The Technology of Law

By Sam Vaknin

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One can discern the following relationships between the Law and Technology:

1. Sometimes technology becomes an inseparable part of the law. In extreme cases, technology itself becomes the law. The use of polygraphs, faxes, telephones, video, audio and computers is an integral part of many laws - etched into them. It is not an artificial co-habitation: the technology is precisely defined in the law and forms a CONDITION within it. In other words: the very spirit and letter of the law is violated (the law is broken) if a certain technology is not employed or not put to correct use. Think about police laboratories, about the O.J. Simpson case, the importance of DNA prints in everything from determining fatherhood to exposing murderers. Think about the admissibility of polygraph tests in a few countries. Think about the polling of members of boards of directors by phone or fax (explicitly required by law in many countries). Think about assisted suicide by administering painkillers (medicines are by far the most sizeable technology in terms of money). Think about security screening by using advances technology (retina imprints, voice recognition). In all these cases, the use of a specific, well defined, technology is not arbitrarily left to the judgement of law enforcement agents and courts. It is not a set of options, a menu to choose from. It is an INTEGRAL, crucial part of the law and, in many instances, it IS the law itself.

2. Technology itself contains embedded laws of all kinds. Consider internet protocols. These are laws which form part and parcel of the process of decentralized data exchange so central to the internet. Even the language used by the technicians implies the legal origin of these protocols: "handshake", "negotiating", "protocol", "agreement" are all legal terms. Standards, protocols, behavioural codes - whether voluntarily adopted or not - are all form of Law. Thus, internet addresses are allocated by a central authority. Netiquette is enforced universally. Special chips and software prevent render certain content inaccessible. The scientific method (a codex) is part of every technological advance. Microchips incorporate in silicone agreements regarding standards. The law becomes a part of the technology and can be deduced simply by studying it in a process known as "reverse engineering". In stating this, I am making a distinction between lex naturalis and lex populi. All technologies obey the laws of nature - but we, in this discussion, I believe, wish to discuss only the laws of Man.

3. Technology spurs on the law, spawns it, as it were, gives it birth. The reverse process (technology invented to accommodate a law or to facilitate its implementation) is more rare. There are numerous examples. The invention of modern cryptography led to the

formation of a host of governmental institutions and to the passing of numerous relevant laws. More recently, microchips which censor certain web content led to proposed legislation (to forcibly embed them in all computing appliances). Sophisticated eavesdropping, wiring and tapping technologies led to laws regulating these activities. Distance learning is transforming the laws of accreditation of academic institutions. Air transport forced health authorities all over the world to revamp their quarantine and epidemiological policies (not to mention the laws related to air travel and aviation). The list is interminable.

Once a law is enacted - which reflects the state of the art technology - the roles are reversed and the law gives a boost to technology. Seat belts and airbags were invented first. The law making seat belts (and, in some countries, airbags) mandatory came (much) later. But once the law was enacted, it fostered the formation of whole industries and technological improvements. The Law, it would seem, legitimizes technologies, transforms them into "mainstream" and, thus, into legitimate and immediate concerns of capitalism and capitalists (big business). Again, the list is dizzying: antibiotics, rocket technology, the internet itself (first developed by the Pentagon), telecommunications, medical computerized scanning - and numerous other technologies - came into real, widespread being following an interaction with the law. I am using the term "interaction" judiciously because there are four types of such encounters between technology and the law:

(a) A positive law which follows a technological advance (a law regarding seat belts after seat belts were invented). Such positive laws are intended either to disseminate the technology or to stifle it.

(b) An intentional legal lacuna intended to encourage a certain technology (for instance, very little legislation pertains to the internet with the express aim of "letting it be"). Deregulation of the airlines industries is another example.

(c) Structural interventions of the law (or law enforcement authorities) in a technology or its implementation. The best examples are the breaking up of AT&T in 1984 and the current anti-trust case against Microsoft. Such structural transformations of monopolists release hitherto monopolized information (for instance, the source codes of software) to the public and increases competition - the mother of invention.

(d) The conscious encouragement, by law, of technological research (research and development). This can be done directly through government grants and consortia, Japan's MITI being the finest example of this approach. It can also be done indirectly - for instance, by freeing up the capital and labour markets which often leads to the formation of risk or venture capital invested in new technologies. The USA is the most prominent (and, now, emulated) example of this path.

4. A Law that cannot be made known to the citizenry or that cannot be effectively enforced is a "dead letter" - not a law in the vitalist, dynamic sense of the word. For instance, the Laws of Hammurabi (his codex) are still available (through the internet) to all. Yet, do we consider them to be THE or even A Law? We do not and this is because Hammurabi's codex is both unknown to the citizenry and inapplicable. Hammurabi's Laws are inapplicable not because they are anachronistic. Islamic law is as

anachronistic as Hammurabi's code - yet it IS applicable and applied in many countries. Applicability is the result of ENFORCEMENT. Laws are manifestations of asymmetries of power between the state and its subjects. Laws are the enshrining of violence applied for the "common good" (whatever that is - it is a shifting, relative concept).

Technology plays an indispensable role in both the dissemination of information and in enforcement efforts. In other words, technology helps teach the citizens what are the laws and how are they likely to be applied (for instance, through the courts, their decisions and precedents). More importantly, technology enhances the efficacy of law enforcement and, thus, renders the law applicable. Police cars, court tape recorders, DNA imprints, fingerprinting, phone tapping, electronic surveillance, satellites - are all instruments of more effective law enforcement. In a broader sense, ALL technology is at the disposal of this or that law. Take defibrillators. They are used to resuscitate patients suffering from severe cardiac arrhythmia's. But such resuscitation is MANDATORY by LAW. So, the defibrillator - a technological medical instrument - is, in a way, a law enforcement device.

Sam Vaknin is the author of Malignant Self Love - Narcissism Revisited and After the Rain - How the West Lost the East. He is a columnist for Central Europe Review, United Press International (UPI) and eBookWeb and the editor of mental health and Central East Europe categories in The Open Directory, Suite101 and searcheurope.com. Visit Sam's Web site at http://samvak.tripod.com

What Publications Should Look for in a Technology Writer

By David Geer

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What to look for in a technology writer.

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