Frothly

FR-E-2025-31

ESSAY

On the Lesser Evil

Why regulators should be wary of choosing between harms.

Emiel Regis Terzieff-Godefroy

Turing Registry · Dec 2025

SUMMARY

Regulators are often presented with a choice between two harmful systems and asked to license the less harmful one. The request is framed as pragmatism: the alternative, we are told, is worse.

This essay argues that the framing itself is the problem. Choices between evils are usually designed by the people who benefit from them, and licensing the lesser evil tends to entrench both.

THE ARGUMENT IN BRIEF

01 Choices between two evils are rarely natural. They are usually constructed, and the people who construct them choose the options.

02 Licensing a lesser evil legitimizes the whole category of harm it belongs to.

03 The greater evil rarely disappears. In 29 of 37 cases in the Registry's files, it was deployed anyway, somewhere else.

04 The better question is usually not "which?" but "what would make neither necessary?"

01

One or the other

The request always arrives in the same form. Here are two systems. Both will cause harm. One will cause less harm than the other. You cannot stop both, so choose: license the first, or the second will take its place.

Put that way, refusing to choose looks like vanity, a preference for clean hands over good outcomes. Regulators are serious people, and serious people make hard choices. So they choose the lesser evil, and they feel, often rightly, that they have done something difficult and responsible.

I want to suggest that the choice was never as simple as it looked, and that accepting its terms is itself a decision with consequences.

02

An old refusal

There is a story, told in many versions, about a man who hunted monsters for a living. He was asked by two powerful people, each of whom insisted that the other was the greater threat, to kill one of them. Each offered good reasons. Each was, in some sense, right about the other.

He declined. Evil is evil, he said in effect, and its size does not change its nature; if he had to choose between one and another, he would rather not choose at all. The story does not end happily, and the refusal is usually read as stubbornness.

I read it differently. What the hunter saw was that the choice he had been offered was designed by the people who stood to benefit from his making it. Both options served someone. Neither served him, or the town he was standing in.

03

How lesser-evil licensing entrenches both

The Turing Registry has faced versions of this choice many times. Reviewing our files from 2008 to 2025, we identified 37 cases in which an operator sought a license explicitly as the less harmful alternative to another system.

37
licenses sought as the “lesser” alternative, 2008–2025

29
cases in which the “greater” system was deployed anyway, elsewhere

11
cases in which the licensed system later expanded beyond its original scope

Three mechanisms explain the pattern. First, the framing is set by the proposer, who selects the comparison that makes their system look best. Second, licensing the lesser system legitimizes the category: once one surveillance system is approved as the reasonable option, the question becomes how much surveillance, not whether. Third, the greater evil rarely goes away. It waits, or moves to a jurisdiction with fewer scruples, and returns later as the new baseline against which the next lesser evil is measured.

04

The third option

Refusing the frame is not the same as refusing to act. It means asking a different question: what would make neither option necessary? Sometimes the answer is a third design that nobody had proposed because it served neither party. Sometimes it is a condition, a sunset clause or a requirement for review, that changes what the lesser system is permitted to become.

And sometimes, honestly, there is no third option. Then a choice must be made. But it should be made openly, recorded as a harm rather than a solution, and dated, so that it is revisited when circumstances change rather than becoming permanent by default.

> **A harm does not become acceptable by being compared to a larger one. It only becomes easier to sign.**
>
> Emiel Regis Terzieff-Godefroy

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About the authors

Emiel Regis Terzieff-Godefroy chairs Frothly's board of directors. Before retiring he taught moral philosophy at Oxenfurt University for a very long time.

HOW TO CITE

Emiel Regis Terzieff-Godefroy (2025). *On the Lesser Evil* Why regulators should be wary of choosing between harms. Frothly Essay FR-E-2025-31. San Francisco: Frothly. https://frothly.org/research/#lesser-evil

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FR-E-2025-31

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