Gender and the Automation of Public Law: The Start of a New Conversation

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Administrative law and digital government scholarship devote scarce attention to gender. Recent debates on the regulation of AI and digital government have focused predominantly on human-centred perspectives, disregarding the importance of gender in defining the human element or implicitly assuming that this debate is gender neutral. Yet, gender is a relevant dimension of automated government which if overlooked, may lead to the exclusion of many citizens. This has proven to be particularly detrimental to women, whose needs, socioeconomic circumstances, and biological differences are either invisible to public decision-makers or are regarded with suspicion as 'deviations' from a male or gender-neutral pattern. For example, recent scandals on the automation of social welfare (e.g., Robodebt in Australia and the Dutch Childcare Benefits Scandal) affected predominantly women, especially single mothers. This invisibility of gender is exacerbated when digitalization and automation replicate stereotypes, patriarchal approaches to the role of women in society, and longstanding dynamics of power and inequality.

Drawing on interdisciplinary scholarship including feminist and gender studies, this paper explains why gender should be more closely considered in the regulation of AI in the public sector, digital government, and automated decision-making.

A. Introduction

There is growing demand for human-centric perspectives in the regulation of AI, digital government, and the use of algorithms by governments and private companies.[1] Existing or proposed EU legislation has responded to

1 David Restrepo Amariles and Pablo Marcello Baquero, 'Promises and Limits of Law for a Human-Centric Artificial Intelligence' (2023) 48 Computer Law & Security Review; Joanna J Bryson and Andreas Theodorou, 'How Society Can Maintain Human-Centric Artificial Intelligence' in Marja Toivonen and Eveliina Saari (eds), Human-Centered

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it with Article 22 of the General Data Protection Regulation (GDPR) and multiple dispositions of the AI Act on human oversight and fundamental impact assessments.[2] A human-centric perspective to AI is respectful of European values and ethical principles. In this perspective, 'human values are central to the way in which AI systems are developed, deployed, used, and monitored, by ensuring respect for fundamental rights'.[3] Few scholars and policymakers would openly admit to 'being against a human-centric' approach.[4] Doing so could quickly be interpreted as a blind adoption of techno-optimism or a refusal to protect fundamental rights.[5] However, do we truly understand what the concept of human-centrism entails? And who is this human at the centre of the regulation of AI? Are we referring to a man, a woman, a non-binary individual, or a genderless construct? And does it matter who is at the centre, as long as it is a human?[6] Another aspect that is often overlooked is the identity of the addressee of the algorithmic administrative decision. Once again, are we speaking of a man, woman or a non-binary individual? And does gender matter?

Most national policies and regulations are designed to be gender-neutral, based on the assumption that only in specific cases will women have different claims and needs than men or non-binary individuals. However, this assumed gender-neutrality of government policies and regulations is a

Digitalization and Services (vol 19, Springer Singapore 2019) 4; Leif and Jonny Holmström, 'Citizen-centricity in Digital Government Research: A Literature Review and Integrative Framework' (2024) 29(1) Information Polity 55 – 72.

2 Alessandro Mantelero, 'Human Rights Impact Assessment and AI' in Beyond Data, Information Technology and Law Series, vol 36 (TMC Asser Press, The Hague 2022) https://doi.org/10.1007/978-94-6265-531-7_2.

3 European Parliament, EU Guidelines on Ethics in Artificial Intelligence: Context and Implementation' (2019), available at https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/640163/EPRS_BRI%282019%29640163_EN.pdf (accessed on 8 May 2024).

4 Scholars have, nevertheless, underlined that humans and AI should be seen in a different light, by focusing on augmentation, or how AI can collaborate with humans, rather than restricting the focus to 'human-like AI', see Erik Brynjolfsson, 'The Turing Trap: The Promise and Peril of Human-Like Artificial Intelligence' 151 (1) Daedalus 272 (2022).

5 John Danaher, 'Techno-optimism: an Analysis, an Evaluation and a Modest Defence' (2022) 35 Philos. & Technol. 54 https://doi.org/10.1007/s13347-022-00550-2.

6 On gender and public administration, see Susan D. Phillips, Brian R. Little and Laura A. Goodine, 'Reconsidering gender and public administration: five steps beyond conventional research' 40 Canadian Public Administration 563 (1997).

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fiction.[7] Law and policy often overlook the fact that behind market actors, civil servants, and mandated 'humans in the loop' there are individuals of flesh and blood, each with their own political preferences, morals, religious views, and gender. Public administration scholarship has identified two major silences concerning gender: first, the representation of women and the role of gender equity within public service workforces, and second, the potential contributions of feminist theories in addressing contemporary public management challenges.[8] A third and fourth silences regard the role of gender in how administrative law and regulation see citizens and regulatees and the limited consideration of gender in the automation of administrative decision-making. At a time when women in many countries are gradually increasing their representation, for example, in the public workforce, gender blindness may reverse progress by perpetuating longstanding power dynamics, neglecting the importance of biological differences, sustaining gender inequity, and failing to account for different socioeconomic conditions and diverse needs.[9] Focusing on 'human-centric perspectives' in regulation of AI—or many other policy or regulatory subjects—without talking about gender is thus destined to be a limited perspective. In other words, human-centrism is not as encompassing as it sounds at first blush because it overlooks the gender dimension which partly defines who we are as humans.

In this paper, I discuss the importance of considering gender in the context of the digital transformation in the public sector, including digitalization of public services, the automation of administrative decision-making and regulation.[10] I do not challenge the current focus of scholarship and policymakers on human-centrism. Instead, I argue that we should seek to understand what 'human-centric' means from a gender perspective,

7 Mieke Verloo & Connie Roggeband, 'Gender impact assessment: the development of a new instrument in the Netherlands' 14(1) Impact Assessment 3 (1996), DOI: 10.1080/07349165.1996.9725883.

8 Gemma Carey and Helen Dickinson, 'Gender in Public Administration: Looking Back and Moving Forward' 74(4) Australian Journal of Public Administration 391 (2015).

9 See Judith Butler, Bodies that Matter: On the Discursive Limits of Sex. Routledge, 2011 (on returning the focus of theories of gender to the body).

10 European Commission/JCR, AI Watch: European Landscape on the Use of Artificial Intelligence by the Public Sector (2022), available at https://ai-watch.ec.europa.eu/publications/ai-watch-european-landscape-use-artificial-intelligence-public-sector_en (last accessed on May 20, 2024).

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particularly with reference to the automation of public services and administrative decision-making.

This paper, while exploratory and modest in scope, aims to complement administrative law scholarship, which seldom incorporates insights from the wealth of feminist studies on public law, theory of the state, social policy, and citizenship.[11] Notable exceptions include scholarly analyses of administrative adjudication and gender bias as well as on the use of gender data in algorithmic systems to define identity.[12] Keeney and Fusi have recently confirmed our claim, stressing also the need to study gender biases in digital government and the role of gender in the public workplace.[13] Legal scholars have also highlighted some of the dangers of employing biometrics on women's bodies, namely facial recognition.[14] This paper does not delve into the issue of algorithmic bias and discrimination, as this has been extensively discussed in legal scholarship.[15] Instead, it adopts a broader perspective, discussing (i) the relationship between administrative

11 See, for example, Catherine A. MacKinnon, Toward a Feminist Theory of the State (Harvard University Press, 1989); Mimmi Abramovitz, Regulating the Lives of Women: Social Welfare Policy from Colonial Times to the Present. South End Press, 1988; Ann Sheila Orloff, 'Gender and the Social Rights of Citizenship' 58 American Sociological Review 303 (1993); Elettra Stradella (ed.), Gender Based Approaches to the Law and Juris Dictio in Europe. Pisa University Press; Eva Brems, Protecting the Human Rights of Women. International human rights in the 21st century: protecting the rights of groups, Lanham, 2003; Catherine A. MacKinnon, Women's Lives, Men's Laws. Harvard University Press, 2004; Tracy A. Thomas, 'The Long History of Feminist Legal Theory' in Deborah Brake, Martha Chamallas & Verna L. Williams (ed.), The Oxford Handbook of Feminism and Law in the United States (Oxford University Press 2021) 15.

12 E. Golin, 'Solving the Problem of Gender and Racial Bias in Administrative Adjudication 95(6) Columbia Law Review 1532 (1993) doi:10.2307/1123135; Ari Ezra Waldman, AE. "Gender Data in the Automated Administrative State" (2023) 123 Colum L Rev 2249.

13 Mary K. Feeney and Federica Fusi, 'A Critical Analysis of the Study of Gender and Technology in Government' 26 Information Polity 115 (2021).

14 Morgan Klaus Scheuerman, Madeleine Pape, and Alex Hanna, 'Auto-essentialization in automated facial analysis as extended colonial project' 8(2) Big Data & Society (2021), https://doi.org/10.1177/20539517211053712.

15 See, for example, Jeremias Adams-Prassl, Jeremias, Reuben Binns, and Aislinn Kelly-Lyth, 'Directly discriminatory algorithms' 86(1) The Modern Law Review 144 (2023); Frederik Zuiderveen Borgesius, 'Discrimination, artificial intelligence, and algorithmic decision-makingì Council of Europe, Directorate General of Democracy 42 (2018); Sandra Wachter, Brent Mittelstadt, and Chris Russell. 'Why fairness cannot be automated: Bridging the gap between EU non-discrimination law and AI' 41 Computer Law & Security Review 105567 (2021).

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law, regulation and gender; (ii) the importance of considering gender in the automation of public law; and (iii) how these considerations can help advance an inclusive human-centric approach to the regulation of AI.

In Section 1, I explain the significance of gender in shaping our interactions with government and regulatory frameworks. After providing contextual background on the interactions between government and citizens, I delve into how gender has been historically overlooked or women have been seen as 'deviations' from men.[16] An illustration is the medical and pharmaceutical research and regulatory paradigm, where the white male body has been traditionally the standard, consequently failing to adequately address the distinct physiological needs of the female body. Section 1 mentions many other regulated fields with the same blind side. Hence, in Section 2, I explain why gender considerations are particularly relevant in the digitalization and automation of government. While there have been many incidents of algorithmic discrimination of women and non-binary individuals, technology does not have to be the 'villain' in this context. Instead, several nuances of gender discrimination have mainly come to light with recent controversies in the context of the automation of the state.[17] Technology has exacerbated discrimination in some cases, but it has also shined a spotlight on it.[18] Section 3 discusses this aspect and how considering gender in the regulation of technology can help us promote human values.

B. The Relevance of Gender in Administrative Law and Regulation

This section begins by examining the general dynamics between citizens, government, and administrative law. Historically, the relationship between citizens and government has been marked by a significant power asymmetry. This disparity in power is even more pronounced for citizens who have faced historical disadvantages due to their gender. The second part of this section discusses different areas of regulation that have neglected the role of gender with significant detriment to a large part of the population.

16 Catherine D'ignazio, Catherine, and Lauren F. Klein. Data feminism (MIT press 2023).

17 Cary Coglianese and David Lehr, Regulating by Robot: Administrative Decision-Making in the Machine-Learning Era, 105 GEORGETOWN L. J. 1147, 1152-53 (2017); Cary Coglianese & Alicia Lai, Algorithm vs. Algorithm, 72 DUKE L. J. 1281 (2022).

18 See Orly Lobel, The Equality Machine: Harnessing digital technology for a brighter, more inclusive future (Hachette UK, 2022).

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I. Administrative Law: Background Information

Administrative law regulates power asymmetries. Castells (2016) defines power as 'the relational capacity that enables certain social actors to asymmetrically influence the decisions of other actors in ways that favour the empowered actors' will, interests, and values.'[19] Power relations 'construct and shape the institutions and norms that regulate social life'.[20] This includes the interactions between citizens and governments. Administrative law aims to correct power asymmetries, ensuring that governments use their discretionary powers within limits, citizens can exercise their rights, and power asymmetries are not abused. The principles of good administration which have been adopted by a growing number of jurisdictions, exemplify the modern attempt to improve the interactions between citizens and government.[21]

Once upon a time, the relationship between citizens and the state was primarily vertical and top-down throughout the administrative state. Citizens were subjects, not right holders.[22] No one inquired who the citizen was, because administrative law was primarily focused on organizing the public administration. During the 19th century in continental Europe, administrative law was constructed upon intricate layers of social understanding, conventions, and professional practices, which were integrated into a shared public order or drawn from social and technical expertise. However, in the twentieth century, government involvement in societal affairs expanded rapidly. The state's role transcended its traditional boundaries, engendering a paradigm shift wherein government intervention permeated facets of daily life to an unprecedented degree.[23] As the role of the state expanded, so did its power ("*puissance publique*").[24] This had

19 Manuel Castells, 'The Sociology of Power: My Intellectual Journey' 42 Annual Review of Sociology 1, 2 (2016).

20 Manuel Castells, 'The Sociology of Power: My Intellectual Journey' 42 Annual Review of Sociology 1 (2016).

21 Sarah Nason, 'European Principles of Good Administration and UK Administrative Justice' 26(2) European Public Law 391 (2020).

22 Laemers, M. T. A. B., & de Groot-van Leeuwen, L. E. (2010). De Awb en 'de burger'. In T. Barkhuysen, W. den Ouden, & J. E. M. Polak (Eds.), *Bestuursrecht harmoniseren: 15 jaar Awb* Boom Juridische uitgevers, p.132.

23 Cananea, G. d. (2023). "Chapter 1 The Development of Administrative Law: Fact and Theory". In The Common Core of European Administrative Laws. Leiden, The Netherlands: Brill | Nijhoff.

24 M Hauriou, 'Droit administratif' in Répertoire Béquet (Dupont 1897) xiv.

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two major implications. Firstly, government started encroaching upon economic freedoms and asserting control over private property, for example, through expropriations. Second, the administration possessed the capacity to formulate regulations with far-reaching implications for various groups within society. Third, it was required to pursue different facets of the public interest which were at times, incompatible. This became particularly true with the development of the welfare state, and more recently, with the challenge to control the costs of such a model in a context of shrinking state budgets. Administrative law slowly developed as a system of checks and balances so as to limit the potentially arbitrary use of discretionary powers in the relationship between citizens and public authorities.[25]

While citizen-government interactions have become more horizontal in some areas, administrative law has overlooked the study of the citizen's identity as part of its main questions.[26] Administrative law developed without acknowledging gender elements, as if they were irrelevant. Constitutional and administrative law traditionally regulated the public sphere of a liberal state, entrusting the economy, religion and family matters to the private realm. The assumption that women were considered to be inferior to men was implicit to numerous foundational declarations such as the French Declaration of the Rights of Man and of the Citizen, proclaimed "freedom and equality in rights of man at birth" (1789).[27]

However, gender remained a missing piece in this scholar's analysis, and to my knowledge, in many other administrative law scholars' research agendas. However, gender is just as relevant to administrative law as it is to other fields of public and private law. To begin with, women constitute the primary demographic receiving welfare benefits. They are poorer than men either because of the gender pay gap or because they take more time off for

25 Cananea, G. d. (2023). "Chapter 1 The Development of Administrative Law: Fact and Theory". In The Common Core of European Administrative Laws. Leiden, The Netherlands: Brill | Nijhoff.

26 An exception in the Netherlands is Leo Damen, 'Bestaat de Awbmens?' In J.L. Boxum, et al. (Eds.), Aantrekkelijke gedachten (Kluwer 1993) 109; Leo Damen, 'Van Awbmens naar responsieve burger? In T. Barkhuysen, et al. (Eds.), 25 jaar Awb. In eenheid en verscheidenheid (Wolters Kluwer, 2019) 113. Damen's work does not address gender.

27 Davinić, M., Kristoffersson, E., Marinković, T. (2023). Gender Equality Aspects of Public Law. In: Vujadinović, D., Fröhlich, M., Giegerich, T. (eds) Gender-Competent Legal Education. Springer Textbooks in Law. Springer, Cham. https://doi.org/10.1007/978-3-031-14360-1_9.

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caring duties.[28] In other words, women are more likely to depend on the state.

II. Public Law and Gender

In public law, the element of gender has been primarily visible to constitutional law and international law scholars who have conducted important research on a set of gender-related topics.[29] As Vauchez and Rubio-Marín explain, 'in terms of gender equality, law is a fundamentally ambivalent artefact. It can certainly be a vector for progressive change (…) [but] it can also entrench profound inequalities'.[30] The gendered aspect of public law may start with birth as, in some countries, rules on nationality have impeded women from passing on their nationality to their children.[31]

One of the key debates in public law and gender revolves around the issue of gender recognition which determine how individuals can have their gender identity recognized by the state. This includes recognition of non-binary identities, the type of identification required by law (e.g., self-identification without further medical exams in the most progressive jurisdictions), access to transition-related care, and additional legal protection and rights (e.g., education, prison placement). Osella and Rubio-Marín have explored the importance of gender recognition policies.[32] This discussion is particularly important for trans and nonbinary individuals and has been welcomed with a great deal of controversy in many countries that are traditionally focused on binary systems. Such systems typically interpret

28 Miliann Kang, Donovan Lessard, Laura Heston, Sonny Nordmarken, Introduction to Women, Gender, Sexuality Studies (Pressbooks by University of Massachusetts Amherst Libraries, 2017) 76-77.

29 Kim Rubenstein, and atharine G. Young, eds. The Public Law of Gender: From the Local to the Global. of Connecting International Law with Public Law. Cambridge: Cambridge University Press, 2016.

30 Stéphanie H. Vauchez and Ruth Rubio-Marín, 'Introduction: From Law and Gender to Law as Gender—The Legal Subject and the Co-production Hypothesis' in Stéphanie H. Vauchez and Ruth Rubio-Marín (eds.), The Cambridge Companion to Gender and the Law (Cambridge University Press, 2023)1-2.

31 Melany Toombs and Kim Rubenstein, 'The National Subject' in Stéphanie H. Vauchez and Ruth Rubio-Marín (eds.), The Cambridge Companion to Gender and the Law (Cambridge University Press, 2023) 271-301.

32 Stefano Osella and Ruth Rubio-Marín, 'Gender recognition at the crossroads: Four models and the compass of comparative law' 21(2) *International Journal of Constitutional Law* 574 (2023).

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human bodies through a binary less, categorizing individuals as male or female. This reduction excludes, nonetheless, a large number of individuals and overlook the existence of other genders. As Osella and Rubio-Marín explain gender is an apparatus that produces not only maleness and femaleness but also gender norms at large.[33]

A second set of debates in public law refers to gender and participation in constitutionalism, fundamental rights, and voting rights. As Julie Suk inquires in her work, "We the People" did not include "We the Women" for a very long time.[34] Very few constitutions refer actively to women, and engage with women's rights and reproductive health. Furthermore, in many countries including those with recently adopted constitutions, very few women were given the opportunity to participate in its drafting and ultimately sign it. The constituent power has thus ignored gender for a long time and it has been primarily a male constituent power. The history of access to voting rights is well-documented, highlighting a long path toward equality. However, despite the many silences in constitutional law regarding gender, the absence of debate or its limited nature is more pronounced in administrative law and regulation.

A third set of debates on public law concerns (public) regulation and the invisibility of gender. This discussion is relatively recent and has been disperse across various regulated sectors. In *Invisible Women*, Caroline Criado Perez describes multiple areas where women are ignored, from the labour market to public transport, from medicine to road safety.[35] Criado Perez documents how the female body and its specificities have been forgotten for decades. An example is automobile safety as car safety test dummies have for decades not included female variants.[36] Also airbags were not originally designed for 'smaller bodies', thus excluding individuals that were shorter and lighter than average, namely women.[37] In the following section,

33 Osella and Rubio-Marin at 576. See also Judith Butler, Undoing Gender (2004) p. 42.

34 Suk, Julie C. *We the Women: The Unstoppable Mothers of the Equal Rights Amendment*. Simon and Schuster, 2020, p. 12.

35 Caroline Criado Perez, *Invisible Women* (Random House, 2019).

36 Fariss Samarrai, *Study: New Cars Are Safer, But Women Most Likely to Suffer Injury*, University of Virginia (Jul. 10, 2019), https://news.virginia.edu/content/study-new-cars-are-safer-women-most-likely-suffer-injury (discussing the male-centered testing methods for seatbelts and other car safety features and the resulting dangers to female drivers).

37 Cary Coglianese, 'The Limits of Performance-Based Regulation' 50 University of Michigan Journal of Law Reform 525, 556 (2017).

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I elaborate on the invisibility of women in different government-citizen interactions.

C. Invisible Women in the Context of Government-Citizen Relations

I. Gender Blindness

Jurisdictions that have codified administrative law and have a general administrative law act rarely—if ever, to the best of my knowledge—make any single reference to the terms "sex" or "gender". These matters are generally considered to fall under the jurisdiction of constitutional and human rights lawyers. In the case of the Netherlands, these words are not featured in the General Administrative Act law (*Algemene wet bestuursrecht*). Administrative law is often presented as an operational field that should not hinder the realization of fundamental rights. While we observe that sector-specific regulation increasingly addresses gender issues—mostly as responses to new research or incidents, administrative law rarely incorporates them into its core studies. Administrative law and public regulation have been long regarded as gender-neutral. However, they are instead gender-blind. Claiming gender-neutrality is inaccurate in a world where standards of normalcy are set by middle-aged, able-bodied male citizens. In this section, we provide a number of examples of this gender blindness in different government-citizen interactions.

I start with urban planning which, though part of our daily lives, is often considered a genderless or gender-neutral field. However, this assumption comes into question when examining specific policy choices, such as the construction of bicycle paths, lighting of neighbourhoods, public transportation, and generally speaking, urban design. Historically, public spaces were designed by men and for men due to the underrepresentation of women and other genders in urban policy, architecture, transport policy, and in general, in the workforce.[38] This also applied to the interaction between urban spaces and public transportation.

38 Sharon Bessell, "Good Governance, Gender Equality and Women's Political Representation: Ideas as Points of Disjuncture." Chapter. In The Public Law of Gender: From the Local to the Global, edited by Kim Rubenstein and Katharine G. Young, 273–95. Connecting International Law with Public Law. Cambridge: Cambridge University Press, 2016. See generally Ines Sanchéz de Madariaga and Marion Roberts (Eds), *Fair Shared Cities: The Impact of Gender Planning in Europe* (Routledge 2013).

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For a long time, including the post-World War II period, the assumption was that the primary users of public transportation would be men commuting to work. Public transportation has therefore been designed in a linear way, considering male commuting patterns.[39] Nevertheless, women who are more often caregivers, move in 'circular patterns' since they bring their children to school, run errands, and attend more often to the needs of elderly parents. The circularity of women's movements result from the fact that women do more trips, have more unpredictable schedules, and are more frequently pedestrians. However, women are the most frequent users of public transportation: they are the average users that are being disregarded. Women's heavy reliance on public transportation is often overlooked when designing routes, thinking of safety measures, and timetables. Women are on average less wealthy and must thus rely on more economical means of transport which, in many cities around the world, translates into long waiting times, crowded buses or shared vans.

As Ines Sanchez de Madariaga' s work shows, mobilities of care are tendentially ignored by urban planners.[40] Women's commuting patterns, their feeling of unsafety at night are often disregarded by city planners.[41] According to existing research, women spend considerably more time engaged in domestic activities and would thus benefit from gender-sensitive urban and transport planning that would make it easier to combine housework, caring responsibilities, and paid employment.[42] In terms of urban planning and urban lighting, it is important to highlight that women more regularly report to feel unsafe walking at night, as, once again, street lighting was not designed to consider gender needs.

In the case of bicycle paths, we regularly see that they are designed based on the 'fastest route' criterion. In some cases, these paths will lead

39 Christine Ro, 'How to Design Safer Cities for Women', BBC, 12 April 2021, available at https://www.bbc.com/worklife/article/20210409-how-to-design-safer-cities-for-women (last accessed on 20 May 2024).

40 Ines Sanchez de Madariaga, 'From Women in Transport to Gender in Transport: Challenging Conceptual Frameworks to Improved Policymaking' 67 (1) Journal of International Affairs 43 (2013).

41 Inez Sanchez de Madariaga, 'Mobilities of Care: Introducing New Concepts in Urban Transport' in Marion Roberts and Inés Sanchez de Madariaga (Eds), Fair Shared Cities: The Impact of Gender Planning in Europe (Routledge, 2013) 51.

42 Inés Sánchez de Madariaga (ed.), Advancing Gender in Research, Innovation and Sustainable Development. (Fundación General de la Universidad Politécnica de Madrid, 2016), available at https://triggerprojectupm.wordpress.com/wp-content/uploads/2017/10/muriel_ina_20170920_low.pdf.

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cyclists through dark woods instead of well-lit areas. Also here, we must critically assess whether this planning decision is truly gender-neutral. Such planning choices can disproportionately affect women and other vulnerable groups, highlighting the need to consider safety and accessibility for all genders in urban design.

Another area of gender blindness concerns retirement and social security benefits. Women tend to live longer but have, on average, smaller pensions to rely on. Lower lifetime earnings due to the gender pay gap and caregiving responsibilities (for children and elderly parents) contribute to reduced retirement savings. Gender equality affect thus retired women at a stage of their lives when they may be particularly vulnerable and unable to work. There is, therefore, a high probability that women will experience financial challenges later in life. In many countries around the world (e.g., Colombia, Israel), retirement ages still differ on the grounds of the gender and women are required to retire earlier. This results in lower lifetime earnings, smaller pensions, greater financial dependence, a negative impact on savings and investments.

In the United States, a study by the Brookings Institution found that women receive Social Security benefits that average only 80% of the benefits received by men.[43] Social security law is a particular field where there are significant power asymmetries and a relationship of dependency between the state and citizens. Here, gender is very visible as also women are the primary beneficiaries of social security systems. At the same time, gender is also invisible as there are few gender-sensitive regulations. This is particularly important considering recent scandals involving the automation of the social welfare state, namely Robodebt in Australia and the Dutch Childcare Benefits scandal.[44] Both scandals had a disproportionate effect on women who were severely penalized and often wrongly accused of having committed fraud. While single mothers in particular, may be more dependent on the social welfare state due to the gender pay gap and care obligations, this field has perceived women with suspicion for decades. Digitalization and automation have exacerbated the problem and allowed for the large-scale investigation of women. Digital technologies allow tax

43 Brookings Institution,'How does Gender Equality Affect Women in Retirement' (July 2020), available at https://www.brookings.edu/articles/how-does-gender-equality-affect-women-in-retirement/.

44 80% of the victims of the Dutch Childcare Benefit Scandal were women, namely mothers.

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authorities to optimize data analysis, predicting which taxpayers or social welfare recipients are more likely to commit fraud, and thus profile them as potential fraudsters.[45]

The majority of the Robodebt scandal were predicted to be women. As it happens, according to the data provided by the Royal commission that investigated this scandal, at least 226,780 Australian women were served unlawful debt notices over four and a half years.[46] Women accounted for 55% of those affected by Robodebt, most of them were under 35 years old.[47] 'Robodebt' is an Australian government initiative from 2016 aimed at recovering 'overpayments' to social security recipients since 2010. Initially targeting $1.7 billion over 5 years, it expanded over time. Drawing on data-matching and automated algorithms, it identified discrepancies, calculated overpayments, and raised debts. This approach, criticized on social and mainstream media, neglected the timing and amount of earnings. The Robodebt initiative faced challenges primarily due to discrepancies in income reporting between Centrelink and the Australian Tax Office. The automated system used a yearly income approach, neglecting the fortnightly nature of Social Security payments based on current circumstances. This mismatch led to miscalculations and the issuance of debts without properly accounting for variations in entitlement rates over shorter periods. The inclusion of 'nil rate' periods, intended to encourage work, further complicated the system. The failure can be attributed to the inability of the automated algorithm to accurately align with the dynamic and fortnightly nature of Social Security payments. Additionally, it shifted the burden of proof onto affected individuals, differing from the prior practice of obtaining detailed records from employers.

The history of social security law shows that this perception is deeply rooted in how welfare recipients are seen by the state. In *The Automation of Poverty*, Virginia Eubanks describes how social security law has entrenched the notions of 'deserving' and 'undeserving poor'. These notions were

45 Luisa Scarcella, 'Tax Compliance and Privacy Rights in Profilin and Automated Decision Making' 8(4) *Internet Policy Review* (2019), available at DOI: 10.14763/2019.4.1422.

46 Australian Ministers for the Department of Social Services, Questions on the Royal Commission into Robodebt, 9 March 2023, available at https://ministers.dss.gov.au/transcripts/10596.

47 Whiteford, P. Debt by design: The anatomy of a social policy fiasco – Or was it something worse? *Aust J Publ Admin*. 2021; 80: 340–360. https://doi.org/10.1111/1467-8500.12479.

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obvious in the context of the aggressive fraud investigations that took place during the Reagan Administration which affected mostly single mothers. Midnight raids were conducted to try to 'find a man' in the household of a female welfare recipient, thus showing that this woman should not be in need of state support. Feminist studies have critiqued how social welfare systems have been developed in a patriarchal way in order to provide temporary relief to men and their families, being thus less suitable for single parents with lower income and higher dependency.[48] Many welfare offices across the United States adopted 'suitable home' and 'substitute parent' rules, which were moral standards that were used to judge the lives of welfare recipients. These rules, particularly prevalent in the South, disproportionately excluded women of colour from welfare assistance. Despite a 1961 directive from the Secretary of Health, Education, and Welfare to curb the arbitrary application of suitable home requirements, numerous welfare offices persisted in conducting surprise home visits, commonly known as midnight raids, to enforce 'man in the house' rules.

The presence of men in these households was construed as a violation of welfare rules, and the discovered men were considered household breadwinners who had concealed their income from the aid office.[49] Beyond the stated reasons, the unspoken objectives of these rules were to monitor and penalize the sexuality of single mothers, cut off indirect government support for able-bodied men, reduce the welfare rolls, and reinforce the notion that families receiving aid were entitled to only minimal living standards, approaching desperation. By the mid-1960s, low-income women of colour were being blamed for all sorts of social problems. A frequently cited 1965 report by Daniel Patrick Moynihan suggested that the issues of inner cities—poverty, joblessness, and crime—were interconnected. In 1968, the Supreme Court struck down the 'substitute father' rule, which had required any man living with a mother to be considered a substitute father and financially responsible for the entire family.[34] This decision intensified the stigma on mothers. The Supreme Court held in *King v. Smith* that the

48 P. Yang and Barrett, N. (2006), Understanding public attitudes towards Social Security. International Journal of Social Welfare, 15: 95-109, https://doi.org/10.1111/j.1468-2397.2006.00382.x; Stensöta, H.O., Wängnerud, L., Agerberg, M. (2015). Why Women in Encompassing Welfare States Punish Corrupt Political Parties. In: Dahlström, C., Wängnerud, L. (eds) Elites, Institutions and the Quality of Government. Executive Politics and Governance. Palgrave Macmillan, London.

49 Kaaryn Gustafson, 'The criminalization of poverty." *The Journal of Criminal Law and Criminology (1973-)* 99, no. 3 (2009): 643–716. http://www.jstor.org/stable/20685055.

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substitute-father presumption was inconsistent with the intent of the Social Security Act to provide for needy children. The decision highlighted that the Act aimed to support children in need regardless of the cohabitation status of their mothers.

Negative stereotypes were also promoted by Reagan during his campaign, by merging the identities of women who had been convicted of welfare fraud. Reagan exaggerated the character of the woman living abundantly thanks to social welfare support and the stereotype of the 'welfare queen' emerged in this context. This stereotype was infused with racial and sexual meanings, conjuring images of poor, black, and sexually-promiscuous women benefiting from welfare, even though at the time, white women were the largest group receiving welfare benefits.[50]

For decades, implicitly or explicitly, there have been welfare policies that aimed to discourage poor women (often welfare recipients) from having (more) children. While in the first half of the twentieth century, these policies included mandated sterilization, these policies evolved into less direct attacks to citizens' reproductive health. Instead, free contraceptives, refusal to receive benefits, and other similar policies were enacted in the 1980s and 1990s to prevent what was "then regarded as costly and pathological" reproduction.[51] Dorothy Roberts has analysed this problem extensively, particularly with regards to black women's reproductive health and how black families are discriminated by the welfare system.[52] For example, poor pregnant women seeking Medicaid-funded prenatal services endure persistent state surveillance.[53] Also in the Netherlands, investigations by Lighthouse Reports on the deployment of welfare surveillance algorithms in Rotterdam revealed that female claimants were often asked intrusive questions regarding their intimacy. It turns out that privacy is a luxury of those who do not depend financially on the state. In the United States, Anita L. Allen has named this "Black Opticon", a term which entails dis-

50 Miliann Kang, Donovan Lessard, Laura Heston, Sonny Nordmarken, *Introduction to Women, Gender, Sexuality Studies* (Pressbooks by University of Massachusetts Amherst Libraries, 2017) 38.

51 Dorothy E. Roberts, 'The only good poor woman: Unconstitutional conditions and welfareì 72 *Denv. UL Rev.* 931 (1994) 933.

52 See Dorothy E. Roberts, Killing the black body: Race, reproduction, and the meaning of liberty (Vintage, 2014;) Dorothy E. Roberts, Torn apart: How the child welfare system destroys Black families--and how abolition can build a safer world (Basic Books, 2022).

53 Nair supra note at 208.

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criminatory oversurveillance, discriminatory exclusion, and discriminatory predation.[54]

While the stereotype of the 'welfare queen' is derogative at many levels, there is one aspect in which it is accurate: poverty and social welfare dependency is a women's issue. Indeed, in 1984, when the stereotype was widespread, two-thirds of the adults living below the poverty line were women, and households headed by single mothers were five times more likely to live in poverty than two-parent families.[67] Moreover, with rising divorce rates and an increasing number of non-marital births in the United States, women and their children became disproportionately represented in the social welfare system. This is possibly also a problem we see elsewhere. In the Netherlands, two thirds of women in 2021 were economically dependent.[55] In the United States, women, especially women of colour, are more likely to live in poverty than men: according to U.S. Census Bureau Data, of the 38.1 million people living in poverty in 2018, 56 percent were women.[56] According to the UN, 1 in every 10 women in the world lives in extreme poverty.[57]

A third area of gender blindness is medical and pharmaceutical regulation. For many years, women's bodies were only regulated negatively (e.g., prohibition to wear certain clothes, criminalization of abortion and other restrictive reproductive health measures). However, the differences between male and female bodies were not considered in medicine and pharmaceutical regulations for decades. A well-known and tragic illustration of the latter is the administration of thalidomide, a drug prescribed to pregnant women in the 1950s and 1960s to alleviate morning sickness. The drug caused several birth defects when taken during pregnancy as it had not been tested on pregnant women. The thalidomide scandal prompted significant changes in pharmaceutical regulation and testing procedures and initiated a debate on the importance of considering the difference between the male and female bodies (for example, when assessing and treating heart disease symptoms).

54 Allen, A. L. "Dismantling the" Black Opticon": Privacy, Race Equity, and Online Data-Protection Reform." Yale LJF 131 (2021): 907.

55 'Hoe gender(on)gelijk is Nederland? Vrouwen in armoede' (Nieuwsbericht, College voor de Rechten van de Mens, 14 December 2022) <www.mensenrechten.nl/actueel/nieuws/2022/12/14/hoe-genderongelijk-is-nederland-vrouwen-in-armoede>.

56 'The Basic Facts About Women in Poverty' (Center for American Progress, 3 August 2020) < www.americanprogress.org/article/basic-facts-women-poverty/>.

57 UN Women, '1 in every 10 women in the world lives in extreme poverty' UN, 8 March 2024, available at https://www.unwomen.org/en/news-stories/press-release/2024/03/1-in-every-10-women-in-the-world-lives-in-extreme-poverty.

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However, also nowadays, many aspects specific to the female body remain overlooked. Examples are perimenopausal and menopausal symptoms or the study of female hormones and their relationship to multiple diseases and conditions.

Another area of disregard for gender sensitivity, in the relationship between public regulators and citizens, concerns financial regulation. Women are not only poorer on average, but they also have lower financial literacy.[58] Women are thus more likely to fall prey to financial fraud or make ill-advised financial decisions. Since women typically are more reluctant to invest, there has been a trend to educate women in financial literacy since the number of investors is primarily male. Nevertheless, financial regulation and supervision does not consider gender in any way or the need to address this knowledge gap. Even though women interact with money differently, have different behaviours, upbringing, the concept of the vulnerable consumer of financial services and products does not consider gender. Instead, the 'vulnerable consumer' of financial services takes into account education, income, age, but regards gender as irrelevant. While paternalistic and patriarchal perceptions of women are undesirable, gender-sensitive financial and consumer regulation could help break the vicious circle of female poverty.

There are many other areas where the gender dimension and more specifically, women are invisible in regulation and generally in government-citizen interactions such as redress and reparations.[59] While the history of gender inequities are well-known, why do women remain invisible in the administrative law and regulatory contexts, especially in Western countries that claim to advance gender parity?

58 Andrea Hasler and Annamaria Lusardi, 'The Gender Gap in Financial Literacy: A Global Perspective Report' Global Financial Literacy Excellence Center - George Washington University Business School (2017), available at https://gflec.org/wp-content/uploads/2017/05/The-Gender-Gap-in-Financial-Literacy-A-Global-Perspective-Report.pdf.

59 Brandon Hamber and Ingrid Palmay, 'Gender, Memoralization, and Symbolic Reparations' in Ruth Rubio-Marín (ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (Cambridge University Press, 2009).

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II. Why women remain invisible

The invisibility of gender and in particular of women is, in most cases, probably not intended as discriminatory. More often than not, no one thought about it. Regulations have been thus far a reflection of those drafting regulations, their values, and needs. There has been perhaps the unspoken assumption that these regulations could or should be gender-neutral as a way of ensuring equal treatment. However, in many fields, gender neutrality does not truly exist and gender discrimination does not have to be intended or direct.

First, as Caroline Criado Perez has explained in the book *Invisible Women*, women are invisible because they are often regarded, in medicine, technical design, and much more, as a deviation from the male standard. Simone de Beauvoir had described this perspective in the *Second Sex*: Men are the subject, women are 'the other'.[60] This otherness means that women are relegated to a secondary position because nothing is defined by reference to them, but by reference to men. Since then, this position has also been corrected by postcolonial perspectives that have added that in many countries, the main denominator has not simply been a 'man' but a 'white man'. However, when someone is regarded as 'a deviation' and there is less data about a certain group, many elements of the lives of these individuals go uncounted. And what does not get counted, does not count. This brings us to our connection between gender and the automation of administrative decision-making and how public regulators use digital technologies. AI systems will work less well on women and non-binary individuals because of the historical inputs on these individuals (or the lack thereof). Consequently, these individuals may be more frequently discriminated since they are regarded as deviations from a standard model. Decisions supported by these systems may also be less accurate and overlook the needs of a large part of the citizenry.

A recent report of the European Parliament Research Service on digitalization and administrative law has reflected on the diversified impact of digital technology on gender equality: to begin with, the EU faces a shortage of women in science, technology, engineering and mathematics (STEM) in the digital sector who are able to contribute to the development

60 Simone de Beauvoir, The Second Sex, xxxii-xxxv.

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of new automated systems.[61] Furthermore, exploratory studies of the use of AI in the Spanish public administration has identified potential discriminatory bias with relevance to gender, which were primarily caused by training data in which women are under-represented.[62] Lastly, women are also affected by another type of inequality: more limited digital skills and uptake of digital technology due to lack of training, culture, or access to new technologies.[63]

The limited presence of gender discussions and more specifically the limited participation of women in administrative law and regulation are a blind spot of the administrative state.[64] This is particularly problematic at a time when administrative and regulatory decision-making is increasingly automated, thus reproducing historical biases, omissions, and distorted narratives. Women and minorities tend to be disproportionately discriminated by automated systems that do not understand the invisibility of women in historical data.[65] This regulatory blindness concerning gender has not ceased to exist. There are still nowadays multiple examples of equipment used in certain jobs which was built only with male bodies in mind (e.g., if machinery used by firefighters that can be operated safely only by those who meet height and weight requirements that rule out significantly more women than men).[66] While changes are ongoing, particularly when it comes to safety regulation, it is important to continue to raise awareness for

61 European Parliamentary Research Service, Digitalisation and Administrative Law, available at https://www.europarl.europa.eu/RegData/etudes/STUD/2022/730350/EPRS_STU(2022)730350_EN.pdf.

62 I. García, 'Artificial Intelligence Risks and Challenges in the Spanish Public Administration: An Exploratory Analysis through Expert Judgements', Administrative Sciences, Volume 11, Issue 102, September 2021.

63 European Parliamentary Research Service, Digitalisation and Administrative Law, available at https://www.europarl.europa.eu/RegData/etudes/STUD/2022/730350/EPRS_STU(2022)730350_EN.pdf.

64 Cfr. Cseres, Kati, Feminist Competition Law (January 3, 2024). Amsterdam Centre for European Law and Governance Research Paper No. 2023-04, Amsterdam Law School Research Paper No. 2023-43 Draft chapter for Cambridge Handbook on the Theoretical Foundations of Antitrust and Competition Law (Cambridge University Press, forthcoming 2024 , Available at SSRN: https://ssrn.com/abstract=4682906 or http://dx.doi.org/10.2139/ssrn.4682906.

65 Joy Buolamwini and Timnit Gebru, 'Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification', *Proceedings of the 1st Conference on Fairness, Accountability and Transparency* (PMLR 2018) <https://proceedings.mlr.press/v81/buolamwini18a.html> accessed 8 November 2023.

66 Schouten, Gina. "Discrimination and Gender." The Routledge Handbook of the Ethics of Discrimination. Routledge, 2017. 185-195.

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the gendered nature of public law and the interactions between government and citizens.

A gender sensitive approach to the automation of administrative decision-making should also consider the historical differences in the position of women in society, the additional caring duties that are traditionally imposed on women, the feminization of poverty, and the need to gather further input as to the needs of different genders. The following section discusses how to further develop gender-sensitive administrative law and regulation.

D. Gender Matters

Gender-sensitive administrative law and regulation are particularly crucial in the context of automation of public law. Considering gender when designing the automation of public services, administrative decision-making, and proposing new regulation can ensure that digital technologies do not perpetuate historical power asymmetries. Furthermore, it can shed light into areas that were until now disregarded and where women or non-binary individuals have different needs that impact their interactions with government. This section discusses three suggestions that aim to raise awareness for the relevance of gender: gender impact assessments; data feminism and AI as equalizer which aim to reshape administrative law and regulation drawing on feminist and gender studies.

I. Gender Impact Assessments

Over the last years, several countries (e.g., Austria, Sweden, Denmark, Finland) have adopted so-called Gender Impact Assessments to promote gender-responsive budgeting and regulations. These regulatory and policy decision-making methods have been around since the mid-nineties and were designed to address the structurally unequal power relations between women and men, particularly in the context of labour division.[67]

By systematically evaluating how different genders are affected by policies, programs, and budgets, this impact assessment aims to guarantee

67 Mieke Verloo & Connie Roggeband, 'Gender impact assessment: the development of a new instrument in the Netherlands' 14(1) Impact Assessment 3, 6 (1996).

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that gender considerations are integrated in the decision-making processes. The aims of this tool are twofold: on the one hand, this impact assessment intends to promotes equity; on the other, it also acknowledges the need to consider gender so as to enhance the effectiveness of policies by addressing diverse needs. A gender impact assessment can also lead to the implementation of concrete actions aimed at improving gender equality. These actions might include adjusting the policy framework to better accommodate gender-specific needs, establishing clear objectives, implementation milestones, and progress commitments within the policy parameters, improving the collection of gender-disaggregated data to better understand and address gender impacts, and initiating new research or consultations to explore the gendered impacts of policies more deeply. According to the European Institute for Gender Equality, 'gender impact assessment is a tool for gender mainstreaming (…) and civil servants working for governmental, regional or local offices, departments or ministries initiating a new norm or policy should be involved in the process of gender impact assessment.'[68] Different countries may design this assessment according to different models, depending on the institutional settings and different actors involved. Models can vary depending on the degree of autonomy accorded to civil servants for this task, the assistance provided by gender equality mechanisms and the potential intervention of 'external' actors such as gender or legal experts.

According to the Council of Europe, gender impact assessments can be broadly applied both to proposed and existing policy programmes, budgets, policy plans, legislation and regulation and they require training and knowledge of gender issues.[69] Recent research shows that gender impact assessments of regulation may be in practice incomplete as they remain primarily gender neutral and do not consider adequately the experiences of women and LGBTQI+ individuals that often carry a disproportionate burden of the adverse impacts of economic activities. Much of the focus of impact assessments has been economic, so gender has been often analysed in relation to labour. However, going forward, it is essential to take these

68 European Institute for Gender Equality, Gender Impact Assessment: Who Should Use Gender Impact Assessment', available at https://eige.europa.eu/gender-mainstreaming/toolkits/gender-impact-assessment/who-should-use-gender-impact-assessment?language_content_entity=en.

69 Council of Europe Gender Equality Glossary, Gender Impact Assessment (2016), available at https://edoc.coe.int/en/gender-equality/6947-gender-equality-glossary.html.

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impact assessments seriously, train staff in gender so that those conducting these assessments are aware of how to address power imbalances. Furthermore, gender impact assessments should not be reduced to the position of women, but they should encompass gender broadly in order to ensure that policy and regulation is responsive to the different experiences of individuals.[70]

II. Data Feminism

Nowadays, we discuss the role of digital technology and datafication processes in perpetuating historical inequalities. It is regarded as a shortcoming of the digital state. However, data collection—including on gender—is far from recent. Church officials and colonial authorities have collected personal data for centuries as a method of consolidating knowledge and controlling power over individuals' lives.[71] Over the last decade, a new research field emerged focused on giving meaning to gendered data and the different interactions between data and gender: data feminism. The latter does not limit itself to studying women and data. On the contrary, it draws on intersectional approaches, considering how race, class, sexuality, ability, religion, and geography and many more factors influence each person's experience and opportunities in the world. In other words, this intersectional perspective of data 'feminism examines unequal power.'[72]

Data feminism is a burgeoning field of scholarship that offers a novel approach to understanding data, emphasizing both their uses and limitations. This perspective is informed by direct experiences, a commitment to activism, and the principles of intersectional feminism. Scholars in this field begin with the recognition that power is not distributed equally in society.

By examining how data practices reinforce or challenge existing power structures, data feminism advocates for more equitable and inclusive data methodologies. This approach not only critiques traditional data practices but also seeks to empower marginalized communities through more ethical

70 Nora Götzmann & Nicholas Bainton, 'Embedding gender-responsive approaches in impact assessment and management'39(3) Impact Assessment and Project Appraisal 171 (2021), DOI: 10.1080/14615517.2021.1904721.

71 Catherine D'Ignazio and Lauren F. Klein, *Data Feminism* (MIT Press, 2020) 12.

72 Catherine D'Ignazio and Lauren F. Klein, *Data Feminism* (MIT Press, 2020) 14.

10.5771/9783748929093-179 - am 08.11.2025, 12:06:39. https://www.nomos-elibrary.de/de/agb - Open Access - (cc) BY

and representative data use. 'Data feminism is not only about women (...) and is not only about gender (...) intersectional feminists have showed how race, class, sexuality, ability, religion, and geography and many more factors influence each person's experience and opportunities in the world. Intersectional feminism examines unequal power.'[73]

III. AI as Equalizer

In her book 'The Equality Machine,' Orly Lobel argues that artificial intelligence can be used to remove gender biases from decision-making, increase the neutrality of human assessments, and provide a lever for changing traditional 'white-male-dominated' practices.[74] There has mounting concern regarding the impact of automation on labour, particularly women's labour. Job displacement is expected to affect women who are trained in traditional sectors rather than in STEM, women with limited education and resources in the Global South. However, AI can also be used for augmentation, that is, to enhance human capabilities and optimize human labour, thus reducing the time required per task.[75] Lobel argues that the discussion on automation and gender should not be limited to labour. In every sector, AI can potentially assist women's position, if properly regulated, as it may actually shed light on discriminatory practices that were hidden in someone's values before. Therefore, Lobel contends that we can use technology to ameliorate human cognitive biases and correct human mistakes that an automated system would not typically make (for example, paying excessive attention to negative information about a certain fact, even when the predominant information about it is positive).

A combination between feminist and gender studies and this more optimistic perspective of the potential of AI could help us further understand how to incorporate gender elements in the automation of administrative decision and regulation.

73 Catherine D'Ignazio and Lauren F. Klein, *Data Feminism* (MIT Press, 2020) 14.

74 Orly Lobel, *The Equality Machine: Harnessing Digital Technology for a Brighter, More Inclusive Future*. Hachette, 2022.

75 World Economic Forum, The Future of Jobs Report (2023), https://www.weforum.org/publications/the-future-of-jobs-report-2023/digest/.

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E. Conclusion

This paper argues that the digitalization and automation of administrative decision-making and its regulation are not and should not be gender-neutral or gender-blind. Gender matters in administrative law, and this is particularly pertinent in the context of automation. It is well known that technology often exacerbates longstanding issues and social biases. Furthermore, as I have argued elsewhere, administrative law is never gender-neutral. Rather, administrative law is based on a standard citizen who is typically not genderless, but often an autonomous, middle-aged man, with a stable income, average family, home, and education.[76] These were the citizens that once upon a time, engaged with government to apply for licenses, permits, and benefits for their families. Nevertheless, this is a vision of the past we need to correct, and we should not allow AI to perpetuate it.

A gendered perspective on AI is needed, not only in the context of labour but more broadly. AI systems are integrated in multiple digital interactions between citizens and governments. If no action is taken, they will continue to perpetuate the vicious circle of power inequality.

I conclude with a few reflections. First, regulators and policymakers should be trained on gender issues. This is an important gap in our law schools and the legal profession training—as gender and feminist studies are rarely offered in European law schools or in the legal profession training—and this gap is not addressed later by professional trainings. Gender studies should be thus more mainstream because if we would like to ensure that administrative law and regulation includes the perspectives of all the different individuals in our society, we need to ensure that we understand their experiences and needs. Thus far, gendered regulations have been reactive, often emerging as responses to incidents and empirical data on the deaths of women whose bodies were not considered in medical or safety trials (e.g., automotive sector, healthcare, pharmaceuticals). A preventive approach is thus advised.

Second, technology is an opportunity to break the vicious circle, but only if we regulate it properly. Generative AI outputs still discriminate against women because they are trained on historical data that associate 'expertise' with 'men' and women with 'beauty' and other stereotypical

76 Sofia Ranchordas, *Administrative Blindness: All the Citizens the State Cannot See* (Tilburg University 2024) (inaugural lecture).

10.5771/9783748929093-179 - am 08.11.2025, 12:06:39. https://www.nomos-elibrary.de/de/agb - Open Access -

female features.[77] The AI Act seeks to safeguard fundamental rights and combat discrimination, thus seeking to manage risks and promote equality. However, the AI Act does too little to address gender discrimination. Gender deserved a special section or at least a couple of legislative dispositions, ensuring that measures are taken to address the problem of underrepresentation of women in the technology sector, the gendered lens of AI systems, and an intersectional perspective on data analysis and processing. More and better data and training are needed to ensure that generative AI will stop 'hallucinating' against women. However, changing human biases may be more difficult than changing technical ones.

There is a long road ahead of us when it comes to solving gender blindness in the automation of administrative decision-making and regulation. This is merely the beginning of a long conversation we should have with scholars from feminist and gender studies, civil society, and the individuals around us.

77 Anamika Kundu, 'The AI Act's gender gap: When algorithms geti t wrong, who rights the wrongs?' Internet Policy Review, https://policyreview.info/articles/news/ai-acts-gender-gap-when-algorithms-get-it-wrong/1743.

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