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Book Review

Markku Suksi, *The Rule of Law and Automated use Decision-Making. Exploring Fundamentals of Algorithmic Governance*, Cham, Springer, 2023.

The The use of artificial intelligence tools by public administrations is reshaping the paradigms upon which public law has been constructed and which, for centuries, have sustained its development. Among them is the primacy accorded to statutes as foundational instruments of the constitutional order. Equally central is their role as mechanisms through which rules are defined by representatives vested with democratic legitimacy, and as such must be observed by all members of the community. The use of artificial intelligence tools and digital infrastructures threatens to undermine the principle that the legislature establishes the normative framework governing collective life. This threat is most evident when the algorithm renders decisions autonomously and in a manner that cannot be verified.

This is the guiding thread that underlies the book under review. It seeks to examine whether, and in what manner, the introduction of automated decision-making procedures into public decision-making processes can be reconciled with the principles of the rule of law that are upheld by all modern Western democracies. The recourse to artificial intelligence may yield greater efficiency. Yet such efficiency cannot be pursued at the expense of legality, transparency, and the full range of principles that form an indispensable corollary of the rule of law.

In the thought-provoking concluding chapter, Markku Suksi examines the paradigm shift that is shaping the modern world and producing profound transformations. A comparable development had already occurred during the industrial revolutions, which radically altered the social and economic structures of European societies and also reshaped the manner in which legal norms were produced. At that time the 'rule of law' emerged, replacing the 'rule of king'. The rule of law relied on methods of managing social conflict through linguistic instruments of command, embodied in legal norms adopted by elected assemblies. This historical shift conferred a distinctive centrality upon the legal profession.

Today, in the midst of the ongoing revolution, it may be foreseen that the centrality of decision-making tools grounded in linguistic comprehension is about to be displaced by the centrality of algorithmic decision-making systems. In this emerging world, the disciplinary domains that appear to occupy a pivotal role are those concerned with the digital management of decision-making processes. The 'rule of law' appears to be supplanted by a 'rule of algorithms' (Yannick Meneceur).

The relationship between automated decision-making and the principle of legality is the focus of Markus Naarttijärvi's contribution. Having examined the dogmatic foundation and the theoretical meaning of the rule of law, the author turns to its compatibility with the use of ADM systems, particularly when the exercise of discretionary functions is entrusted to machines. In such circumstances the construction of algorithms is assigned to computer scientists and technicians, often employed by private companies, who thereby come to replace public authorities in decision-making. This entails a transfer of functions to actors not identified in accordance with the traditional techniques of legitimising power characteristic of the rule-of-law state, and who moreover operate through instruments that are not always transparent.

Concerns of a similar nature are also discernible in the contribution of Tuomas Pöysti. Drawing on comparative experiences from Sweden, Germany, France and the United States, the author examines how major European states have regulated the use of ADM systems by public administrations. Central to his analysis is the reference to European Union law, in particular the GDPR, and to Finnish constitutional law, both of which require safeguards and transparency. Pöysti further emphasises the role of technical experts and private providers in the conduct of decision-making informatics. He stresses that legal certainty must also encompass systemic guarantees: the quality of data, the controllability of processes, and the comprehensibility of reasoning. Automation may enhance efficiency and uniformity, yet it magnifies errors when poorly designed. The perspective must therefore remain human-centred, with the aim of

preserving human dignity. The possibility of human oversight of algorithmic decisions, and thereby of judicial review, constitutes an essential requirement that cannot be disregarded.

A partly different, and certainly original, standpoint is developed in Suksi's chapter. He addresses the conditions that the principle of the rule of law imposes on the use of automated administrative decisions. The central argument is that compliance with the structural guarantees of the rule of law presupposes not only a clear legal basis but also the application of the method of legal subsumption. An administrative act must result from the application of the legal norm to the facts. Such an operation can be replicated only by rule-based systems and not by machine-learning applications, which rely on statistical inferences and thus employ decision-making techniques distinct from those used until now. As a consequence, the connection between decisions generated by machine-learning systems and the legal norm is merely indirect. This constitutes a thought-provoking and significant reflection, yet one that departs from the position adopted by United States scholarship. By contrast, Lena Enqvist and Markus Naarttijärvi appear to concur with Suksi's analysis in section 4.1 of their contribution.

Riku Sarlin's contribution adopts a more practical orientation, as it is devoted to illustrating how administrative automation is employed in a specific sector, namely that of social benefits. The analysis also highlights the importance of system design and the extent to which such design may affect the responsibilities arising from the adoption of automated decisions.

The issue of algorithmic discretion is instead addressed by Lena Enqvist and Markus Naarttijärvi. In an insightful and richly argued contribution, they examine discretionary automation through the lens of the principle of proportionality. This principle provides the framework within which automated administrative decisions may be considered valid, with the implication that disproportionate measures must be deemed invalid even when they appear, at least formally, to comply with the law. The central idea of their essay is that proportionality unfolds across several stages: the drafting of legislation, its application, and the subsequent review of decisions adopted through artificial intelligence tools. At each level, the object, the standards, and the responsibilities change, whether legislative, concerning system design, decision-making, or the review of the resulting decisions.

The volume closes with contributions by Anna-Sara Lind and Cecilia Magnusson Sjöberg. The latter analyses a range of concrete legal implications of algorithms in public administration, while Lind questions the resilience of the rule of law within the framework of contemporary normative pluralism.

The book edited by Markku Suksi offers an intelligent and systematic analysis of the issues raised by decision-making automation in administrative law, bringing to light the tensions between technological efficiency and constitutional principles. The comparative perspective and the diversity of contributions make it possible to appreciate how different legal systems are confronting the challenge posed by ADM. What emerges is the enduring centrality of classical categories of administrative law, which continue to serve as indispensable criteria for assessing the legitimacy of new forms of algorithmic decision-making. The work thus stands out for its ability to provide conceptual tools for measuring the compatibility of automation techniques with the rule of law, without yielding either to facile enthusiasm or to a priori rejection. [Reviewed by ANGELO GIUSEPPE OROFINO].