

Responsibility and accountability: AI, governance and the rule of law

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- *A rule of law perspective on AI and automated decision-making in governance*

- How to regulate technology – how the technology we use regulates us.

I. Relevance of the rule of law when regulating AI in governance?

II. How AI governance affects the rule of law?

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- Perennial problem: how to manage the coordination of relationships between individuals and social systems?
- Most start with checklists (eight is the magic number): Fuller, Finnis, Bingham, Raz – Council of Europe/Venice Commission, European Commission, World Justice Project
- Thus: *legality, prospective rules, general in character, non-discrimination, access to justice*...and from this, a tendency to checklist regulation

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- Council of Europe: "To create a regulatory framework for AI, specific principles based on the protection of human rights, democracy and the rule of law".
- Risks: (a) separating principles from the overarching aim of the rule of law (b) not accounting for other factors affecting the rule of law (c) Rule of law as a box to check: i.e. legality of automated decisions in Sweden (public administration at state level)
- A different starting point - *teleological* (what is the point of the rule of law?). Power, and minimising arbitrary power.

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- How AI governance affects power and exercise of power.
- Post-decisional or pre-decisional accountability when governance is automated
- Where is accountability located?
- Responsible but not accountable public agencies?

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- From the sublime to the mundane: local governance and the robustness to handle automated governance
- GDPR, EU Commission expert group on AI and the limits of checklists
- EUP on outsourcing AI to private parties "... this should not compromise the protection of public values and fundamental rights in any way; ...public procurement terms and conditions should reflect ethical standards imposed on public authorities when applicable"
- System and competencies at risk (Agency for Digital Development)
- Emergence of a new professional group in public administration that is short term, problem-solving, external – public ethos (Agency for Public Management)