

# Preface

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In 2015, after a long period of study acquainting herself with the detail of machine learning, artificial intelligence and the transformation of agency through the analysis of data, one of us (Mireille) published her book *Smart Technologies and the End(s) of Law* (hereafter *The End(s)*). This also followed Mireille's participation in the Onlife Initiative, an EU initiative spearheaded by Nicole Dewandre and Luciano Floridi, which explored a number of key technological transformations, including the blurring of previously clear distinctions between 'reality' and 'virtuality', 'human' and 'machine', and 'natural' and 'artificial', in a world where information was no longer scarce but abundant. These transformations have modified our relations to ourselves, to each other, and to the social world in general. In particular, the public sphere – hardly an unproblematic concept at the best of times – is now a far more complex, and potentially dangerous, place than it was throughout the twentieth century. Notions of privacy, identity, autonomy, non-discrimination, due process and the presumption of innocence are altered, subtly or not so subtly, with the result that we need to be vigilant to ensure that law remains an instrument of justice.

*The End(s)* struck a chord with a number of commentators and thinkers, and was critically discussed in a number of forums; it also formed the kernel of a successful bid with the European Research Council, resulting in an ERC Advanced Grant for Mireille, to engage a cross-disciplinary research team on the subject of computational law.<sup>1</sup> Given the range of views on the topic of smart technologies and data-driven agency, and the range of disciplines over which the debate sprawls, one danger is that relevant viewpoints or arguments are not brought into contact with each other, especially in the siloed academic world, where lawyers talk to lawyers, technologists to technologists, philosophers to philosophers, and so on. Mireille therefore instigated deliberately interdisciplinary discussions, debates and critiques, which have resulted in a dedicated special issue,<sup>2</sup> as well as the follow-up volume that now sits in your hand or on your e-reader screen, containing chapters by a representative and deliberately diverse group of experts on topics raised in the original work.

Kieron and Mireille had already worked together on a previous edited volume, in the series of Digital Enlightenment Yearbooks on *The Value*

of *Personal Data*.<sup>3</sup> This, despite, or more likely because of, our different disciplinary backgrounds and political outlooks, was a pleasure for us both, and so Kieron was very happy, not to say flattered, to be asked to join Mireille as co-editor. As a team, we hoped to solicit and attract high-quality chapters from as diverse a set of perspectives as possible. Kieron focused on his own areas of computer science, Web science, politics and analytic philosophy, Mireille on her specialisms of law and philosophy of technology.

All the authors were asked to give their ideas on some aspect of data-driven agency using *The End(s)* as a jumping-off point, to ensure the thematic unity of this volume. The resulting collection is (we believe) a significant contribution to the debate about the transformation of agency, and demonstrates the range of expertise that is required for us to produce acceptable social, political and legal responses. Naturally, the chapters collectively come to no conclusion. Even the editors disagree about several issues, some of which are laid out for the reader in chapter 2. But understanding the position of one's interlocutor is half the battle for a civilised politics, and is sadly rare enough nowadays.

The project has been a joy upon which to work. For that, we have to thank firstly the splendid set of authors who were kind enough to devote time and effort to produce and polish their chapters, and cooperative enough to do it to the deadlines we set. We are also indebted to Amber Watts of Edward Elgar, our constructive and sympathetic editor who piloted us through the publication process. And last but not least, our gratitude to Aniek Den Teuling, at the time master student of computer science, for spending part of her research internship at the computer science department of Radboud University on copy-editing the chapters and preparing the content of chapters 1 and 14.

Finally, one of the most distinctive features of *The End(s)* as a physical object was its intriguing cover, an image of Karin LaMonte's sculpture 'Dress 3', which portrays in cast-glass a sumptuous garment defined by the form of the woman who is wearing it – but the woman herself is missing. Only the contours of the dress remain, as mute testimony to its absent wearer.<sup>4</sup> We are pleased and privileged that the cover of this companion volume *Life and the Law* is graced by another of LaMonte's sculptures, 'Lark-Mirror (Hysteria)'. Here, we confront a mirror that retains the fading image of a girl or young woman, somehow leaving an uncanny impression. Once more, the sculpture, by some unspecified miracle, preserves the memory of one not present. We look into the mirror and see, not ourselves, but the record of a fleeting moment from another time, another place. The mirror reveals a little, but not all; the sleeping beauty cannot disappear from memory while the mirror exists. Neither can she be

fully known. Does the mirror reveal or mislead? Is it a lark-mirror or the tempting hysteria of our data-driven agency?<sup>5</sup> The essays in this book ask the same question about another representational technology.

Kieron O'Hara and Mireille Hildebrandt

## NOTES

1. 'Counting as a human being in the era of computational law' (COHUBICOL), see [www.cohubicol.com](http://www.cohubicol.com).
2. Book Forum in *Critical Analysis of Law*, Vol 4 No 1 (2017), containing reviews by Roger Brownsword, Ryan Calo, Julie E. Cohen, Ian Kerr, Charles Raab and a reply by Mireille Hildebrandt, see <https://cal.library.utoronto.ca/index.php/cal/issue/view/1869>.
3. Hildebrandt, M. K. O'Hara, and M. Waidner (eds.). 2013. *The Value of Personal Data. Digital Enlightenment Yearbook 2013*. Amsterdam: IOS Press.
4. On this work see the 'Between the covers' in *The End(s)*, pp. xv–xvi in the paperback version.
5. The 'lark mirror' has been described as: 'a small mirror used to attract and trap small birds attracted to shiny things. In several languages (French, Italian, etc.) the saying "mirror for larks" is used to refer metaphorically to an apparently attractive offer that is really just trying to attract gullible people', see Rob Rushing on *The Phrase Finder*, [www.phrases.org.uk/bulletin\\_board/59/messages/167.html](http://www.phrases.org.uk/bulletin_board/59/messages/167.html).