

# Book Reviews

BRUCE STERLING, *The Hacker Crackdown: Law and Disorder on the Electronic Frontier*, Penguin, London, 1994.

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I am writing this review on pirated computer software. Or perhaps, to strip the deed of any unwarranted romantic connotations, I should simply call it stolen software. However that attempt to capture the immoral nature of the act may be less than accurate from a legal point of view, for more likely my offence is infringement of some copyright or patent. I am not quite sure. In any event I make not of the fact because it seems emblematic of the casual attitude that many of us — even those of use who are otherwise relatively law abiding — adopt towards property rights when those rights are asserted with respect to such hard-to-produce/easy-to-copy “property” as computer software (or, to take another example, the illegally duplicated recorded music I am listening to as I write this). Interestingly, it is now possible to take that same approach to literary productions. For instance the full text of the very book that is the subject of this review has recently been entered onto the Internet.<sup>1</sup> Thus there is no need and little sense in your spending Penguin’s recommended price of \$12.95 to acquire it. Moreover you could easily download that text onto diskette, make multiple copies, and sell the disks at prices which undercut the prices charged for it at the local bookstore. That might even save a few trees. I am uncertain whether I have just abetted a criminal offence.

The themes in the previous paragraph — our strange cultural attitude to computer crime (including the adolescent bravado of those who engage in it), the legal uncertainties surrounding how computer software should be protected, and the question of whether merely passing on information about how to commit a computer crime could or should constitute a punishable offence — form the subject of *The Hacker Crackdown*. Because Sterling’s latest book lacks footnotes and bibliography, and because he writes in a jaunty informal style, it would be easy to dismiss *The Hacker Crackdown* as mere journalism rather than scholarship. However, despite his tendency to wander off on irrelevant tangents now and then, and despite the occasional gonzo stylistic influences from Hunter Thompson, there is much in this book that is not superficial. Sterling offers some stimulating insights into current legal efforts to regulate cyberspace, and the fact that he manages to do so without boring his readers should not be counted against him.

*The Hacker Crackdown*’s principal focus is the nation-wide blitz which various American law enforcement agencies, including the FBI and the Secret Service, unleashed against the operators of certain electronic bulletin boards in 1990. The catalyst for this was the January 1990 crash of AT&T’s long-distance telephone switching system, which,

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<sup>1</sup> Those of you with access to the infobahn can find the full text of *The Hacker Crackdown* via anonymous FTP at [ftp.eff.org](ftp://ftp.eff.org/pub/Publications/Bruce%20Sterling) in /pub/Publications/Bruce Sterling. I am not quite certain whether this is the proper citation format for an Internet file. As I have noted elsewhere, manuals of legal citation lag sadly behind the true needs of scholarship: Black, V and Fraser, D, “Cites for Sore Ears (A Paper Moon)” (1993) 16 *Dal L J* at 217.

as it subsequently turned out, was not caused by electronic intruders but by an internal fault in AT&T's own software. However computer hackers had demonstrably penetrated a telephone company computer. They had "stolen" a file document relating to the 911 emergency system and posted an excerpted version thereof on a widely available electronic bulletin board. This stunt and others like it caused concern in certain quarters that computer delinquents might do more — that they might disable America's telephone network, or perhaps even tamper with the computers of the national defence system. The vision of some fifteen-year-old boy<sup>2</sup> using his home computer to gain access to the computer that controlled America's nuclear arsenal was bound to provoke some response from the nation's police. The response that came was a co-ordinated investigation by a number of law enforcement agencies. This resulted in a series of arrests, unprecedented seizure and confiscation of private computers, and eventually some highly publicised trials. In addition — the setting being America — the authoritarian over-reaction and the show trials elicited a rejoinder from groups seeking to justify their activity by reference to their constitutional right to free speech, a rejoinder which likewise found its outlet in litigation.

*The Hacker Crackdown* chronicles and analyses those events. It does so unevenly. Although a number of interesting issues of substantive, evidentiary and constitutional law arose in connection with the various trials discussed in the book, legal analysis is not Sterling's strong suit.<sup>3</sup> He relates those issues and demonstrates something of their novelty and complexity, but *The Hacker Crackdown* features no pathbreaking legal analysis. Nor, despite some helpful passages explaining the nature of electronic bulletin boards, is the book a systematic introduction to the technological terrain on which the various battles were waged. There is sufficient technical background to enable readers to follow the unfolding narrative, but this is not a thorough introduction to the technology of the Internet.

What *The Hacker Crackdown* seems to do pretty well is to provide context and draw connections. Its virtue is synthesis. Sterling appreciates that the description of the investigations and prosecutions which lie at the heart of his story would be incomplete without some attempt to probe the mindsets both of computer hackers and of the corporate officials and police who opposed them. He offers a helpful account of the growth and regulation of telephone companies in the United States. He also gives an interesting history of computer hackers, tracing their origins to the Yuppies and phone freaks of the 1970s. At bottom this is a book about America, or at least about the most recent manifestation of that country's ongoing struggle between personal freedom and exploration of the last frontier on one hand, and the clampdown of the corporate national security state on the other. Of course on such matters it is easy to write glib cultural commentary, full of irrefutable but equally unprovable observations. Those who disagree with Sterling may well accuse him of that, but for my money much of what he says rings true.

Not all the legal proceedings discussed in *The Hacker Crackdown* were complete at the time Sterling finished writing. Of particular note here is a civil suit brought in the name of Steve Jackson Games Inc, but in part organised and financed by the Electronic Frontier Foundation, a body dedicated to fighting for civil liberties on the Internet.<sup>4</sup> SJG Inc was a

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2 My use of gendered term is intentional. *The Hacker Crackdown* makes note at several points that most computer hackers are male: pp 12, 33, 56 and 67.

3 Which may explain why I remain uncertain about what crime, if any, I am committing as I type this.

4 *The Hacker Crackdown* includes a description of the genesis of EFF, including a brief biographical sketch of one of its founding members, Grateful Dead lyricist John Perry Barlow. See pages 234–50.

publisher of science fiction board games which had all its computers seized by police as part of the 1990 crackdown. Although no charges were brought against SJG Inc or its employees, its computer files were retained for investigative purposes. This prompted SJG Inc and other affected parties to launch a suit against the police, including the United States Secret Service, seeking damages to redress violations of their constitutional rights. Although the printer version of *The Hacker Crackdown* does not see this suit through to its conclusion, an update — in effect the ongoing story of the crackdown — is available on the Internet.<sup>5</sup> Which brings me back to where I began. The best (cheapest, most up to date) place to find out about computer crime is through a computer. However, those who prefer to read books will find *The Hacker Crackdown* an enjoyable and thought-provoking place to start.

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JOHN PRATT, *Punishment in a Perfect Society: The New Zealand Penal System 1840–1939*, Victoria University Press, Wellington, 1992, 288pp, ISBN 0 86473 239 2.

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This is an impressive book and deserves to be widely read. It is written by a criminologist who immigrated to New Zealand in 1986 and was surprised to find that there was virtually no penal history of New Zealand. The book sets out to remedy this deficiency.

The chronological starting point for this history is the year of the Treaty of Waitangi which established New Zealand as a British colony. The intention of the white settlers from that point was to build a “perfect society” which, by their definition of the term, was a “Britain of the South Pacific” without the social problems of the home country (p26). The closing point, at the beginning of the Second World War is much more arbitrarily selected. The rationale that is offered is that it allows some consideration of the effect in practice of the changes in policy and legislation introduced in the first decade of the twentieth century. It is also conveniently almost 100 years after the history commences. However the reference at the outset of chapters 1 to two incidents in 1989 makes in clear that Pratt does not suggest that 1939 was in any way a watershed year for the history of the penal system in New Zealand.

More important than the chronological framework is the theoretical framework of his own project which is based on an appreciation of the work of Foucault and the theoretical framework that existed for those who established New Zealand’s penal system. The first chapter contains a summary of the history of the British penal system from the eighteenth century to the twentieth century. In this account the theories of Bentham and the work of Du Cane feature equally. Concepts, such as that of the separate system, of classification by crime or by criminal, and of “less eligibility” by which is meant the theory that prisoners are less eligible than other members of society for any benefits, are introduced. In the fifth chapter the concepts of the new penology become the focus. Reference is made to the theories of the Italian penologists, Lombroso, Farofalo and Ferri, and to the enthusiasm

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5 Anonymous FTP at [ftp.eff.org](ftp://ftp.eff.org/pub/EFF/Policy/SJG) in [pub/EFF/Policy/SJG](ftp://ftp.eff.org/pub/EFF/Policy/SJG).