Who Should Regulate AI: Lawyers or AI Engineers?

The unexpectedly rapid development of AI has changed the world and has undeniably influenced our lives. Artificial intelligence is now almost everywhere, and it seems nearly impossible not to encounter it at least a few times a day. Of course, it is not always visible on the surface, but that does not mean it isn't there. Smartphones, social media, personalized ads, cars, or even customer service are just a few examples of simple, everyday contact with AI. Beyond such minor applications, we will increasingly face products that profoundly affect our lives. They will appear in areas such as military technologies, scientific research, or medical diagnostics. The question is no longer whether AI will enter these domains. It is already there! The real question is**: how safe is it for us**?

Such concerns naturally lead to discussions about laws and regulations on AI. In this respect, the world is currently divided into three parts. China, where regulations are largely instrumental and subordinated to the interests of the state. The United States, where regulations are highly libertarian and in line with the American spirit of capitalism. And finally, Europe, which focuses on the safety of its citizens and on building ethical standards.

The AI Act in particular has prompted European entrepreneurs to raise their voices in protest and to question whether lawyers should really be the ones writing the laws on artificial intelligence. These doubts are understandable!

On the one hand, the main regulatory approaches align with the culture and philosophy of each geopolitical area. The collectivist culture of China does not focus on the well-being of the individual but rather creates laws designed for the benefit of the whole. Capitalist America, by contrast, allows the relationship between citizens and AI to be shaped largely by the free market. This provides relatively favorable conditions for American businesses, something their European counterparts envy, as Europe remains committed to its traditions of ethics and individual safety. The global nature of the market means that Europeans can see how Americans enjoy greater freedom, and this inevitably breeds frustration.

On the other hand, public awareness of the possibilities and risks of artificial intelligence has been shaped not by facts but by the images provided in science-fiction films and books. To make matters even more difficult, AI is the product of mathematicians and computer scientists, arguably the two most difficult scientific fields to understand and to popularize. As a result, AI itself is hard to grasp for the average member of society. All this leads to the claim that "lawyers cannot regulate AI, because they do not understand it".

Arguments for absolute freedom are easier to counter by pointing to examples such as the global financial crisis following the collapse of Lehman Brothers in 2008, or the dramatic consequences of chasing the American dream, leading to homelessness and poverty. These examples show that excessive market freedom comes at a price.

It is different with the charge of lacking technical competence. This argument may appear to be a promising direction – at least in the case of Europe – for depriving lawyers of the privilege of drafting laws on artificial intelligence.

But is this really the right direction? I dare to doubt it! The presence and role of lawyers in contemporary society are the result of a development and tradition that have lasted for thousands of years. The legal profession is not an invention of the elites or a scheme to make citizens' lives more difficult. The knowledge and competence of lawyers are essential for the proper functioning of societ and **AI is by no means an exception**.

AI Engineers as the New Lawmakers?

The argument of lacking knowledge, raised against lawyers as lawmakers, naturally extends to entrepreneurs and casts AI engineers as potential new lawmakers. At least in this one domain of artificial intelligence.

But who exactly is an AI engineer? When I began reflecting on the question of who should regulate AI, the first problem I encountered was defining the parties to the dispute.

Identifying lawyers on one side was easy: they are a distinct social group, familiar with the law and responsible for shaping it from the technical side. Of course, the law is created under the influence and direction of the government, but its final form is the result of lawyers' work. And lawyers are easy to identify. In most countries, to be called a lawyer one must at least complete legal studies. To actually practice law, including work on legislation, further requirements usually apply—training, examinations, internships, and sometimes even academic degrees. The path to becoming a lawyer is highly formalized, and some form of certification is required almost everywhere. For that reason, there is little doubt about who qualifies as a lawyer.

And what about the other side? The side I have provisionally called AI engineers, though one could just as well say "the AI people." Here the matter becomes much more complicated. The market is full of specialists who call themselves by different titles: data scientist, machine learning engineer, AI scientist, AI engineer, AI lead, AI expert, machine learning expert, machine learning scientist, AI systems developer, AI architect, and many others. To make matters worse, these titles are far from consistent; for example, a data scientist, a machine learning engineer, and an AI systems developer may all describe the same role, or three completely different ones.

Nor is there a single clear path to the title of "AI expert." On the market, there are those who have completed many years of study, gained impressive experience, including academic degrees and other achievements. Yet there are also those whose background consists of just one or two online bootcamps. Is that necessarily bad? Not at all; after all, not every profession requires a long and formal path. But it does create a certain risk

At present, the competencies of AI engineers (let us stick with this term) are highly diverse. I have personally met specialists in very senior positions in private companies for whom probability theory in machine learning models amounted to nothing more than randomly selecting initial parameter values in iterative learning algorithms, or even so-called "experts" who struggled with the basic use of a computer. On the other hand, there are also many

individuals whose knowledge and skills border on genius. Entrusting such a heterogeneous group with power could lead to tragedy.

At the turn of the nineteenth and twentieth centuries, the famous Quebec Bridge was built in Canada. At the time, the system of certifying Canadian engineers was largely symbolic, and the role of chief contractors on this nearly one-kilometer bridge was given to specialists who were not particularly qualified. As a consequence, the structure collapsed twice, consuming an enormous budget and the lives of nearly one hundred workers. Not even alarming messages from the leading bridge designers of the era – who repeatedly urged that construction be halted – were enough to prevent disaster. In the aftermath, Canada introduced one of the most stringent systems of engineer certification

The variation in competence among bridge engineers in Canada at that time was probably even smaller than the diversity of competence among today's AI engineers, since self-taught expertise in such a domain was hardly possible then. The history of the Quebec Bridge shows how disastrous it can be to rely on specialists from a group that is difficult to clearly define, and how the voice of true authorities can be ignored once dilettantes take over leadership.

The drafting of legal norms is an endeavor of far greater risk than building a bridge. A single bridge poses a danger "only" to those who cross it, and "only" until the moment it collapses. Legal norms, by contrast, have a much broader impact and that impact does not necessarily end when the norms prove defective.

Does a formal system of lawyer certification mean there are no dilettantes in the profession? Of course not. But that is not the point. Rigorous certification reduces the variation in competence and lowers the risk of power being handed over to the unqualified.

It would seem that for AI engineers to become new lawmakers, certification would first have to be introduced and access to the profession restricted. But is that the right solution? Personally, I do not think so.

Are lawyers not experts?

Accusing lawyers of lacking knowledge, combined with the widespread aversion toward this professional group, makes it easy to overlook the solid and unique competencies that lawyers possess.

The study of law is not a modern invention. Alongside philosophy, law is one of the oldest fields of human knowledge, and contemporary legal systems are the product of traditions stretching back several thousand years. The first specialists devoted to law can be found in ancient Rome (the Roman Empire began in 27 BCE). Importantly, they were true specialists – what we would today call lawyers – since law was the central focus of their work. From at least Roman times, therefore, law can be considered an independent discipline. Yet this is not the beginning of legal thought, which reaches back thousands of years earlier, when the building and regulation of social relations remained closely tied to theology. One of the oldest legal codes – the Code of Hammurabi – dates back to 1772 BCE.

By comparison, artificial intelligence – or more broadly, computer science – is a product of the twentieth century, while the development of computational thought can be traced back to the beginnings of modern mathematics, which separated from philosophy and became an independent discipline around the eighteenth and nineteenth centuries.

The fact that computer science is younger than the study of law does not diminish its value in any way. Yet do not attempts to strip lawyers of their authority seem at least somewhat cynical, given the long history of their discipline?

Law as a system of norms changes very quickly, especially today, when the legislative process remains strongly influenced by political decisions. The study of law, however, develops much more slowly. This stems from the nature of the discipline, in which conducting experiments is extremely difficult. One cannot simply create a state for a trial run and test different regulations. Hence, among the undeniable competencies of lawyers are an awareness of social conditions, of the processes that govern the development of law, and of its directions.

The already mentioned Code of Hammurabi introduced the so-called "law of retaliation," expressed in the phrase still familiar today: "an eye for an eye." It is worth noting that this extremely cruel principle, universally judged as wrong, has not been fully eradicated from human consciousness even after nearly four thousand years. While lawmakers in modern states know perfectly well that retaliation leads nowhere good and causes more harm than benefit, the same principle is not necessarily condemned by, for example, contemporary parents. Who has not heard a parent tell their child, "If someone hits you, hit them back"? In doing so, the parent is quite literally teaching the child the law of retaliation.

The law of retaliation is only a striking example – one that might not even pose a real problem if AI engineers were to write the law. Yet it is far from the only trap into which non-lawyer lawmakers could fall. Allowing AI engineers to create legal norms could lead to experiments on citizens – experiments that can easily be avoided with the knowledge lawyers possess.

A judge in their own case ...

An AI engineer acting as a lawmaker would in fact be setting rules for themselves. Being a judge in one's own case inevitably creates a conflict of interest, and the prohibition against such a situation is one of the oldest principles of law. Nevertheless, history knows of cases where attempts were made to depart from this very rule.

In 1610, a judgment was issued in the case of Thomas Bonham vs. College of Physicians, known simply as "Dr. Bonham's Case." The ruling confirmed that a professional group should not be allowed to make rules for itself.

The College of Physicians was an institution that issued licenses to practice medicine in London and within a seven-mile radius of the city, and it also held the power to punish unlicensed practice (including fines and imprisonment). Obtaining a license from the College of Physicians differed significantly from procedures known today. Despite the existence of certain requirements, the College exercised rather arbitrary control over who could practice in London and profited directly from penalizing unlicensed physicians, such as Dr. Bonham, who had received thorough medical training at the universities of Oxford and Cambridge. As a result,

licensing was not aimed at ensuring that only qualified specialists were allowed to practice medicine.

AI engineers writing laws for AI engineers would face a similar temptation: to enact norms that maximize profit at the expense of consumer safety. When power is held in one's own hands, it is easy to forget that the law exists primarily to protect the vulnerable, not to create favorable market conditions. Just as the College of Physicians forgot that its role was to protect the residents of London from charlatans, not to profit by obstructing physicians' access to licenses, so too might AI engineers, when making law, forget that consumers are not merely a source of profit.

So maybe AI engineers should be the ones to write the law...

Lawyers write laws in a way that practically only they can understand. As a result, citizens who need to comply with the law must consult lawyers just to know how to act. Have lawyers, then, not created a monopoly on understanding the law? If AI engineers should not be allowed to make law on their own, perhaps they could at least help formulate it so that it is understandable to AI engineers themselves.

And history of law has an answer to such ideas, for it is not entirely true that lawyers have created a monopoly on understanding the law.

Legal language is often excessive, and that is a fair criticism of lawyers. Like any professional jargon, it facilitates communication within the group but makes it much harder outside of it. Lawyers could show some goodwill by communicating in a more accessible way – for example, by writing shorter sentences or avoiding foreign phrases, especially Latin ones. Yet there are limits. The world is a complex place, and sometimes it is difficult to describe it in simple terms. Every specialist who has ever tried to explain even a basic concept from their field to a layperson has discovered this firsthand.

Social relations, unfortunately, are also complex, and lawyers have developed a language to describe them precisely. Nevertheless, in the 1970s an initiative for plain language in law emerged. It was launched by Citibank, which formed a team of lawyers and linguists to create a consumer-friendly template for a specific type of document. It worked! Citibank was praised for the solution, and the project was a success – so much so that an initiative arose to impose on banks the obligation to draft documents in language understandable to consumers. Interestingly, Citibank itself welcomed the idea of such an obligation, but also advised against moving forward with it. Why?

It turned out to be difficult to define what "plain language" actually means. A statement clear and simple to one person may not be so to another. The convoluted and hard-to-grasp language of law is the price of systemic coherence. Lawyers have developed a fairly universal way of communicating about complex social relations. If such language were abandoned, we would not end up with statements about law – or the law itself – that are universally comprehensible. Instead, we would be left with texts incomprehensible to anyone and a state of communicative chaos. It may be hard to believe, but legal language is intended to provide clarity. The problem is

simply that the social world is so complex that this “clarity” is accessible only to experts trained to understand its intricacies.

Juxtaposing the risk of incomprehensible regulations drafted by non-lawyers with the wide diversity within the group of AI engineers, it is easy to conclude that entrusting them with lawmaking could result in complete chaos, and a situation in which no one would understand the law thus created.

Lawyers make law detached from reality?

Let the first cast a stone who has never thought that the law is detached from reality. That “the law is the law, and life is life,” and that lawyers draft laws in the seclusion of their offices, disregarding what really happens in life. Such accusations are widely known, so perhaps they are an argument for shifting the leadership in lawmaking into the hands of AI engineers?

Absolutely not! These accusations are, in fact, the product of heuristics rather than genuine knowledge or sound reasoning. First, it is simply not true that laws are drafted in the seclusion of offices. The legislative process is highly complex, multi-stage, and often extends over many years. It frequently involves scientific research, public consultations, and lengthy debates.

It is true that law may sometimes appear detached from reality, but this is because it is the product of compromises among many social interests. Moreover, the accusation of being out of touch with life is usually made by those who view the world from a very narrow perspective.

Just a few weeks ago, I took part in a discussion with an AI engineer who argued that the AI Act is outdated because it attempts to regulate AI models running locally on a computer, whereas the current standard is cloud-based architecture. Fair enough – but the AI Act does not ignore cloud solutions; it simply accounts for both types. Referring to “industry standards” is very vague, because, first, there is no obligation to adhere to such standards. Second, that engineer was overly focused on his day-to-day work and failed to notice that many AI models exist – and will continue to exist – that do not need to run in the cloud.

Viewed from a narrow perspective, the AI Act may appear out of touch with reality, but in fact it represents a compromise among many interests and provides general norms with broad applicability.

At times, the law imposes burdensome obligations that are inconvenient to follow. For example, the AI Act sets out extensive requirements for meticulous documentation of high-risk AI systems and their ongoing maintenance. Such obligations understandably provoke resistance, yet situations like this are best compared to the duty of wearing seat belts while driving.

Seat belts are so disliked among drivers that one can easily find online T-shirts printed with fake seat belt patterns, meant to fool police officers and avoid a fine. Such acts of defiance are usually the result of stubbornness and a lack of awareness that seat belts have reduced both the number of fatal accidents and the risk of injury by nearly thirty percent. Moreover, it is worth noting that the studies on this subject date back to the 1970s, when car traffic was much lighter, so the protective effect of seat belts today is likely even greater.

Arguments such as “I don’t want to wear a seat belt because my uncle survived an accident only because he wasn’t wearing one,” or “detailed documentation of a system won’t protect anyone,” are the product of heuristics and narrow thinking. Lawyers, by contrast, are trained to view social relations from a broader perspective.

So who should regulate AI?

The answer to the question of who should make the law on artificial intelligence is as obvious as the answer to the question of who should build AI systems for legal applications.

AI systems for legal applications should be built by AI engineers in consultation with lawyers. There is no doubt that in such a case lawyers should serve only an advisory role, while the main work and leadership should rest in the hands of AI engineers.

The balance of power should be exactly the opposite when it comes to making AI law. Lawyers should lead the process of lawmaking, consulting AI engineers when necessary.

Legal history offers examples of such collaborations achieving great success. The Montreal Protocol on substances that deplete the ozone layer remains to this day one of the finest examples of cooperation between lawyers and domain experts. It was a collaboration that brought about real change – both in industry, through the abandonment of substances such as Freon, and in the natural environment, through the regeneration of the ozone layer.

Can lawyers regulate AI without AI engineers? In principle, yes—but it carries the risk of regulations aimed at preventing Skynet. In the nineteenth century, for instance, the United Kingdom faced the challenge of regulating road traffic for motor vehicles. Out of an abundance of caution, speed limits were set at two miles per hour in urban areas and four miles per hour in rural areas. Moreover, it was required that a flag bearer walk sixty yards ahead of any vehicle convoy to warn of the approaching danger.

From today’s perspective, we know that the red flag requirement was an expression of excessive caution and slowed the development of the automotive industry in the United Kingdom. Obviously, we would want to avoid such mistakes in the regulation of artificial intelligence. This is why consultation with AI engineers is necessary.

n the other hand, excessive caution is better than recklessness. It was relatively easy to roll back the restrictive traffic regulations in the United Kingdom, whereas tightening the laws on access to firearms in the United States is very difficult, if not impossible…

Appendix to „Who Should Regulate AI: Lawyers or AI Engineers?”

Which Direction Should AI Regulation Take?

What regulatory path should lawyers take when drafting AI laws in consultation with engineers? The American, the European, or perhaps the Chinese? I do not claim to know the answer, though I do have my own view...

For many years I have been a supporter of technology, and I personally believe that computers, smartphones, artificial intelligence, and other innovations have done a great deal of good while opening up countless new opportunities. For example, in the ongoing debate in Poland about banning children from using smartphones at school, I took a clear stance. Any attempt to limit children's ability to use their own devices amounts to an attack on their freedom. But...

What troubles me is the scale at which we rely on technology, and especially the influence AI has on us. Just look around: if you lift your head from your smartphone in a public space, you will see how deeply absorbed everyone around you is in their devices. What is even more disheartening is that you no longer need to be in a public place to witness this; sitting in your own home, you may find your wife, husband, grandmother, grandfather, daughter, or son equally engrossed by a computer or some other device.

It is not even the decline of relationships that concerns me, because that is not entirely true. Thanks to the ubiquity of online communicators, we often sustain or even deepen relationships that could never survive otherwise. That is truly remarkable! But there is also the dark side. The endless scrolling through social media on the one hand delivers an incredible dopamine rush, which leads to irritability and overstimulation. On the other hand, it exposes us to seemingly perfect lives of celebrities and influencers, which fosters frustration and diminishes our sense of self-worth. And let us not forget that it is artificial intelligence itself that will increasingly fuel this growing dependence on technology. Is this really the kind of world we want to live in?

Let us recall what life was like ten or fifteen years ago. It was slower, calmer, perhaps even better... Recently, I rewatched my favorite slice-of-life series, which first aired less than twenty years ago. I had the impression that I was watching the characters' lives unfold on an entirely different planet..

I still oppose excessive restrictions on citizens, yet very strict and burdensome regulations may ultimately prove to be a healthy direction for the end users of technology, that is, for the citizens themselves.

That is why I believe the European Union has chosen the right course. Perhaps it is even too lenient. At a time when the AI Act is not yet fully in force, companies are already asking, “How can I get around having my product labeled as a high-risk AI system?” Already now, much like the College of Physicians, they are forgetting that human beings cannot be treated merely as instruments for profit.