

AI, MIGRATION AND THE TRANSFORMATION OF PUBLIC POWER

Camilla Ramotti*, Mario Savino *

ABSTRACT

The growing use of artificial intelligence and digital infrastructures in migration and asylum governance raises questions that go beyond efficiency and technological innovation. It affects how public authorities produce knowledge, assess evidence, exercise discretion, allocate responsibility and safeguard fundamental rights. This Editorial frames these developments as part of a broader transformation of public power and introduces the contributions to the Special Issue, which examine border technologies and large-scale IT systems, technologically mediated evidence, algorithmic accountability and institutional oversight. The central challenge is to ensure that public power remains transparent, attributable and contestable as migration governance becomes increasingly technologically mediated.

SUMMARY: 1. Introduction. – 2. Digitalisation, asymmetry and fundamental rights. – 3. AI and the transformation of public power. – 4. The contributions to this Special Issue. – 5. Concluding remarks.

1. Introduction

The growing integration of artificial intelligence, automated systems and digital infrastructures into migration and asylum governance may at first appear to raise a relatively circumscribed question: under what conditions

* Camilla Ramotti is postdoctoral research fellow in Administrative Law at Roma Tre University.

* Mario Savino is full professor of Administrative Law at Tuscia University.

may new technologies be used by public authorities to make administrative action more efficient and consistent?

Yet the transformation at stake is not simply technological. As algorithmic systems become embedded in administrative processes, part of the exercise of public power may shift upstream: from the final decision to the infrastructures, datasets, classifications, models and thresholds that shape the conditions under which that decision is made. The central legal question is therefore not only whether technology improves administrative action, but how it redistributes the sites at which knowledge is produced, discretion is exercised and responsibility is allocated.

Much of the debate has focused on the most immediate aspects of this transformation: data quality and reliability, discriminatory outcomes, algorithmic transparency, data protection and human oversight. Yet this framing captures only part of the problem.

In migration and asylum, these technologies operate in a field in which the exercise of public power may determine whether a person can cross a border, access a procedure, obtain protection or avoid removal. The stakes therefore extend well beyond administrative efficiency. As the digitalisation of migration governance expands, the relevant question is also how technological mediation reshapes the conditions under which public power is exercised, justified and challenged.

Seen in this broader perspective, categories such as efficiency, automation, evidence, risk, surveillance and oversight are neither neutral nor self-explanatory. Their legal significance depends on the institutional context, the objectives pursued, the information on which technological systems operate and the safeguards accompanying their use. What appears as a technical solution may therefore reflect a deeper transformation in the relationship between administration, mobility and individual rights. Migration and asylum provide a particularly revealing setting in which to observe this transformation, because they combine strong institutional asymmetries, persistent factual uncertainty and forms of public power that increasingly operate before, beyond and around the final administrative decision.

The contributions collected in this Special Issue examine different dimensions of this broader transformation.

2. Digitalisation, asymmetry and fundamental rights

Migration governance is already deeply digitalised. Biometric databases, interoperable information systems, digital border controls, risk-assessment mechanisms, travel-authorisation systems, identity-verification tools and technologies supporting case management, credibility assessment or evidentiary analysis increasingly form part of the ordinary functioning of migration and asylum administrations.

What matters is not only their growing use, but the structural role they increasingly play. Digital infrastructures increasingly shape administrative processes themselves: they influence which information is available, how it is combined and which persons or situations are identified as requiring closer scrutiny. At the border, surveillance systems, biometric identification and automated risk analysis similarly extend the capacity of public authorities to observe and govern mobility before, at and beyond the territorial frontier.

This is especially important in migration governance, where the relationship between public authorities and individuals is already markedly asymmetrical. Public administrations possess legal expertise, databases, coercive powers and increasingly sophisticated technological infrastructures, while migrants and asylum seekers may face informational, linguistic and procedural barriers. Digital technologies may reduce some of these asymmetries, but they may also reinforce them.

Three features make this tension particularly acute in migration governance. First, the relationship between the individual and the administration is often marked by substantial informational and institutional inequality. Second, many migration and asylum decisions must be taken under conditions of factual uncertainty, making technological claims to accuracy and objectivity especially consequential. Third, migration control increasingly operates through infrastructures and

processes that precede or extend beyond the traditional administrative decision, including databases, interoperability systems, screening, predictive tools and forms of remote or pre-entry control.

Opacity then becomes a legal problem, affecting the ability to understand and contest the exercise of public power. The same applies to discrimination, where apparently neutral data or risk indicators may reproduce existing inequalities while acquiring an appearance of technological objectivity. These risks do not, however, require a choice between technological enthusiasm and technological rejection. Digitalisation cannot in itself resolve the structural problems of migration administration; nor is automation necessarily incompatible with rights, discretion or human dignity. What is needed instead is a differentiated analysis of the technologies concerned.

Such an analysis must consider the technology being used, the authority using it, its function, the data on which it relies, its effects, and the available forms of human oversight and redress. A system used to organise files or identify missing information raises different concerns from one that produces an individual risk score, evaluates linguistic characteristics or contributes to credibility assessment. The legal analysis should therefore resist treating “AI” as a unitary object: what matters is the function it performs within a particular administrative process, the kind of knowledge it produces and the degree to which its output affects the exercise of public authority.

3. AI and the transformation of public power

The transformation of public power produced by these technologies can be observed along three closely connected dimensions: the production of administrative knowledge, the exercise of discretion and the allocation of responsibility.

Automation does not necessarily eliminate discretion. It may relocate it. Choices that were once visible in an individual administrative decision may move upstream, into the selection of data, the definition of categories, the

design of models or the setting of thresholds. Discretion may thus become less visible precisely because it is exercised earlier in the decisional chain, before the individual case reaches the stage of formal determination. Human judgment may remain present, but at different stages and in different institutional forms. The point, then, is not simply whether there is a “human in the loop”, but where human judgment is exercised, by whom, under what legal constraints and with what degree of visibility.

Traditional administrative-law guarantees developed around a model in which decisions are attributable to identifiable public authorities. Algorithmic systems complicate this structure, as administrative processes may increasingly rely on infrastructures designed by private providers, trained on externally assembled data or connected to European and transnational databases.

Responsibility is not thereby eliminated. But it may become more difficult to locate.

The resulting problem is one of distributed but not diminished responsibility. The involvement of private providers, European information systems, technical experts and automated tools does not displace the legal responsibility of public authorities, but it complicates the reconstruction of where relevant choices were made and by whom.

Algorithmic administration nevertheless remains subject to the principles and guarantees of administrative action. The difficulty is ensuring that they remain effective when technological mediation makes decision-making less intelligible.

This transformation also has an epistemic dimension. Digital systems do not merely process information already available to the administration; they may influence what becomes visible, measurable and relevant to administrative decision-making. Asylum decisions often depend on the assessment of incomplete, uncertain or difficult-to-verify information. The legal question is therefore not exhausted by technical accuracy. It also concerns the inference drawn from it, the evidentiary weight attributed to it and the authority that technologically mediated knowledge acquires in practice.

At the border, the same transformation takes a different form. Surveillance may not merely observe mobility, but alter and redirect it, dispersing the consequences of enforcement across space and institutions.

Knowledge, discretion and responsibility are therefore transformed together. The common feature is a growing distance between the formal location of legal authority and the technical and institutional processes through which the conditions of its exercise are constructed. Administrative law must consequently be able to follow public power upstream, beyond the final act, to the processes in which data are selected, categories are defined, inferences are generated and technological outputs acquire decisional relevance.

4. The contributions to this Special Issue

The contributions collected in this Special Issue examine these transformations from different perspectives.

Petra Molnar begins with the border. Through the concept of border necrotechnics, her contribution places surveillance technologies and automated migration control within a broader account of border violence, examining the assemblage of automated systems, databases and surveillance infrastructures through which mobility is governed and responsibility may become fragmented. Her analysis therefore shows how technological power may be exercised through infrastructures of surveillance and mobility control even before it takes the form of an individual administrative decision.

Niovi Vavoula examines the rule-of-law implications of algorithmisation in EU large-scale IT systems for migration and border management. Focusing on automated processing in ETIAS and VIS, facial recognition and interoperability mechanisms, she shows how uncertainty surrounding the nature and operation of algorithmic systems may affect legality and foreseeability, while the discretion entrusted to EU agencies and the limited information available to affected individuals may hinder effective judicial protection. Her contribution therefore connects the infrastructural

dimension of digital border governance with the requirements of legal certainty, transparency and effective remedies.

Agnese Palazzi addresses the epistemic dimension of this transformation. Focusing on technologically mediated evidence in asylum procedures, she examines how such evidence may affect the relationship between determining authorities and applicants, particularly the distribution of evidentiary uncertainty and the practical operation of the benefit of the doubt. Her contribution thus raises the broader question of the legal authority that technological outputs should be permitted to acquire within asylum adjudication.

Camilla Ramotti approaches algorithmic migration governance through the categories of administrative law. Focusing on accountability, she examines the continuing relevance of legality, participation, transparency, human oversight, non-discrimination and reason-giving, arguing that technological change requires traditional procedural guarantees to remain effective when algorithms mediate administrative decision-making.

Elisa Pandolfi focuses more specifically on the right to explanation. By comparing the safeguards emerging under the GDPR and Article 86 of the AI Act, she examines when individuals affected by algorithmically mediated migration decisions are entitled not merely to information about the system, but to a meaningful explanation of the role played by its output in the individual decision. Her contribution thus connects algorithmic transparency with the possibility of effective individual contestation.

Anna Magdalena Kosińska moves from individual safeguard to institutional oversight. Her contribution examines the role of national Ombudsmen in addressing the risks associated with AI-driven migration governance, drawing on the experiences of Poland, Greece and Sweden and on emerging fundamental-rights monitoring mechanisms. It also raises the question whether oversight bodies possess the capacity, expertise and independence needed to supervise increasingly technological forms of public power.

Taken together, the contributions show that the legal significance of artificial intelligence in migration governance cannot be located in a single technology or confined to the moment of decision alone. Technological

mediation operates throughout the administrative chain: in the design of infrastructures and categories, the production of knowledge and evidence, the exercise of discretion, the adoption and explanation of individual decisions, and the institutional mechanisms through which public power is supervised and contested. The resulting challenge is therefore not merely to regulate artificial intelligence, but to ensure that legal accountability remains effective as the sites at which public power is exercised become more dispersed and less visible.

5. Concluding remarks

The digitalisation of migration governance is not simply a process of administrative modernisation or the introduction of new tools into otherwise unchanged legal structures. It affects how public authorities produce knowledge, classify individuals, exercise discretion and allocate responsibility. These technologies may improve the processing of information and the consistency of administrative action, but they may also reinforce existing asymmetries and make the exercise of judgment more difficult to identify and contest.

The question is no longer whether technology should form part of migration governance: it already does. The relevant issue is the legal conditions under which technologically mediated public power is exercised. If public power is increasingly exercised through digital infrastructures, legal protection must be capable of following that power wherever it is located. Transparency must extend beyond the final decision to the processes that shape it; human oversight must be substantive rather than formal; and judicial review and independent oversight must be capable of reconstructing how data, classifications and technological outputs become administrative judgment.

The task of administrative law is not merely to subject new technologies to existing guarantees, but to identify the points at which legally relevant choices are increasingly made outside the visible moment of decision. Accountability must follow public power upstream, to the technical,

epistemic and institutional processes in which the conditions of administrative action are constructed.

The debate on artificial intelligence and migration thus raises a familiar legal question in a new institutional form: how can power remain visible, attributable and contestable as the instruments through which it is exercised change?

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