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INTRODUCTION

Prior to the development of the AI Bill of Rights which led to the creation of the EO, discourse surrounding the regulation of AI emerged in various forms. The advent of AI technologies triggered a global shift in the integration of smart software solutions across factors of production ranging from <u>agriculture</u>, to <u>manufacturing</u>, to <u>healthcare</u>. However, for every benefit that AI provides, there is seemingly an equally troubling mire that looms overhead: global conflicts, cyberattacks on nation-state's critical infrastructure, and manipulation of data and statistics in pursuit of rogue ideologies using AI have witnessed an exponential upswing (4). In the absence of global, standardised AI regulatory protocols and governance, the dangerous elements of AI will continue to experience a free flow of misuse and manipulation. Moreover, the implication of AI technologies is profound to the extent, that 'hundreds of AI leaders, including the CEOs of Anthropic, Google Deepmind, and Open AI signed a one-sentence letter that reads: "Mitigating the risk of extinction from AI should be a global priority alongside other societal risks such as pandemics and nuclear war" (1).

To address the conundrum of how AI should be regulated and the ways the public sector should adapt and evolve to ensure safe usage of AI technologies, the Biden administration complemented the <u>Blueprint for AI Bill of Rights</u> with the <u>Executive Order (EO)</u> on regulating use of AI. Understanding current trends in AI regulation across different jurisdictions is crucial background knowledge to comprehend the rationale behind the EO and its implications for AI regulation. As such, this chapter offers a comparative analysis of international AI policies to offer strategic enhancements to the US AI regime as an <u>influential paradigm</u> in Canada's regulatory landscape.





AI REGULATORY APPROACHES

Jurisdiction	AI Regulatory Events	Year
European Union (EU), UNESCO	 EU proposes AI Act <u>UNESCO</u> forms policy recommendations on the ethics of Artificial Intelligence 	2021
EU, United States of America (US)	 EU Council reaches <u>consensus</u> on its position on AI act The US introduced <u>AI Bill of Rights</u> 	2022
EU, US, China, G-7	 The AI act formally <u>adopted</u> by the EU The US issues the <u>EO</u> on regulating AI <u>Measures</u> for the Management of Generative AI Services introduced by China. The <u>Hiroshima Process</u> launched by the G-7 to develop a common standard on AI governance. The United Nations (UN) forms an <u>AI Advisory Board</u> to coordinate global AI governance. 28 governments attend the <u>AI Safety Summit</u>. 	2023



Several jurisdictions agree that AI must be governed but differ on their strategy. For instance, the European Union (EU) has taken significant steps in regulating AI through its AI Act, building upon its two preceding acts: the EU Digital Services Act and the Digital Markets Act. It is one of the most comprehensive AI regulatory frameworks that introduced AI transparency requirements and restricted AI use for surveillance purposes (1). In China, the national government laid out the legislative tools and policy levers that includes anti-discrimination requirements and a mandate that reflects "Socialist core values" (1).

Since May of 2023, many governments have attempted to collaborate and coordinate to develop a unified approach in governing the safe use of AI goods and services. At the 49th Group of Seven (G7) summit, the bloc introduced, what it called the **Hiroshima Process**, aimed at fostering a standardised approach to global governance of AI (1). It is noteworthy that China and the US are leading jurisdictions in the creation of AI goods and services and have invested billions of dollars in the technology. Despite being at odds with each other as rival powers, both states took a measured approach in their rivalry to acknowledge the significant dangers that lurk in an unregulated AI environment. This pretext led to the collaboration between the two state actors in the form of the AI Advisory Board created by the United Nations in October 2023 (1). Furthermore, at the AI Safety Summit held in the UK, twenty-eight governments attended, reflecting a strong intent to expedite the process of developing global protocols to guide regulatory frameworks which govern AI technologies. There, delegates including China and the US signed a joint declaration 'warning of AI's potential to cause "catastrophic" harm and resolving to work together "to ensure human-centric, trustworthy and responsible AI" (1).

Further showcasing the collaborative spirit that AI regulation has engendered, the **Bletchley declaration** was the outcome of the AI Safety Summit held in London, in November 2023 just a week after the release of the EO. Over 29 countries attended the summit with shared interest in identifying AI safety risks and building risk-based policies (9). This declaration is a remarkable product mainly due to it bringing together three contrasting ideologies as China, the EU, and the United States signed a joint declaration on AI governance (<u>6</u>). These actors agreed that it is of paramount importance that despite the ideological differences, they must work together to find a 'global solution to global problems' (<u>6</u>). This development signalled an unprecedented level of recognition of the dangers of AI and the need to adapt and effectively mitigate potential risks.



This series of collaborative and coordinated summits between governments set the stage to create the tools and levers critical for regulating the ever-changing dynamics of AI. These summits have also empowered private sector AI technologists to become a growing influence among geo-political powers. In addition, increased contributions from stakeholders across international fora have resulted in the emergence of three prominent schools of thought as the **Progressive, Longtermists** and the **AI hawks**.



The impact of these schools of thought in driving discourses around regulating AI, is key in navigating ways how the EO can be further enhanced. The White House leadership must collaborate with each of these stakeholder groups, to develop AI regulatory levers that are practical and sustainable to implement. Put simply, the US EO outlines a series of policy instruments aimed at creating an environment which facilitates a safe movement of AI goods and services. As of now, AI cannot function without its active participants who are the enablers or the founders of AI goods and services. What this phenomenon has created is a community or a broader society of AI actors with differing interests, perspectives and ways of doing things.

The reality on the ground as Schneier and Sanders point out is that "this isn't really a debate only about A.I. It's also about control and power, about how resources should be distributed and who should be held accountable"(8). The point is, building an effective regulatory framework of any civic environment, in this case technological environment, is an essential exercise to understand the actors and their culture to define scope and parameters. This will allow the creation of sustainable regulatory frameworks that takes into consideration key actors of the subject being regulated as to not impede extensively on its function while keeping a check on areas that could adversely affect significant issues as alluded to in chapter one.



SCHOOLS OF THOUGHT



Major stakeholders in this group range from social justice advocates to human rights groups. Major stakeholders in this group range from technology moguls, pioneers of AI to leading AI firms.

Major actors include :

Meredith Broussard Safiye Umoja Noble Rumman Chowdhury Cathay O'Neil Joy_Buolamwini (founder of Algorithmic Justice) Major actors include: <u>Geoff Hinton</u> and <u>Yoshua Bengio</u> ("Godfathers of A.I. "), <u>Elon Musk,</u> <u>Sam Bankman-Fried</u> (former billionaire), <u>Jaan Tallin</u>



Major stakeholders in this group range from founders of AI, technology moguls, AI engineers and AI experts, government stakeholders, leading AI firms such as:

Sam Altman

(Open AI), <u>Mark Zuckerberg</u> (Meta), <u>Reid Hoffman</u> (Co-founder of Inflection AI), <u>Eric Schmidt</u> (former Google CEO)



Progressives:

Expanding on the role of the Progressives or the Reformers ($\underline{8}$), this group is the most practical and current amongst the two schools of thought, as they are concerned with critical issues that continue to evade regulatory controls and social justice from the past to the present and will potentially continue into the future. Such issues are 'Racial Policing' that systematically targets people of colour and enforce ambiguous measures in the name of law and order ($\underline{8}$). Another issue involves discriminatory practices in ranking feminine-coded résumes lower and differentiating ethnic backgrounds to racial profiling ($\underline{8}$). The proliferation of automated weapons such as drones or killer robots in pursuit of advancing imperialistic agenda on a global scale is of significant concern to this group ($\underline{8}$).

Longtermists:

Also known as Doomsayers ($\underline{8}$), this group consists of technological moguls like Elon Musk, who believe that humanity will be the cause of its own extinction through AI and the only way to save the human race is to populate Mars ($\underline{8}$). Constituents of this ideological group are keen on advancing further development of AI with the mutual belief that without proper guardrails in place, an existential threat will be inevitable ($\underline{8}$).

AI Hawks:

Finally the AI Hawks, or Warriors, take the middle approach on the ideological spectrum of AI. The group consists of leading AI companies, government agencies and defence contractors ($\underline{8}$). Each has a stake in how AI is governed and regulated where the former is concerned with the incentive to maximise on profit and the latter with national security ($\underline{8}$). Eric Scmidt, former CEO of Google boasts of a well-connected network of lawmakers in the US government dictating and directing how regulatory tools should be designed and implemented in response to international security concerns ($\underline{8}$).

By understanding the actors across the ideological spectrum of AI, civic groups can formulate strategies to effectively collaborate and develop sustainable policy solutions to regulate this emerging technology.



REGULATORY PRIORITIES OF THE EO

The release of the EO in October 2023, just a week before the major AI Safety Summit in London, sent a signal to international leaders of the US' intention in leading the development of policy frameworks in pursuit of regulating AI goods and services. This section outlines the response to the release of the EO by well-known experts and industry leaders in AI governance. Studying these responses is vital to identify the nuances in the EO that can be further improved and develop precautionary measures that can be used to anticipate future trends and effectively adapt current regulatory framework accordingly.

The EO takes a multi-faceted approach in providing guidance and direction that ensures safety, security and trustworthiness of AI (5). One of the key regulatory attributes of the EO, is the flexibility it confers upon various subnational jurisdictions to utilise and draft their own rules to achieve the objectives of the Executive Order (5). As a result of this flexibility, the EO has its fair share of criticisms. Experts took an aim at the EO, stating that it has left out the U.S. Department of the Treasury and other financial regulators from the decision making process (5). Another critique to the EO aims at its lack of specification or direction to the application of intellectual property law on AI created goods and services, licensing criteria for advanced models, and reporting requirements for training data (5). It is important to note that the idea of regulating AI is a novel concept especially at the public level. The private sector is many years ahead of the government and it is inevitable that actors in the private sector are the new emerging geo-political leaders in the AI arena. One of the greatest shortcomings of the EO is its lack of authoritative value. The Atlantic Council expert Lloyd Whitman notes that the Biden-Harris administration's EO is comprehensive. However, he cautions that often these administrative burdens and judicial reviews are precarious and can be revoked by future administrations (4). He also notes that the amount of red-tape and bureaucratic administrative obstacles threatens to affect the efficacy of the EO (4).

The EO has also addressed the issue of **'Autonomy in Weapons Systems'** and the application of AI in law enforcement and border control, among other applications outside conflict (<u>4</u>).



Frances Burwell, a distinguished fellow at the Atlantic Council's Europe Centre compared the EO with EU AI Act, drawing a clear distinction between the two where the former depends on the market influence of the federal government and latter is legislation with enforcement (4). This demonstrates that the EU has the upper hand in its implementation of its Act as it enjoys jurisdictional autonomy over its stakeholders , whereas the impact of the EO is dependent on the degree of influence it has over its stakeholders and the precarious nature in reaching consensus on enforcement measures in Congress.



PATHWAYS OF IMPROVEMENT TO AI GOVERNANCE

The AI regulatory background provides a backdrop to the evolution of the AI regulatory framework from the inception of the negotiation process of the EU Act on AI to the release of multiple AI regulatory frameworks by different states. This evolution highlights the complex nature of this collaborative effort to reach a consensus on building sustainable policies that are both practical and flexible to adapt to nebulous circumstances. It also demonstrates the scale of legislative and bureaucratic efforts, the complex nature of multiple stakeholders with diverse interests, areas where it is easier to reach common grounds, and dimensions where the gap of mutual interests widens.

In the midst of actors scurrying to engage, network and collaborate with allies and adversaries, inadequate policy approaches expand the risks and harm caused by the free movement of AI goods and services. As Bremmer points out, "AI is not software development as usual; it is an entirely new means of projecting power"(3). This signals a shifting paradigm in the projection of geopolitical power.

To address the regulatory challenges that governments face, Bremmer and Suleyman, propose constructing a whole new regulatory framework from the ground-up (3).



means of projecting power



Their approach is called **Technoprudentialism**. It advances a mandate similar to that of financial institutions such as the Financial Stability Board, the Bank of International Settlements, and the International Monetary Fund (3). "The objective of this approach is to identify and mitigate risks to global financial stability without jeopardising economic growth" (3).



A Techno Prudential mandate would require the creation of institutional mechanisms that encompass the multi-facet environment of AI (3). "These mechanisms, in turn, would be guided by common principles that are both tailored to AI's unique features and reflect the new technological balance of power that has put tech companies in the driver's seat" (3).



The principles that governs the Techno Prudential mandate are:



Assessing risk factors of AI goods and services and developing mechanisms to prevent these risks from materialising.



Ensuring policy levers and tools are adaptable to the highly dynamic nature of AI.



The inclusion of all actors (state and non-state) into the governing framework model to ensure transparency and accountability for each actor.



Building strong standards in developing algorithms to minimise loopholes that can lead to leaks or significant collateral damage.

Dominion and Targeted Control

Techno Prudential regulation and oversight should extend across every industry from "manufacturing to hardware, software to services, and providers to users" to mitigate regulatory loopholes open to exploitation. Specialised governance tools must exist for each element in the AI spectrum.



These principles at their core should pave the way to the creation of three specialised AI governance regimes with universal jurisdiction, roles and responsibilities:

Mechanism	Function	
Fact-Finding Regime	Fact-finding similar to that of a global scientific body to objectively advise governments on the subject of AI (3).	
Oversight Regime	Functions as a space to create 'areas of commonality and guardrails proposed and policed by a third party' between China and the US; this approach is similar to that of verifying and monitoring arms control.	
Mediator Regime	Specialises in maintaining stable relationships between the world's two rival powers, often at odds with each other, but are main leads on the development of AI goods and services.	

Improving AI governance is crucial as AI becomes increasingly integrated into our daily lives. Without robust and adaptable frameworks, we risk facing serious threats such as cyberattacks, data manipulation, and global conflicts, all of which could destabilize societies and compromise security.

The Technoprudential approach offers a practical solution by drawing on regulatory principles from the financial sector. It emphasizes precaution, agility, inclusion, impermeability, and targeted control, ensuring that AI regulation remains both effective and flexible.



Creating specialized AI governance regimes—such as Fact-Finding, Oversight, and Mediator regimes—is essential for international stability. These regimes facilitate collaboration among global stakeholders, help governments make informed decisions, and maintain stable relationships between rival powers.

Ultimately, these strategies are vital for managing AI's transformative potential across industries and geopolitics. They strike a balance between promoting innovation and protecting public interests, ensuring that AI development benefits society in a responsible and secure manner.

Conclusion

The rapid evolution of AI technologies requires an equally dynamic and collaborative approach to regulation. The challenges posed by AI are multifaceted, ranging from ethical concerns and social justice issues to geopolitical power shifts and existential risks. The United States' Executive Order on AI regulation, though a significant step forward, must be viewed as a living document, adaptable and responsive to the continuous advancements in AI and the emerging global consensus on governance.

International collaboration, as evidenced by the recent summits and declarations, underscores the critical need for a unified regulatory framework. The Bletchley Declaration and the formation of the AI Advisory Board are indicative of a growing recognition among global powers that despite differing ideologies, a cooperative approach is essential to mitigate the risks associated with AI. This cooperation is not just about creating rules but about fostering a culture of shared responsibility and mutual accountability.

The United States, with its Executive Order, has laid the groundwork for a regulatory regime that seeks to balance innovation with safety. However, for the EO to be truly effective, it must incorporate feedback from a diverse range of stakeholders, including Progressives, Longtermists, and AI Hawks. These groups bring unique perspectives that can help shape policies that are both robust and flexible.

The proposed Technoprudential approach offers a comprehensive framework that aligns with the principles of precaution, agility, inclusion, impermeability, and targeted control. By establishing specialized AI governance regimes with universal jurisdiction, roles, and responsibilities, this approach aims to create a resilient regulatory environment capable of addressing the complexities of AI.



Ultimately, the goal is to build an international regulatory architecture that not only prevents the misuse of AI but also harnesses its potential for the greater good. This requires continuous engagement, transparency, and a commitment to ethical principles across all levels of governance. The race for AI supremacy is not merely a technological competition but a profound test of global cooperation and human values. The future of AI governance depends on our collective ability to act swiftly and wisely in the face of unprecedented technological change. As Bremmer and Suleyman aptly put it, "There is no time to waste" (3).



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