
SELF-DEFINITION IN LEGAL SCHOLARSHIP

JESSICA M. EAGLIN*

Am I a law and technology scholar? A more senior scholar first suggested the notion to me at a regional junior scholars' conference in my second year as a law professor. After reading my draft article on algorithms and criminal sentencing, this scholar told me something new. "This is a law and technology paper," she said. In essence, she suggested, "You are one of us." At the time I thought, "Whatever a law and technology scholar is, I don't think that is me."

This personal experience informs my read of Ryan Calo's book, *Law and Technology: A Methodical Approach*. First, it illuminates the ambition of his project. *Law and Technology* sets forth Calo's definition of what it means to be a law and technology scholar based on how select legal scholarship already approaches law and technology.¹ Through this definitional project, Calo seeks to "make [a] case for law and technology as a field" in law.² In so doing, the book invites identification with the field. Second, the opening story casts some doubt on this ambition. To the extent that Calo seeks to "confer a sense of coherence and identity upon this burgeoning . . . field" through identification of a "common methodology, grounded in what most law and technology scholars already do,"³ I see peril. In this brief review, I reflect on why.

Law and Technology is a concise book on how to examine technology in law. Chapter 1 identifies features about technology which make it challenging in society.⁴ Chapter 2 explains why law, and legal scholarship specifically, is a useful tool through which to engage technology.⁵ Calo suggests that law's pragmatism and legal scholars' comfort with normativity are unique.⁶ Thus legal scholarship on technology is unique in its effort to "safeguard[] rights and interests in the face of technological change and to promot[e] human flourishing."⁷ Chapter 3 lays out a pervasive method of engaging technology in law.⁸ Chapter 4 applies

* Professor of Law, Cornell Law School. The author thanks Chaz Arnett, Fanna Gamal, Jamelia Morgan, and Ngozi Okidegbe for helpful comments and discussions in preparing this reflection.

¹ RYAN CALO, *LAW AND TECHNOLOGY: A METHODOLOGICAL APPROACH* 2 (2025).

² *Id.* at 4.

³ *Id.*

⁴ *See id.* at 20-51 (detailing tech as inevitable, tech obscuring human involvement, and tech as undesirable to regulate).

⁵ *Id.* at 52-79.

⁶ *E.g., id.* at 54-55.

⁷ *Id.* at 54.

⁸ *Id.* at 86.

the method to a variety of contexts. The book concludes with recommendations for new directions in the field.⁹

Chapter 3 is the heart of the book, and the focus of my review. Calo contends that legal scholars have a particular method and adopt various modes of analysis when confronting technology in law.¹⁰ He argues that legal scholars of technology follow a four-step method: (1) selecting and defining a technology;¹¹ (2) envisioning the whom, what, or how of technology's impact;¹² (3) conducting legal analysis of the tensions or questions that arise from the technology's application;¹³ and (4) setting forth an intervention.¹⁴ Further, he identifies four archetypal categories of law and technology projects: (1) disruption; (2) governance or tech assessment; (3) internal or critical projects; and (4) empirical research.¹⁵

Going back to my own perceptions of "the field," reading *Law and Technology* was illuminating. I could see some, but not all, of my own projects through its lens. In some instances, my work centers on the expansion of algorithms in criminal law and the tensions it creates.¹⁶ In other instances, my work centers on criminal law reforms and their impact on marginalized communities in the era of mass incarceration, with only passing reference to technical reforms.¹⁷ Both strands consider algorithms, but only one appears consistent with Calo's suggested law and technology method. Of course, not every project by every scholar who thinks about technology in law must fit into his definition for the frame to be helpful. This makes concrete Calo's ambition. Calo conceptualizes law and technology as a far-reaching subfield.¹⁸ By describing its contours, *Law and Technology* begins to define a field. Considering my work through his lens illuminates a secondary ambition. In defining the field for ourselves, *Law and Technology* also begins to define the "ourselves" who fit within it.¹⁹

Yet *Law and Technology* gives me pause, too. Legal scholarship is a political project, even though legal scholars don't often think of it as such.²⁰ Its form and

⁹ *Id.* at 137-42.

¹⁰ *Id.* at 116-17.

¹¹ *Id.* at 90-94.

¹² *Id.* at 95-104.

¹³ *Id.* at 104-11.

¹⁴ *Id.* at 111-16.

¹⁵ *Id.* at 107. A fifth category is "hybrid," which "combin[es] multiple approaches." *Id.*

¹⁶ See, e.g., Jessica M. Eaglin, *Constructing Recidivism Risk*, 67 EMORY L.J. 59 (2017) (explaining design of algorithms used in criminal sentencing).

¹⁷ See, e.g., Jessica M. Eaglin, *To "Defund" the Police*, 73 STAN. L. REV. ONLINE 120, 132-33 (2021) (referencing expansion of algorithmic systems in policing).

¹⁸ CALO, *supra* note 1, at 89 (analogizing law and technology to law and economics).

¹⁹ *Id.* at 141 (highlighting 2024 Georgetown Law Journal symposium on "Afrofuturism and the Law" and noting "the field of law and technology was well represented" there, having included Ifeoma Ajunwa, Paul Gowder, and myself).

²⁰ See Jocelyn Simonson & K. Sabeel Rahman, *The Part IV Problem in Legal Scholarship*, 126 COLUM. L. REV. F. (forthcoming 2026) (manuscript at 3) (on file with author) ("Despite

content shapes and is shaped by many forces.²¹ Who gets cited and how, and which ideas gain broad traction in legal scholarship and outside it, depend on many factors.²² Calo seeks to organize the field of law and technology based on his interpretation of who constitutes the center of law and technology scholarship already. What are the political implications of defining law and technology as a subfield in this way and at this moment? Calo's book does not provide an answer, but it does beg the question.

One political implication is marginalization. A robust and diverse body of legal scholarship examines law's role in maintaining hierarchical structures of power in society. Scholarship in this tradition will engage with "technology" in Calo's sense of "physical or digital artifacts or systems"²³ because law interacts with these things in society.²⁴ Yet the driving ambition of work in this tradition is not to determine "what the rules should be *for* or in light of technology."²⁵ It is to understand and engage with the ways that law maintains hierarchical relations of power in contemporary society.²⁶ Understanding technology in society is an increasingly important byproduct in that larger effort.

reports of their irrelevance, law review articles are read both within and outside of the academy; they are cited as sources of expertise; and they are used, albeit modestly, to craft legal and political strategies and policies."); Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561, 573 (1984) ("Courts do cite law review articles; judges, even when they do not rely on an article expressly, may still read and be informed by it. . . . Moreover, what law professors say in their elegant articles contributes to a legal climate, a culture.").

²¹ See, e.g., Goldburn P. Maynard, Jr., *Killing the Motivation of the Minority Law Professor*, 107 MINN. L. REV. 245, 256 (2022) ("The legal academy finds itself in a world of academic capitalism and stiff competition for resources, which in turn incentivizes the production of certain kinds of scholarship.").

²² See, e.g., Simonson & Rahman, *supra* note 20, at 13-14 (noting how legal scholarship emphasizes societal notions of "feasibility"); Delgado, *supra* note 20, at 574 (positing "unconscious action," rather than "conscious malevolence or crass indifference," explains the absence of minority scholarship in text and footnotes of civil rights scholarship).

²³ CALO, *supra* note 1, at 23 ("I . . . understand technology as necessarily embodied in physical or digital artifacts and systems. . . . [M]y focus throughout the book is on how the law interacts with *things* . . .").

²⁴ See, e.g., Sean Allan Hill II, *Bail Reform and the (False) Racial Promise of Algorithmic Risk Assessment*, 68 UCLA L. REV. 910 (2021) (algorithms); Monica C. Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650, 708 (2020) (algorithms); Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 465 (2018) (body cameras); Dorothy E. Roberts, *Digitizing the Carceral State*, 132 HARV. L. REV. 1695 (2019) (reviewing VIRGINIA EUBANKS, *AUTOMATING INEQUALITY: HOW HIGH-TECH TOOLS PROFILE, POLICE, AND PUNISH THE POOR* (2018)) (algorithms).

²⁵ CALO, *supra* note 1, at 4, 105.

²⁶ See, e.g., Ngozi Okidegbe, *To Democratize Algorithms*, 69 UCLA L. REV. 1688 (2023); Fanna Gamal, *The Private Life of Education*, 75 STAN. L. REV. 1315 (2023); Khaled Ali Beydoun, *The New State of Surveillance: Societies of Subjugation*, 79 WASH. & LEE L. REV. 769 (2022); Chaz Arnett, *From Decarceration to E-Carceration*, 41 CARDOZO L. REV. 641,

Do these kinds of work fit into Calo's framing of the field? Perhaps. As he suggests, critical projects have a place in the law and technology tradition.²⁷ But in defining technology as just artifacts and identifying a method oriented toward legal analysis in light of those artifacts, Calo also forecloses dynamic ways this field could encompass more of such works.²⁸ In turn, such works, which may be marginalized from other fields already, become more so as more "subfields" arise. Such marginalization impacts citation practices, invitations to conferences, and more unspoken currency in the legal academy. In turn, the works themselves can become marginalized in law. This is less a critique of Calo, who perhaps rightly describes the subfield, and more a reflection on the subfield which he describes.

This reflection leads me to a different question raised by the book: Is defining a subfield in law a worthy project? Calo suggests it is,²⁹ and I concur. It helps junior scholars and illuminates interlocutors. But how and when we define fields matters, too. *Law and Technology* underscores just how contested the contours of "what counts" as law and technology scholarship is in this moment. Calo provides a useful lens through which to understand that contestation.

675-80 (2019); see also Jessica M. Eaglin, *Racializing Algorithms*, 111 CAL. L. REV. 753, 767 (2023) (illuminating production of race at intersection of criminal law and algorithmic governance debates); Jessica M. Eaglin, *When Critical Race Theory Enters the Law & Technology Frame*, 26 MICH. J. RACE & L. 151, 151 (2021) (noting law and technology scholars' narrow focus on technical solutions and recommending greater consideration of historic "role of law in creating the social context in which . . . technologies are adopted").

²⁷ Calo, *supra* note 1, at 107 (identifying "*the internal or critical project*" as an archetypal category within law and technology scholarship, and pointing to the work of Julie Cohen, Daniel Solve, and Joshua Fairfield as demonstrative examples).

²⁸ See *id.* at 23 (excluding from "technology" those works that engages with "the pragmatic organization of knowledge"); *id.* at 105 ("The field of law and technology, as I envision it, concerns what the rules should be *for* or *in light of* technology.").

²⁹ See *id.* at 16.