

LAW IN THE ERA OF AI

Regulation of AI. Problems and Options.

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Lack of experience and thereby
lack of knowledge
create regulatory problems in relation to AI

With the digital technology we are facing a
paradigmatic regulatory change

Legal regulation requires knowledge about what is to be regulated.

There is yet no solid answer to the normative problems related to AI

From both/and to either/or

In industrial society, regulation demanded mainly due to external effects of production, distribution and consumption.

These external effects give rise to interventional kind of regulation characterized by compromises. You both want to eat the cake and keep it at the same time.

In the digital era, the nature of the problems related to societal development has changed. The new technology opens up hitherto unknown possibilities and problems.

The regulation problem becomes a question of *either/or*. A choice has to be made between different areas of application. For what purposes should we accept the use of the new technology?

The new that emerges is valued in the terms of the old.

The technological development behind the emergence of the digital society tends to be adopted and used in the first stage within the framework of the earlier society's logic and power centres.

From ex post to ex ante regulation

The ethical and political problem becomes a question of deciding where to draw a limit to different activities.

What kind of outcome will we accept?

We do not yet know which leg to stand on.

This puts us in a DILEMMA

Lack experience of AI activities

while

regulation of AI has to be built on
considerations ex ante

New technology in general emerges without political decisions and needs no support from the legal system. Quite the opposite, it often demands deregulation of present legislation.

Law is actualized primarily for preventive reasons in relation to negative aspects of new technology.

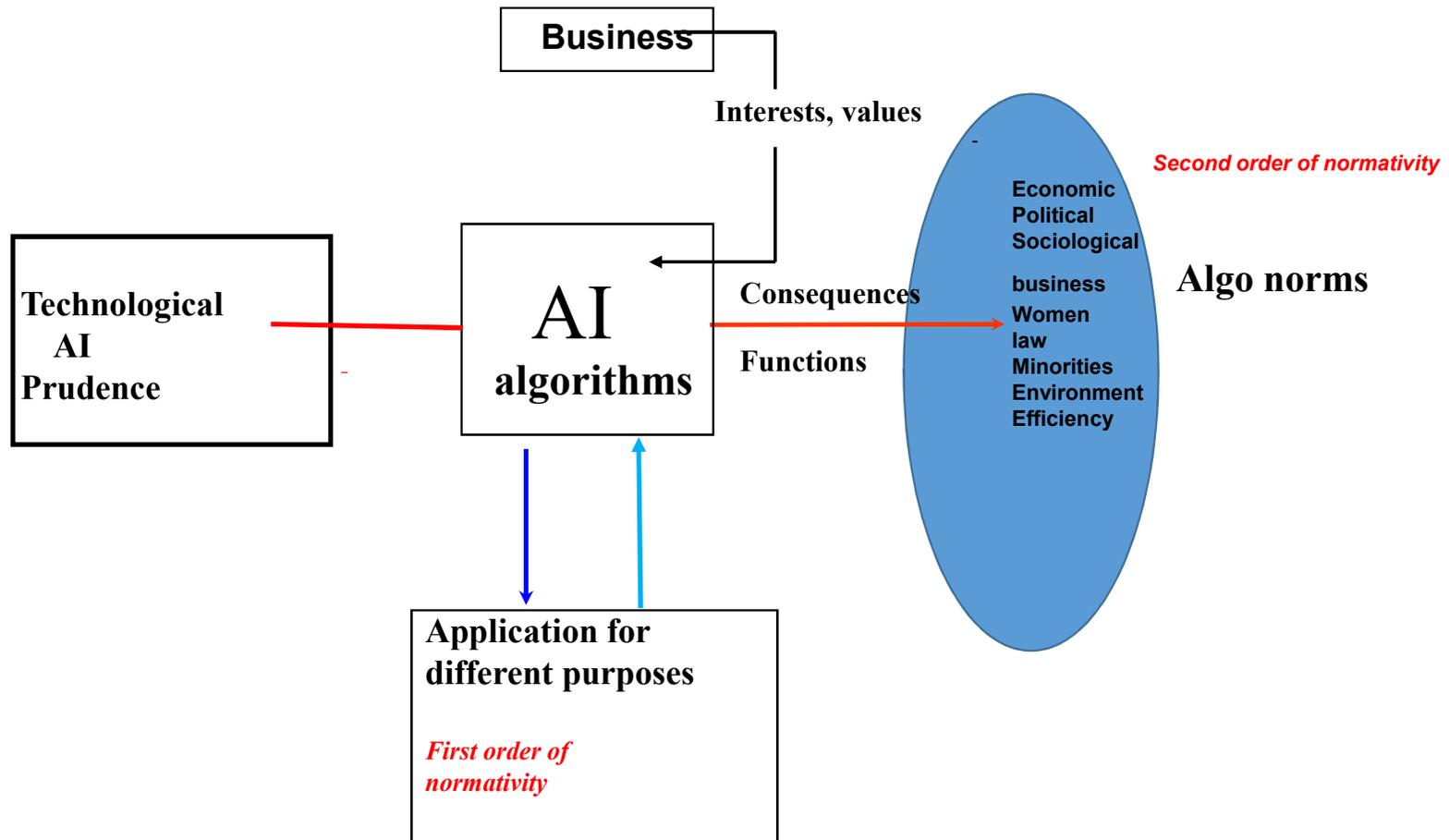
These negative aspects are the same as before and can therefore be combatted with existing legal means.

Compare with self-driving cars.

The main regulatory problem is related to different orders of normativity.

There is a crucial difference between algorithms in a technical sense and in a social science perspective.

Both are normative but with different addresses and different consequences.



Algo norms is an indirect effect of AI.
These are what we have to get hold of in order
to understand how to regulate.

The normative dimension is hidden behind
cognitively based instructions on how to act.
This is not the same as the problem with the so
called black box

Algorithms as norms are unique.

The normative consequences are embedded in the technology, and determined by the design of the AI, *The first order of normativity.*

Algo norms emerge when the algorithms meets and collide with the surrounding society, *the second order of normativity.*

Algo norms are problematic in two interconnected ways which affect the regulatory options. One is the democratic deficit that arises when norms in society are introduced and decided upon by technicians or by the system of algorithms itself.

The second related problem concerns manipulation in different respects. One is about the market.

Our choices are determined by the algorithms and those who have programmed them in order to figure out what we like best and thereby seem to want more of. We face a situation where the seller determines the content.

To summarize, should we follow a Reactive or Proactive regulation strategy?

Since we at least for the time being lack knowledge about the new digital technique's effects in different societal respects, it lies close at hand to stick to the strategy of trial and error, i.e. to wait and see what the consequences are and after that take decision about preventive actions.

At the same time we are aware of that if AI is released, it might be too late to intervene. This calls for a proactive strategy

CONCLUSION

The options for regulation depend on collecting and systematization of societal and social consequences of AI in different respects and from there consider legal regulation.