

EDITORIAL

## Law, Religion, and Technology: A Viable Triad?

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For a journal of law and religion, the decision to confront changes and challenges imposed by novel technologies is no trivial one, yet it is one the *Journal of Law and Religion* is undertaking.<sup>1</sup> Whether the perspective of law and religion is even of any use in comprehending and contending with these technologies is a valid question. Contemporary technologies have reshaped our lifestyles, and their ubiquitous impact on our erstwhile habits and perceptions is intently studied and investigated from every angle. Yet bringing the perspective of law and religion to these challenges demands an especial measure of explanation. To justify the grouping of law, religion, and technology, we must demonstrate a potential unique contribution that the lens of law and religion might make and identify the topics or themes that stand to benefit.

In practice and in theory, the emergence of new technologies is closely tied to the fluidity of the human condition and the potential for improving that condition, a primary goal of religions in general. The function of technology as a generator of change is of course not a modern phenomenon, and legal reactions usually play a pivotal part in adapting and containing that change. Traditionally, adjustment to new technologies and their impact grew out of the recognition that technology changes existential circumstances and such changes may necessitate the intervention of the law. The law thus does not anticipate change borne of new technologies, but reacts by intervening or altering existing legal arrangements.

The reactional pattern of changed circumstances, interventional necessity, and legal adaptation is typical of both premodern and late-modern technologies. Samuel Warren and Louis Brandeis's seminal essay on the right to privacy, despite its modern context, illustrates this pattern well: an acknowledgment of changes wrought by technology to circumstances, a claim for the necessity of intervention, and new legal regulation—symbolized, in this case, by the right to privacy.<sup>2</sup>

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<sup>1</sup> See the article in this issue by Tal Zarsky and Nadav Berman and the recent article by Kenneth Bamberger and Ariel Evan Mayse: Tal Z. Zarsky and Nadav S. Berman, "What Is the Juxtaposition between Silicon Valley and Mount Sinai? Covenantal Principles and the Conceptualization of Platform–User Relations," *Journal of Law and Religion* 37, no. 3 (2022) (this issue); Kenneth Bamberger and Ariel Evan Mayse, "Pre-Modern Insights for Post-Modern Privacy: Jewish Law Lessons for the Big Data Age," *Journal of Law and Religion* 36, no. 3 (2021): 495–532. In addition, *JLR* is currently developing a symposium to expand this conversation on law, religion, and technology to include more perspectives from other religious traditions.

<sup>2</sup> Samuel D. Warren and Louis D. Brandeis, "The Right to Privacy," *Harvard Law Review* 4, no. 5 (1890): 193–220. For additional analysis of the nexus between law, religion, technology, and privacy, see Bamberger and Mayse, "Pre-



In impact and otherwise, data-driven technologies fundamentally differ from traditional technologies.<sup>3</sup> These technologies and the information revolution from which they spring are deeply involved in a process of changing our perception of reality and our self-understanding of our place, as human beings, in reality. To wit, data-driven technologies not only cause circumstantial changes but also challenge basic presuppositions upon which the law is founded. Therefore, the law's ability to react to these technologies is limited, and this limitation may require the viewpoint of law and religion as an essential resource.

The treatment of data-driven technologies from religious perspectives and the study of their impacts on religious experiences and imaginaries are only in their beginnings, with a trend toward deeper work to be expected. Notwithstanding the nascent nature of work on religion and data-driven technologies, the complex relationship between technology and religion is a constant focus of religious thought and religious studies. At least in Western contexts, technology is not always valued in religious thought as an achievement or success. Instead, the relationship between technology and religion is dominated by ambivalence, with rivalry and tensions on one hand and collaborative interplay on the other.<sup>4</sup>

Various religious approaches emphasize the role of technology as a divine blessing with the capacity to improve the human condition. Technology may be construed as representing the continued appearance of divine goodness in human history, thus acting in the service of religious worldviews. Further, technology and religion are mutual sources of inspiration, as when technology serves as a source for the conceptualization of religious ideas. The image of God as watchmaker is a classic example of how an understanding of technology can enable and constitute religious language, as well as imagery of the deity and its relationship to the world. A growing trend in the ethics of artificial intelligence and human-centric ethics similarly uses religious ideas and principles as sources of inspiration for dealing with an AI-automated reality saturated with data. In the same spirit, Tal Zarsky and Nadav Berman demonstrate in their article for this issue of *JLR* that religious institutions and concepts have potential as sources of inspiration for renewed formulations of values and legal arrangements.<sup>5</sup>

Nevertheless, the ability to develop technologies that change the human condition exists in tension with religious experiences, with the image of God as the creator of the world, and with the idea that reality operates according to a divine plan. This tension is represented as early as the biblical story about the construction of the Tower of Babel. The story, in its biblical version, is about the development of engineering technology by humans—the invention of the brick<sup>6</sup>—which allowed them to initiate significant changes and improvements in their social lives, preserving unity, uniformity,<sup>7</sup> and social cohesion.<sup>8</sup> The focus of the story, however, is not the success of technology as a means for greater social aims, but

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Modern Insights for Post-Modern Privacy"; Joseph E. David, "Belonging and Identity: Past and Present," *Journal of Law and Religion* 37, no. 2 (2022): 391–98.

<sup>3</sup> I prefer the term *data-driven* to describe these technologies over others (such as *digital*, *smart*, and *AI* technologies) because it indicates the inherent interdependency of contemporary technologies and the information revolution and because this dependency helps to validate the distinction between these and traditional technologies.

<sup>4</sup> A comparable ambivalence of tension and collaborative interplay characterizes the complex relationship between law and religion, as reflected in the academic study of the two. That law and religion are two normative systems for regulating and providing meaning is a central axis of historical competition between religious institutions and secular political systems. On the other hand, collaboration and interplay between religion and law exist in power-sharing arrangements and the ways in which law and religion, and legal thought and religious imagination, have influenced and shaped one another.

<sup>5</sup> Zarsky and Berman, "What Is the Juxtaposition between Silicon Valley and Mount Sinai?"

<sup>6</sup> "Then they said to one another, 'Come, let us make bricks and bake them thoroughly.' They had brick for stone, and they had asphalt for mortar." Genesis 11:3. (The translations from the Bible are mine.)

<sup>7</sup> "Now the whole earth had one language and one speech." Genesis 11:1.

<sup>8</sup> "And they said, 'Come, let us build ourselves a city, and a tower whose top is in the heavens; let us make a name for ourselves, lest we be scattered abroad over the face of the whole earth.'" Genesis 11:4.

the divine unease that it caused.<sup>9</sup> Technological inventions that enhance human capabilities are depicted as a problem rather than an achievement in divine eyes. The same tension accounts for many religious communities' suspicion and avoidance of unfamiliar technologies. This disavowal results not only from conservatism, but also from caution about the potential impact on religious experience and imagination.

Data-driven technologies differ from traditional technologies in that impact. Though both enhance the human ability to change and control social reality, data-driven technologies go further by giving humans and machines capabilities that traditionally defined and constituted concepts of godhood, such as creation, superhuman intelligence, omnipresence, omniscience, and the ability to erase the past. Data-driven technologies both undermine the distinction between divine omnipotence and human limitation and dilute traditional concepts of divinity by making available a significant part of those abilities once considered exclusive to God.

More important than data-driven technologies' subversion of divine exclusivity is their subversion of human uniqueness. Alan Turing observed in his pioneering essay that aside from challenging the belief in the divine origins of intelligence and thought, the concept of machine thinking conspicuously clashes with the idea that human beings are unique and distinct from nonhuman entities, such as animals and machines.<sup>10</sup> In other words, data-driven technologies differ from traditional ones in significantly eroding the anthropocentric understanding of the world that formed in scriptural religious traditions.

The law reacts in various ways to data-driven technologies and their impacts, practical and theoretical. Chief among the resulting theoretical challenges is the way in which data-driven technologies threaten the validity and stability of the anthropocentrism to which modern Western law is highly committed.<sup>11</sup> The commitment to protect human dignity and human rights stems from and is justified by this anthropocentrism, which is in turn predicated on an assumption of the essential uniqueness of humanity. Whether this uniqueness embodies a theological idea (of man created in the image of God) or a secularized myth (of human beings as rational agents exercising free choice), it is the cornerstone of modern Western morality, political thought, and law. Maintaining the anthropocentric foundation of the law, or reformulating it in alignment with data-driven technologies, is both an urgent task in which the law is forced to avail itself of extralegal and prelegal perspectives and one that the perspective of law and religion can amply inform.

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<sup>9</sup> "And the Lord said, 'Indeed the people are one and they all have one language, and this is what they begin to do; now nothing that they propose to do will be withheld from them.'" Genesis 11:6. The biblical story of the Tower of Babel leaves the tension between technology and the divine consciousness as an enigma. Traditional interpretations identified the very pretension of erecting a tower with its top "in the heavens" as a challenge to God's sovereignty, or human uniformity as a developmental obstacle to the divine plan for human diversity.

<sup>10</sup> A. M. Turing, "Computing Machinery and Intelligence," *Mind* 59, no. 236 (1950): 433–60.

<sup>11</sup> The impact of the information revolution on the validity of the anthropocentric picture is reflected in Luciano Floridi's argument that the information revolution is most comparable to scientific revolutions (viz., the Copernican, Darwinian, and Freudian revolutions) that changed perceptions of reality and humanity. See Luciano Floridi, *The Fourth Revolution: How the Infosphere Is Reshaping Human Reality* (Oxford: Oxford University Press, 2014).