

If Code Is Law, Then Coders Are Lawyers

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E. Gabriella Coleman, [Coding Freedom: The Ethics and Aesthetics of Hacking](#) (Princeton University Press, 2012).

Legal academics who write about norms risk becoming armchair anthropologists. But the armchair is precisely the place anthropologists avoid; good ethnography cannot be done alone. As one of my college professors said, “The specific antidote to bullshit is field work.”

E. Gabriella Coleman has spent much of her career doing field work with a computer. Her first monograph, *Coding Freedom: The Ethics and Aesthetics of Hacking*, is based on an extended study of free software programmers. She lurked on their email lists, hung out in their IRC chat rooms, went to their conferences (she even helped organize one herself), and spent countless hours simply talking with them about their work. The result is a fascinating study of a community substantially defined by its tense engagement with law. (More recently, she has been closely observing the anarchic carnival-esque collective paradoxically known as Anonymous, with equally [fascinating results](#).)

On one level, this is a book to savor simply for its empathetic ethnography. The “hackers” it describes—despite the pejorative, transgressive overtones that years of media overreaction have given the term—play at the intersection of esthetic beauty and practical utility. Coleman describes coding as a species of creative craft work, with a perceptive eye for detail. One of the best passages is dedicated to a close reading of a code snippet written by the free-software advocate [Karl Fogel](#) in which he grinds his teeth in frustration at having to work around a bad design decision in another piece of software. He creates a function named “kf-compensate-for-fucking-unbelievable-emacs-lossage” to solve the problem. As Coleman explains, quoting Erving Goffman:

Fogel's code is an apt example of “face work”—when a hacker is sanctioned to perform a “line,” which is the “pattern of verbal and nonverbal acts by which he expresses his view of the situation and through this his evaluation of the participants, especially himself.” Within such a presentation, hackers can declare and demarcate their unique contribution to a piece of software while at the same time proffering technical judgment. One may even say that this taunting is their informal version of the academic peer-review process. In this particular case, Fogel is declaring the code he patched as an utter failure of the imagination.

Anyone who thinks about programmers, open source, online communities, or the politics of intellectual property should have a copy of *Coding Freedom* on the shelf. It is an invaluable portrait of how free-software coders work, individually and collectively.

What makes *Coding Freedom* truly stand out, however, is that “free software hacker” is an identity significantly constituted in relation to the law. To write free software is to choose to release one’s code using a carefully crafted copyright license; Coleman’s hackers elevate this legal issue to prime significance in their working lives. *Coding Freedom* is thus both the oft-told story of a legal idea—free software—and the lesser-known story of how numerous hackers, following personal but parallel tracks, have engaged with copyright law.

Coleman describes two crossing trajectories in copyright: the rise of an increasingly expansive domestic and international copyright system and the simultaneous rise of the free software movement. The former is bent on restricting uses; the latter on enabling them. The two collided in the early 2000s in the fights over the implementation of the DMCA, particularly the DeCSS case and the arrest of Dmitry Sklyarov. The result was the politicization of

copyright in code: inspired by legal scholars and free software evangelists, many hackers saw themselves as participants in a struggle against a repressive copyright system.

Coding Freedom makes these familiar stories fresh. Free-software hackers were receptive to a fight-for-your-rights narrative precisely because they were already embedded in a professional context that foregrounded the political and ethical implications of copyright law. What is more, they engaged with copyright law as *law*, drafting licenses to achieve a free-software goals, endlessly debating the minutiae of license compliance, and critiquing copyright's inconsistencies with the playful creativity of appellate litigators.

Coleman artfully demonstrates how the anti-DMCA trope of “code is speech” resonated with hackers' lived experiences creating software alone and together. They were used to communicating both their individual expression and their shared endeavor in source-code comments and elegant algorithms. When [Seth Schoen](#) critiqued the DMCA's prohibition on circumvention tools by rewriting DeCSS “[in haiku](#),” he was drawing on a long hacker tradition (also artfully described by Coleman) of linguistic play, of writing programs not merely to compute but also to amuse.

This leads into a thoughtful discussion of the extent and limits of a hacker-oriented critique of the existing order of things. On the one hand, some coders have been politicized by their engagement with copyright, and connect it to a larger transformative movement concerned with the intellectual commons and global access to knowledge. On the other, free-software licenses are built around a deep core of apolitical neutrality: they pointedly refuse to take any position on the relative worth of what downstream users use the software for. Feeding the homeless is fine; so is building doomsday devices.

Coding Freedom offers a nuanced analysis of hackers sometimes-closer sometimes-further dance with liberal ideals – particularly in its clever discussion of how Debian (a leading free software project) cycles between majoritarian democracy, technical meritocracy, and informal consensus. None of these governance modes is fully satisfactory, either ideologically or pragmatically: each has broken down as Debian has gone through growth spurts and awkward adolescent phases. But at the same time, each of them reflects larger commitments its members hold dear: equality, excellence, and collaboration.

Debian — which Coleman describes as a Coverian [nomos](#)— is the heart of the book. Its social practices of production, education, and self-governance receive careful treatment. In an early chapter, Coleman convincingly argues that hard work of creating and sustaining hacker communities does not happen solely online. She gives a thoughtful description of “cons” — the regular gatherings at which hackers come together to teach each other, discuss project direction, code intensely, and socialize. She convincingly argues that a con is a ritual-laden lifeworld, an in-sense experience that helps hackers understand themselves as part of a larger collaborative collective. These and other in-person interactions are an important part of the glue that makes the global networked hacker public possible; online and offline appear as complements in her story, rather than as modalities in opposition.

Coleman's portrait of how hackers become full-fledged members of Debian is eerily like legal education. They learn a specialized subset of the law, to be sure, with a strong and narrow emphasis on a thin slice of copyright. But the hackers who are trained in it go through a prescribed course of study in legal texts, practice applying legal rules to new facts, learn about legal drafting, interpretation, and compliance, and cultivate an ethical and public-spirited professional identity. There is even a written examination at the end. Law schools and regulators ought to be interested in her careful portrait of informal but successful legal training in a lay community.

There is a deep parallel between software and law as formal rule-bound systems of control and creation. *Coding Freedom* breaks important ground in teasing out some of the implications of this connection. Hopefully others will also take up the project.

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