

Book Review: 'Rethinking the Jurisprudence of Cyberspace'

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Cite as Andriychuk, O., "Book Review: Rethinking the Jurisprudence of Cyberspace", European Journal of Law and Technology, Vol 11, No. 1, 2020

BOOK

Chris Reed and Andrew Murray, *Rethinking the Jurisprudence of Cyberspace*, 2018, Edward Elgar Publishing, 256pp, ISBN9781785364280

REVIEW

This book is an intriguing and ambitious attempt by two indisputable authorities in internet law to provide a legal philosophical framework for this relatively new, very dynamic and rapidly maturing area of law. The authors are mindful of the delicate and risky nature of this endeavour; marrying two very different legal domains almost inevitably implies the need to cut corners, to challenge, to simplify and ultimately to break the 'inviolability of disciplinary frontiers pact'.

But equally being a pioneer is a fruitful exercise as alongside the perils come significant benefits; and in the case of cyberlaw this is both a long awaited and much needed opus . Much needed, primarily because at the moment internet law means so many different things to so many different people. In some sense, today – let alone tomorrow – whichever area of law we take up, we are dealing with internet law. The same with methodology: it covers doctrinal, black letter dimension as much as it does socio-legal methods; it operates instruments of law and economics, and it is also cannot be not politicised. The area is expanding exponentially and even a brief look at the curriculum of internet law modules at different law schools reveals the obvious: tutors add to 4-5 core topics the themes they are familiar most. Digital technologies penetrate more and more areas of social life and in doing so they raise more and more legally relevant questions. The dynamism and the speed of such penetration is self-evident.

The authors themselves state it very eloquently: [throughout decades of studying cyberlaw we have tried to answer the question,] "What is the law applicable to a given situation?" We find however that [... t]he answer has never successfully identified 'the' law but, at best, 'some of these laws'. [... But w]hich of these laws ought to be obeyed?'. This passage is essentially the

most effective shield against the legal philosophers, policing passionately the 'purity' of jurisprudence, its ancient pedigree and condensed, refined theoretical thinking: the book is not an 'invasion' of cyber lawyers into the realm of jurisprudence; on the contrary, it is an attempt to use the wisdom of legal philosophy for the benefits of internet law, to provide an analytical basis to the (sometimes too) rapidly emerging and (sometimes too) dynamic realm of law or – to put it radically – to fertilise the law of tomorrow with the law of yesterday.

This book introducing an applied jurisprudence of cyberlaw is a must for anybody teaching internet law related subjects. It offers long-awaited normative guidance to the questions of which law should be obeyed – as there are so many of them 'simultaneously claiming obedience' – but also why these (or any at all) laws should be obeyed. It contextualises, adapts, operationalises the Holy Grail of jurisprudence to the needs and benefits of cyberlaw, explicating inter alia issues related to the source and nature of authority in (cyber)law; the functioning of law in cyberspace; the rule of cyberlaw; enforcement; law-making and some other issues central to any textbook in jurisprudence.

It would be too mechanistic to reduce the book to mere applied jurisprudence with defined and absolute 'givers' and 'receivers'. The authors have not limited themselves to the mere transposition of the principles of jurisprudence to the realm of cyberlaw. In this sense they are 'disobedient' receivers, and the book is full of examples of how the authors disagree with the answers offered by the philosophy of material law to the philosophy of digital law, 'recoding' them to the specificity of cyberlaw.

The main research question of the book is focused on revising a number of real, vibrant, cyberlaw dilemmas through the prism of jurisprudence. More specifically, the authors offer a thorough analysis of the role of private parties in establishing cyberlaw. There is most likely no other area of law in which the rules of the game are influenced to such an extent by non-state actors: technical rule-makers and Big Tech and where the interstate borders are so illusionary and 'virtual'. The relevant part of the book first identifies those actors, explaining their competences, real and legal power, and then offers an original, coherent and very well-substantiated jurisprudential conceptualisation of such a situation.

In Part II the book shifts from authorities to norms – a very logical transfer, as we can clearly see such a shift in legal philosophical literature. Democratic societies do not rely exclusively on the power of authority. Proper understanding of the legal rules of cyberspace is impossible without an attempt to understand the inner dynamics of norms, and the mechanics of communication between various imperatives, something known in jurisprudence as a 'pure theory of law'. The authors offer a 90-page discussion on this issue, and it is perhaps this part of the book that proves the overall success of the entire project of the jurisprudence of cyberspace, making it an intellectually appealing, conceptually mature legal theory of cyberlaw.

The last part of the book deals with legitimacy and the Rule of law – another very topical area in contemporary jurisprudence. The authors identify the key parameters of the concept of Rule of law and check various internet law conundrums against them.

The book is a must for those teaching cyberlaw related modules as well as for the broader academic community. It is very well-written, and the ideas emerge one after the other with remarkable regularity and surprising clarity. A pleasure to read. An honour to recommend.