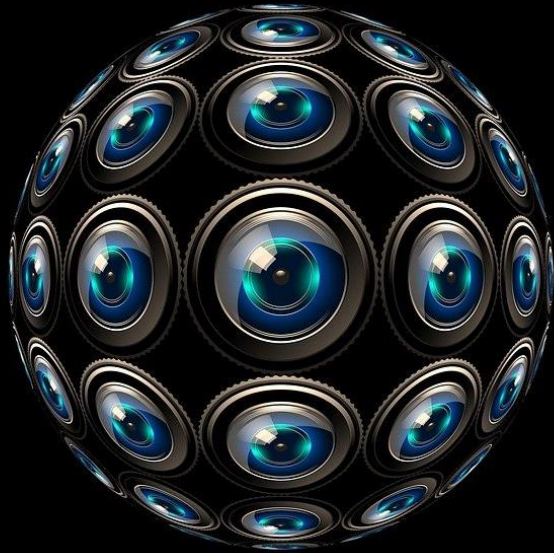


The background is a dark blue field filled with a complex network of light blue lines and dots, resembling a neural network or data connections. Overlaid on this is a stylized, wireframe representation of a human brain, also in light blue. To the right of the brain, there are several parallel, horizontal circuit-like patterns with circular nodes, suggesting digital or technological themes.

Forward-looking legal principles & regulation of predictive technologies

Michael Dizon, PhD

Predictive analytics



Growing interest and concern

Predictive policing

Criminal sentencing and bail decisions

Automated and real-time compliance monitoring and detection

Law and direction of time

Traditional, narrow view of law:
backward-looking, precedents
and status quo

But law always involves past, present and future

Law is now more future-oriented



A man in a dark suit is shown from the side, looking towards a futuristic digital landscape. The landscape features glowing orange and blue lines, resembling data or energy, set against a background of city lights at night. The overall scene conveys a sense of innovation and forward-thinking.

Future-related legal principles & regulatory approaches

Future effects of law

Prospective
application
of law
(*ex ante*)

Presumption
against
retroactivity
(*ex post facto*)

Statutes are
in effect
until
repealed



Future effects of law

Doctrine of non-desuetude
(non-use)

Constitution is

‘intended to endure for ages to come,
and, consequently, to be adapted
to the various *crises* of human affairs’

(Marshall)

Future legal interpretation

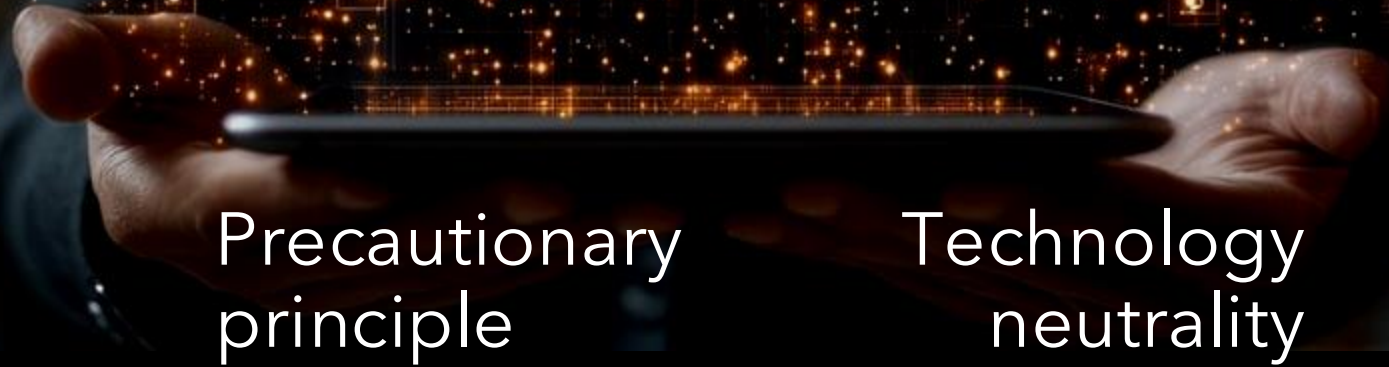
Statutes 'always speaking'

Ambulatory approach

Lex ferenda
(future law or ought to be)



Legal principles about the future



Precautionary
principle

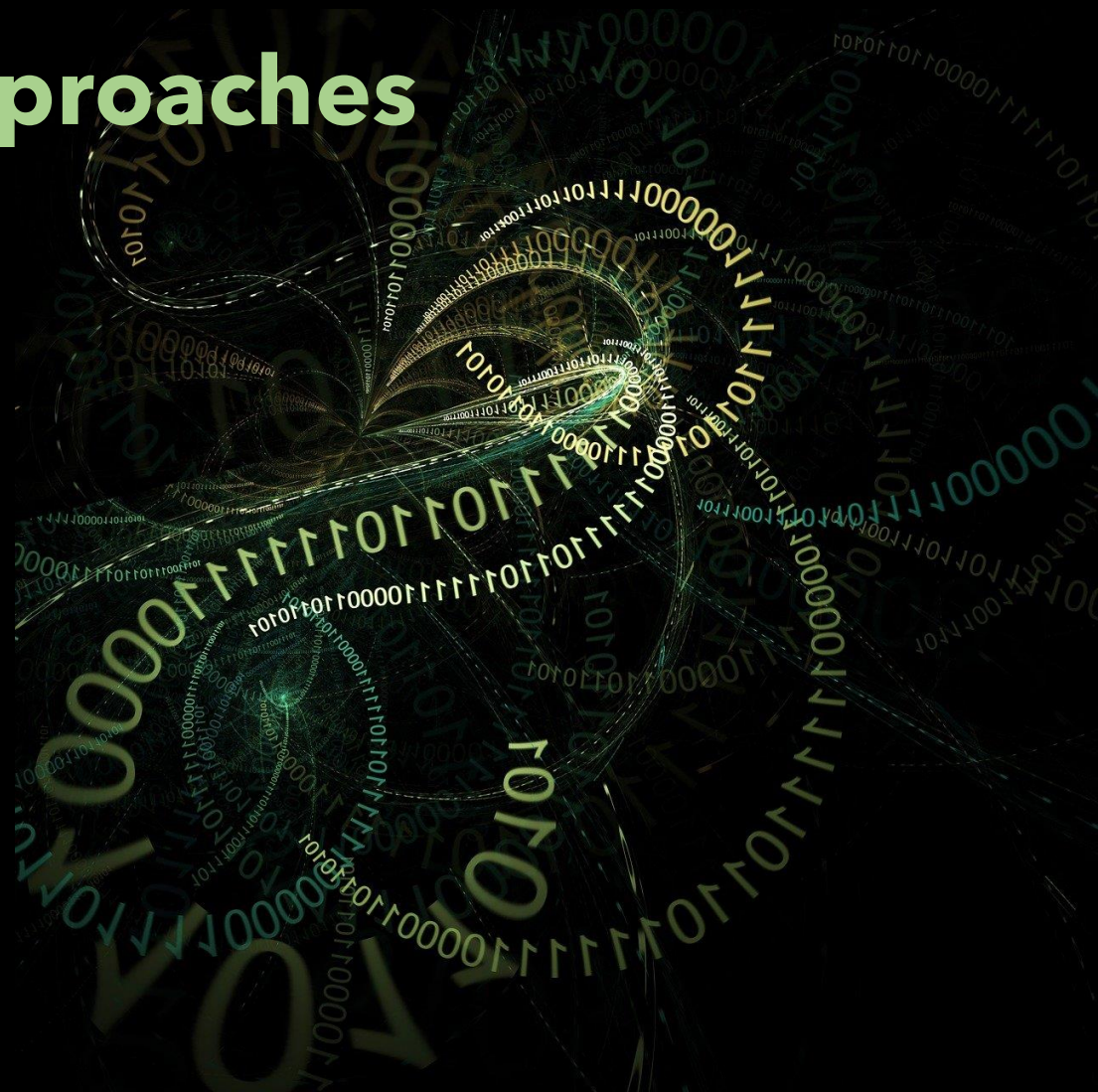
Technology
neutrality

Regulatory approaches for the future

Non-rules based

Principles-based

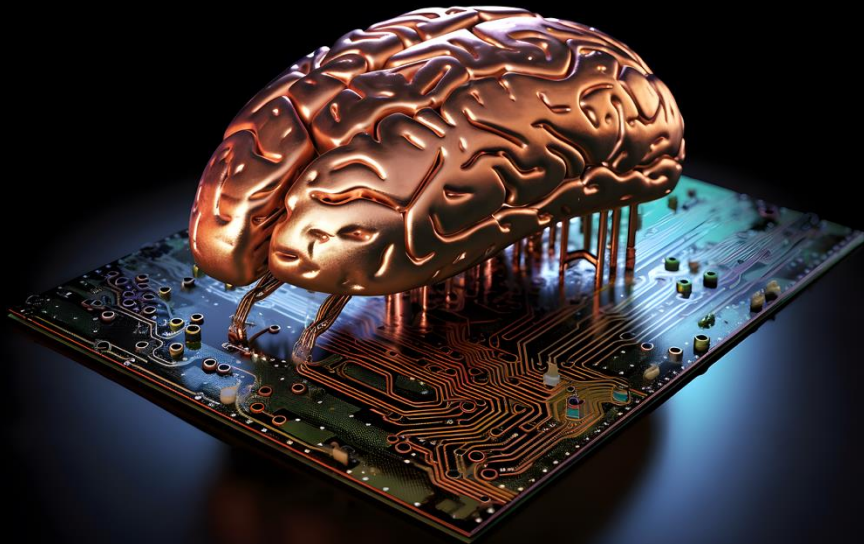
Risk-based



Law and the future



Law and prediction



Not just technical or
epistemic but also
normative and social

Not only forecasting
but also shaping the
future through present
actions and decisions

Self-fulfilling prophecy

Normative element



‘ The most powerful tool of prediction is law ’

(Neuwirth)

Predictive power of law rooted in its normative and prescriptive character

Possible for law to shape and embrace predictive technologies

Laws and technologies
embody and enact
public interests and
social values

With technology,
values-based design

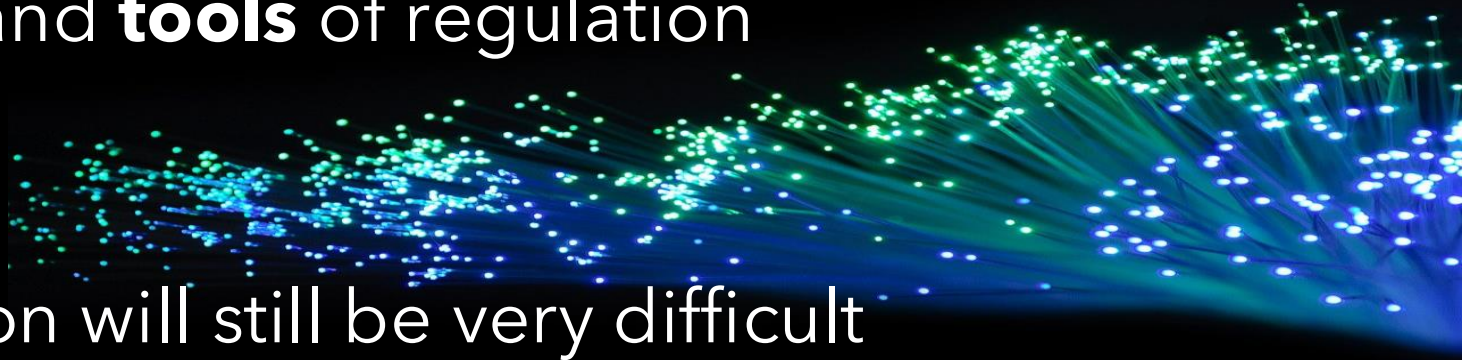
In law, concerned
with social values,
contexts and
considerations

Social dimension



Future of predictive regulation

Predictive technologies as
targets and **tools** of regulation



Regulation will still be very difficult

Uncertain, random and stochastic

Biases and effects (hindsight, confirmation,
anchoring, Hawthorne, Rosenthal)

Future of predictive regulation

Regulation will still be very difficult

Traps of instrumentalism and technological determinism

Law in books versus law in action



Regulation of predictive technologies now

Need to refocus law and policy discussions

From future to present

More human- or society-centric and less fixated on technology per se

Existing yet changing goals, norms and values

Norms and values approach

No better time than now



Questions and comments

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