

Research Seminar

The False Choice between Digital Regulation and Innovation

Speaker: **Professor Anu Bradford**
(Columbia Law School)

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Memo by Anca Radu
(Ph.D. Researcher, Law Department,
Teaching Assistant, STG)

Professor Anu Bradford is a leading scholar on the EU's regulatory power and a sought-after commentator on the European Union, global economy, and digital regulation, **Anu Bradford** coined the term the *Brussels Effect* to describe the European Union's outsize influence on global markets. She is the author of *The Brussels Effect: How the European Union Rules the World* (2020), named one of the best books of 2020 by *Foreign Affairs*. Her newest book, *Digital Empires: The Global Battle to Regulate Technology*, was published by Oxford University Press in September 2023, and was recognised as one of the best books of 2023 by *Financial Times*.

Bradford is also an expert in international antitrust law. She spearheads the Comparative Competition Law Project, which has built a comprehensive global data set of antitrust laws and enforcement across time and jurisdictions. The project, a joint effort between the Columbia Law School and the University of Chicago Law School, covers more than a century of regulation in over 100 countries and has been the basis for **Bradford's** recent empirical research on the antitrust regimes used to regulate markets.

Before joining the Law School faculty in 2012, **Bradford** was an Assistant Professor at the University of Chicago Law School. She also practiced EU and antitrust law in Brussels and has served as an adviser on economic policy in the Parliament of Finland and as an expert assistant at the European Parliament. The World Economic Forum named her Young Global Leader '10.

At the Columbia Law School, **Bradford** is the Director of the European Legal Studies Center, which trains students for leadership roles in European law, public affairs, and the global economy. She is also a senior scholar at Columbia Business School's Jerome A. Chazen Institute for Global Business, and a non-resident scholar at Carnegie Endowment for International Peace.

Bradford began her talk by introducing her paper discussing the False Choice often presented between digital regulation and innovation. The paper is the result of her broader research agenda around digital economy. It builds on her latest published book – *Digital Empires*. She started from huge gap between American technological progress and the hypothetical notion that Europe is behind in terms of technological innovation due to its consecrated commitment to digital regulation. In studying these questions, Professor **Bradford** is ready now to challenge this claim and argue that, while she does not deny said gap, she calls into question the justifications of the gap and that the two can very well co-exist.

She first started by stating one of the most evident distinctions between the two systems. If she would have asked us to name some of the most successful tech companies in the United States, for sure every one of us around the table would have been able to come up with a different name. However, the same would not have applied for Europe. To support this statement, **Bradford** recalled the Forbes 2023 listing of the 100 largest tech companies in the world, and within the first 20 top companies, there are only 3 European companies. Instead, 11 of them are American tech companies.

Another statistical data Professor **Bradford** relied on is the 70 largest platforms in the world, to which European platforms contribute 4% of the market cap, whereas the U.S. platforms contribute 73% of that total. Next, she asked us to look at 100 'unicorns' around the world, out of which only 12 European tech companies are on that list. These 12 companies are split as follows: 7 of them come from the U.K. and only 5 of them come from the European Union. Let us now look at the quantum computing. Here **Bradford** mentioned that the 10 biggest companies investing in this next big wave of technology are American and Chinese, and not a single European company can be found in there. Related, if we look at investments in AI, the U.S. companies invest six times more than the European ones.

The conclusion to which she arrived after carefully analysing all these statistical pieces of evidence is that, even if this were not how we would like for the situation to look like, it is important to understand what these statistics explain about the gap between the U.S. and Europe in terms of AI innovation and regulation. **Bradford** believes that by understanding the underlying explanations for said gap, could allow us one day to reverse those statistics and close the gap, should this be our will.

Bradford briefly described then the two regulatory models. A more in-depth description can be found in her latest book – *Digital Empires*. In a nutshell, the American model is a market-driven one, whereas the European model is a rights-driven one. In other words, the American philosophy about regulating the tech industry is a techno-optimist libertarian view of the world: it maximises the free market, the internet, and incentives to innovate. This means that it hands over the governance to tech companies, while limiting the role of the government and its ability to intervene in the market.

To prove this point, she recalled section 230 of the Telecommunications Act, which provides a liability shield for platforms. So, let us imagine that someone uploads an illegal video on YouTube, but regardless of whether the platform decides to take down the video or not, there is no legal claim that can be lodged against YouTube. Moreover, there is no privacy law in the U.S. at the federal level, and the U.S. has not been able to revise its antitrust law either. As regards the latter, there are some attempts – i.e., the courts testing the boundaries of the existing laws – but it is not clear whether the courts are ready to accept those theories of harm.

Therefore, there is no robust digital regulatory framework in the U.S. And this happens for several reasons. First, it is the ideological commitment to the market and the distrust in the government's intervention. Second, expensive lobbying takes place in the U.S. legal system. Conversely, the level of lobbying in Brussels is at a much lower threshold. So, lobbying places an important role in the U.S., and creates a dysfunction in the Congress. The two political parties currently agree on two things only: a) China is a problem; and b) Big Tech is a problem. However, they do not agree on how to deal with these two problems. Conversely, we do not see this kind of divide in Europe.

On another note, in Europe we can observe a human-centric digital transformation, which means that AI regulation should be adopted in a compatible way with fundamental rights, democratic values and the rule of law. To put it simply, Europeans are proactively intervening to redistribute power away from large platforms to smaller companies and to individual users, and even to the public at large. This has resulted in an extensive regulatory framework.

Bradford gave but one example – the GDPR (General Data Protection Regulation) is considered to be the Crown Jewel or the first big push in this domain. Also, the extensive use of antitrust laws that has been leveraged against big tech, has been supplemented now by the Digital Markets Act and the Digital Services Act. Europe has not only a legally binding way to regulate the content moderation space, but we are waiting now also for the final draft of the AI Act.

At the same time, **Bradford** stressed that we hardly see any regulation on AI in the U.S. Thus, it is very easy to argue that the reason why Europe is behind, is precisely its dedication to AI regulation. And vice versa, it is the lack of regulation which allows the U.S. to technologically innovate. While she does not argue against this claim, she does think that there is something even more important happening. **Bradford** started proving this point by clarifying that even if Europe would drop all these pieces of AI and market regulation, Europe would still not be thriving at tech innovation. She then makes two arguments in the paper.

First, **Bradford** argues that digital regulations – including privacy, antitrust and AI regulation – can cut both ways. They are not inevitably hindering innovation. They can hinder innovation, or they can enable it. Meaning, there is no one way relationship there. Let us look at an example. While it remains true that the GDPR has imposed costs on companies and those costs can be diverting resources away from research and development, she is rather not worried about the Big Tech not being able to comply with the GDPR. Professor **Bradford** is much more worried about the distributional impact on small and medium companies, as for them, proportionately, the impact is much bigger. She then also recalled another argument which shows that the GDPR has, in fact, enabled innovation. In this sense, it encouraged the companies to rethink about innovation and new ways to develop the kind of products responsive to the regulation. This can further help not only create social innovation (i.e., cleaner air), but also market innovation (e.g., better, and more efficient practices).

Another example Professor **Bradford** gave us comes from the antitrust field. There is a long-standing debate of what is optimal degree of competition to maximise innovation. On the one hand, there are economists who say that we need some monopoly rents to be able to really invest in innovation. On the other hand, some argue that we see less innovation when the markets are so concentrated, the digital economy is really in the hands of Big Tech. Meaning that, even if we see startups emerging, we do not see them scale. Or, if they do invent, then we can observe that Big Tech companies acquire them because they want to keep competition before it reaches them. These are only a few examples that Professor **Bradford** gave to stress that there is really no one way that says that every time you intervene with antitrust and privacy laws, you immediately should expect to see less innovation.

The second, and what she called the more original part of her paper, refers to the question of what is then the reason Europe is so behind, if it is not its focus and dedication to tech regulation. Here, Professor **Bradford** offers 4 different reasons in her paper.

1. The absence of an integrated digital single market in the EU

Bradford argues that the market is still fragmented, and it is very hard for tech companies to scale in the EU, whereas in the U.S. or China, they benefit from being able to scale in a very fast domestic market. One example of said fragmentation can be attributable to different consumer preferences. She then mentioned a study from 2015, in which emphasised already back then that only 4% of the Digital Services sold in the EU were cross border digital services, implying that there is not a digital market. So, it is much harder for European companies to scale and become big players in Europe.

2. European companies do not have access to the same kind of capital as the thriving Venture capital industry in the U.S.

European tech companies rely primarily on banks, and banks are much riskier than the Venture capitalists in the Silicon Valley. This being said, the Venture capital market is more integrated and much more efficient than the disintegrated or insufficiently integrated capital market in the EU. Indeed, there are some efforts to establish a capital markets union, but it is wilfully incomplete. As such, it is very difficult for a Portuguese startup to access funds in Sweden or Poland, or Germany. So, they mainly fundraise locally. This could be a massive explanation why U.S. tech companies are doing so much better.

Another important element **Bradford** mentioned here is that the reason why U.S. Venture capital firms are doing so well is because they are intermediaries. There are massive institutional investors who are allowed to invest in risky assets, including pension funds and university endowments. On the contrary, in Europe all the university endowments are not large enough to become big players. However, in the U.S., they are some of the major participants in these Venture investments pension funds. Related, in the U.S., **Bradford** emphasised that 30% of the Venture funding comes, in fact, from the pension funds.

3. The difference in attitude towards risk

Professor **Bradford** underlined that the U.S. has the benefit of a mentality that is encouraging, conducive of taking risks. Also, the existing framework allows entrepreneurs to fail and then try again. Whereas Europeans are very risk averse, and entrepreneurship is not as valued as in the U.S., Europeans do not want to invest in risky assets. Furthermore, in Europe there is a different culture with reference to failure. If someone goes through bankruptcy, it is portrayed as a personal tragedy, whereas in the U.S. it is simply a rite of passage. Americans are fond of their failure stories (i.e., Steve Jobs).

Lastly on this third argument, **Bradford** noted that the most punitive laws on bankruptcy are to be found in Sweden, Portugal and the Czech Republic.

4. One cannot be a top innovator unless it has the innovators

Here again, **Bradford** stressed that the U.S. benefits from having access to the world's best talent. It should be noted that they do not only hire from the U.S., but they are hiring from all over the world. Contrarily, Europeans do not have the same culture of embracing diversity and proactively seeking to attract the best minds from around the world.

She then gave us statistical evidence to support this argument. She asked us to look at over one-billion-dollar companies in the U.S., and to observe that over 50% of them have an immigrant founder. Similarly, if we look at the household names of the leading platform companies, we can observe the same thing (i.e., Steve Jobs is the son of a Syrian immigrant; Jeff Bezos is a second-generation Cuban; and Elon Musk is South African; Serge Brin is Russian). This reveals a huge story of American commitment to immigration. **Bradford** argues that this is also making a big difference between the U.S. and the European approach to technology.

Conclusions

With this paper, Professor **Bradford** has, if not completely challenged or debunked the idea that digital regulation would be the culprit why the Europeans are behind the U.S. in terms of technological progress, she has certainly invited this conversation to, first, control all these variables that she thinks are extremely fundamental in explaining these differences. She offers normative support for the European digital agenda. By abandoning this agenda, Europe will not fix these issues arounds competitiveness. She basically gives Europe a long to-do list on issues that it should take seriously. Why? These issues **Bradford** argues should really gain sense in the process of policymaking, if Europe is serious about catching up with the U.S.

As regards the U.S., **Bradford** sends the message that it should not fear regulation and a rights-driven approach as it would not dismantle innovative culture. It would not un-do the capital markets or prevent the migrants from going to the U.S. She firmly believes that the U.S. can still thrive if there was a federal privacy law or one of those antitrust bills would go through.

Questions and answers

A Postdoctoral Researcher asked a question related to the distributional effects Professor Bradford talked about. And he was wondering whether there is a way to incentivise the Big Tech companies to share some insights that they develop along the value chain. These could inform researchers and policymakers on creating a better regulatory framework.

Professor **Bradford** referred to a couple ways to answer this question. Companies like Microsoft and Apple are often committed to what they call *privacy by design*, meaning that they design their products at the outset to be privacy compliant. So, anyone involved in the supply chain that then uses their products, already gets them. This means that at the point of origin, the compliance cost has been embedded in the product. Another issue she then mentioned is that in the AI space, there is some suggestion where the GDPR is hampering the ability of small startups to use the data. And we all are aware that in order to innovate, access to data is vital. So, if a small company does not have access to their own data, the GDPR makes it more difficult for it to rely on third company data. Maybe one way to make this possible would be to use anonymised data for commercial benefits. Another way in which **Bradford** believes regulators can help make this process cheaper for smaller companies is regulatory sandboxes. There, they can test the compliance of their products within a controlled environment.

A Ph.D. Researcher asked then whether one reason why Europe is falling behind the U.S. in the race to AI innovation could also be the cumulative effects of its culture towards migrants, the focus on regulation and the lack of incentives.

Professor **Bradford** clarified that indeed, she does not believe it is regulatory stringency that keeps Europe behind, it is rather regulatory complexity. If one criticises the GDPR as anti-innovation, then they should also question the alternative. And the alternative would not be the lack of a privacy law, but the existence of 27 different privacy laws, which would make it even harder for tech companies to understand and navigate them. With regards to the cultural approach, **Bradford** referred again to the paper and the example she gives there regarding the difference in attitude towards accepting failure. So, in academia too for instance, Americans celebrate failure, and thus are more brave and even confident. However, in Europe, academics do not celebrate failure, and care much more for being wrong. As such, she observed that American academics are very good at intellectual risk.

An EUI Professor later referred to one of the things that we witness a lot in legal academia and maybe in the policy research is that there is a lot of priority given to works on distribution more than growth. The anti-innovation, anti-growth discourse that is very popular on campuses is averse to the idea of sharing equally. This is because the only thing that allows you to share is to grow the pie eventually. He then raises awareness of the risk we are taking in saying that growth is not the priority, and distribution is, as the stipends from innovation and the surplus from what we get from becomes increasingly small.

Professor **Bradford** believes that there are no alternatives as, indeed, there is nothing to redistribute if you do not have a pie in the first place. Having grown up in Finland, she is very committed and comfortable with the idea of redistribution equality. She believed the entire Finnish community is very committed to social welfare. But at the same time, one cannot ignore that Nordic countries are some of the most competitive economies, and she believes

this is absolutely crucial to preserve in order to continue maintaining the level of welfare state and redistribution.

Another **Ph.D. Researcher** asked the Professor's opinion on knowledge transfer regimes between the public and the private sectors in the U.S.

Bradford agreed that this is also an important point, and she stressed that she addressed it in the paper as well. Indeed, the U.S. story of funding technology is not just one of Venture capital, it is also that there has been a lot of U.S. state funding that is related to the commitment to National Security. The Department of Defence runs this agency called DARPA, which has funded a lot of innovation, including ARPANET (a predecessor to internet). It provided the seed funding to Apple, which led to iPhone. In many ways, she believes it would be a false narrative to only explain that only private funding is behind. But even though there is a lot of state funding, the U.S. is market-driven in how it distributed the state funding. However, we are not witnessing the U.S. going back to some of the state-driven routes.

Another **EUI Professor** reiterated the sense of urgency from the point of view of Europeans moving forward, and he stressed three elements from the presentation: the costs of these changes, the political will, and the type of reforms needed. And from an economist's perspective, he was wondering how the list of priorities should look like in the daunting task of matching the costs, the political issues, and the urgency.

Professor **Bradford** believes that one way to address this question is to think in terms of short-term, medium-term, and long-term goals. This would then allow us to think about a sort of spending the immediate political capital and the way you chase the long-hanging fruit, which is a different question, that the way you introduce the greatest net benefit. She thinks that the digital single market should be a priority as Europe kind of has the architecture in place. Another important thing would be the idea of immigration, which would be important also for the long-term goals, and not just for tech industry, but also supply chains (i.e., universities can attract individuals by allowing for family reunification for instance).

Another **EUI Professor** also stressed the institutional discussion about providing the right incentive structure to policymakers in Brussels, and this movement from evidence-based policymaking to political policymaking. He believes that this might be something that we need to think more deeply about in the future.

Indeed, Professor **Bradford** believes that the observation related to the European Commission becoming much more geopolitical has a direct impact on the regulatory agenda, and she fears that it is really fuelling a greater sort of industrial policy and technological protectionism. In this sense, Europeans are tempted now to overplay their hand and use the very asset and the superpower they have – which is regulation – and leverage towards geopolitical tools. She further fears that this will not end well. She also referred to the French led industrial policy agenda, which is really trying to subsidise our way to competitiveness, and she is not sure we have the money to do that, and ultimately if it would serve us well.

Another **Ph.D. Researcher** asked the Professor whether the reform agenda she outlined is consistent with the human-centric approach in the EU. The researcher referred here also to the problem of sometimes over-regulating (in terms of the number of existing pieces of legislation).

Professor **Bradford** confirmed the researcher's identification of the problem – we have different securities laws, different degrees of investor protection, different institutions, different market structures, enforcement mechanisms. Indeed, these require quite big revisions at the national level in the different aspects of how the markets and capital markets work, which

makes it more complicated to deal with. She then identified how little progress has been done, even though this issue is well-known.

Professor **Bradford** then concluded that the bigger argument of the paper is that there is a false choice between digital innovation and digital regulation. We can have both the commitment to human-centric, rights-driven digital regulation at the centre of the ethos of the European project, and the European view of the kind of digital world that we want to aspire to. With the mention that, at the same time, we can also be much more competitive, while still having this agenda. It also gives a certain legitimacy to endorse our regulatory vision because if we do not need to fight this battle, then we are seen as a regulator of technologies, a referee, and never as a developer of technology.

Lastly, she referred to the single market that we can commercialise. She is, of course, very committed to data protection, but she believes that there are ways that we could think of to also utilise the data as a massive asset. Without question, she believes this should and could be done in a consistent way with the rights-driven agenda. Otherwise, this is a lost opportunity.