

RUNAWAY TECHNOLOGY

In an era of corporate surveillance, artificial intelligence, deep fakes, genetic modification, automation, and more, law often seems to take a back seat to rampant technological change. To listen to Silicon Valley barons, there's nothing any of us can do about it. In this riveting work, Joshua Fairfield calls their bluff. He provides a fresh look at law, at what it actually is, how it works, and how we can create the kind of laws that help humans thrive in the face of technological change. He shows that law can keep up with technology because law is a kind of technology—a social technology built by humans out of cooperative fictions like firms, nations, and money. However, to secure the benefits of changing technology for all of us, we need a new kind of law, one that reflects our evolving understanding of how humans use language to cooperate.

Joshua A. T. Fairfield is William D. Bain Family Professor of Law, Washington and Lee University School of Law. He is the author of *Owned: Property, Privacy, and the New Digital Serfdom* (2017). A Fulbright and Fernand Braudel Scholar, Professor Fairfield was a privacy and civil liberties counsel on intelligence community studies of virtual worlds, and was part of the founding team of Rosetta Stone.

Cambridge University Press
978-1-108-42612-1 — Runaway Technology
Joshua A. T. Fairfield
Frontmatter
[More Information](#)

Cambridge University Press
978-1-108-42612-1 — Runaway Technology
Joshua A. T. Fairfield
Frontmatter
[More Information](#)

Runaway Technology

CAN LAW KEEP UP?

JOSHUA A. T. FAIRFIELD

Washington and Lee University School of Law



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press
978-1-108-42612-1 — Runaway Technology
Joshua A. T. Fairfield
Frontmatter
[More Information](#)

CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre,
New Delhi – 110025, India

79 Anson Road, #06–04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of
education, learning, and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781108426121

DOI: 10.1017/9781108545839

© Joshua A. T. Fairfield 2021

This publication is in copyright. Subject to statutory exception
and to the provisions of relevant collective licensing agreements,
no reproduction of any part may take place without the written
permission of Cambridge University Press.

First published 2021

Printed in the United Kingdom by TJ Books Limited, Padstow Cornwall

A catalogue record for this publication is available from the British Library.

ISBN 978-1-108-42612-1 Hardback

ISBN 978-1-108-44457-6 Paperback

Cambridge University Press has no responsibility for the persistence or accuracy of
URLs for external or third-party internet websites referred to in this publication
and does not guarantee that any content on such websites is, or will remain,
accurate or appropriate.

Cambridge University Press
978-1-108-42612-1 — Runaway Technology
Joshua A. T. Fairfield
Frontmatter
[More Information](#)

To Christine, Mary, Maggie, Hannah, and Grace.

Cambridge University Press
978-1-108-42612-1 — Runaway Technology
Joshua A. T. Fairfield
Frontmatter
[More Information](#)

Contents

<i>Acknowledgements</i>	<i>page viii</i>
PART I KEEPING UP: LAW AS SOCIAL TECHNOLOGY	1
1 Can Law Keep Up?	3
2 Rates of Change	18
3 Technology Law	53
PART II RUNNING ON WORDS: LAW AS COOPERATIVE FICTION	89
4 Language, the Human Superpower	91
5 What Went Wrong with Science?	115
6 Law’s Fruitful Fictions	148
7 Shifting How We Think	172
PART III LAW AND THE LANGUAGE WE NEED	213
8 Why We Fail	215
9 Jurisgenesis	248
10 TL;DR	278
<i>Index</i>	<i>284</i>

Acknowledgements

This book is the result of many conferences and conversations over several years. I particularly appreciate the editorial vision of Matt Gallaway and Sara Versluis. I am also deeply indebted to the intellectual input of BJ Ard, Kiel Brennan-Marquez, Ryan Calo, Ted Castronova, Bryan Choi, Andrew Ferguson, Cristie Ford, Brett Frischmann, Eric Goldman, Woodrow Hartzog, Gus Hurwitz, Margaret Hu, Margot Kaminsky, Alexandra Klein, Matthias Leistner, Arno Lodder, Russ Miller, Aaron Perzanowski, Joel Reidenberg, Chris Seaman, Andrew Selbst, David Thaw, Ari Waldman, and Elana Zeide, among many others. I am particularly indebted to the European University Institute in Florence, Italy and the Frances Lewis Law Center at Washington and Lee School of Law for grant support, and both the EUI and the Max Planck Institute for Innovation and Competition in Munich, Germany, for research support and a place to write. I owe a debt of gratitude to my research assistants Jessiah Hulle, Patrick Twisdale, and Nathaniel Reynolds for their assistance in the preparation of the manuscript, to Jacob Lester for grant writing support, to my father, John Fairfield, for his tireless reading and commenting on drafts, and to my amanuensis, who listened to every word.