Kunstig Intelligens Disrupter Loven

Om podcasten

Juristeriet - podcast

Klodens tech-giganter som Google og Amazon kæmper på livet løs for at være først med de smarteste kunstige intelligenser. Imens river jurister verden over sig i håret, for hvem har egentlig ansvaret, når en "frit" handlende kunstig intelligens gør skade på os? Er det ejeren eller er det producenten af den kunstige intelligens?

Det spørgsmål kigger vi, sammen med postdoc Léonard van Rompaey, nærmere på i denne udgave af Juristeriet. Léonard peger på, at lovens udfordringer med kunstig intelligens er et problem, vi bliver nødt til at forholde os til på et større samfundsniveau.

Sidst i udsendelsen besøger vi igen Ditlev Tamm, der sidder klar i Pejsestuen med endnu en fortælling fra rettens kulturhistorie. I dag om jyske lov, der indeholder en af de mest kendte sætninger i dansk lovgivning: med lov skal land bygges. Men har den sætning egentlig særlig meget med Danmark at gøre, når det kommer til stykket?

0:00 Intro
3:03 Léonard van Rompaey: Kunstig intelligens
35:09 Ditlev Tamm
51:33 Outro

Mere om Léonard van Rompaey:
Forskerprofil
Nyhed - Staten skal forsikre os mod skader fra kunstig intelligens
Research profile - synch.law

Hvis du har ris, ros eller gode forslag til udsendelser om jura, så skriv til os på redaktion@jur.ku.dk.

Indholdet af podcasten

00:00:12
Jon Clausen
Du lytter til Juristeriet. En podcast om jura og juridisk forskning produceret af Det Juridiske Fakultet på Københavns Universitet. Mit navn er Jon Clausen. I denne episode kaster vi os over den kunstige intelligens. For mens klodens techgiganter som Google, Amazon og Huawei kæmper på livet løs for at være først med de smarteste kunstige intelligenser, så river jurister verden over sig i håret. For hvem har egentlig ansvaret, når en i gåseøjne frit handlende kunstig intelligens gør skade på os? Er det ejeren, eller er det producenten af den kunstige intelligens? Det spørgsmål har tidligere Ph.D.-studerende og nu post.doc. Léonard van Rompaey taget under kærlig behandling. Han peger på, at spørgsmålet om kunstig intelligens er et, vi bliver nødt til at forholde os til på et større samfundsplan. Landets egen løsning bygger både på det veletablerede juridiske princip. God tro. Men han foreslår også, at staten om nødvendigt kan agere en slags forsikringsselskab, når det kommer til skader påført af kunstig intelligens. Sidst i udsendelsen besøger vi igen Ditlev Tamm, som sidder klar i pejsestuen med endnu en fortælling fra rettens kulturhistorie. I dag om jyske love, der indeholder en af de mest kendte sætninger i dansk

lovgivning: Med lov skal land bygges. Men spørgsmålet er, om den sætning egentlig har noget med Danmark at gøre, når det kommer til stykket. Lyt med om en halv times tid. Men først: kunstig intelligens.

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00:01:51
Jon Clausen
Det er morgen og du er på vej til arbejde i din selvkørende bil. Pludselig svinger bilen til højre og kører ind i en cyklist, der brækkede armen i faldet. Du har ikke rørt ved bilens instrumentbræt, så hvem har egentlig ansvaret for ulykken? Er det dig, eller er det producenten af den kunstige intelligens, der kører bilen for dig? Scenariet med selvkørende biler er stadig science fiction, men næppe særlig meget længere.

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00:02:19
Jon Clausen
Kunstig intelligens findes allerede inden for transport, byggeri og bankvæsen. Og forventningen er, at kunstig intelligens inden for få år vil være overalt i samfundet. Men kunstig intelligens er lidt et problem for loven. For hvordan skal man juridisk forstå maskiner, der bliver klogere, mens de arbejder, og som træffer egne beslutninger og laver egne vurderinger. Er sådan en maskine en ting? Eller er den en aktør? En slags person ligefrem? Og hvor skal vi placere ansvaret, når en kunstig intelligens laver fejl? Det er nogle af de spørgsmål Léonard Van Rompaey behandler i sin Ph.D. afhandling, som han forsvarede i juni 2020. Og det her interview med Léonard er på engelsk.

00:03:06
Jon Clausen
Hi Léonard.
00:03:06
Léonard van Rompaey
Hi Jon.
00:03:07
Jon Clausen
Thank you for coming on the podcast.
00:03:08
Léonard van Rompaey
Thank you for inviting me.
00:03:11
Jon Clausen
So, Léonard, maybe you could start by defining A.I. and tell us why A.I. poses a bit of a problem for the law.
00:03:21
Léonard van Rompaey
Right. What's fundamentally interesting about those technologies and what is at the source of the legal issues they create is that they learn, you know, we don't have control over what the machine learns. We can we can you can feed it, you give it, you give it a purpose, you give it a data set, and then you will try to analyze that data set with the objective of accomplishing its purpose. And then it does that completely on its own. When it's done, you can control it does the right thing, right. So you control before it learns and you control after it learns. You don't control specifically every single thing it learns. So you're a machine learning system. Might learn to do what you wanted, but at the same time you might learn things you don't want to learn and you only discover that, you know, a few years after you've deployed the system. So that's from a technological angle. That's what I'm interested in, is a machine that have this kind of

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discretionary ability to learn. They are given the mission and then they are given freedom to act, to learn by themselves.

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Jon Clausen

So in terms of the in terms of the law, why are these kinds of, A.I.s a challenge?

00:04:49

Léonard van Rompaey

Law exists because we live in social groups that are too large to efficiently be constrained by social norms alone, so we create legal systems, we created legal systems to kind of control him behavior and to dictate what is allowed, what is forbidden and how to do things. So and it's hard if you take it from that perspective. And obviously there's different theories about law and you have a system that's made for controlling human behavior. But now what is so different from a legal perspective is that we have machines with behavior. It's not just human behavior. We have to control or state behavior or company's behavior. We have to control machine behavior now as well. And that creates challenges for our legal systems.

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Jon Clausen

So maybe we could look at some of the examples, yeah, of the of those kinds of challenges.

00:05:48

Léonard van Rompaey

Sure. Now that we have machine behavior, fundamentally, the robot or the system is still an object. It's still a thing. And but it's also an agent to a certain extent. It's also it gets dangerously close to persons to the extent that it has this behavior. For instance, in administration, you could have smart chat bots. You go on an administration website, for instance, the American Ministry of Defense has this and you can ask the chat bot questions and it will answer you. So to what extent does this constitutes administrative decisions? Administrative council? Because when you ask something to an administration, they are bound by what they say. So to what extent does this chatbot make those decisions and give the administrative go? And of course, you know, they say this is not:h "This should not be considered as an administration decision. This should not be considered as legal counsel". But still, people are going to ask questions to those chat bots and they're going to get answers and they're going to act based on those. So to what extent is it fair to tell them this is our advice, but this is not our advice? And another example, maybe something that's that I find pretty cool, but also problematic is in the United States. I can't remember in which city, but they essentially have this adaptive health inspector for restaurants that monitors people's tweets from restaurants. So essentially what it does is that, you know, people tweet about, oh, enjoying a nice lunch or enjoying a nice dinner at an Italian restaurant or wherever. And then the actually monitors the messages made by those same people the following days to check that they're sick or not. If they turn out to be sick and they say, oh, my gosh, feeling so sick, they tweet, oh, my God, I'm feeling so sick today, then the system will recommend that health inspector go in and check up on the restaurant. I think that's probably brilliant, but it also creates questions of, you know, of bias and discrimination. Are there some neighborhoods where this the system is going to target those more? Because, for instance, people who live in minorities and in poorer suburbs would potentially be sick more often than people living in rich neighborhoods. So the restaurants in those poor neighborhoods would be targeted by health inspection more often and so on. So that's also a question that's spurred by the fact that the machine is making a certain number of discretionary decisions there. It's been tasked to do so. Law enforcement, predictive policing, essentially, that you have those software that analyze past data on criminality and they can make heat maps of where to redirect police interventions and police presence in cities. So you can you can you can tell around this time of the year, it's more likely to have a crime committed in that area. And more often than not, that ends up targeting specific neighborhoods that are poor. And then you feed back this data which reinforces the

systems.
00:09:14
Jon Clausen
So you get more of what you were already looking for?
00:09:18
Léonard van Rompaey
Exactly. So that's a bias and discrimination issue because we just rely on the system that doesn't have contextualisation ability. That cannot think outside of its own hand. Transportation, obviously driverless cars. And and the problem with driverless cars and we can come back to it later, is that this problem between losing, losing, maintaining and retaking control from the car, obviously there still is different levels of automation for cars, level one, two to five. But let's just take the hypothetical example of a Level five autonomous vehicle, you know, so it does everything. You just need to be in a situation where the driver can retake control from the car, you know, if it starts doing something fundamentally wrong. And that's a problem because. Retaking control from a car that's making decisions that's not the same cognitive operation as maintaining control over a car. And there's this concept called automation bias, where you tend to over trust the decisions and the actions and the behavior of a machine that you've been working with for for some time.
00:10:33
Léonard van Rompaey
And so retaking control becomes much more difficult than maintaining control in the first place, but at a legal level right now, it's considered to be the same obligation. So you have users that have to do a much more difficult cognitive operation, be responsible for the behavior of their driverless cars, even though it's not the same conditions anymore. So that's another problem. Warfare, autonomous weapon systems, killer robots. I mean, obviously, there's a host of ethical problems with this, but that's really a very good example of this thing, object, person divide. I mentioned briefly, you know, in in the in the laws of armed conflict, you have three main categories of objects or actions or or persons. Essentially, you have means methods of warfare and then combatants and civilians. So the means of warfare are the guns, the weapons you use, the vehicles you use. That's means of warfare. Then you have methods of warfare is the way you use those, the way you use those those those weapons, for instance, explosive ammunition as a method of warfare is authorized against vehicles. But it's illegal to use them against combatants, against persons, because they do way too much damage. So as a method of warfare against tanks, it's allowed as a method of warfare against combatants. It's illegal. And then the last thing is combatants. So that are the people that are actively participating in the conduct of the military operations. So where's the killer robot in that? You know, it's kind of a means of warfare because it's an object, but it's also an object that carries other objects, other means of warfare. So you have your robot that's carrying guns. So does it become a method of warfare at this point or is it still a means already between means and methods? Huge ambiguity.
00:12:48
Léonard van Rompaey
But then it's also it also becomes the killer robot also becomes the agent of warfare, the one that conducts the operations that make the military decisions, that actively participates in the conduct of operations. So it is reminiscent a little bit of what combatants are. Obviously, we can't qualify them as combatants because they're not human beings and we qualify combatants and such because that's a protection for them. To a certain extent. They're given rights and obligations. And we don't we're not thinking about doing this. We're not thinking about giving killer robots the rights not to be killed once they've laid down their weapons, for instance, that doesn't work that way. But still, there's this kind of ambiguity. I hope this is enough examples to convince that A.I. is exceptional. It is actually a conceptual challenge for our legal systems. It's not just the

newest technology that needs a little bit of regulatory adjustments.
00:13:50
Jon Clausen
Right. So A.I. widespread and will be more so in society. I was wondering what the law is like today in terms of A.I. How does the law deal with A.I.? If we take the example of the self-driving car, which I think for many people is a well known example that you're driving along in your self-driving car, it's for some reason makes a decision to turn right to avoid something or whatever and accidentally run into someone. Then the question is, is that your responsibility or the machine's responsibility or. But how does the law deal with that kind of example today?
00:14:42
Léonard van Rompaey
So right now, there's very little A.I. or robot law outside of academia.
00:14:52
Jon Clausen
And of course, we don't have the self-driving cars in that sense yet, but the idea is that we will have at some point.
00:14:59
Léonard van Rompaey
Well, you know, actually there's a test project going on in Copenhagen called Holo, and that's, you know, autonomous buses driving around. So they're not that far away. Right. So what we do now, essentially, is that, you know, we look at existing legal regimes, traffic law, tort law, insurance law, and we try to look OK, how does how does the robot fit in there? And that's, you know, that comes back a little bit to what I was saying earlier about losing, retaking, maintaining control. Right now, the obligation is over drivers to maintain control over the conduct of their vehicles because we assume that as soon as an accident happens, that means that usually one party has stopped maintaining control over their vehicle or weren't maintaining control well enough because they were on their phone or not paying attention or whatever. So we try to we try to use that kind of legal concept and we apply it to robotics. And as I mentioned, that's not exactly what's happening. It's you know, it's not a tangible long term solution to interpret things like this question of maintaining control. But in terms of responsibility, as I was saying a little bit when I was trying to define A.I., there's this problem that much more than before. We lose control over objects, we lose control over those machine learning based systems. We lose control over what it learns exactly and how it learns it. And you can't even tell how it does or how it comes up with a specific result. The only thing you can check is the database and algorithms you use and then the output of the system. It's once it's learned, we lose control over that period of his training. And once we consider that the you know, with different testing and risk assessments, we do we consider that it's good enough.
00:16:56
Léonard van Rompaey
You deploy the system, you sell it and it's on the streets. And once it's there again, we lose control over the driverless car much more than we did with any previous technology. Nowadays, you can get cruise control on your car, stay in lane technology. You know, for all intents and purposes, when you're on the highway, your car drives for you. So we lose control. We decide to lose control. That's what we want to do. Right? That's why we develop this technology. We want to lose control. We want to be able to concentrate on more interesting stuff instead of driving. But when the user, the user has control over the driverless car before the car starts driving and once it's done driving or once we retake control. So you go into your driverless car, you set a destination, you give it a mission. Drive me to location X. And it says, OK, I'm going. You lose control over your car, essentially because it's driving itself, and then when you retake control, when the car has reached the desired location, you retake control again, the user. So what happens? Who's responsible when an accident happens in the lapse of time where you don't have

control? Well, first of all, the first thing I want to say about this is that it's hugely unfair to consider that the driver, that the user should be responsible for what happens during that driving time because, you know, they haven't programmed the machine. They didn't choose the data set. They didn't test that the vehicle was able to drive around. All they are responsible for the users is setting the car on the mission in a way that maximizes its safety. So as long as they respect those and, you know, and as long as they also respect they are also a bit diligent about the use, not just being legalistic in the sense that I do exactly what the manual says.

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Léonard van Rompaey

You know, common sense to a certain extent should have a legal value there, but the user should only be responsible for this setting the mission right and retaking control. But then when an accident happens within a good use of the of the system and, for instance, the accident happens too quickly to possibly be able to retake control, I think that is the producer that should be responsible for that accident by the driverless car, because, as I mentioned, we lose control over the cars. But definitely the producers have more control over the systems, the machine's behavior, not its setting or conditions of use over the machine's behavior than the user does. So they should be responsible for the machine's behavior.

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Jon Clausen

Right. And the way the law is today or the way the all would tend to interpret that kind of a situation today. It would be the user's responsibility more than the companies?

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Léonard van Rompaey

Unfortunately, yes. I think that my understanding of tort law, tort law is the law of the responsibility outside contracts. So, you know, you heard someone on the street. You're responsible for the damages you caused to that person. That's tort law. As it stands right now, the user would unfairly be responsible for accidents caused by robots, advanced robots or advanced machine learning systems, whether they're physical or digital, whether they're driverless cars or whatever doesn't matter. They would tend to be responsible because we analogize a certain number of legal mechanisms that exists. The responsibility over your dog's behavior, the responsibility of the employer, over the employee's behavior, the responsibility of the company, the responsibility of the caretaker with the children or the incapable adults, we kind of analogize those legal responsibility schemes over the use of robots. So right now, if an accident happens, even though the user is not responsible, they're not the ones that gave the system its behavior. They're only responsible for the setting and retaking control. They would be made responsible as a proxy that would work. But if, you know, if you want to go against the producers most of the time, that would not work, I think.

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Jon Clausen

Right. So in many ways, A.I. is something that we want in society. I suppose, we see that it has many benefits. It will help us with many things. Theoretically, cars, self-driving cars will be more safe than than the current traffic system where we are driving. So it has many benefits, many advantages. But what will that mean to the deployment of A.I. or people's willingness to buy it if they are responsible for its behavior?

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Léonard van Rompaey

That's what's funny about about deployment of robotics, is that overall there will be less accidents. They will probably tend to be less bad when they do happen than they are currently. So more safety, but there will still be accidents that will happen. And the conundrum here is that those that do happen will usually happen for unforeseeable reasons, because if they were foreseeable, probably the producer would have designed, warned or mitigated against those risks.

The accidents that do happen will be unforeseeable. And that well, that's why it's harder to make the producers responsible for those, because if it's unforeseeable, you can't blame them for not having designed against them or warned against. And that's why producer responsibility fails. So in the end, you only have the users responsible. And, you know, they're pretty much aware that they're not the ones that caused the accidents, but they still be the ones that are responsible for it. I'm afraid that if we don't do something to work against this issue of enforceability and unless we find a way to actually make the producers responsible for. Because that's also an incentive to for them to make safe, safer designs, people might lose trust in the technology and well, that's really too bad because there's so many good things that could that could be made things to it. That's what I'm concerned with, is if we don't make sure the system stays fair and that we make the producers responsible, that people lose trust in the technology and decide not to use it. So then the question becomes, how do we do that? How do we how do we fix this? Yes, I think that the first thing we need to do is, you know, a more theoretical clarification. We say, OK, robots possess characteristics of objects but are missing some important characteristics of objects. Robots possess some characteristics of persons, but they are missing other important characteristics of persons. What are they? They're sitting in the middle. Should we recognize them? Should we give legal personhood to robots or not? I say we settle that debate once and for all. We make a legal fiction. We we essentially define robots and as objects. And it's a legal fiction because we know that it's not a definition of that that fits perfectly, but we still do it. And then we look at the leftover problems that this definition creates and we deal with those. So that's the first clarification. Robots are objects. They are not persons in any case now or hopefully not in the future unless, you know, there's some incredible..

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Jon Clausen

Regardless that they seem autonomous.

00:24:58

Léonard van Rompaey

Exactly. Doing things that seem discretionary regardless, regardless of all of this, they are objects, period. So that's the first step one, the second step is we deal with all those tiny legal challenges that I mentioned before, you know, the rest of the issues, those questions of contextualisation for the admin chat bot. The problem of definition issues with autonomous weapons know means, method, combatants. We deal with those one by one, very specific answers. As an example, we can use we can look at the problem with responsibility for unforeseeable accidents. So, you know, it's your car that's for a very unforeseeable reason, identifies the kid as a walking path and misunderstood, misunderstand something massively. It's completely unforeseeable. Why did this? The producers could not have come up with a solution in advance for this simply because it was it was impossible from a logical or rational perspective to expect that the machine would do that. OK, because those will be most of the accidents that will happen. They will be cause for those unforeseeable reasons. So that's what we want to deal with. First, I say that when you have an unforeseeable accident like this that causes damage, the producer is responsible for the damages, even though it's unforeseeable, based on their good faith, based on how much of a good player they're trying to be. It goes beyond negligence. Negligence is the standard we use to identify whether someone is responsible for product defects. And if the accident was unforeseeable, they can't be negligent. You can't be negligent for something that was not foreseeable. We say, OK, there's this now. We go beyond this for those unforeseeable cases. We say they're responsible to a certain point based on their good faith. And hopefully, once you say this and you make good faith, a standard of attribution of liability by judges, producers will self regulate.

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Léonard van Rompaey

They'll find themselves the methods to generate good faith, to generate trust in their products, in

their companies, in their industry and in the technology. So it's not just about being a good player with a specific car. It's also being a good player about other aspects of your business. The reason is because if companies do this, they set up corporate cultures to really try their best on all aspects, to create safe systems, to be ethical. And they use concepts from ethics, ethics in business, human rights and business. And they document how they apply those concepts in order to showcase that they're good players. And they really tried you beyond the state of the art in technology and engineering. We have all those standards that say how you should make a safe product. They they went beyond this. You know, they have to document that they really tried as well as much as possible to make a safe product. And they recognize that the nature of the technology makes it impossible to make a completely safe product. They're like, you know, it's a gamble. We try our best. We try to be good guys and we know it's going to happen one day or another. But we really tried our best to delay as much as possible the occurrence of this. So based on their good faith, the judge essentially attributes a percentage of the damages to be paid by the company, and that percentage is based on their good faith or lack thereof. If they have, you know, they're really good, really trying to be good guys. They're only responsible for a small fraction of the damages because it's still their design, it's still their product, it's still their responsibility. They accept it to put this on the streets. So they should still be a little bit responsible. And then if they're not really good guys, they're in for the money.

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Léonard van Rompaey

They went as quickly as possible to market their product as quickly as possible.

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Jon Clausen

They didn't test it well.They did. They complied with all the kind of technical things, like they reach all the basic thresholds. We did risk assessments. We did the testing according to regulation, whatever, from the European Union. Look, we have it there. It's written on the paper. We did it. It's the stamp. That's not enough, that's in my opinion, that's not good faith. That's not good faith, recognizing that they are playing with a developmental technology that creates unforeseeable risks, that is potentially dangerous, that is novel, that needs to be studied. They don't recognize, they refuse to recognize that state. They're not in good faith. They pay a large part of the damages. Right. So the last question is what we do with the left over, you know, the part that the companies do not pay, the part that the companies do not pay. This is a decision that we need to make as a society. I think that different countries around the world need to decide, governments. This is a hugely beneficial technology, but it has risks. We recognize that we still accept as a social as a society to reap the benefits of the technology, to foster its deployment and development. We still need to to to deal with that leftover kind of thing. You know, when the businesses really do their best to be good players, we need to make a decision as a society about that left over. How do we pay those damages to the victims? Because who pays those damages to the victims? Maybe it's the victims themselves. Maybe it's the users, maybe it's the companies. Maybe it's society as a whole through public insurance schemes. I don't have a strong opinion about who or how we should pay those, but it's a decision that needs to be made by our parliaments and our policymakers.

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Léonard van Rompaey

But one potential solution would be to have a public insurance that is funded with a tax on sales of specific products or on certain importations, because, you know, that's the kind of public insurance that already exists with for car accidents when in some countries. When a car accident happens and the person responsible does not have an insurance for their cars, which is illegal. And they are also unable to pay the damages themselves because, you know, usually people that don't have a car insurance are usually people who don't have money to pay their damages anyway. Well, they have those public insurances that are financed by by taxes and they have this

kind of lump sum that's sitting in the bank. And when an accident happens and no one can pay, the state pays, for instance. That's an example. I'm not saying this should be the solution. I'm just saying that this is the kind of decision we need to make. So this is related to your current work anyways. So this is what I'm working right now. It's a collaboration between Synch law firm based in Hellerup and the Center for Private Governance here at the Law Faculty. It's a program that's funded in part by Innovation Fund Denmark, and that's what we're looking at. How can those businesses generate trust? How can they demonstrate they're being good players? How can they show that? How can they prove that they are in good faith? And what should they do in order to be in good faith? That's what I'm working on right now. So what I'm telling, you know, robotics companies and also, you know, these are the things you should consider. You should consider your system outside of its technological uses and its technological aspects. Maybe you should have sociologists, anthropologists participate with you in your design when you're having design meetings about new products.

00:33:17
Léonard van Rompaey
Maybe you should have people that aren't engineers sitting with you, helping you make decisions about how to design this new product. And you should document those and you should read to read those kind of conversations about your products throughout the existence of your product, not just at the design phase, but also at the testing phase and the sales phase. And then after once it's still on when once it's marketed, they need to repeat that process over and over again and document that they're doing it. So once a case happens, they have the recordings or the minutes from there, from the conversation to show. We actually really tried to foresee that kind of stuff. But it wasn't foreseeable. We tried to go beyond this is how much beyond we went. And then the thing is that those businesses will come up with themselves, with new standards, with new methods of generating trust, of demonstrating trust. But, yeah, I mean, I'm talking to businesses already who are really interested in this and who really want to demonstrate that they are trying to incorporate A.I. effects in their product, that they want to be good players, that they want to show that they're not just doing the bare minimum, they're not just reaching the basic the most basic threshold. They want to go beyond that. And they are starting to some of them are starting to see a commercial interest in showing that they're good guys.

00:34:39
Jon Clausen
Right.

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And that's that's my idealist hope for the future, is that we enter in an age where really demonstrating that you are a good player becomes a strong commercial argument for businesses.

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Jon Clausen
Du kan finde mere information om Léonard van Rompaeys forskning på jura.ku.dk eller i noterne til denne udsendelse, hvor vi har lagt et par links til artikler om og af Léonard. Og så er det igen blevet tid til at bevæge os ind i pejsestuen, hvor professor emeritus Ditlev Tamm venter med endnu en spændende historie fra rettens kulturhistorie. I sidste udsendelse berettede Ditlev om ærkebiskoppen i Lund, Anders Sunesen, som omkring 12 hundrede tallet nedfældede Den Skånske Lov. Og netop den lov fik stor betydning for de andre såkaldte landskabslove i Danmark, heriblandt den nok så berømte Jyske Lov. Hej Ditlev - Hej. Ditlev
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00:35:43
Ditlev Tamm
De fleste af os kender sætningen Med lov skal land bygges. Men det er nok de færreste af os, der kender så meget mere til Jyske Lov end det. Hvad handler Jyske Lov egentlig om, og hvorfor er den blevet så vigtigt, ja det er jo et godt spørgsmål. Det er en rigtig flot sætning, og den er meget

vigtig. Men vi skal lige slå fast, at Jyske Lov består på sin vis af flere dele. Der er denne fortale, og den er fortale. Og denne sætning er faktisk en oversættelse fra latin. Med lov skal land bygges er et citat fra romerretten. Hvis man vil have det på latin formuleret i det andet århundrede og står at læse i den store samling af romerretten, som vi kalder Digestaerne, som er en samling af citater fra romerske jurister. Og hvad vi ellers finder i denne fortale. Det stammer fra kirkelige ret fra kanonisk ret. Det er så en øvelse. Nogle har gjort det meget velformuleret, og det er oversat som sagt til et smukt dansk. Og det er flot, men det har ikke nogen naturlig forbindelse med det, som Jyske Lov ellers handler om. Læser man Jyske Lov, og. Lægger man den ved siden af den loven for Skåne og de sjællandske love, så man se, at de handler om nogenlunde det samme. De begynder med, hvad forudsætningerne er for at arve de handler om, hvad der hvad der sker, hvis man bor sammen i en husholdning. Et bo kalder man det . Der kan opstå spørgsmål. Der bor en far og en mor, og der bor nogle børn. Og hvad nu hvis et af børnene gifter sig, og der kommer en kone ind, når der kommer en mand ind, og man så skal dele det på et tidspunkt? På hvad måde skal man dele det. Kan man tage det ud med ud, man har fået, eller skal man dele det lige eller hvordan man gøre det så nogle spørgsmål, der bliver taget stilling til der.

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00:37:49
Hvad nu hvis nogen har børn uden for ægteskab? Kan de arve og komme ind i billedet? Det er også noget, der spiller en rolle. Hvad nu hvis man har fået børn uden for ægteskab? Og så? Vi kan også godt lige sige det. Jo faktisk noget relativt nyt. Men her har vi kirken igen. Der kommer ind og pludselig spiller det en rolle. Så det har næppe spillet en stor rolle i det ældre gamle danske samfund. Om børn skal af med fra lige den mand og konen, der var gift eller kom på nogen anden. De var nogens børn, men med med kirken bliver ægteskabet noget vigtigt, og pludselig bliver det en. Bliver det altså en distinktion, som man skal, som man skal tage stilling til. Hvad nu skal der være forskel på dem, der er født i ægteskabet, og dem, der er født uden for ægteskabet, og der er så en forskel. Der er også regler om, at man kan anerkende dem som børn født uden for ægteskab, og de kan komme ind. Men det er jo helt givet et eksempel på netop noget nyt, som kommer ind i lovene, fordi ægteskabet bliver en institution, der kommer til at spille en rolle. Men ellers - det så noget loven handler om så handler den meget om det gør alle lovene. Lovene har også noget om, at man bor i en familie og familierne både typisk på landet og den måde, man boede på landet på. Det var med både i en landsby og landsbyerne bygget på et dyrknings fællesskab af jorden og derfor er det i hele taget af regler om jord. Meget, meget centrale. Men altså dels hvem skal have jorden? Når nogle er døde, må man råde over sin kones jord. Det er nogle spørgsmål, men også. Hvordan skal man egentlig dyrke i fællesskab? Hvilke beslutninger skal man træffe, og om hvordan opdeler man egentlig?

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00:39:28
Hvordan finder man ud af, at når man nu bor sådan og sådan noget har sit hus i landsbyen? Hvilke marker modsvarer det så ude i selve marken? Hvornår skal man begynde at så? Hvornår skal man begynde at høste? Hvad gør man, hvis der lever dyr ind fra den ene til den anden og alle sådan nogle ting? Det er et vigtigt afsnit. Hvad hvis der er én, der spærrer en vej? Må man have lov til at gå ud i en fælles skov og hugge et træ? Er der nogle skove, som kan tilhøre nogle? Og hvad må man egentlig? Det er Flemming Regel, som gælder stadigvæk den der med, at hvis man kommer kørende gennem en anden skov, og det er ikke så aktuelt, når man kører i bil. Men det var ret aktuelt, hvis man kørte hestevogn, hvis der brækker en aksel eller et hjul går i stykker. Må man så tage noget træ og reparere det? Det vi kalder det uskadelige nytteret. Det går jo helt tilbage til lovene. Det måtte man godt, men man måtte ikke begyndte at læse på og fælde andres træer og eller tage brænde. Der er nogle ting, der også bliver taget stilling til. Og så er der jo mange regler om det, vi i dag vil kalde forbrydelser. Det kaldte man ikke for retsbrud mod eller overtrædelser. Drab spiller en stor rolle, specielt i Skånske Lov og der kan vi netop se. Det her med formentlig, at der er sket ændringer, så det, der begynder i Skånske Lov, er et problem i

Skåne. Og hvordan gør vi egentlig? Det har så nogenlunde, når vi kommer til Jyske Lov. 40 år efter, så har det sådan set fundet sit leje. Så ved man, hvordan man gør. Man skal typisk betale, man er langt længere fremme med, at man skal betale en bod.

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00:41:06
Ikke noget med at tage hævn, at familien skal deltage. Reglerne om, hvordan man så indkalder familien og får dem til at deltage, er noget, der er. Så det er også tydeligt, at man er, at man er vred på tyve. Det er jo klart, at vi skal jo forestille os trods alt. Selv om Danmark altid at være et samfund, hvor få døde af sult, har der jo alligevel været år og der har være mangelsamfund. Så det, at nogen tog noget, kunne være alvorligt. Det er jo også en del af samfundets tillid, at man kan lave dyr græsse på markerne fjernt fra. Der er bælgmørkt, så du og så tyves vilkår er jo gode i sådan et samfund, så derfor er der også strenge straffe for netop tyveri. Og udgangspunktet har været død, ikke dødsstraf. Men udgangspunktet har været, at man tog sig selv til rette, og der kan vi se netop i Jyske Lov. Her er man jo inde på at sige, at det skal være over, hvis der skal være en vis værdi i, at det man har taget, før man kan gå så langt. Og så må man i øvrigt ikke en selv. Så skal man overlade det til kongens foged. Det er et af de punkter, hvor Den Jyske Lov er lidt længere fremme end de andre, altså mere overladt til til offentlige myndigheder. Man kan se, der er sket meget i de år, fra Skånske Lov er blevet skrevet ned, til man har fået den og redigeret Den Jyske Lov i retning af også at give det offentlige og give det offentlige flere flere beføjelser. Og så er der jo også regler om noget, som man jo ofte er tilbøjelig til at skubbe lidt ned, men som jo alligevel er vigtig for at forstå datidens samfund. Der er jo ganske udførlige regler om slaver, både erstatning, hvis man dræber slaver, og også hvordan det er, hvis slaver forvolder skade gør.

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00:42:50
Handlinger, der er det helt tydeligt at man har overtaget romerrettens regel og der findes der i romerretten. Man kalder det hæftelse. Endelig kan man sige en maksimal erstatningsregel, som er den, at den erstatningen for en skade forvoldt af en slave kan ikke overstige slavens værdi. Man vil altid kunne betale sig fra erstatningen for en slave, man har ansvar for ved at udlevere slaven. Den regel går igen i alle de danske love, så det - i det hele taget ved den måde, som slave reglerne er stillet op på. Altså de viser tydeligt, at det er helt givet, at uregulerede område, hvor man inspireret af romerretten nu opstiller nogle regler for, hvordan det forholder sig, hvis der er en slave indblandet. Det har været et af de vigtigste områder af romerretten, og det kan man sådan her i parentes nævne sige en lidt sjov ting i juraen. Det er jo at en meget stor del af de grund eksempler, der stammer fra romerretten, og som belyser juridiske konflikter, for eksempel ejendom, konflikter med alle de andre, faktisk slaver. Så jo, vi kan sige, at vi har haft et meget på sin vis ukorrekt billede af samfundet, fordi man altså har accepteret, at slaven havde deres særlige slave, var ting, der kunne bevæge sig så langt rækker. Altså ansvars spørgsmål belyses vældig godt ved at bruge de romerske bestemmelser, hvor der er en slave impliceret. Man køber en slave, en slave, som et eksempel. Og der er altså vores landskabslove. De er ikke et hak bedre. Der spiller slaverne også en vigtig rolle som noget af det, man regulerer. Noget af det, der er så spændende ved Jyske Lov også. Det er jo det særegne at man får det man kalder faste nævn.

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00:44:56
Så der er én bestemt, der bliver udpeget sande mænd. Der der bliver udpeget otte mænd i hvert herred. Det var inddelingen af landet var i 200 herreder der havde sine ting og kongen bekræfter udpegelsen af disse otte mænd. Det er så dem der skal afgøre de alvorlige sager, drab eller strid om grænserne mellem fast ejendom og forskellige andre forhold. Det hører under sandemændene, og det er de samme. Så det er altså folk, og så kan man sige at kunne oparbejde en vis professionalisering med hensyn til at undersøge sager og måske bliver gode til at finde ud af, hvem der lyver, og hvem der ikke lyver. Og hvordan ting egentlig er således, at der er fremdrift i de der sandemænd, i henseende til et mere effektivt proces system. Men det store

spørgsmål, man har diskuteret omkring Jyske Lov. Det har jo været dette om om der var, om det gjorde nogen forskel, at loven var givet af kongen. Vi ved jo som sagt ikke det der der med skånske lov. Min gode teori nu er det er Anders Sunesen. Og at der sikkert også er nogen, der har med kirken at gøre, men som er anonyme, som står for det sjællandske. Men Jyske Lov, der er det jo sådan, at i de håndskrifter vi har, vi skal understrege igen det jo i de håndskrifter, vi har. Det har vi dels den vigtige, den fortale. Men den finder vi faktisk også som fortale til nogle af de sjællandske love. Så vi kan ikke være helt sikker på, at den er lavet lige til Jyske Lov. Det kan godt være lavet til noget andet eller bare være lavet, og så nogle synes, den er så smuk. Den kan vi bruge som fortale. Så er der en anden del af håndskrifterne, Jyske Lov, der der står, at vide skal alle, der ser den lov, at den er givet af kong Valdemar.

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00:46:53
Og så bliver det beskrevet, at kong Valdemar har givet loven i Vordingborg, og at hans tre sønner var til stede, og at landets biskopper var til stede og de som nævnt med navn. Og så er det også nævnt, at alle de bedste mænd, der var i hans rige, og så kan man at det har man taget for pålydende indtil nu, er det måske også rigtigt for at. Så må loven jo være givet af kong Valdemar, der står da det i marts. Og vi ved jo om kong Valdemar. Han døde faktisk i marts 1241. Så hvis hvis det er rigtigt, hvad der står, og når jeg tillader mig at nævne det, så er det jo fordi vi ved jo, at der var meget i middelalderen, der ikke er rigtigt på den måde. Vi synes, det er rigtigt. Ofte var det jo sådan i middelalderen, at hvis man synes, at man havde ret, eller at man havde et godt dokument, så var det næsten for godt til bare at være der. Så var det også vigtigt, at man ligesom satte en legitimation på det, så andre også kunne forstå, hvor vigtigt det her var. Så det er slet ikke nogen utænkelig tanke, at nogen skulle have fundet på på et senere tidspunkt og synes, at Jyske Lov var så god. Og der var jo også dermed sandemænd. og kongen skulle udnævne, at det var der sandelig også være kongen, der har givet loven. Men efter indgrebet er det ligeså tænkeligt, når vi ser på det med kritiske øjne i dag, at det er den bedste beskrivelse af, hvordan loven bliver til. Den er formuleret senere, og den indgår egentlig i en forståelig og udbredt middelalderlige tankegang om, at en lov måtte være givet af kongen. Man har noget, man kalder Kong Valdemars love, og på den måde bliver Jyske Lov en af Kong Valdemars love og bliver altså en kongegiven lov .

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00:48:40
I modsætning til de andre love, som man kalder retsbøger, men altså indholdsmæssigt er der ikke meget forskel. Og ser man på det på den måde, så falder jo i virkeligheden også en diskussion, man har haft lidt væk. Altså den diskussion, som går ud på, at det man ville, da man gav Jyske Lov. Det var i virkeligheden at give en lov, der skulle gælde for, som man talte om riget altså Skåne var et land. Sjælland var et land, Jylland var et land og tilsammen udgjorde de så kongens rige, og det som man naturligt nok diskuterede. Det er jo, så hvorfor får vi så ikke en lov for hele riget? Det gjorde man jo i Norge allerede i slutningen af 12. århundrede årene. Det gør man også i Sverige i 13. århundrede årene. Mit svar er, at det havde man ikke brug for. Og mit svar er også, at hvis man tror, at Jyske Lov var tænkt som en sådan rigslov så kan der godt være. Men jeg er, så alvorlig i tvivl om hele dette setup med Vordingborg, hvor folk kan være til stede og vedtaget en lov overhovedet modsvarer en realitet. At man egentlig ikke bare har udarbejdet en lov. Og egentlig tror jeg nemlig heller ikke på, som man også siger. Spørger man så også, at de så ikke blevet vedtaget på Landstinget? Nej det tror jeg ikke . Hvordan skulle man det? Altså prøv at tænk på sådan et landskab. Altså en ting som en forsamling af folk, der hverken kunne læse, eller der hverken kunne læse eller skrive, som man havde stilling til konkrete konflikter på hvilket grundlag skulle de begynder at vedtage en lov der fylder, der fylder det meste af 100 sider med 250 bestemmelser? Nej, dette er blevet skrevet ned af nogen, der kunne. Det har været et grundlag, og det er blevet læst.

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00:50:29
Ditlev Tamm
Men vi skal ikke opfatte det som en lovgivning i vores forstand. Det er et idealbillede, man har villet tegne, og det der er sket, er at der gradvis hen over middelalderen. Så er idealbilledet på mange måder blevet blevet virkelighed, fordi man faktisk har fulgt de normer, som man skrev ned på det tidspunkt. Men vi skal hverken tro, at man skrev ned, noget som lige præcis var sådan, eller at det blev vedtaget på den måde. Det er skrevet ned som sagt af nogen, der kendte til retten i andre lande, nogen som var interesserede i at både kirke og konge stod jo stærkt. Alle mennesker i virkeligheden i den civilisationsproces proces vi ser her. Udviklingen fra et voldssamfund til et samfund, hvor alle er interesserede i, at man har nogle normer, afgøre konflikter på en fredelig måde, sådan at man kan udvikle og udbygge samfundet, og derfor er de landskabslove som sagt. Det er noget af det vigtigste, der er skrevet på dansk.

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00:51:34
Jon Clausen
Der er mange flere spændende beretninger fra rettens kulturhistorie i Ditlev Tamms bog Juraens 100 Bedste Historier, der udkom i 2016 på forlaget Gyldendal. Det var alt for nu. Husk at lytte med næste gang, hvor vi sammen med ph.d.-studerende Hjalte Osborn Frandsen skal se på rumlov. Ja, det lyder måske som et mærkeligt sted at have lovgivning i rummet, altså. Men med de tusindvis af nye satellitter, vi i de nærmeste år kommer til at sende i kredsløb om Jorden, så haster det faktisk med at få reguleret, hvordan de bevæger sig rundt der oppe. Hvis vi altså gerne vil undgå, at de banker ind i hinanden, og det vil vi virkelig gerne undgå, forklarer Hjalte Osborn Frandsen. I næste episode. Og så er Ditlev Tamm naturligvis også tilbage med endnu en fortælling fra rettens kulturhistorie. Hvis du har ris, ros eller gode forslag til udsendelser om jura. Så skriv til os på redaktion@jur.ku.dk. Vi lyttes