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# **Liberalism in the Digital Age**

**Regulating Emerging Tech to Ensure  
Robust Democratic Institutions**

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# Setting the Stage – External Pressures

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- Fourth Industrial Revolution
- Increasingly multi-polar world
- Competition among nations as *the* global security concern
- Competition among nations for “tech supremacy”
- Destabilizing impacts of emerging technologies on:
  - Media
  - Elections
  - Warfare

# Setting the Stage – Internal Pressures

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- Fear of (or trepidation over) emerging technologies
  - Employment
  - Public safety
  - Privacy
- Negative perception of government regulation
  - As an impediment to innovation
  - As taking too long
- Negative perception of government's understanding of emerging technologies
- Need to safeguard:
  - Constitutionally-protected rights
  - Institutions of government

# Tensions

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- “Move fast and break things” vs. the precautionary principle
  - Innovation vs. regulation
  - Societal benefits of emerging technologies vs. societal risks of emerging technologies
  
- Rapid development of emerging technologies vs. slow response by government
  - The pacing problem

# Tensions (cont.)

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- Frustration with existing regulatory constructs vs. desire for institutional preservation
  - Product of using 19<sup>th</sup> and 20<sup>th</sup> century legal constructs to address 21<sup>st</sup> century problems
- Our innovators vs. your innovators
  - Innovate before the other guy
  - Innovation as a national security imperative

# Ability of Governments to Respond

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- Command and control:
  - “Innovation-driven development”
  
- Liberal democracies:
  - Administrative procedure
  - Constitutional considerations
  - Consumer protections
  - Environmental protections
  - Liability regimes

# Potential Governance Models

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- Threats
- Dynamic regulation
- New regulatory constructs
- Public-private partnerships
  - Through the development of standards
  - Through collaboration
- International Organizations

# Another Alternative

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- Iterative Policymaking - allow agencies to create “rights and obligations” with “force and effect of law” through interpretative/interpretive rulemakings (i.e., policy)
- Mechanics:
  - Strategic amendments to Administrative Procedure Act (or state equivalents) allowing agencies to forego typical administrative process (e.g., rule promulgation) in certain circumstances
  - Instead, agencies would be able to articulate requirements/permissions/prohibitions through detailed policy statements
  - Agencies would be required to review policies periodically and as needed to ensure public safety
  - Oversight and public process would be built into periodic review process
- Clear parallels to concept of adaptive management



# Provisos

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- Regulating myriad emerging technologies likely will require multiple regulatory pathways
- There will be technologies/applications that we cannot presently imagine and challenges that no one can foresee
- Democracy is necessarily messy; by necessity, governance of emerging technologies will continue to be more challenging than in command/control economies
- Innovators will also weigh trade-offs in deciding where to invest their talents
  - But overly burdensome regulatory structures can tip the balance, resulting in:
    - Companies relocating to more favorable business/regulatory environments (e.g., geopolitical adversaries)
    - Disillusionment with institutions of governance
  - Thus, national security arguments can be made for flexible regulatory governance

Thank you! I welcome your insights and comments:

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