Algorithmic decision-making and the control problem

Automation **complacency**

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- Failure detection deteriorates.

Automation bias

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- The operator <u>disregards</u> or <u>fails to search for contradictory information</u> in light of a computer-generated solution, which is simply <u>accepted as correct</u>.

Banks et al. (2018)

Automation is "most dangerous when it behaves in a consistent and reliable manner for most of the time."

Automation complacency

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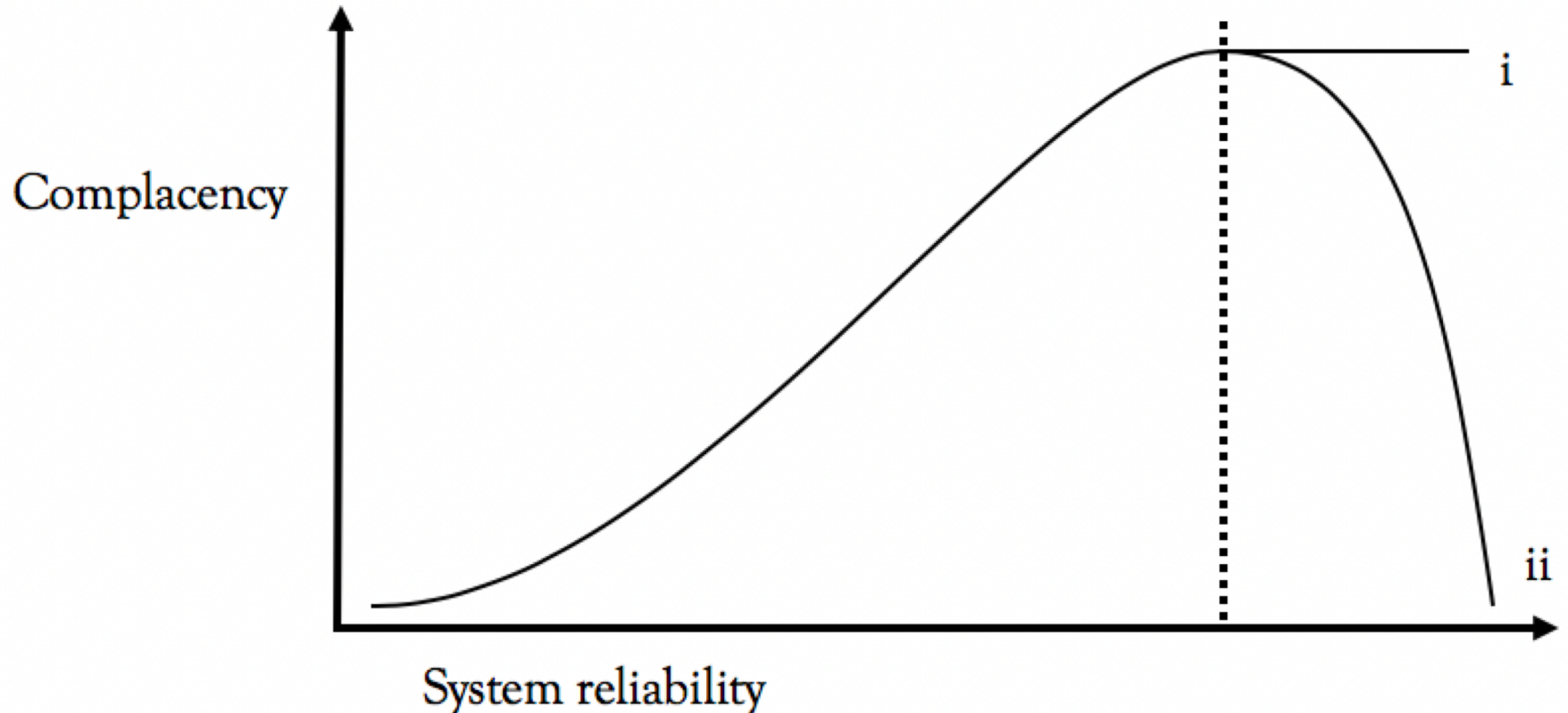
Implications for public law

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  e.g. rubber-stamping others' advice

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"FETTERING" DISCRETION

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"FETTERING" DISCRETION
  e.g. blindly following company policy

Oswald (2018)

"A public body whose staff come to rely *unthinkingly* upon an algorithmic result in the exercise of discretionary power could be illegally 'fettering its discretion' to an internal 'home-grown' algorithm, or be regarded as delegating decision-making illegally to an externally developed or externally run algorithm, or having pre-determined its decision by surrendering its judgment."

General delegation provisions

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State Sector Act 1988

Crown Entities Act 2004

Local Government Act 2002

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➔ obviate entity-specific provisions

s. 495A(1) Migration Act 1958 (Cth)

The Minister may arrange for the use, under the Minister's control, of computer programs for any purposes for which the Minister may, or must, under the designated migration law:

    (a) make a decision; or

    (b) exercise any power, or comply with any obligation; or

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