

Hindrance or helper? Law and visions for digital transformation of the welfare state

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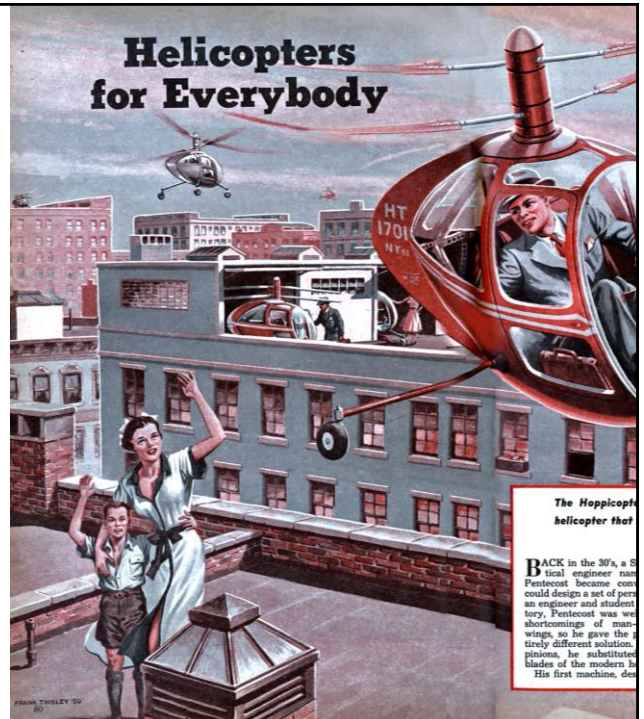
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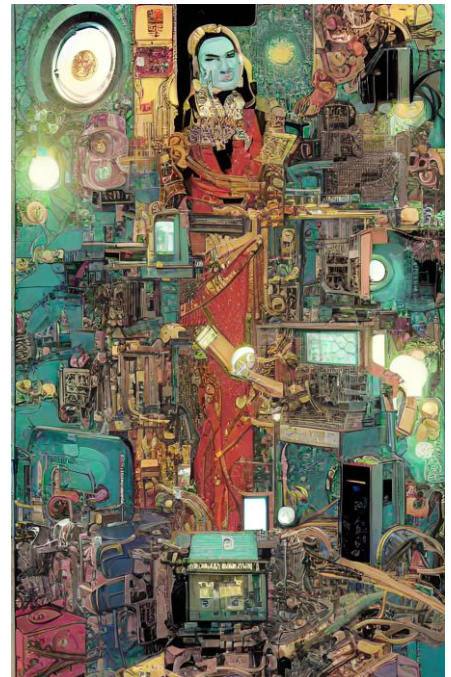
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Picture: Frank Tinsley, 1950



What's next for Nordic welfare states?

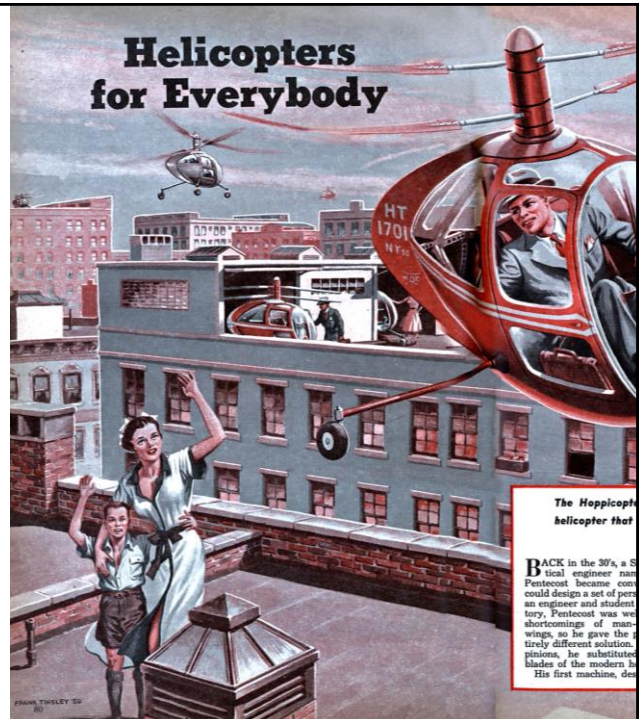
- Today, *digitalisation* occupies a prominent place in the imagination of a future welfare state
- “The golden age of the Norwegian economy will soon be over. It is necessary to find new ways to organise ourselves in order to maintain our good welfare services. Digital technology provides such opportunities.”
 - Tore Tennøe, Director of the Norwegian Board of Technology (2017)
- “As humankind moves, perhaps inexorably, towards the digital welfare future, it needs to alter course significantly and rapidly to avoid stumbling zombie-like into a digital welfare dystopia.”
 - Philip Alston, the UN Special Rapporteur on extreme poverty and human rights (2019)



Emerging state visions for the digital welfare state

- Socio-technical imaginaries:
 - “Collectively held, institutionally stabilized, and publicly performed visions of desirable futures, animated by shared understandings of forms of social life and social order attainable through, and supportive of, advances in science and technology.” Sheila Jasanoff 2015
- Vision:
 - A clear and motivating description of an ideal future state, that provides direction, purpose and motivation, guiding actions and decisions towards the desired outcome.
- «Publicly performed visions»:
 - Study: Recent Norwegian policy documents on digitalisation generally and sectoral strategies from public organisations, in particular the tax authority (2021) and the welfare authority (2022)

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The Hoppicopter
helicopter that

BACK in the 30s, a Swedish engineer named Pentecost became convinced that he could design a set of personal transport devices that would solve the transportation problems of the modern city. His first machine, des-

One vision of digital transformation

- “Digitalisation of the public sector aims to give citizens, businesses and the voluntary sector a simpler everyday life through better services and more efficient use of resources by government agencies, and facilitate increased productivity in society at large.
- The purpose of the strategy is to support a digital transformation in the individual agencies and in the public sector as a whole.
- Digital transformation means changing the fundamental ways in which agencies perform tasks using technology.
- This means that the agencies will undergo radical changes aimed at achieving enhanced user experiences and smarter, more efficient performance of tasks.
- Such an approach may require the organisation to be restructured, areas of responsibility reorganised, regulations revised, or processes redesigned.
- This has as much to do with change management, skills and organisational development, public administration policy and public administration development as it does with technology.
 - “One digital public sector. Digital strategy for the public sector 2019–2025”, adopted 2019

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Norway: The tax administration's visions for the future

User-centredness: Tailored and seamless services, life events

«Our services will centre around our users' needs and be included as a part of other services our users deal with.»
«The users expect customised and coherent services. To maintain a high level of trust, it is crucial that the public sector delivers services based on new technology that is customised to the user's context and needs.»

Automation of decision-processes

«Case processing will be automated to a greater extent and use digital decision-making support.»
«We will use machine learning and predictions based on large-scale data as a natural part of task solving to offer new services and automate and simplify tasks.»

Proactive public administration

«Our ambition is to be present in businesses' own processes and systems. At the same time as making it easier to do the right thing, it will also be more difficult to make mistakes. We will achieve this by integrating compliance in our systems, influence behaviour and conduct accurate audits.»

Digitalization-friendly regulation

«We will make use of the opportunities in the current regulations, and actively work so that the regulations become more digital friendly.»
«Our services are part of a coherent and comprehensive public service offering. User-oriented regulations designed for digital services facilitate the safeguarding of users' rights and opportunities.»

Data: More and better data, more innovation, more sharing

«We will build expertise about how information can be used in new ways to create value in our processes and for others.»
«The Norwegian Tax Administration will strengthen the work of developing and using predictive models. This places high demands on our ability to manage data.»
«By using data from others, we will help ensure that individuals and businesses do not have to provide information to the public sector more than once.»
«The Norwegian Tax Administration's data will be reliable and available, not just for us, but also for individuals, the public sector and businesses.»

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The strategies suggest emerging, foundational changes:
How the administration operates, its relationship to individuals, to data and to regulations.

Side 5

Five challenges for future legislation



1. Between discretion and automation-friendly regulation

- Norwegian (Nordic?) legislative tradition:
 - Short(ish) legislation with standards and terms that need clarification through practice
 - Trust in administration → will use discretion to interpret wisely, to ensure outcomes that are just and sensitive to the specific context
- «Legislation that is automation-friendly contains clear and unambiguous criteria based on unambiguous types of information.» NOU 2019: 5 *Ny forvaltningslov*
 - Simplify legislation and limit/remove discretion?
 - Retain discretion, and use e.g. machine learning to suggest solutions?
- How to strike the balance between discretion and automation?

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Side 6

Five challenges for future regulation

2. The role of data – and limits for compilation, sharing and use

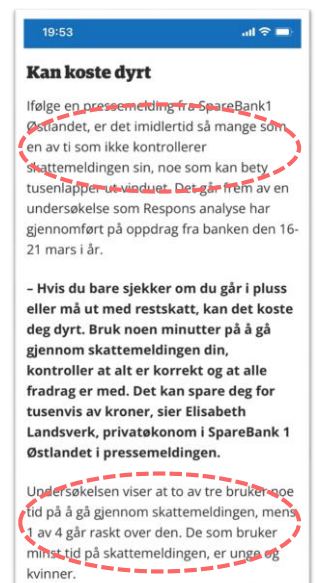
- «We will use machine learning and predictions based on large-scale data as a natural part of task solving to offer new services and automate and simplify tasks.» TA strategy
- The vision of digital transformation creates a thirst for data
 - Where to draw the line for the types and amounts of data to be collected and used?
- Important boundaries in EU/EEA legislation, e.g. the principle of proportionality and the purpose limitation of the GDPR:
 - How to ensure that these boundaries receive sufficient attention - on the path from visions to concrete tools?



Five challenges for future regulation

3. Relations between state and private party in a more proactive administration

- Blurring of state/private boundaries:
 - «Our ambition is to be present in businesses' own processes and systems. At the same time as making it easier to do the right thing, it will also be more difficult to make mistakes. We will achieve this by integrating compliance in our systems, influence behaviour and conduct accurate audits.» TA strategy
- Can it be problematic to simplify processes for the private party?
 - Autonomy in contexts of duties and sanctions
 - Principles of contradiction and the administration's duty to clarify the case
- How to prevent increasing passivity of private parties in their own cases?



Five challenges for future regulation

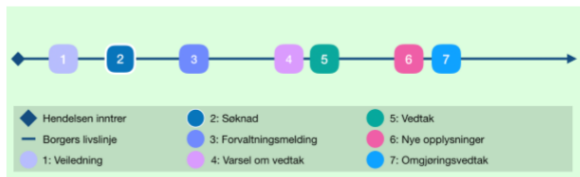
4. Automation og administrative law

- Administrative law shall ensure rule of law and adequate/trust-worthy handling of individual cases
- Automation and digitalisation changes the work flow and increases the speed
- How can «old» norms regarding case handling be applied, when new processes, tools and work flows are put in place?
- What should the future norms regarding administrative case handling be?
 - In Norway, we are still waiting for a new public administration act. NOU 2019: 5 *Ny forvaltningslov*

2.2 Saksbehandlingen

2.2.1 Den tradisjonelle saksbehandlingsprosessen

Forvaltningsloven konseptualiserer saksbehandlingsprosessen som en serie med distinkte faser som følger hverandre på en tidsakse. Oppbygningen av forvaltningsloven reflekterer også i stor grad en slik tenkning.



Figur 3: Eksempel på en tradisjonell saksbehandlingsprosess.

Illustration of stages of a traditional case handling process.

Source: [JOU 2019: 2 Lex digitalis. Hendelsesorientert tilbeding av velferdstjenester](#)

Five challenges for future regulation

5. Legislative processes

- The 2019 Digital strategy for the public sector described the radical changes necessitated for digital transformation:
 - “Such an approach may require the **organisation to be restructured, areas of responsibility reorganised, regulations revised, or processes redesigned.**”
- What does this entail for legislation processes and amendments of regulation?
- Division of work between the legislative and executive branches of government:
- Cooperation between different strands of government:
- Time: How can the slow legislative processes be aligned with quest to adapt to the new possibilities and challenges of rapid technological developments?



Picture: the photo archive of the Norwegian Parliament



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