

Technological mediation vs. the rule of law

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In a constitutional democracy, the operation of law relies on the multi-interpretability of language and the possibility of contesting meaning. These capabilities are assumed in the contemporary structures of rule creation, interpretation, adjudication, and enforcement. When new technologies are introduced into those structures, such as AI/machine learning or self-executing rules (e.g. smart contracts), new mediations necessarily enter the frame. In terms of individual state-sourced legal rules, the technologies that enforce them necessarily mediate their legal nature, while at the same time mediating the individual's reality in the ways identified in the literature on postphenomenology. But beyond individual rules, the very structure of the legal system and of the rule of law are also mediated, in potentially reflexive ways. The direct connection between textual rules and the ways citizens and practitioners consciously re-invigorate the rule of law through their interactions with them is broken, or at least interrupted. The introduction of technological normativity mediates and thus alters, to whatever extent, the 'humanness' of law. In itself this is not new; evolving technologies have been at the heart of law for centuries – text, the printing press, email and the word processor have all mediated to some extent the nature and practice of law. The question is how to conceptualise those mediations as we move into new realms of technological development that do not simply augment legal practice but in fact *embody* the substance of law, changing the nature of its relationships with those who create and adjudicate it as well as those whom it is intended to govern and to serve.

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