



Law, Technology and Ethics

Objectives

To expand our understanding of what technology is.

To reframe our understanding of our relationship with technology.

To highlight the links between technology, ethics and law.

Lawyer's duty

Ethical

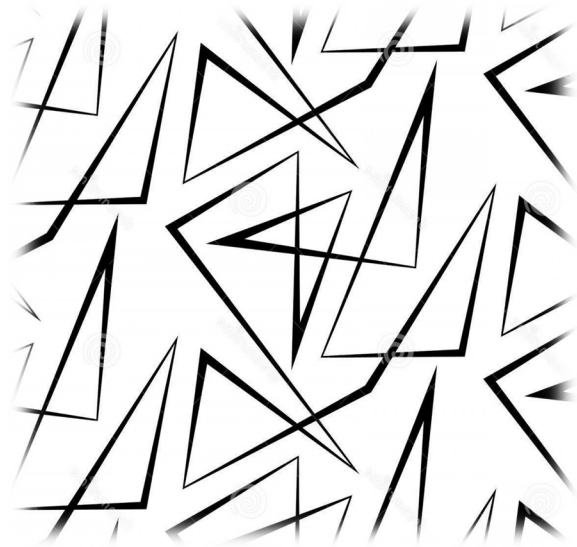
Moral?

Social contract?

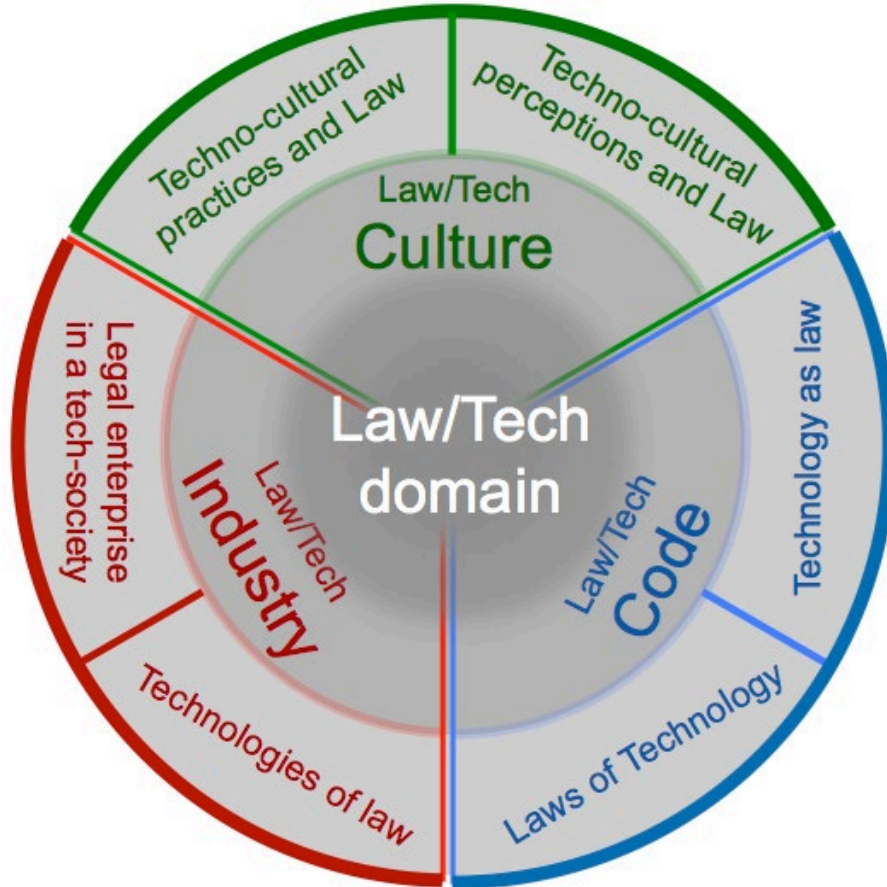
Human – Technology – World

Technological abstraction

Complexity leads to
abstraction



Law / Tech Framework



Law / Tech Code

Both law and technology prescribe, proscribe or regulate behaviour.



Laws of Technology



Technology as Law

Law of Technology

Regulatory regimes

- Legislation
- Common law
- Practice Notes



Examples:

- ▶ *Telecommunications Act 1997*
- ▶ Supreme Court of Victoria, Practice Note GEN 5: Technology in Civil Litigation, June 2018.

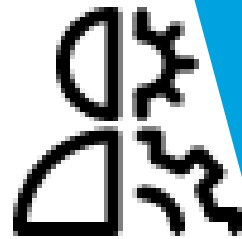
Technology as Code

Technology that *acts in a way similar to law* by regulating behaviour in an environment.

- Technology can restrict, modify or prescribe behaviour
- Act as 'quasi-law'

Examples:

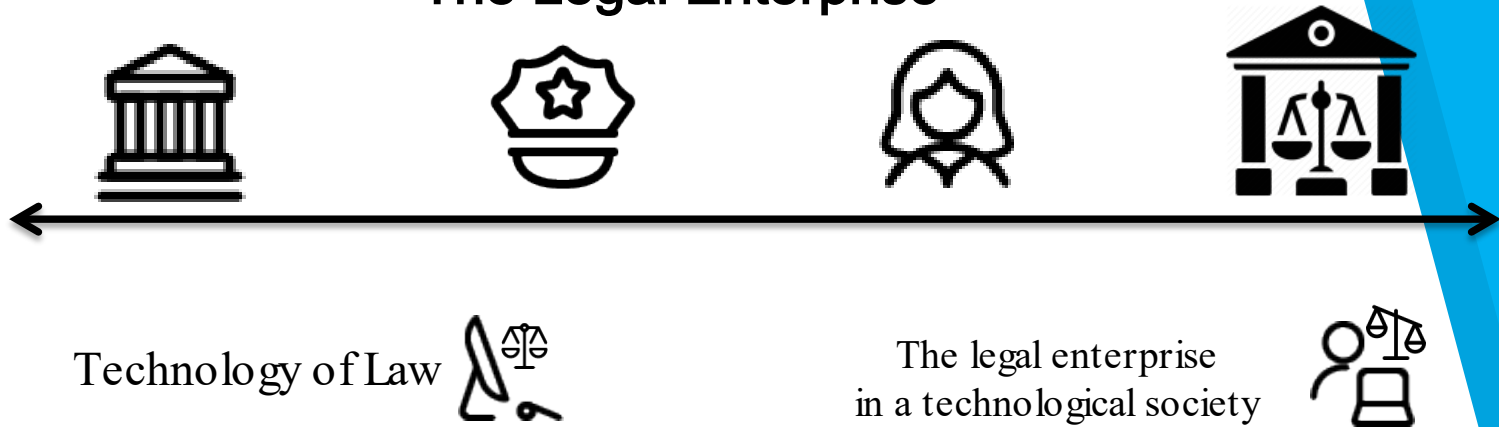
- ▶ Computer code prescribes a way of functioning in an online environment.
- ▶ A speed bump aims to restrict the behaviour of drivers.



2. Law -Tech Industry

Technology is incorporated into the perception and practices of the legal 'enterprise'.

The Legal Enterprise



2.1 Technologies of Law

Technologies used in the law industry.

- General business technologies
- Specific legal technologies



Examples:

- ▶ General business technologies such as the Internet and office management systems.
- ▶ Specific legal technologies such as legal research databases, e-discovery, online courts, and PEXA.

2.2 The legal enterprise in a tech society

Technology influences how we think about, build, and practise the industry of law.

- Developing policy and enacting laws
- Administering law and practicing law

Examples:

- ▶ Design thinking in law
- ▶ Innovations in law firm structures, e.g. the NewLaw phenomenon
- ▶ Live streaming court proceedings.



🗨️ Katie Miller 🏳️‍🌈 replied



Darren O'Donovan @DarrenODonovan · 1d ▾

One thing about [#notmydebt](#) was that those of us with various types of privilege (legal/organisational) were a step too late hitting this robodebt dysfunction. I feel this was one of the reasons individuals got isolated&instrumentalied by this Department. I'm very sorry about it



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22



Katie Miller 🏳️‍🌈 @Natural_Justice · 1d ▾

I have also had disquiet about this. I wonder if part of it was that we didn't recognise quickly enough the paradigm shift that [#Robodebt](#) represented - which meant that our traditional modes of response were ill adapted 🤔



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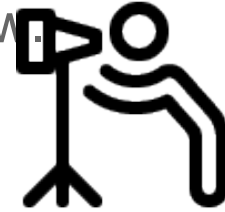


3. Law -Tech Culture Subdomain

Technological mediation affects how we see the law

-how we exist in the world

-how we understand the world



Techno-cultural practices and law



Techno-cultural perceptions and law



3.1 Techno -cultural practices and law

Technology influences how we are *in* the world. Legislation

-Social norms

-Law is connected or disconnected to a social norm.



Examples:

- ▶ Ease of copying has affected social norms in relation to piracy.
- ▶ Uber instigated a practice that violated certain regulations but influenced social norms to the point that the law was changed.
- ▶ Bitcoin is changing the way people transact.

3.2 Techno -cultural perceptions and law

Technology influences how the world becomes *meaningful* to us.

- How we interpret the world
- What's right and wrong

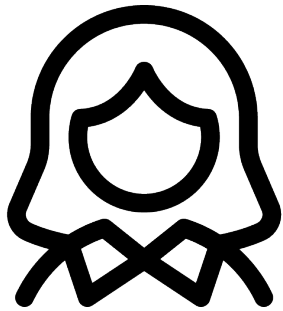


Examples:

- ▶ Hyperconnectivity has blurred the line between private and public.
- ▶ Social media influences how we 'consume' political information.
- ▶ *Bitcoin* is changing the way people think about how economies operate.

Broadened concept of technology

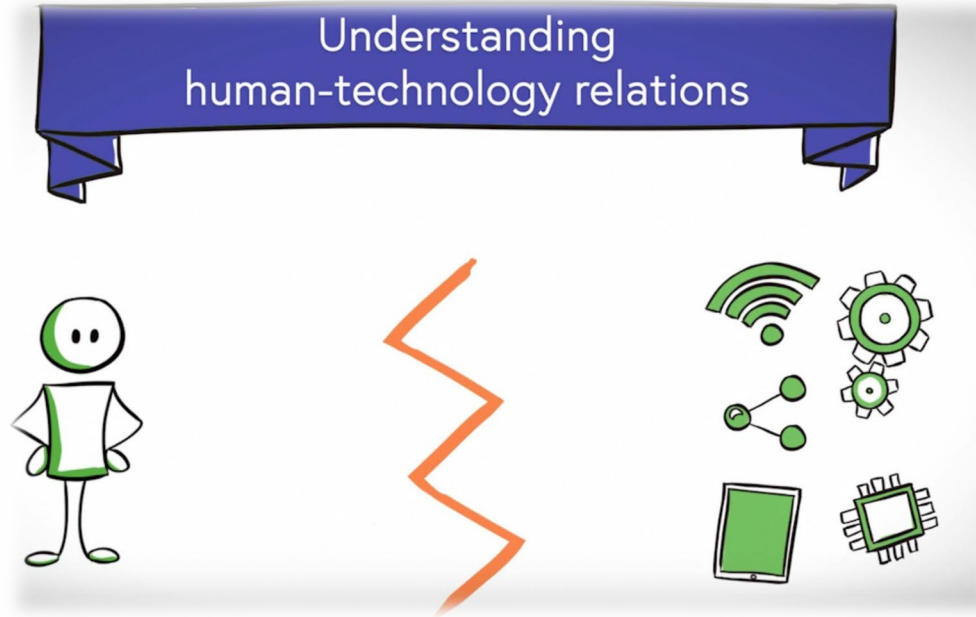
Technology should be thought of as a relationship between...



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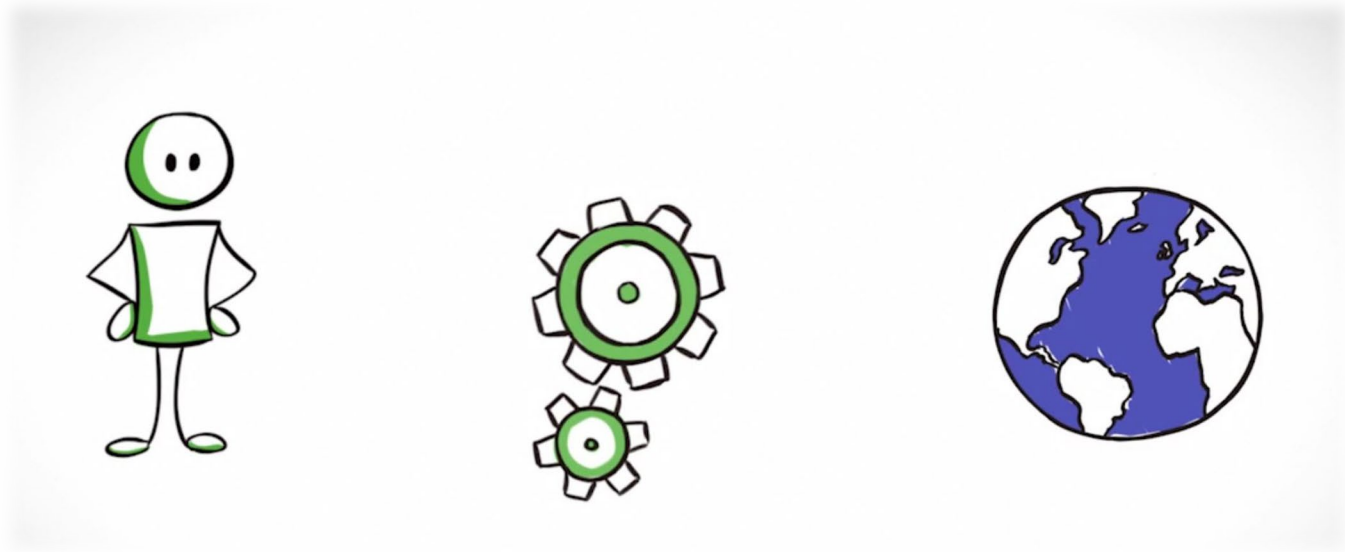


Technological mediation



<https://www.youtube.com/watch?v=FVhrLwBNbvU>

Technological mediation



Technology connect us to our world

Technology changes how
we see the world



Technology changes how
we act in the world



Technological mediation and ethics

Technological mediation:

- ▶ Helps us understand the moral perspective.
- ▶ Plays a role in ethical design.

Technological mediation and law

Don't just think about technology as a 'thing'.

Concepts are also technological in nature.

Concepts are important to the work of lawyers

Technological mediation and selected phenomenon

Phenomena	Dimension	Simplified Explanation
Sexting	Perception	Blurred lines between private and public
	Practice	Explicit images sent via the Internet
NewLaw	Perception	
	Practice	
Bitcoin	Perception	
	Practice	
Uber	Perception	
	Practice	
Robodebt	Perception	
	Practice	

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Uber	Perception	Taxi-like service (without licences).
	Practice	Social norms promoted use of service
Robodebt	Perception	Efficient compliance system (from the government's perspective)
	Practice	Instrumentation of debt and debtors

ABA Model Rules

Rule 1.1 – Client-Lawyer Relationship

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Comment ('Maintaining competence')

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

3. PARAMOUNT DUTY TO THE COURT AND THE ADMINISTRATION OF JUSTICE

3.1 A solicitor's duty to the court and the administration of justice is paramount and prevails to the extent of inconsistency with any other duty.

4. OTHER FUNDAMENTAL ETHICAL DUTIES

4.1 A solicitor must also:

- 4.1.1 act in the best interests of a client in any matter in which the solicitor represents the client;
- 4.1.2 be honest and courteous in all dealings in the course of legal practice;
- 4.1.3 deliver legal services competently, diligently and as promptly as reasonably possible;
- 4.1.4 avoid any compromise to their integrity and professional independence; and
- 4.1.5 comply with these Rules and the law.

Who is it really?

- ▶ A lawyer acted for the vendor in a sale of business.
- ▶ Before settlement, the lawyer received an email from the vendor requesting that the funds be placed into a particular bank account.
- ▶ The lawyer emailed the client confirming that it was the correct account and if they wanted all the settlement funds into that account.
- ▶ This was confirm via return email.
- ▶ Settlement occurred and the fund were paid into the account.
- ▶ Three days the client telephoned the lawyer asking where the sale proceeds were.

Social media posts

- ▶ A lawyer acted for a government department in NDIS matters.
- ▶ At a tribunal hearing the lawyer was successful in limiting the payment made to the benefit recipient.
- ▶ The lawyer tweeted about the matter and bragging about his win.

In-house Counsel

- ▶ An in-house counsel lawyer is given instructions to draft terms and conditions for the company's new website.
- ▶ Some of the terms give the company the ability to sell the user's data to third parties.
- ▶ The terms of on paragraph 42 in a 70 paragraph agreement
- ▶ There is no provision to opt -out.

Meet my little friend

- ▶ You are an employment lawyer and you have been getting a lot of extra calls lately.
- ▶ Most of the questions are straight forward and do not result in a retainer
- ▶ The partners in the firm decide to set up a chat - bot to answer questions and hopefully free -up the lawyers from rudimentary tasks
- ▶ Some of the answers the chat -bot gives makes assumptions about the situation and employers are relying on these answer to dismiss employees.

Technology, law and ethics

Technology, law and ethics are intricately meshed.

From the overt to the subtle

From the smallest to the largest.

Every facet of our lives.

Technology, law and ethics

Don't get lost in the abstraction.

Broaden your conceptualisation of technology.

Have a framework to assist you.

Understand of technology mediates our ethical perceptions and practices

Technology, law and ethics question

Is it ethical for a lawyer to use AI to come up with a solution for a client and for the lawyer not to disclose the method?



THANKS!

Fabian Horton

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