Book Reviews

Book Review – Artificial Intelligence, Robots and the Law

Michael Guinhot & Lyria Bennett Moses

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Michael Guinhot and Lyria Bennett Moses have written a comprehensive exploration of the current state of artificial intelligence ('AI'), robots and the law in Australia. The authors consistently confront the Collingridge dilemma, that when technology is easy to control, the need to do so is not apparent. Yet, once societal norms have shifted and adopted new technology, regulating the technology becomes difficult.[1] Consequently, it is never the optimal time to regulate technological advances.

Drawing on the Collingridge dilemma as a common thread, this review considers the book's case for technology neutral legislation, and the current lack of agreement on established ethical principles of AI identified in *Artificial Intelligence, Robots and the Law.* To evaluate technology neutral legislation, the authors' discussion of mass government surveillance and the use of digital tools to conduct voter manipulation is analysed, identifying an opportunity for further discussion. The accessibility of the book is noted before concluding with a discussion of public apathy towards privacy intrusions by technology corporations.

AI defies a simple definition, with many organisations describing AI differently. While the authors address the various definitions, it is sufficient for this review to define AI as an intelligent system that acts on stimuli to achieve certain goals.[2] The book gains legal pace through its consideration of how AI will interact with common law development in Australian tort, contract, criminal and property law. These areas currently struggle to deal with the complex issues that technology raises. The authors highlight the tension between human decision-making and programmed processes. For example, in a car collision involving a self-driving car, there are potentially three responsible actors/program at fault: the driver, the car's AI programmer or the car's AI itself.[3] A precautionary principle approach would ban the technology until it is safe, but given the high road toll, the book proffers a compelling argument that even if the technology is not perfect yet, it's often safer than human drivers.[4] With the rapid impact that

[1] Michael Guinhot and Lyria Bennett Moses, *Artificial Intelligence, Robots and the Law* (LexisNexis, 2020) 107, 213.
[2] Ibid 18.
[3] Ibid 234–239.
[4] Ibid 320–322.

automated technology is having on society, questions of legal responsibility involving automation have never been timelier.

Guinhot and Moses posit that for clarity, and convenience, it is most effective to broaden established and settled principles of law than to accommodate new technological contexts.[5] By using existing principles to regulate new technology, the challenge of the pacing problem is largely ameliorated. The pacing problem refers to the situation where technology develops more rapidly than the slower pace at which the law responds and changes.[6] In addition to broadening existing principles, the authors argue that by adopting technology neutral legislation, which is purposive drafting in broad terms rather than highly specific regulation,[7] the law is better able to respond to the latest innovations.[8] The authors acknowledge this is not always possible. For example, the area of data ownership requires entirely new laws because current remedies are limited to causes of action in breaches of contract or equitable confidentiality. The authors argue that for data to be owned as property, it would require a new statute.[9] Technology neutral legislation adds drafting complexity as failings in technology contexts must first be identified which requires technical expert knowledge. Further complicating matters, there is no universal global response to AI or agreement about which ethical principles it should embody. In identifying these inconsistencies, the authors table the ethical principles that different domestic and international organisations propose AI should comply with.[10] This highlights a lack of coordination on ethics and how ethical definitions can be shaped by corporate interests if left unregulated. A promising global response is underway, striving for mutual agreement on the ethical principles that AI should possess.[11]

The authors explain concerns around mass surveillance combined with AI use, such as the Chinese Government's facial recognition software.[12] The authors include domestic examples of computer vision data misuse, such as the controversial disclosure of Tasmanian (and other States') license photos under the *Intergovernmental Agreement on Identity Matching Services*.[13] Regulators are addressing these issues, but are not necessarily considering all of the associated risks. Without a solution, AI powered

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[5] Ibid 323–324, 341.
[6] Ibid 104–106.
[7] See generally J M Green, 'Fuzzy Law – A Better Way to Stop Snouts in the Trough?' (1991) 9 *Company and Securities Law Journal* 144.
[8] Guinhot and Moses (n 1) 324-325.
[9] Ibid 227.
[10] Ibid 60-67.
[11] Organisation for Economic Co-operation and Development, *Recommendation of the Council on Artificial Intelligence*, Doc No OECD/LEGAL/0449, 22 May 2019.
[12] Guinhot and Moses (n 1) 51-52, 208.
[13] *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Amendment (Identity Matching Services) Regulations 2017* (Tas).

surveillance may become the status quo and be beyond effective regulation, per the Collingridge dilemma.

Mass-voter manipulation using digital platforms is analysed by the authors as a threat to democracy, a multi-faceted issue culminating in influencing an election result. The book focuses on the tools used to carry out election manipulation in the US, including social media reinforcing ideological echo chambers.[14] Given the Australian perspective of *Artificial Intelligence, Robots and the Law*, this analysis would benefit from discussion of Australian safeguards on the democratic process and whether it is as vulnerable as the US. It would have been interesting for the authors to have considered what immediate reforms are necessary to protect Australia's democracy. This is particularly relevant given increased social media use in election campaigns and the general reliance on digital platforms for information.

The book provides a common language by which three highly complex fields intersect in a manner that is accessible to laypersons.[15] It does so by framing concepts in familiar terms, using illustrative examples rather than jargon-laden terms, and quelling apocryphal fears which surround the ethical dilemmas of AI with sound research. With the goal of accessibility to a broad readership, the book provides a discrete expanded dictionary of terms,[16] dually serving as a compendium for legal-technology buzzwords. The accessibility goal of the book is achieved through examples of technology use, which crystallise complex concepts and illuminates the extent of the challenges faced.

Despite these strong examples, it was surprising that the book missed the opportunity to discuss consumer apathy towards privacy violations, alongside the monetisation of freely given social media data.[17] This discussion would provide additional insight into the social engineering that accompanies digital consumer manipulation.[18] Reforms addressing the disparity between corporations writing favourable terms and conditions and the heedless acceptance by users would complement the commentary on clickwrap agreements, where a user must accept a website's privacy policy before they can access it.[19] It could also explain why legislators allow this to continue and why, despite resistance, user data is still freely collected.[20]

Guinhot and Moses provide critical context to the difficulties of 'techno-ethical' problems, consulting leading research and mapping possible

[14] Guinhot and Moses (n 1) 220–223.
[15] Ibid 3, 353.
[16] Ibid ch 1.
[17] Ibid 259.
[18] Ibid 260–262, 270–274.
[19] Ibid 126–128.
[20] Ibid 258–259.

statutory responses. The authors have preferred to inform the reader using rigorous research, rather than taking a clear stance on more controversial AI issues.[21] Reflection about the information we callously provide to major corporations without proper contemplation is a by-product of the discussions advanced by the authors. It becomes apparent that these problems do not have simple solutions, but if there is never an optimal time to regulate technological advances, why not now?

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[21] Ibid 354.

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