

**Hochschule für Politik  
an der Technischen Universität München (TUM)  
POL61301**

**Technology Governance and the Regulatory State  
Sommersemester 2019**

Seminar:  
Tuesdays 16:45 – 18:30, Room H.202  
Wednesdays 16:45 – 18:15, Room H.204  
Hochschule für Politik (Richard-Wagner-Str. 1; 80333 München)

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**Please Note:**

The language specification for this course is English. Accordingly, the readings for this course are all in English and the seminar discussion will be in English, too. The course paper must be written in English as well.

**Course Description**

Regulation has become an important mode of governance in the last few decades. Accordingly, many authors contend that we live in the age of the regulatory state, in which governments use regulation as a key tool for shaping markets and controlling delivery of (public) services. In the realm of technology governance, the European Union in particular has increasingly focused on regulating the behavior of large technology firms in order to ensure that these firms serve more than just the interests of their owners. However, given the proliferation and increased importance of regulation, new challenges have emerged as well: the fast-moving and complex nature of the technology industry, as well as the winner-take-all dynamics characterizing many new technologies, are testing the problem-solving capacity of the regulatory state and undermining its ability to pass effective regulations.

This course introduces the conceptual toolbox that allows students to understand the regulatory state and systematically analyze its capacity to address the challenges of contemporary technology governance. We will study the causes of regulatory failure, analyze the conditions for successful regulations, and shed light on the emerging challenges of the regulatory state. Participants will draw up different scenarios for the regulatory state and for technology governance in order to think creatively about the issues at hand.

Upon completion of this course, participants will:

- have gained a nuanced understanding - as well as the ability to apply - the key concepts of regulatory governance, such as the regulatory state, good regulation, smart regulation, and regulatory failure
- be familiar with the main opportunities and challenges of technology governance
- have learned how to undertake systematic political and economic analysis of the regulatory state and its capacities in different domains from the perspective of firms, society, and the government

Students in the Hochschule für Politik Master's program Politics & Technology may count the course toward the “Global Governance, Ethics, and Technology” specialization.

### **Learning Objectives**

Students will:

- be introduced to the key concepts in the field of regulatory politics and policy, focused in particular on technology governance, from the perspective of firms, civil society, and the government;
- gain an in-depth understanding of the potential and the limits of regulations and other forms of governing technology and thus often technological development - based on research in law, economics, political science / public policy, and sociology;
- apply their understanding of regulatory politics and policy to concrete cases of recent technology governance initiatives in the EU and the US;
- hone their analytical skills through the application of quantitative and qualitative methods to the analysis of regulatory policy, technology governance, and related issue in ways that will leave them better prepared for developing a thesis research project;
- evaluate policy and regulatory initiatives in the realm of technology governance according to whether the initiatives are likely to achieve their stated goals;
- Formulate ideas for public policy and regulatory initiatives in the realm of technology governance.

### **Course Format and Workload Expectations**

The course format will combine a traditional seminar, focused on discussing key issues and questions that arise out of the readings, with occasional, highly interactive lectures. Additionally, participants will work on scenarios that allow them to think creatively about the future of the regulatory state and of technology governance.

Students are expected to do the required readings in advance of each meeting of our seminar; to shape our seminar discussion through questions raised in class, as well as a brief presentation toward the end of the semester, and to contribute through regular participation.

## Readings

The required readings are specified below; they are drawn from scholarly journals such as *Journal of Common Market Studies*, *Regulation*, *Journal of Competition Law & Economics*, *Business and Politics*, *Journal of Political Economy*, *European Competition Journal*, *Stanford Technology Law Review* as well as books, such as *Governments and Markets: Toward a New Theory of Regulation* (Balleisen & Moss, eds.); *The Politics of Regulation* (Jordana & Levi-Faur, eds.); *Antitrust and the Bounds of Power* (Amato); *Business and Its Environment* (Baron); and *Capitalism Without Capital: The Rise of the Intangible Economy* (Haskel and Westlake).

A number of readings are posted for public access on the web. The others will be made available to you via a specially designated shelf in the TUM library ("Semesterapparat" with the title *Tech Governance & Regulatory State*). Supplemental materials may be made available via the course website on Moodle.

## Assessment / Grading

Students' achievement of intended learning outcomes will be assessed through a paper and a presentation at the end of the semester. Authoring a paper allows the students to reflect on what they have learned throughout the course, as well as conduct original research that goes beyond the assigned literature and the topics of discussion in class. The final grade for the course will be based on the following components: The paper will count for 80% of the grade. The presentation of the paper, as work-in-progress, in front of the other seminar participants will account for 20% of the grade. In addition, a "bonus" of up to 1/3 of a grade will be given for high quality contributions to the classroom discussion and the ability to actively listen to the other seminar participants (turning a 2 into a 2+, a 2+ into a 1-, etc.).

Your paper for this course should be either an in-depth critical reflection on a body of literature (akin to a review article) or an original research paper (which I recommend as a learning opportunity for anyone who is thinking about writing an empirical Master's thesis). For the paper, each student may choose his / her own topic (related to the subject matter of this course), subject to instructor approval.

## Prerequisites and Enrollment

The course is designed primarily for students in the Master's program of the Hochschule für Politik / Bavarian School of Public Policy, but open to others. It provides a multi- and trans-disciplinary social scientific introduction to the topic; no previous knowledge of regulatory politics or antitrust law, economics, and policies is expected. Students with no background in the social sciences should consult the instructor before enrolling (ideally before or after the first meeting of the course).

**1. Governing Technology? An Introduction to Regulatory Politics and Policy in the Context of the Digital Economy (7 & 8 May 2019)**

- Breyer, Stephen G. [Selection from the Introduction to:] *Regulation and Its Reform*. Cambridge, MA: Harvard University Press, 1982: 1-4.
- Jordana, Jacint and David Levi-Faur. [Selection from:] "The Politics of Regulation in the Age of Governance." In *The Politics of Regulation: Institutions and Regulatory Reforms in the Age of Governance*, edited by Jordana and Levi-Faur. Northampton, MA: Edward Elgar Publishing, 2004: 1-15.
- Vogel, Steven K. "Why Freer Markets Need More Rules." In *The Political Economy Reader: Markets as Institutions*, edited by Nazneen H. Barma and Steven K. Vogel. New York: Routledge, 2007: 341-354.
- Thompson, Ben. "Stratechery: Facebook's Motivations." 17 January 2018. Read online at: <https://stratechery.com/2018/facebooks-motivations/>
- Finger, Matthias. "Towards a European model of regulatory governance?" In *Handbook on the Politics of Regulation*, edited by David Levi-Faur. Northampton, MA: Edward Elgar Publishing, 2011: 525-535.

Recommended Readings

- Caporaso, James A. "The European Union and Forms of State: Westphalian, Regulatory, or Post-Modern?" *Journal of Common Market Studies* vol.34 no.1 (March 1996): 29-52.
- Eckert, Sandra. "European Regulatory Governance." In *Handbook on the Politics of Regulation*, edited by David Levi-Faur. Northampton, MA: Edward Elgar Publishing, 2011: 513-524.

**2. Market Failure and More: The Rationales Behind Regulation (14 & 15 May 2019)**

- Stiglitz, Joseph E. „Government Failure vs. Market Failure: Principles of Regulation.“ In *Government and Markets: Towards a New Theory of Regulation*, edited by Edward J. Balleisen and David A. Moss. New York: Cambridge University Press, 2010: 13-51.
- Kelman, Steven. "Cost-Benefit Analysis: An Ethical Critique." *Regulation* vol.7 no.3 (May/June 1981): 33-40. Read online at: <https://www.cato.org/regulation/janfeb-1981> or <https://object.cato.org/sites/cato.org/files/serials/files/regulation/1981/1/v5n1-7.pdf>
- Sidak, Gregory J. and David J. Teece. "Dynamic Competition in Antitrust Law." *Journal of Competition Law & Economics* vol.5 no.4 (December 2009): 581-631.
- Haucap, Justus and Ulrich Heimeshoff. "Google, Facebook, Amazon, and eBay: Is the internet driving competition or market monopolization?" *International Economics and Economic Policy* vol.11 no.1 (August 2013): 49-61. Read online at: <https://link.springer.com/article/10.1007/s10368-013-0247-6>

### Recommended Readings

Marcus, Alan I. "Setting the Standard: Fertilizers, State Chemists, and Early National Commercial Regulation, 1880-1887." *Agricultural History* vol.61 no.1 (Winter 1987): 47-73.

Gaughan, Anthony. "Harvey Wiley, Theodore Roosevelt, and the Federal Regulation of Food and Drugs." Third Year Paper in Food and Drug Law, Harvard Law School, 2004. Read online at:  
<https://dash.harvard.edu/bitstream/handle/1/8852144/Gaughan.html?sequence=2>

### **3. Government Failure: What Could Go Wrong when Regulating Technology Markets? (21 & 22 May 2019)**

Munger, Michael C. "Regulation." *Encyclopedia of Libertarianism*. Washington: Cato Institute, 2010: 418-420. Read online

at: <https://www.libertarianism.org/encyclopedia/regulation>

Stigler, George J. "The Theory of Economic Regulation." *Bell Journal of Economics and Management Science* vol.2 no.1 (Spring 1971): 3-21.

Wilson, James Q. "The Politics of Regulation." In *The Politics of Regulation*, edited by James Q. Wilson. New York: Basic Books, 1980: 357-394.

Büthe, Tim. "Private Regulation in the Global Economy: A (P)Review." *Business and Politics* vol.12 no.3 (October 2010): 1-38.

Yandle, Bruce. "Bootleggers and Baptists." *Regulation* vol.7 no.3 (May/June 1983): 12-16. Online inter alia at: <https://www.aei.org/publication/viewpoint-bootleggers-and-baptists-the-education-of-a-regulatory-economist/> or <https://www.cato.org/regulation/mayjune-1983>

Thompson, Ben. "The European Commission Versus Android." *Stratechery* 19 July 2018. Online at: <https://stratechery.com/2018/the-european-commission-versus-android/> (last accessed 9/17/2018).

Ross Sorkin, Andrew. "Google's EU Fine Might Not Matter." *The New York Times* 19 July 2018. Online at:

<https://www.nytimes.com/2018/07/19/business/dealbook/google-europe-antitrust.html> (last accessed 9/17/2018).

Schechner, Sam and Nick Kostov. "Google and Facebook Likely to Benefit from Europe's Privacy Crackdown." *The Wall Street Journal* 23 April 2018.

Online at: <https://www.wsj.com/articles/how-europes-new-privacy-rules-favor-google-and-facebook-1524536324> (last accessed 9/17/2018).

### Recommended Readings

Hayek, Friedrich A. "Economic Policy and the Rule of Law." In *The Constitution of Liberty* (Collected Works, vol. XVIII). Chicago: University of Chicago Press, 1960: 329-341.

Carrigan, Christopher and Cary Coglianese. "George J. Stigler, 'The Theory of Economic Regulation.'" In *Oxford Handbook of Classics in Public Policy and Administration*, edited by Martin Lodge, Edward C. Page, and Steven J. Balla. Oxford University Press, 2015: 287-299.

Peltzman, Samuel. "Toward a More General Theory of Regulation." *Journal of Law and Economics* vol. 19 no.2 (August 1976, special issue Conference on the Economics and Politics of Regulation): 221-240.

**4. Antitrust Law and Economics: Comparing the US and the EU (28 & 29 May 2019)**

Stigler, George J. "Perfect Competition, Historically Contemplated." *Journal of Political Economy* vol.65 no.1 (February 1957): 1-17.

Amato, Giuliano. "Introduction" and "Chapter 1 (USA): Protection of Competition or of Freedom of Contract." In *Antitrust and the Bounds of Power: The Dilemma of Liberal Democracy in the History of the Market*. Oxford: Hart Publishing, 1997: 1-4, 7-19.

Baron, David P. "Antitrust: Economics, Law, and Politics." In *Business and Its Environment*. 7<sup>th</sup> edition. Upper Saddle River, NJ: Prentice Hall, 2013: 265-280, 287f.

Baron, David P. "Antitrust Cases." In *Business and Its Environment*. 7<sup>th</sup> edition. Upper Saddle River, NJ: Prentice Hall, 2013: 289f, 294-301.

Motta, Massimo. "Competition Policy: History, Objectives, and the Law." In *Competition Policy: Theory and Practice*. Cambridge: Cambridge University Press, 2004: 1-38.

Parret, Laura. "Shouldn't We Know What We Are Protecting? Yes We Should! A Plea for a Solid and Comprehensive Debate About the Objectives of EU Competition Law and Policy." *European Competition Journal* vol.6 no.2 (August 2010): 339-376.

Recommended Readings

Kovacic, William E. and Carl Shapiro. "Antitrust Policy: A Century of Economic and Legal Thinking." *Journal of Economic Perspectives* vol. 14 no. 1 (Winter 2000): 43-60.

Eichenwald, Kurt (book), Scott Z. Burns (screenplay), Steven Soderbergh (director). *The Informant!* (with Matt Damon et al.). Warner Brothers Pictures, 2009.

Glass, Ira. "The Fix Is In." September 2009 re-broadcast (with some new material) of the 15 Sep 2000 episode #168 of *This American Life*. Online at: <http://www.thisamericanlife.org/radio-archives/episode/168/the-fix-is-in> (58 minutes; last accessed on 10/15/2018; also on iTunes)

Möschel, Wernhard. "US versus EU Antitrust Law: The author compares important features of the Antitrust Law in the United States and in Europe." *Zeitschrift für Wettbewerbsrecht* vol. 5 no.3 (August 2007): 261-265.

**5. The Political Economy of Digital: Network Effects, Dynamic Competition, and the Value of Intangible Assets (4 & 5 June 2019)**

- Arthur, Brian W. “Competing Technologies, Increasing Returns, and Lock-In by Historical Events.” *The Economic Journal* vol.99 no.394 (March 1989): 116-131.
- Liebowitz, Stan J. and Stephen E. Margolis. “Path Dependence, Lock-in, and History.” *Journal of Law, Economics, & Organization* vol.11 no.1 (April 1995): 205-226.
- Liebowitz, Stan J. and Stephen E. Margolis. Network Externalities (Effects). Online at: <https://www.utdallas.edu/~liebowit/palgrave/network.html> (last accessed on 25/9/2018).
- Evans, David S. “Multisided Platforms, Dynamic Competition, and the Assessment of Market Power for Internet-Based Firms.” *Coase-Sandor Institute for Law and Economics Working Paper*, no.753, 2016. Read online at: [https://chicagounbound.uchicago.edu/law\\_and\\_economics/799/](https://chicagounbound.uchicago.edu/law_and_economics/799/)
- Gates, William. “Not enough people are paying attention to this economic trend.” *Gates Notes* 14 August 2018. Read online at: <https://www.gatesnotes.com/Books?Capitalism-Without-Capital> (last accessed on 9/24/2018).
- Brynjolfsson, Erik, Yu Jeffrey Hu and Michael D. Smith. “From Niches to Riches: The Anatomy of the Long Tail.” *Heinz Research Paper*, no.51, 2006. Read online at: <http://repository.cmu.edu/heinzworks/51>

#### Recommended Readings

- Anderson, Chris. “Long Tail Economics.” In *The Long Tail: Why the Future of Business is Selling Less of More*. 2<sup>nd</sup> edition. New York: Hyperion, 2008: 125-146.
- Haskel, Jonathan and Stian Westlake. “Public Policy in an Intangible Economy: Five Hard Questions.” In *Capitalism without Capital: The Rise of the Intangible Economy*. Princeton, NJ: Princeton University Press, 2018: 208-238.

### **6. Business Disruptions as Policy Disruptions: How to Regulate New Business Models (11 & 12 June 2019)**

- Knowledge@Wharton. “When Business Blows Up Policy: How to Regulate Disruptions.” 27 July 2018. Listen online at: <http://knowledge.wharton.upenn.edu/article/when-business-blows-up-policy-how-to-regulate-disruptions/> (28:55 minutes; last accessed on 9/25/2018)
- Edelman, Benjamin G. and Damien Geradin. “Efficiencies and Regulatory Shortcuts: How Should We Regulate Companies Like Airbnb and Uber?” *Stanford Technology Law Review* vol.19 no.2 (2016): 293-328. Read online at: <https://law.stanford.edu/publications/efficiencies-and-regulatory-shortcuts-how-should-we-regulate-companies-like-airbnb-and-uber/>
- Marian, Omri. “A Conceptual Framework for the Regulation of



Cryptocurrencies.” *University of Chicago Law Review* vol.82 no.1 (2017): 53-68. Online at:

[https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1035&context=uclev\\_online](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1035&context=uclev_online)

Cohen, Molly and Arun Sundarajan. “Self-Regulation and Innovation in the Peer-to-Peer Sharing Economy.” *University of Chicago Law Review* vol.82 no.1 (2017): 116-133. Read online at:

[https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1039&context=uclev\\_online](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1039&context=uclev_online)

Koopman, Christopher, Matthew Mitchell, and Adam Thierer. “The Sharing Economy and Consumer Protection Regulation: The Case for Policy Change.” *The Journal of Business, Entrepreneurship & the Law* vol.8 no.2 (May 2015): 529-545. Read online at:

<https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1130&context=jbel>

### Recommended Readings

Biber, Eric, Sarah E. Light, J.B. Ruhl and James E. Salzman. “Regulating Business Innovation as Policy Disruption: From the Model T to Airbnb.” *Vanderbilt Law Research Paper* no.17-24, 2017. Read online at:

<https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=3910&context=facpubs>

## **7. Media Companies, Platforms, or Something Else Entirely? Regulation and the Ethics of Technology (18 & 19 June 2019)**

Murray, Andrew D. “Internet Regulation.” In *Handbook on the Politics of Regulation*, edited by David Levi-Faur. Northampton, MA: Edward Elgar Publishing, 2011: 525-535.

Ehrlich, Paul. “Communications Decency Act 230.” *Berkeley Technology Law Journal* vol.17 no.1 (2002): 401-419. Read online at:

<https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1358&context=btlj>

Bell, Emily and Taylor Owen. “The Platform Press: How Silicon Valley Reengineered Journalism.” *Tow Report* 29 March 2017. Online at:

[https://www.cjr.org/tow\\_center\\_reports/platform-press-how-silicon-valley-reengineered-journalism.php/](https://www.cjr.org/tow_center_reports/platform-press-how-silicon-valley-reengineered-journalism.php/) (last accessed on 9/25/2018).

Saunders, Kurt and Berger-Walliser, Gerlinde. “The Liability of Online Marketplaces for Counterfeit Goods: A Comparative Analysis of Secondary Trademark Infringement in the United States and Europe.” *Northwestern Journal of International Law and Business* vol.32 no.1 (Fall 2011): 37-92. Read online at:

<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1013&context=njilb>

Sewall, Sarah. “Google was working on two ethically questionable projects. It quit the wrong one.” *The Washington Post* 7 September 2018. Online at:



[https://www.washingtonpost.com/opinions/google-was-working-on-two-ethically-questionable-projects-it-quit-the-wrong-one/2018/09/07/f95ee7b4-a639-11e8-97ce-cc9042272f07\\_story.html?utm\\_term=.24b496126e51](https://www.washingtonpost.com/opinions/google-was-working-on-two-ethically-questionable-projects-it-quit-the-wrong-one/2018/09/07/f95ee7b4-a639-11e8-97ce-cc9042272f07_story.html?utm_term=.24b496126e51) (last accessed 9/24/2018).

Lin, Patrick. "Why Ethics Matters for Autonomous Cars." In *Autonomous Driving*, edited by Markus Maurer, J. Christian Gerdes, Barbara Lenz, & Hermann Winner. Berlin and Heidelberg: Springer Publishing, 2016: 69-85.

#### Recommended Readings

Ardia, David S. "Free Speech Savior or Shield for Scoundrels: An Empirical Study of Intermediary Immunity Under Section 230 of the Communications Decency Act." *Loyola of Los Angeles Law Review* vol.43 no.2 (2010): 374-501. Read online at: <https://digitalcommons.lmu.edu/llr/vol43/iss2/1/>

### **8. Scenarios for the Future: Where might Technology Governance go from Here? (2 & 3 July 2019)**

Drexl, Josef. "On the Future EU Legal Framework for the Digital Economy: A Competition-based Response to the 'Ownership and Access' Debate." In *Trading Data in the Digital Economy: Legal Concepts and Tools*, edited by Sebastian Lohsse, Reiner Schulze, and Dirk Staudenmayer. Münster Colloquia on EU Law and the Digital Economy III, 2017: 221-244.

Streitfeld, David. "Amazon's Antitrust Antagonist Has a Breakthrough Idea." *The New York Times* 7 September 2018. Online at: <https://www.nytimes.com/2018/09/07/technology/monopoly-antitrust-lina-khan-amazon.html> (last accessed on 9/24/2018).

Wu, Tim. [Selection from:] *The Curse of Bigness: Antitrust in the New Gilded Age*. New York, NY: Columbia Global Reports, 2018. [TBC]

Hovenkamp, Herbert. "Antitrust Policy and Inequality of Wealth." *Faculty Scholarship* no.1769, 2017. Read online at: [https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=2771&context=faculty\\_scholarship](https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=2771&context=faculty_scholarship)

Crane, Daniel A. "Antitrust's Unconventional Politics." *Law & Economics Working Papers* no. 153, 2018. Read online at: [https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1264&context=law\\_econ\\_current](https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1264&context=law_econ_current)

#### Recommended Readings

Khan, Lina M. "Amazon's Antitrust Paradox." *Yale Law Journal* vol. 126 no. 3 (2016): 710-805. Read online at: <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=5785&context=yjl>

Muris, Timothy J. and Jonathan E. Nuechterlein. "Antitrust in the Internet Era: The Legacy of United States v. A&P." *George Mason Law & Economics Research Paper* no. 18-15, 2018. Read online at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3186569](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3186569)

### **9. Simulation game (9 & 10 July 2019)**

The readings for preparing the simulation will be handed out in class the previous week

### **10. Presentation of Papers as Work in Progress (16 & 17 July 2019)**

Büthe, Tim (based an earlier work by Peter Hall). "Writing an Analytical Paper in Political Science." MimeoFile

King, Gary, Robert O. Keohane, and Sidney Verba. [Selections from:] *Designing Social Inquiry: Scientific Inference in Qualitative Research*. Princeton, NJ: Princeton University Press, 1994: 3, 6f, 9-12, 12-19, 23, 25f, 32f, 46, 55-57, 63, 75-95, 128-135.

George, Alexander L. and Andrew Bennett. "Advantages and Limitations of Case Studies." [Selection from chapter 1 of:] *Case Studies and Theory Development in the Social Sciences*. Cambridge, MA: MIT Press, 2005: 17-22.

Munck, Gerardo L. "Tools for Qualitative Research." In *Rethinking Social Inquiry: Diverse Tools, Shared Standards*, edited by Henry E. Brady and David Collier. Lanham, MD: Rowman & Littlefield, 2004: 105-121.

Mitchell, Ronald B. "Regime Design Matters: Intentional Oil Pollution and Treaty Compliance." *International Organization* vol.48 no.3 (Summer 1994): 425-458.

### **11. Presentation of Papers as Work in Progress & Wrap-up (23 & 24 July 2019)**

The readings are the same as for seminar 10 above