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Perfect Lawmaking and Perfect Legal Compliance – Two False Ideals of Normativity in Governance by AI?

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Abstract: Given the rapid advances in AI in predicting and controlling human behavior, the question arises as to whether the responsible use of AI might not best be regulated by law with the aid of AI itself. This question is guided by the expectation that two normative problems associated with legal norms can be definitively resolved with the help of AI: (1) that it might be possible to perfect legal norms through AI to such an extent that they provide a single correct answer for every application, and (2) that they can control the behavior of those subject to them in such a way that there is no longer any deviant behavior. This article situates these two expectations within the historical context of efforts to perfect legal norms and critically discusses the possible consequences for the democratic constitutional state.

Keywords: perfect law; law enforcement; prevention of deviance; technological solutionism; human judgment; discretion

The following article addresses a problem that inevitably arises in any regulation of responsible use of AI. To the extent that AI can be used – and is already being used in some cases – to perfect both legislation and compliance with the law, the legal regulation of responsible use of AI itself becomes dependent on AI. This accelerates a development that has deep historical roots: the use of technology to control human behavior. These efforts to perfect normativity are driven by the hope that it will be possible to determine precisely what each addressee of the law must do in any given situation here and now, and to impede non-compliance. If this is the meaning and purpose of normativity, and if AI, unlike older technologies, now makes it possible in a perfect way for the first time, wouldn't this be the final realization of

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an ideal? Or is this a dubious understanding of the ideal of a norm-guided practice of coexistence between fallible and finite human beings?

1 AI Regulating AI?

Normally, behavioral norms, especially when it comes to legislation, are understood to mean that a matter requiring regulation, a social relationship, or a technical process appears as an object area that differs from the norm. The object area can vary, e.g., road traffic, the exchange of goods for money, family relationships, etc. What they have in common is that they usually focus on individuals who become the addressees of a norm and on their behavior that is standardized in one of the three deontic modalities of obligation, prohibition, or permission. "The legal order," writes Kelsen, "which is the object of this cognition (i.e., jurisprudential cognition – added by KG), is a normative order of human behavior – system of norms regulating human behavior" (Kelsen 2005, 4). The required behavior is described in general terms in the norm, so that it must be specified in a situation-specific manner for and by the addressees acting within the scope of the object area. The norm is usually addressed to persons who are responsible for complying with it and who can be held accountable for doing so. This does not exclude artificially created persons, such as legal entities, from being addressees of norms, but even these remain tied to human behavior – not only in their genesis, but also in the actions of natural persons that are attributed to them and for whose consequences they are liable. Therefore, those who call for the responsible use of AI usually think of AI as part of the object domain, as well as of persons whose behavior relates to it, e.g., by manufacturing or using AI systems, etc. *For example*: After the steam engine was invented and used, among other things, to operate railways, legal norms regulated who was liable under what circumstances for damage caused by the operation of a railway.[1]

This changes to the extent that AI is not only the subject of regulation, but also, as it were, changes sides and itself becomes an element or technique of regulation. Norms are not only directed at human behavior as their object but are also a product of it. According to Kelsen, the term "norm" refers to "something that something *ought* to be or *ought* to happen, especially that a human being ought to behave in a specific way. This is the meaning of certain human acts directed toward the behavior of others" (Kelsen 2005, 4). To put it bluntly: humans intentionally regulate and legislate the behavior of other humans. Legal systems differ from other normative orders in that, among other things, a separate type of norm is created for this purpose: H.L.A. Hart's secondary norms or Kelsen's authorizing norms. The more AI is used by those authorized to set norms for the process of forming a norm, the less it is

1 E.g., § 1 German Reichshaftpflichtgesetz of 1871.

intentionally determined by human behavior. Ultimately, the process of legislation can be entrusted entirely to AI. For example, a steam engine cannot regulate how steam engines are to be used, e.g., who is liable to what extent for damage caused by their operation. But AI could regulate how AI is to be used.

Even if it remains limited to human norm-forming and norm-setting processes, AI is still capable of influencing the application and observance of these norms by their addressees. At least in cases where vague legal terms or discretionary powers make the applicability of the norm in individual cases dependent on the weighing and consideration of a multitude of relevant factors, AI is suitable for collecting and analyzing relevant information on a larger scale. Finally, AI can also be used to steer the behavior of the addressees in the respective situation in accordance with the rule or to replace it entirely with AI-controlled processes.

If AI in this sense is also a technology for creating norms and controlling behavior, and if it can become even more widespread in the future or even a substitute for compliance with norms through human behavior, this would mean for the regulation of responsible use of AI that AI would be used to regulate AI. This could then lead to the dilemma that, as legal systems move toward using AI to create norms and ensure general compliance with rules, legal regulation of the responsible use of AI would itself depend on AI, which in turn would require regulation using AI, and so on *ad infinitum* (see Günther 2024, 19).

2 Using Technology to Control Behavior: A Short History

Of course, using technology to control behavior is nothing new. As is well known, one of the central Christian narratives, the Christmas story in the Gospel of Luke, begins with a Roman emperor having the inhabitants of what was then Syria counted, presumably in order to determine their obligations for taxes and military service on the basis of this calculation. With the development of more accurate mathematical and statistical methods in the late 18th century, legislation increasingly relied on calculations not only of quantitative size, but also of the past and, on this basis, calculable and probable behavior of the population in the future. Condorcet already advocated the "application of the arithmetic of combination and probability" (de Condorcet 1795, 349) in science-based politics, the progress of which would lead to an "improvement of laws and public institutions" (de Condorcet 1795, 353). Valid statistics on the population, e.g., on the annual number of suicides, are known to be among the conditions for the emergence of sociology (see Durkheim 2022). If statistical surveys can be automated and made more effective by technical means, if collected data can be archived and otherwise stored, this is only logical. The larger the amount of data collected over a longer period of time, the

easier it is to identify patterns, constants, and changes, and to predict likely developments. Condorcet had already anticipated this when he recommended the development and application of a "technical method" (de Condorcet 1795, 362), initially only for teaching purposes – but here, too, one can already recognize the idea of an algorithm: "the art of uniting a great number of objects in an arranged and systematic order, by which we may be enabled to perceive at a glance their bearings and connections, seize in an instant their combinations, and form from them the more readily new combinations " (de Condorcet 1795, 362). Such methods and the desire to improve their application are an essential part of what Foucault called the biopower of the modern state. The Nazi state was the first to use the punch card technology developed by IBM with the corresponding machines for a census in 1933 (see Mühlhoff 2025, 17; Mulligan 2008, 18). In the US, the transition from punch card technology to electronic data processing was completed during a census in 1951, when a 'Universal Automatic Computer' (UNIVAC) was used for the first time, shortly followed by the first opinion polls to predict the presidential election.

The Federal Constitutional Court of Germany already emphasized in its 1983 census ruling that the state must collect data, not least for the purpose of giving substance to the principle of the social welfare state pursuant to Article 20(1) of the Basic Law (Grundgesetz) and thus guaranteeing the minimum material conditions for the realization of fundamental rights of freedom, which, however, became better known for establishing the fundamental right to informational self-determination for the first time. This right had to be weighed against the constitutional principle of the welfare state, for the realization of which "the state is entitled and obliged to create the indispensable basis for action for policies oriented toward this principle by means of comprehensive and constantly updated information on economic, ecological, and social interrelationships" in order "to create an indispensable basis for action" (Federal Constitutional Court 1983, 65, 1 (47)). The purpose of using such methods and technologies is to capture the object area of regulation as precisely as possible in order to adapt laws and other legal norms to the needs of the addressees and to enable a higher degree of compliance with the legal norm. Of course, as Foucault has shown, such norms also elicit a conformist response from those to whom they are addressed and have a normalizing effect on living conditions, as can be seen in the standardized employment and pension history of white male breadwinners in small families under social security law (Ewald 1987; Foucault 2007).

The situation is not much different when it comes to the use of technologies for individual behavior control. The threat of penalties and similar sanctions is only able to influence behavior to a limited extent in such a way that a violation of the norm subject to the threat of sanctions is avoided. The risk remains that some individuals will decide to violate the norm despite the threat of significant disadvantages, especially if the probability of detection is calculable and remains low overall.

This is where technical prevention of norm violations comes in, using observation tools such as cameras, which are now part of everyday life and are used in both private and public settings. The strategy of the hero Odysseus in Homer's epic poem of the same title is also a case of technical prevention: he had his companions tie him to the ship's mast with a rope before passing the sirens so that he could hear their song without falling prey to them, as he had calculated in advance. According to Jon Elster, Odysseus thus developed a technique of self-binding in order to compensate for his own weakness of will at the decisive moment and thus protect himself from harm (cf. Elster 2013, 36 seq.). Another well-known example is the concrete speed bump on the road, which is intended to prevent drivers from exceeding the speed limit at the cost of damaging their own vehicles. For Bruno Latour, this is already an example of how the act of enforcing a speed limit has been translated "into another form of expression" by engineers who have "delegated the program of action to concrete" (Latour 2022, 227 – trans. by K.G.). Technical prevention with the help of AI is also another form of expression of norm-enforcing action, this time not through concrete, but through an algorithmically controlled machine. It even enables the next and logical step from the prevention of norm violating behavior to its preemption. While a driver still has to react to the concrete speed bump herself, a control module that automatically responds to a speed limit in the vehicle without the need for human intervention would be much more effective. Not only would the action program be delegated to technology, but also the will-driven execution of the addressee. It will be substituted by a technical device, and the addressee will be unable to stop it, because it operates completely independent of his will. It becomes an *impossibility structure* for her (Gless and Silverman 2023, see also Rich 2013; Mulligan 2008). The entire process, from action programming to execution, takes place without a human addressee; their behavior is completely replaced by technology.

Of course, what all these technologies have in common is that they still require more or less conscious rule-following and shared knowledge of the rule, even in cases where the corresponding behavior is almost automatic in most cases, such as at traffic lights. At the very least, this behavior must first be learned and knowledge of the corresponding rule acquired, as demonstrated by the educational effort required to stop small children from running across the street when the light is red.

3 Personalization by AI – A Qualitative Leap?

With the development of AI, the use of technologies in the two dimensions of norm formation and norm compliance has made a qualitative leap. This leap has a real basis: "the new abundance of massive personal data" (Ben-Shahar and Porat 2021, 202). Even the best statistics and the use of data processing machines were

unable to capture the lifestyles of individuals as precisely as would be necessary for the tailored standardization of their behavior. Complementary to this, even with the help of the best technical prevention measures available to date, it has not been possible to ensure precise compliance with norms. The 'sleeping policeman,' the norm cast in concrete, can still be circumvented, if necessary at the cost of self-harm. AI now opens up the possibility for the first time to predict human behavior much more accurately than has been possible in the past, based on huge amounts of data and analysis methods. The amount of data that can be collected from smartphone use alone is considerably greater than could be obtained even with the best social science survey. But above all, AI makes it possible to analyze this data much more quickly and comprehensively. Instead of surveying potential norm addressees, counting and evaluating the responses, self-generated and automatically produced data can be used with appropriate analysis methods to provide information about living conditions, lifestyles, and personal characteristics and abilities. "The collection of digital personal information and the development of computerized methods to analyze patterns in it – the Big Data revolution – made facts that were once obscure widely available." (Ben-Shahar and Porat 2021, 202)

The more and better human behavior can be predicted, the more effectively it can be influenced or, if necessary, completely replaced. Smart city projects strive to coordinate everyday behavior in the individual use of urban infrastructure in such a way that there are as few disruptions as possible, such as traffic jams. The effectiveness of behavior coordination can be increased even further to the extent that individualized behavior control becomes possible, e.g., through individually calculated speed limits for drivers. It is no longer just a matter of enforcing a speed limit on a specific stretch of road in a specific location equally for all passing motorists by having the control module in the vehicle automatically maintain the speed, i.e., technically substituting the same rule compliance by each individual. Where it matters, it remains necessary to enforce uniform compliance with the rules by each individual addressee.

Otherwise, however, road traffic could be optimally coordinated if an individually adjusted speed could be calculated for each individual driver on the basis of collected data. Instead of specifying a generally applicable standard for everyone, such as for driving in built-up areas or through corresponding traffic signs, the permissible maximum speed could be flexibly adjusted to the specific circumstances of time, place, weather and, above all, the individual characteristics and abilities of the driver, such as age, length of driving experience, number of accidents caused, etc. Casey and Niblett developed the concept of the 'micro directive' in 2017 as a critical example of an individualized behavioral norm generated from the data collected on each individual:

> For example, a micro directive might provide a speed limit of 51.2 miles per hour for a particular driver with twelve years of experience on a rainy Tuesday at 3:27 p.m. The legislation remains constant, but the micro directive updates as quickly as conditions change. (Casey and Niblett 2017, 1404)

Legislation would only determine the political goal that safe and uninterrupted mobility for each individual should be made possible at the same time as for everyone else by regulating the maximum speed. This goal would then be transformed with the help of AI-generated microdirectives for each individual driver into an individual behavioral directive of a speed limit applicable only to them, which could be flexibly adapted to changing conditions at any time.

What applies to road traffic can be applied *mutatis mutandis* to other areas of legal regulation. Ben-Shahar and Porat have developed a model of personalized law along these lines. Similar to personalized medicine, legal norms should not be blind to an indefinite number of future applications and to individually different addressees, but should be tailored to the specific situations and different abilities and preferences of individuals – not in the sense of discrimination, but for the purpose of better meeting individual needs and conditions. Justice should not only remove her blindfold, but even be given a magnifying glass or a telephoto lens through AI:

> Rather than blindfolded, let the law know everything that is relevant about people, apply the underlying legal principles to the facts of each person, and thus tailor personalized legal regimes. If medicine, education, or parenting can treat, teach, or nurture better when personalized and adjusted to the subjective, why not law? (Ben-Shahar and Porat 2021, XI)

This model is primarily designed for standard setting and application. It promises greater precision in all areas where legal regulations can only be formulated in general and therefore vague terms due to a multitude of unpredictable and heterogeneous applications. One of the examples of standard application presented by the authors relates to the legal assessment of negligently caused damage to third parties in private tort law, which only leads to liability on the part of the perpetrator if they have violated the usual duties of care ('standards of care') to be observed in social interaction (Ben-Shahar and Porat 2021, 61 seq.).

It is often difficult to determine these duties precisely in individual cases, even if the examples usually cited seem simple: If the driver had observed the traffic signs in the 20 mph zone near the school instead of thoughtlessly driving past at 30 mph, he would have been able to pay more attention to whether children were spontaneously running across the road in front of the school and brake in time when one child did so and was injured in the accident. In German criminal law, in order to answer the question of whether the driver could possibly be guilty of negligent bodily injury to the child, it must be established not only that such a duty

existed, but also that it would have been recognizable to any reasonable third party in the perpetrator's position, so that the possible occurrence of harm would have been foreseeable and avoidable if the duty of care had been observed. Furthermore, these findings must not be made from an *ex post* perspective, i.e., with knowledge of the damaging event, but from the perspective at the time of the relevant behavior, i.e., *ex ante*. The objectifying benchmark of a reasonable third party with average abilities also needs to be concretized and individualized to the target public of the perpetrator and any special knowledge she may have. It is not difficult to imagine, along with Ben-Shahar and Porat, that this process of determining possible negligence according to the criteria mentioned above could not only be accelerated but also made considerably more precise by using AI to collect and analyze case-specific data.

Further examples from the authors from common law concern consumer protection law in the specification of consumers' rights of return and revocation when purchasing goods or warranty commitments and product insurance, which must be tailored to the specific situation and interests of the buyer and seller in each case (cf. Ben-Shahar and Porat 2021, 71 seq.). Finally, criminal law on the punitive side should also benefit from AI-supported personalization, as the deterrent effect of penalties could be calculated individually based on the profit hoped for by the offender or the reduction in the probability of detection brought about by the offender (cf. Ben-Shahar and Porat 2021, 76 seq.). In addition, in various areas of law, especially in private law, where the law allows individual agreements between parties either within a given framework or in deviation from given but available law, personalization could be used to find a balance between rights and obligations tailored to the specific needs of the parties (cf. Ben-Shahar and Porat 2021, 85 seq.).

4 Technical Solutionism in Legislation and Law Enforcement

Taking together the improvements in norm formation, application, and compliance made possible by AI as outlined here, it becomes clear that they are driven by the intention to overcome the deficits and risks inherent in normative orders, and especially in law, as long as humans with limited and fallible knowledge and the freedom to deviate from the norm are involved. This applies above all to the dimension of norm formation, where it is only possible to predict to a limited extent how the norm will be applied to future cases if these differ from the past cases on which the formation was based at the time of setting, as well as to compliance with norms when those subject to the rule deviate in their actual behavior from what is permitted or prohibited.

On the horizon, therefore, looms the ideal of perfect norm formation and compliance, which could now finally be achieved technically. Governing a population through perfect laws that precisely determine what each individual subject to the norms must do or refrain from doing in every situation, and that either leave them with no other option but to behave in the prescribed manner through technical means of behavioral control, or completely replace fallible norm-compliant behavior with technical substitutes, thus seems to be possible for the first time. Condorcet's dream of perfecting laws and public institutions would then have been fulfilled, albeit in a different way than he had imagined – namely, not through progressive learning processes of human reason. The rule of law would be replaced by rule by machines and their algorithms: algocracy. "What about a world where algorithms based on machine learning and large swathes of data become not simply important or indispensable for the functioning of society but the main decision-makers and executives in charge of how society functions?" (Volkov 2025, 48; see also Danaher 2016)

The extent to which the desire to overcome these shortcomings in human coexistence drives concepts of algorithmic governance can be seen, for example, in the draft for 'anticipatory governance' presented by the global management consulting firm Deloitte already in 2019. The guiding principle sounds plausible at first glance: Prevention rather than cure! It seems better to respond in advance to social crises that can turn into conflicts that are more or less difficult to resolve, just as in medicine it is always better to protect health by detecting an incipient disease as early as possible or by combating its causes. Why should anything else apply to the solution of political problems and political legislation?

> From spotting fraud to combating the opioid epidemic, an ounce of prevention really is worth a pound of cure – especially in government. Predictive analytics is now being applied in a wide range of areas including defense, security, health care, and human services, among others. (Deloitte 2019)

The technical tools proposed by Deloitte at the time are likely to have been further perfected in the meantime, but they already give an idea of what this is all about:

> Predictive analytics and artificial intelligence (AI) allow governments to target likely problems before they erupt into crises. Recent advancements in natural language processing (NLP), machine learning, and speech and image recognition have made it possible for government to predict and anticipate problems rather than react to them. (Deloitte 2019)

In this way, political goals could be achieved with a much higher degree of precision and effectiveness than has been possible to date – the "promise to make public administration more efficient, adaptable, personal, or even fairer" (Ruschemeier 2025, 3).

To this end, the measures used to achieve these goals, e.g., behavioral regulations, must be designed as precisely as possible on the basis of comprehensive empirical information. Large amounts of data on citizens' behavior in various everyday situations are needed, which can only be analyzed with the help of AI to identify specific behavior patterns, which are then used as the basis for legislation that is more or less perfectly tailored to them. To the extent that this succeeds, everyone subject to the norm knows exactly what to do or not to do in every situation. This is the ideal of perfect norms or legislation. "Predictive technology will generate greater *ex ante* information that can be used by lawmakers to write highly specific, complex laws. And individuals will receive notice of these complex laws in a simple form thanks to technological advances in communication." (Casey and Niblett 2017, 1446)

Complementary to this, it is ensured that every addressee of the norm actually does what they should do or refrain from doing in a given situation. This is the ideal of perfect compliance with norms. Both ideals come together in the superideal of personalized governance: each person receives behavioral guidelines and directives that are precisely calibrated to their biography and life situation. If it is possible in medicine to personalize therapies based on comprehensive information about the patient's biology and medical history, why not tailor behavioral rules in law to individual abilities, experience, data on past compliance with law and predictions of future behavior?

This minimizes two risks that have previously been associated with every project aimed at governing human coexistence according to rules: the risk of the indeterminacy of norms and the risk of a lack of or insufficient motivation to comply with norms. Both risks are responsible for the fact of deviant behavior; normative orders are therefore notoriously imperfect. When legislating, it is impossible to foresee all future applications and their potential conflicts with other rules, nor can it be guaranteed that those subject to the rules will always be sufficiently motivated to actually comply with them.

The goal of perfecting normativity with the help of AI is one of the visions and projects driving technological development. Morozov (2013a; see also: 2013b) speaks critically of the "folly of technological solutionism":

> The idea that given the right code, algorithms, and robots, technology can solve all of mankind's problems, effectively making life 'frictionless' and trouble-free. The drive to eradicate imperfection and make everything 'efficient'.

The imperfection of normative orders, with their two risks of indeterminate norms and weak or uncertain motives for compliance, is one such case.

The ideal of a perfect norm is based on a technocratic conception of normativity, which in turn has a long tradition, including Condorcet's project of perfecting

legislation. As Hannah Arendt has shown, it can already be found in Plato and Aristotle as the utopia of the 'perfect law.' It is characterized by the fact that it precisely determines what each addressee is obliged to do or refrain from doing in every situation. Its degree of precision would be so high that it could operate like a technical rule or the program of a machine. Therefore, she quotes Aristotle, it is comparable to "the plumb line, the measure, and the compass, […] which occupy a prominent position among all tools" (Arendt 2023, 321).[2] Every norm could then be followed in a mechanical manner. This would realize the technocratic utopia of exact planning and the execution of behavioral programs by the addressees according to plan. According to Arendt, the utopia of perfect legislation is part of an instrumental conception of politics that assigns legislation the task of setting goals and providing the instruments for their realization, just as a craftsman uses suitable tools to manufacture his products, e.g., a piece of furniture, according to a predefined plan. "Plato, who was the first to devise utopian forms of government in which human coexistence could be regulated by technology, is the true founder of utopian thinking in politics." (Arendt 1998, 227) Political legislative action is transformed into technical production.

This changes the meaning of normativity. Lorraine Daston has traced the historical shift in which the understanding of rules as paradigms that must be concretized with discretion, judgment or wisdom in a context-sensitive manner to form a behavioral norm appropriate to the situation has changed to a mechanistic and algorithmic understanding of rules. "Rules were many things before they became first and foremost algorithms, i.e., instructions subdivided into steps so small and unambiguous that even a machine could execute them." (Daston 2023, 8) The latter forms the ideal type of a rule in such a way that it instructs each addressee to take individual behavioral steps that are so simple and unambiguous that they can be carried out automatically, as it were. "Enforcing laws perfectly eliminates this discretion." (Mulligan 2008, 39) Once this step has been taken, the paradigm concept comes under suspicion of making rules appear vague, indeterminate and therefore inaccessible to rational analysis (cf. Daston 2023, 14 seq.). It is only logical, then, that an algorithmic understanding of rules drives the use of new technical possibilities,

2 This paragraph on Aristotle is missing from the first and second American edition (Arendt 1998) on p. 226 and was apparently added by Hannah Arendt to her German edition. Therefore, it is quoted here from the German edition (Arendt 2023) in my own translation into English. Arendt's quotation is taken from *Protreptikos*, an early work by Aristotle, which Arendt took from a treatise by Kurt von Fritz; see her note 68 on p. 508. A similar remark can be found in Aristotle's Rhetoric: "it is proper that laws, properly enacted, should themselves define the issue of all cases as far as possible, and leave as little as possible to the discretion of the judges" (Aristotle 2020I 7, 1354 b = p. 5). Whether and to what extent this is compatible with Aristotle's other remarks and discussion on the ethics of prudence and equity in the application of laws cannot be discussed here.

namely artificial intelligence, to develop modes of governance based on personalized behavior control. Casey and Niblett (2017, 1446) also note "This will be the death of rules and standards and the rise of micro directives." The ancient analogy between the instrument used to measure distances or indicate cardinal directions and the perfect law would be fully realized here. Directives could then be calibrated so precisely to the specific situation, with all its circumstances and the individual abilities determined with the help of personality profiles, that every person would know exactly what to do and what not to do in every situation, here and now. The AI-generated micro-directive fits seamlessly into this paradigm:

> Imagine a world where lawmakers enact a catalog of precisely tailored laws, specifying the exact behavior that is permitted in every situation. The lawmakers have enough information to anticipate virtually all contingencies, such that laws are perfectly calibrated to their purpose – they are neither over- nor underinclusive. Now imagine that when a citizen in this world faces a legal decision, she is clearly informed of exactly how to comply with every relevant law before she acts. This citizen does not have to weigh the reasonableness of her actions, nor does she have to search for the content of a law. She just obeys a simple directive. The laws at work in this world are not traditional rules and standards. Instead, they take a new form that captures the benefits of both rules and standards without incurring the costs. This new form – we call it the microdirective – is the future of law. (Casey and Niblett 2017, 1402)

The transformation of general and abstract norms into micro-directives has also an impact on compliance with norms. With the help of new digital technologies, especially AI, there seems to be a new possibility to eliminate the risk of norm deviance or at least to minimize it to such an extent that the probability of choosing this alternative behavior is significantly reduced. Smart orders are orders that are designed to minimize or eliminate deviations from their norms through intelligent design and with the help of algorithmic operations. E.g., the risk that a promise will not be kept can be eliminated in a smart contract by automating the execution of performance and consideration in a blockchain. The risk of crimes can be minimized by predictive policing and algorithmic prevention of future criminals.

5 Conclusion: Two Warnings

Among the many reasons why the ideal of a perfect law seems more like a dystopia, two stand out that concern the relationship between the legislator and the addressees of the law. The first one concerns the asymmetry of informational power between those who create, enact and enforce the law on the one side and its addressees on the other, the second one the possible changes of the capacity of normative, in particular moral judgment, and motivation of the addressees.

The state already possesses a large amount of data about its citizens and has the ability to collect further data in various contexts, which, according to Ruschemeier, results in an asymmetry of informational power between them and the state (cf. Ruschemeier 2025, 3). This informational power becomes all the more threatening the less democratic and transparent the legislative process is. The individual then has no control over what data is collected about her, or how and for what purposes it is analyzed, in order to generate a personalized directive that applies only to her. The citizen stands, as an isolated individual, in front of a state that not only knows almost everything about her, but also influences her life with directives that apply only to her alone, and to no one else. Only the state, with a monopoly on information, knows which personalized directives affect the other citizens; the citizens themselves do not. The result would be a complete breakdown of solidarity among citizens, because no one would be able to put herself in the other's shoes *vis-à-vis* his or her personalized micro-directives.

In addition, the individualization and personalization of a general law in the form of a micro-directive would shift the legislative process into the hands of the executive branch, because it is primarily concerned with individual circumstances of a particular case.[3] After all, the greatest asymmetry of information currently exists not between the state and its citizens, but between the latter and private companies that are pursuing and enforcing their own economic interests and political goals with the help of AI-supported behavioral control and directives: "The more pressing concern and challenge for states is to control 'wild' personalization by powerful private actors." (Eidenmüller 2022)

But even if the AI-driven legislative process were to be designed in a symmetrical and transparent manner, there would still be a creeping transformation of the concept of an autonomous person, who, at least in a theory of democracy, should be both the author and the addressee of legislation, not at the same time, but they should and could be able to change the corresponding roles. This presupposes the concept of an autonomous person as a responsible and rational speaker and listener who is competent to judge and who can give and demand reasons, either as the author or as the addressee of the law. Contrary to this, in an AI-driven process of legislation the authors of a norm are more or less considered and treated as streams of behavioral data that are skimmed, collected and analyzed by AI in order to govern them anticipatorily and prevent conflicts or crises. Their voice as a citizen becomes simply irrelevant. On the other hand, the addressees of the norm are also

3 On the problem of the self-executing nature of a general measure law, see Oliver Lepsius 2021.

configured as data-producing and data-responsive conglomerates that are induced by appropriate incentives and directives to follow micro-directives like automatons.

This configuration of persons also differs fundamentally from the concept of an autonomous person who can give and demand reasons, but at the same time knows that she cannot foresee all future applications of a norm and therefore has to rely on her own judgement and discretion when applying norms and motivate herself to comply with norms in the application situation knowing that she is fallible. Legislation and application are always imperfect (Mulligan 2008, 37). Unlike programs for machines, norms are characterized by the fact that they must be adopted by their addressees through cognitive and volitional processes, and that the addressees possess the actual freedom to behave in a manner that deviates from them. This remains the case even when significant sanctions are threatened in the event of deviation. Even if there is no *right* to deviate, the ever-present *possibility* of doing so distinguishes the practical rationality of norm-guided human behavior from the non-rational mode of operation of a machine (Günther 2021, 537–41; Rich 2013, 809; Gless and Silverman 2023).

For both reasons, there is the institution of responsibility, which manifests itself, among other things, in the fact that persons who engage in coexistence regulated by norms mutually attribute to each other the cognitive ability to understand what a norm requires them to do and the motivational ability to comply with it in order to take responsibility for deviant behavior. Above all, responsibility is institutionalized and demanded also in the relation between the authors of legislation and the addressees, when citizens have a right to ask the authors for public justification of a law and to take a critical position in political debates towards enacted or proposed laws. Besides institutional differences and modifications, it is the same kind of responsibility to give and demand reasons that has to be taken by an offender if she violates the law and by a judge when she decides about the responsibility of an offender in a particular case. In all cases, the judgement has to be role-reversible (Brennan-Marquez and Henderson 2019, 151).

This is not changed already by the fact that information gathering and analyzing techniques are used in legislation and the prevention of deviant behavior. There were and are also social areas in which compliance with standards can be ensured by technical control, e.g. wherever technologies play a major role. Why not equip cars with a chip that automatically reduces the vehicle's speed without the driver's intervention if a traffic rule commands this or which is able to detect a drunk driver and prevent him from getting his car going? Why not support judges in the legal assessment of a duty of care in a case of negligence with AI-tools? It would be difficult in public reasoning to object the legislative goal of preventing harm to others caused by breaking the speed limit in traffic and drunk driving or the intention of

judges to exercise the highest degree of fairness by taking into account as much as possible individual circumstances in a case of negligence.

The introduction of micro-directives or personalized law is not a question of either/or, but of degree or scope – as long as the relationship between responsibility and technology does not become an either/or situation. One has always wanted to have it both ways: as perfect as possible compliance with the norm, but by responsible persons. However, perfecting norm formation and norm compliance through AI in the manner described above could lead to the institution of responsibility as a whole becoming superfluous. This would also cause the associated skills, which must be developed individually and which individuals can therefore attribute to each other, to atrophy or an 'automation of virtue'. It could have the effect of a "moral disability" (Kerr 2010, 282) or "moral atrophy" (Shiffrin 2010, 1214; 1222; 1244). Allowing norm-following behavior to be performed automatically by the person or by replacing it entirely would mean that the faculties of moral deliberation and judgment and discretion are no longer required.

As a consequence, people are not only gradually losing their capacity for moral judgment, discretion and action, but also their moral critical faculties towards their normative orders themselves, which are taking on a smart form for perfect law enforcement. This could lead to a loss of 'active moral citizenship'. It would be a concern for a democratic society. "Overall, perfect enforcement will decrease society's ability to gain the momentum needed to bring about changes to unjust or unwise laws" (Mulligan 2008, 48). And it would raise the question whether the ideal of a perfect norm with perfect compliance is not a false ideal.

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