

# AI Governance: The Challenges in Regulating AI

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# Regulatory Toolbox



- Regulation?
  - A means to intentionally influence and/or constrain the behavior of actors, be it individuals, groups, or legal entities such as companies.
- Protecting & Enabling role
- Four modalities of regulation (Lawrence Lessig)
  - Law
  - Social Norms
  - Market
  - Architecture → including low- and high-tech
- No strict separation - combinations possible
- Competence to regulate plays a role

# Why is law special?



- The rule of law
- Law is an expression of pluralistic democratic deliberation
- In constitutional democracies:
  - Law protects human rights, democracy and other core values
  - Law is contestable: we can challenge the law and its interpretation
  - Law is part of a system of checks & balances
  - The final word on its interpretation is with independent, impartial courts

# Challenges to regulate AI



- Problem #1: No single definition of AI
  - Let alone a “legal” one
  - The AI-effect
  - Risk of loopholes
- Problem #2: Context is important
  - Technique matters
  - Sector matters
  - Purpose matters
- Problem #3: One of many technologies
  - Technology neutral v Technology specific?
  - Unfair market advantage?
  - Justification through specific AI-feature(s)?
- Problem #4: What should be regulated
  - AI as a product? Service?
  - AI users/developers? AI outcomes?
- Problem #5: Moving Target
  - Uncertainty
  - Continuous technological advancement
  - Future-proofing?

# Challenges to regulate in general

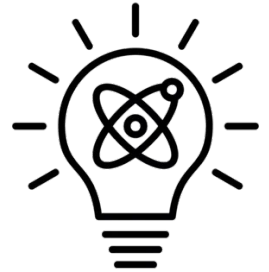


- Problem #1: Over & Under-inclusivity of the law
  - Exhaustive list?
  - Broad definition?
- Problem #2: Standards v rules
  - Taking 'reasonable' care, making 'best efforts', avoiding 'discrimination'
  - Drafting technical documentation, conducting adversarial testing...
- Problem #3: Interpretative discretion
  - Text is inherently open-ended and open to multiple interpretations
  - Vagueness as a bug or as a feature?
- Problem #4: Ex ante v Ex post?
  - Prior enforcement regime v take action after a problem arises
  - Self-assessment / third party assessment / public licensing scheme

# Common objections

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1. Regulators don't know the technology, so how could they regulate?
2. Law cannot catch up with a technology that evolves so fast
3. Law stifles innovation



# Takeaways



- There is no ideal solution; trade-offs are inevitable
- Each jurisdiction makes its own balancing exercise
- The law has its limits
  - Not everything can be addressed by law
  - Risk of regulatory capture
  - Laws can be abused
- Not choosing is also a choice!

# Thank you

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