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Efteruddannelse: Valgfag på kandidatordningen (tompladsordningen), skræddersyet efteruddannelse

Artikel

”Towards a More Just World”: Utopian Legal Projects & the State of the Art in International Criminal Law

Af Lektor Kerstin Bree Carlson[1]

The modernization of mass murder in the Second World War generated a number of legal and normative responses, spurred by an impulse to ensure “never again”. The Universal Declaration of Human Rights (1948) named core rights enjoyed by all humans, and located these rights beyond the traditional boundaries of sovereign statehood. These rights joined other principles, established in treaty form at the end of the war, regarding “humane” ways to wage war (the Geneva Conventions of 1949). Together with the nascent European Union (the European Coal and Steel Authority, 1951, formed to liberalize trade and by so doing, to ensure peace), these events formed the core of an expanding transnational legal order linking rights guaranteed by law to peace and prosperity.

Sovereign states remain, of course, the central mechanisms to ensure rights to citizens. But in the event that states violate individuals’ rights, the post Second World War world order instituted a number of correctives. On the transnational level, one of the most active and successful is the European Court of Human Rights (ECHR)(1959), the judicial arm of the Council of Europe (1949), which produced the European Convention on Human Rights (1950). The ECHR today serves more than 840 million citizens of its 47 member states, hearing citizens’ complaints against their governments; in 2017, the ECHR issued 85,951 decisions.[2] At the same time, the western commitment to liberal (i.e. non authoritarian) government led to the belief that good governance can be exported, which led to policies assisting with “transitional justice”. The term “transitional justice” emerged from Latin America in the 1980s and postulates that post-conflict societies must break with past practices in order to construct prosperous, non-violent futures. Transitional justice is effectuated by many political and legal mechanisms, including lustration (where actors from an authoritarian period are required to abstain from politics for a time; Czechoslavakia practiced this at the end of the Cold War), truth

1 Pieces of this article are adapted from previous publications: “International Criminal Law and Its Paradoxes: Implications for Institutions and Practice” Journal of Law & Courts (2017); Model(ing) Justice: Perfecting the Promise of International Criminal Law (Cambridge University Press, forthcoming 1 October, 2018); and a manuscript in progress, The Justice Laboratory: The Trials and Tribulations of International Criminal Justice in Africa, forthcoming 2019. Please contact the author, keca@sam.sdu.dk, with questions or for more information.

2 This figure includes judgments and decisions regarding admissibility. See Annual Report 2017, p. 163, available at: https://www.echr.coe.int/Documents/Annual_report_2017_ENG.pdf

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commissions (for which South Africa's remains the paradigmatic example), and international or hybrid international/ domestic criminal tribunals.

It is this final category – international criminal tribunals, and the legal regimes associated with them – that form the subject of this article. In the following pages, I will review what this transnational order consists of (section I) and what it is challenged by (section II).

Section I

In the 1990s, international criminal law practice exploded with the construction of temporary tribunals to address atrocities committed in the Yugoslavia, Rwanda and elsewhere, a wave that culminated in the creation of a permanent International Criminal Court. International criminal tribunals (ICTs) are argued to provide something broken societies cannot do for themselves without assistance: an honest accounting of past events and a clear demarcation of right and wrong, delivered by rule-respecting institutional models of good governance. This narrative, didactic, "norm projecting" capacity is central to the stated objectives of modern ICTs as "transitional justice" mechanisms. That ICTs' determinations are imagined to resonate beyond their own courtrooms derives from the belief that courts are socially constitutive, as well as the authoritative position of law.

The exportation of norms via law that was ultimately termed "transitional justice" began at the close of the Second World War, when the Allied powers famously put their defeated opponents on trial at Nuremberg. The Allies faced several challenges in seeking to use law at the close of war to define the coming peace. First, the crimes articulated at Nuremberg were largely novel, and thus faced a deep intellectual challenge in the opprobrium nullem crimen sine lege: proscribing acts retroactively violates key tenets of rule law systems as well as notions of justice. Second, the crimes committed by Nazi actors which the Allies sought to prosecute emerged not from brute lawlessness but rather from a strict and terrible lawfulness: the positive law, i.e. written, textual law of the Nazi regime had made many of the atrocities perpetrated before and during the war "legal" in Germany.

To circumvent these challenges, the Nuremberg tribunal drew on natural law arguments regarding a universally recognizable "human good" to legitimize its practice. Günther Teubner calls this "sociological natural law" because it "uses societal constitutions to reconstruct the rationalities of diverse subsystems within the legal system and transform them into binding principles."[3] So, for example, the Nuremberg Prosecutor (U.S. Supreme Court Justice Jackson) promised to prosecute "acts which have been regarded as criminal since the time of Cain and have been so written in every civilized code."[4] Likewise, in its Judgment, the Nuremberg judges argued that in "circumstances [where the defendant] must know that he is doing wrong, ... so far from it being unjust to punish him, it would be unjust if his wrong were allowed to go unpunished."[5] In this way, the Nuremberg Tribunal – facing a significant (and hardly baseless) positive law challenge to its practice – turned its weakness into a strength, rooting its legitimacy not in the past (via precedent or positive law) but rather in the future (via the progressive articulations of human rights it recognized). This fit nicely with the Allies' self-posturing as lawful and moral peoples (where their law was lawful because it was moral).

The legacy of Nuremberg credits the tribunal with applying progressive rule of law practice to establish the historical fact of the Holocaust and democratize Germany. The Nuremberg tribunal's work is understood to have produced the historical truths which assisted political reconciliation, i.e. the Nuremberg Tribunal's progressive law practice is valued

3 Günther Teubner, "Exogenous self-binding: How national and international courts contribute to transnational constitutionalization" in Giancarlo Corsi, Elena Esposito and Alberto Febbrajo (eds.). Transconstitutionalism. (Ashgate, Farnham 2015, p. 10)

4 Robert H. Jackson, Report to the President on Atrocities and War Crimes, June 7, 1945, available at http://avalon.law.yale.edu/imt/imt_jack01.asp (accessed November 11, 2012).

5 Judgment of the Nuremberg International Tribunal September 30, 1946, available at http://avalon.law.yale.edu/imt/judlawch.asp (accessed March 1, 2015).

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partially due to its argued capacity to produce socially constitutive effects. Thus, although the Nuremberg Tribunal predated the emergence of the field of "transitional justice" by 40 years, it is recognized as a seminal transitional justice mechanism.

Section II: Challenges

Following the Nuremberg tribunal, modern ICTs have not faced the same jurisdictional challenges it surmounted, thanks to the precedential, positive-law value of the Nuremberg tribunal itself. Nonetheless, modern international criminal law institutions continue to rely on Teubner's "sociological natural law" to legitimize their practice, just as the Nuremberg Tribunal did. Founding doctrinal legitimacy in natural law is continually necessary because, in spite of the positive law example offered by Nuremberg, ICTs are constantly faced with interpretive challenges that require them to "create" law. This law-creating work is necessary because ICTs are "very thin"[6] with respect to the guidance they give their judges and practitioners regarding legal content. To take the ad hoc Yugoslavia tribunal (the International Criminal Tribunal for the Former Yugoslavia, (ICTY))as an example, the original Statute consisted of 34 articles and was 11 pages long. Thus while the crimes and the defendants over which ICTs have jurisdiction are elaborated in their statutes, the precise content of ICT jurisdiction has been necessarily, and significantly, developed by their own practice. In order to adjudicate cases, ICTs must necessarily make interpretations of international law, which is predominantly treaty and customary international law. Although ICTs are mandated to apply customary international law and not to invent or create it, in practice, distinctions between "invention" and "application" are contestable.[7]

The "dynamism" that international criminal law has enjoyed due to its "openness to judicial activism"[8] meets challenges in the principle of legality, i.e. the prohibition on retroactive criminalization. Legal dynamism also plays differently across legal cultures, particularly as regards the legitimacy of judge-made law where ICT statutes do not explicitly authorize such practice. In the continental civil law tradition building on Montesquieu, courts are not structurally imagined as sites to make, challenge, or change law. This is in contrast to the law-making power granted to judges in the common law tradition, where courts are also understood to balance the "tyranny of the majority" through the protection of minority rights.[9] Thus ICT invocation of the amorphous source of customary international law in building legal content is similar and familiar to the interpretive practice of common-law judges, where constitutions "pose relatively few substantive (as opposed to procedural) limits on the state's criminalizing power."[10] A similar observation is made less flatteringly by Bohlander,[11] a civil-law trained attorney, who analogizes the ideological dominance of common-law culture and style of argument at international criminal law as, "We are the Borg. Resistance is Futile." It should be noted that these concerns, and their cultural situatedness across the common law/civil law divide, date back to the Nuremberg Tribunal, where the French (civil law) participant in the drafting of the tribunal charter challenged the legal basis for the aggressive war charge iterated therein as but "a creation of four people who are just four people".[12] Indeed, the challenge to sovereignty offered by international criminal law is part of its progress narrative, where the criminalization of "crimes against humanity" requires us to imagine a polity beyond the national. ICTs operationalizing these ideologies arguably assist in constructing such a global community; transitional justice aims to instill shared norms across domestic institutions.

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6 Schabas, William A. An Introduction to the International Criminal Court. Cambridge University Press, 2011 p. 206

7 Baker, Roozbeh (Rudy) B. 2010. "Customary International Law in the 21st Century: Old Challenges

8 Schabas, William. 2009. "Customary or Judge-Made Law" in (ed) Doria, José. The legal regime of the International Criminal Court : essays in honour of Professor Igor Blishchenko.

9 Bickel, Alexander M. [1962] 1986. The Least Dangerous Branch: The Supreme Court at the Bar of Politics. New Haven: Yale University Press.

10 Lacey, Nicola. 2009. "Historicising Criminalisation: Conceptual and Empirical Issues." The Modern Law Review 72:6 pp 936-960, 940.

11 Bohlander, Michael. 2014. "Language, Culture, Legal Traditions, and International Criminal Justice." Journal of International Criminal Justice 12(3): 491.

12 Cited in Douglas, Lawrence. 2005. The Memory of Judgment: Making Law and History in the Trials of the Holocaust. New Haven: Yale University Press, 52.

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Carsten Stahn and Larissa van den Herik[13] have called international criminal law a "jack in the box" based on its pluralism and dynamism, noting that international criminal law exists in a constantly developing confluence of international law, human rights, and criminal justice. International criminal law emerges from varying regimes, which include ad hoc courts, hybrid tribunals, and the ICC. It is in conversation with other legal regimes, including international, regional, and domestic judicial bodies. This multiplicity of sources and norms leads to diverse legal content and a near constant evolution. Given that predictability and transparency are central elements of legal regimes, international criminal law's dynamism risks challenging the legitimacy of its regime and the institutions applying it. Theorists concerned with what they identify as international criminal law's "fragmentation" note that international criminal law's dynamism and diversity challenge distinctions between punishment and justice, further challenging legitimacy.[14]

Last among the challenges I would iterate here, international criminal law faces the eternal challenge of politics. Law can never be free of politics, because it necessarily serves political systems. Regardless, any law that is too responsive to political interests appears to violate rule of law norms and the legitimacy afforded law as an objective actor. Here, international criminal law is particularly challenged. Instead of clear doctrinal articulations delineating universal rights and obligations (to which all are, equally, subject, a staple of rule of law), organs of international justice have to date largely succeeded in condemning only the weak or those made weak - those on losing political sides, or low level offenders. Thus the charge made by losing sides the world over, that international criminal justice is political rather than legal, is generally proven true; so far political exigencies are more central than doctrinal formulations in predicting outcomes before international criminal tribunals.

This may sound like a stark charge, but the facts bear it out. Consider the example of the ICC in Africa. In many parts of Africa where political violence amasses staggering casualties amidst breathtaking brutality, international criminal justice mechanisms have been instrumentalized by authoritarian leaders solely to eliminate political opposition, with no discernable learned liberal governance for the countries impacted. From cases in Congo, Uganda, and Côte d'Ivoire, leaders with blood on their hands have set the ICC on their political rivals, and in so doing, decreased the likelihood that they themselves will come under scrutiny. This is an unpredicted mutation of the complementarity notion at the center of the Rome Statute constructing the ICC. Article 17 complementarity was designed to assure states that the ICC would intervene only when they were "unwilling or unable" to prosecute; this was an assurance that the sovereignty-busting capacity of the ICC would not be deployed but for in cases of member state malfeasance. Instead, however, several African states have weaponized complementarity, using the ICC as an extraterritorial judicial weapon. They have reaped two central benefits from this practice. First, they have contained and/or eliminated political adversaries, at no economic or political cost to themselves. Second, and perhaps more surprisingly, they have made political hay charging the ICC with neocolonialism due to meddling in African affairs. In this way, the ICC has become a friend to authoritarians seeking to consolidate power in the wake of mass violence, a fact that is masked by the contemporary discussion of African resistance to cooperation with the ICC. For African citizens subject to violence arising from illiberal governance, the quiet and calculated cooperation of African leaders with the ICC has been far more important than their noisy, resistant showboating.

The institutional victory accomplished by complementarity has been followed by a pushback against the court by its African member states, often by the very states that requested ICC engagement. This epoch is defined by the question of the possible limitations of sovereign immunity, and has been couched in the language of neocolonialism, i.e. a western disrespect for and/or disregard of African systems and leaders. The strength of this pushback should not be underestimated: claims that the ICC "chases" Africans and engages in modern day colonialism have led the African

13 C. Stahn and L. J. van den Herik, 'Fragmentation, Diversification and '3D' Legal Pluralism: International Criminal Law as the Jack-in-the-Box?', in: L.J. van den Herik and C. Stahn (eds.), The Diversification and Fragmentation of International Criminal Law, (2012)

14 A. Greenwalt, 'The Pluralism of International Criminal Law, 86 Indiana Law Journal 1063 (2011), - papers.ssrn.com, 1-66. See also Miriam Bak Mckenna "Book Review: Is International Law International? by Anthea Roberts; Nordic Journal of International Law. 87, 1-7 (2018); Martti Koskenniemi, The Case for Comparative International Law, 20 Finnish Yearbook of International Law, 1 (2009)

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Union to stage several votes on the question of ordering its member states to withdraw from the court. The Kenyatta[15] and Ruto[16] cases exemplify this challenge. Following electoral violence in Kenya that killed up to 3000 people in 2007, the ICC Office of the Prosecutor initiated its first independent investigation.[17] It did so upon the request of an independent Kenyan commission,[18] which found that the electoral violence was organized by Kenyan political leaders, and these same leaders were now obstructing its investigation. The leaders of the two opposing parties, Kenyatta and Ruto, successfully parlayed the ICC investigation into political success, working together and winning election after their indictments. The ICC cases against both leaders were eventually dropped after evidence against the defendants evaporated: i.e., a number of witnesses turned up dead, disappeared, or suddenly recanted.

The political realities in Rwanda are arguably even worse. In 1994, Rwanda was the site of a devastating genocide, where upwards of one million people (largely, but not exclusively, Tutsis) were murdered by their countrymen over the course of 100 days. In the wake of the genocide, the UN Security Council created an international ad hoc tribunal to try atrocity crimes associated with the genocide. Over two decades, sitting in Tanzania (with an appeals chamber in The Hague), the ICTR heard cases concerning the Rwanda genocide, establishing many facts about its scale and organization. While the ICTR has been critiqued for inefficiency, it has also been celebrated for progressive legal interpretations particularly as regards sexual violence, an atrocity crime mostly unaddressed by international criminal law.

Unlike its sister tribunal for the former Yugoslavia, the ICTR's work was explicitly doctrinally driven by a goal of reconciliation.[19] While Rwandan violence has ended, the question of "reconciliation" is live and unresolved, however. The Hutu/Tutsi divide that defined the genocide remains intact, reified by a local Tutsi politics that criminalizes discussion of Hutu victims, Hutu saviors, or Tutsi perpetrators.[20] Paul Kagame, the military leader who marched into Kigali in 1994, ended the genocide, and assumed the presidency, has been implicated in massacres of Hutus in Rwanda and Congo, with victim numbers in the hundreds of thousands.[21] He presides over an authoritarian state that brooks no opposition and which now rejects cooperation with international criminal tribunals (both the ICTR and the ICC). In August 2017, he stood for a third term and may now rule until 2034.[22] His strongest political rival, Victoire Ingabire, is currently serving a 15-year jail sentence for "minimizing the Rwandan genocide" because she advocates open dialogue that would include Hutu victims; on 24 November 2017, the African Court of Human and Peoples Rights ruled against Rwanda and ordered it to rehabilitate Ingabire.[23]

From Yugoslavia across Africa, the politics of reconciliation that ostensibly comprise the raison d'etre of international tribunals is not usually taking root. In Bosnia and Rwanda, states that have had the most time and international attention, nationalist and illiberal politics still reign. While those countries are no longer at war, they cannot precisely be called "at peace". This casts doubt on the efficacy of the export of liberal values that underwrites the practice of transitional justice.

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15 The Prosecutor v. Uhuru Muigai Kenyatta, ICC-01/09-02/11 (closed 15 March 2015).
16 The Prosecutor v. William Samoei Ruto and Joshua Arap Sang, ICC-01/09-01/11 (closed 5 April 2016).
17 See https://www.icc-cpi.int/Pages/Situations.aspx (listing all ICC investigations and how they were initiatied)
18 Commission of Inquiry on Post Election Violence (CIPEV) ("Waki Commission"). Report available here: http://kenyalaw.org/Downloads/Reports/Commission_of_Inquiry_into_Post_Election_Violence.pdf
19 United Nations Security Council Resolution S/RES/955 (1994) 8 November 1994, available at: http://www.unmict.org/specials/ictr-remembers/docs/res955-1994_en.pdf
20 See discussion in Susan Thomson, Rwanda: From Genocide to Precarious Peace (Yale University Press 2018).
21 See Howard W. French, "Kagame's Hidden War in the Congo" The New York Review of Books, September 24, 2009, available at: http://www.nybooks.com/articles/2009/09/24/kagames-hidden-war-in-the-congo/
22 Sarah Logan, "Why elections matter for democracy in Africa. The cases of Kenya and Rwanda" The Conversation 3 August 2017, available at: https://theconversation.com/why-elections-matter-for-democracy-in-africa-the-cases-of-kenya-and-rwanda-82013 (2 December 2017)
23 Judgment in Application 003/2014-- Victoire Ingabire Umuhoza v Republic of Rwanda, The African Court on Human and Peoples' Rights (AfCHPR) (24 November 2017)

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Conclusion

So where does all this leave us? And what do the destinies of far away citizens and eclectic, highly specialized legal institutions have to do with Danish legal instruction and research?

There is no one correct standard for human rights, and there is no one correct answer for how rights should best be protected. Constructing the recognition of rights is a process. While the article has illuminated challenges of international criminal law, it would be a serious deficit to downplay the normative and institutional achievements rendered by the very tribunals and processes described above. One of the most powerful quotes in this regard concerns the ICTY and its prosecution of genocide at Srebrenica, where in July 1995, 7000 Bosnian men and boys were slaughtered, buried, disinterred, and reburied by Bosnian Serb troops.

In the 2003 Nikolić Sentencing Judgment[24] the ICTY Trial Chamber articulated the potential, and the impact, of the tribunal as follows:

"[At the time the Srebrenica massacre took place in July 1995] [t]he Tribunal was seen by many – including persons in the former Yugoslavia – as more of an academic or diplomatic response to the armed conflict and the violations being committed therein rather than as an operational institution where one might face criminal proceedings…. International humanitarian law and international criminal law were not seen as enforceable law, but rather aspirational, if not academic, ideas. Thus, expectations of impunity for ones [sic] crimes, no matter how egregious, were the norm. A stark example of this expectation of impunity and total disregard for the law in 1995 was provided by [the defendant] Momir Nikolic … when he was asked during his cross-examination in the Blagojevic trial whether he was required to abide by the Geneva Conventions in carrying out his duties in and around Srebrenica in July 1995. Momir Nikolic replied with a mix of incredulity and exasperation:

"Do you really think that in an operation where 7000 people were set aside, captured, and killed that somebody was adhering to the Geneva Conventions? Do you really believe that somebody adhered to the law, rules and regulations in an operation where so many were killed? First of all, they were captured, killed, and then buried, exhumed once again, buried again. Can you conceive of that, that somebody in an operation of that kind adhered to the Geneva Conventions? Nobody … adhered to the Geneva Conventions or the rules and regulations. Because had they, then the consequences of that particular operation would not have been a total of 7000 people dead."

During the past ten years, as international criminal law has moved from "law in theory" to "law in practice," the principles of international humanitarian law have taken hold to the extent that in the face of such widespread and massive crimes a person being called to participate in the criminal enterprise might consider the Geneva Conventions and the consequences of disregarding the principles contained therein."

For the Nikolić Sentencing Chamber, the ICTY's impact can be measured in a heightened awareness of the international humanitarian norms enshrined in the Geneva Conventions.

International criminal law is built on the theory that awareness of international humanitarian law might direct, and ultimately deter, those individuals who would otherwise violate international humanitarian norms. Surely most would agree that this worthy goal animating international criminal law practice excuses some growing pains, and merits our collective efforts.

24 Prosecutor v. Momir Nikolić, Sentencing Judgment, Case No. IT-02-60/1-S (December 2, 2003) ("Nikolić Sentencing Judgment"); see Appendix A for a full list of all ICTY cases.

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Linda Kjær Minke har sammen med Thomas Elholm udgivet ”Kriminalisering af mobiltelefoner i fængsler m.v.” i Tidsskrift for Kriminalret, nr. 10, side 1229-1239, 2017

Morten Kjær har udgivet ”Reformation og straf” i Ugeskrift for Retsvæsen, U.2018B.21, side 21-23, 2018

Nis Jul Clausen har udgivet ”Det danske retsopgør efter finanskrisen: en foreløbig status” i Nordiska förmögenhetsrättsdagarna, vol. 29, side 39-63, 2018

Nis Jul Clausen har udgivet ”Finanstilsynets afgørelser 2016: børsområdet” i Nordisk Tidsskrift for Selskabsret, nr. 1, side 63-69, 2017

Rasmus Horskjær Nielsen har sammen med Carina Risvig Hamer udgivet ”Elektroniske offentlige indkøb (e-bud): Hvad, hvordan og hvornår?” i Erhvervsjuridisk Tidsskrift, ET.2017.220, 2017

Rikke Gottrup har sammen med Hanne Marie Motzfeldt udgivet ” De danske borgerservicecentre – rollen som vejleder ved borgerens møde med den digitale forvaltning” i Nordisk forskernettverk i kommunalrett, 2017

Signe Jensen har sammen med Marie Lützen og Hanna Barbara Rasmussen udgivet ”Energy efficiency at sea: Knowledge, communication, and situational awareness at offshore oil supply and wind turbine vessels” i Energy Research & Social Science, vol. 44, side 50-60, 2018

Signe Jensen har sammen med Marie Lützen, Lars Lindegaard Mikkelsen, Hanna Barbara Rasmussen, Poul Vibsig Pedersen og Per Schamby udgivet “Energy-efficient operational training in a ship bridge simulator” i Journal of Cleaner Production, vol. 171, side 175-183, 2018

Signe Jensen har sammen med Elin Kragesand Hansen og Marie Lützen udgivet “An Educational Design for Energy-efficiency Ship Handling” i Global perspectives in MET : Towards Sustainable, Green and Integrated Maritime Transport, vol. 1, side 450-459, 2017

Signe Jensen har sammen med Marie Lützen, Lars Lindegaard Mikkelsen og Hanna Barbara Rasmussen udgivet ” Energy Efficiency of Working Vessels: A Framework” i Journal of Cleaner Production, vol. 143, side 90-99, 2017

Steffen Hindelang har udgivet “The Limited Immediate Effects of CJEU’s Achmea Judgement” i Verfassungsblog.de, 2018

Steffen Hindelang har udgivet ”Enemy at the Gates?: Die aktuellen Änderungen der Investitionsprüfvorschriften in der Außenwirtschaftsverordnung im Lichte des Unionsrechts” i Europäische Zeitschrift für Wirtschaftsrecht, vol. 28, nr. 22, side 882-890, 2017

Sten Schaumburg-Müller har udgivet ” Strafansvar for indholdet af onlinemedier - Om formidleransvar for medier, der ikke er omfattet af medieansvarsloven” i Ugeskrift for Retsvæsen, UfR 2018B.113, side 113-123, 2018

Stine Piilgaard Porner Nielsen har udgivet ”En borgers bidrag til sit samfund” i Kristeligt Dagblad, 2017

Thomas Elholm har udgivet ”Danmark tillader endnu selvvask” i Advokaten, nr. 4, side 28-30, 2017

Thomas Elholm har udgivet ”Effektiv svigbekæmpelse har forrang” i Advokaten, nr. 96, side 30-32, 2017

Thomas Elholm har udgivet ”EU-samarbejdet medfører flere og højere straffe” i Advokaten, nr. 6, side 32-35, 2017

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Nyhedsbrev fra Juridisk Institut, Syddansk Universitet, August 2018

Thomas Elholm har udgivet ”Ny central EU-anklagemyndighed” i Advokaten, nr. 96, side 36-37, 2017

Thomas Elholm har udgivet ”Overførsel af domfældte i EU” i Advokaten, nr. 2, side 30-33, 2017

Bøger

Annette Kronborg har sammen med Hans Viggo Godsk Pedersen udgivet ”Dødslejegaver” i Festskrift til Irene Nørgaard af Caroline Adolphsen, Helle Isager, Eva Naur Jensen, Anne-Dorte Bruun Nielsen (red.), Djøf forlag, 2017

Bent Ole Gram Mortensen har sammen med Michael Steinicke udgivet Dansk markedsret, DJØF forlag, 5. udgave, 2018

Bent Ole Gram Mortensen har udgivet ”Denmark” i Upstream Law and Regulation: A Global Guide af Eduardo G Pereira og Kim Talus (red.), Globe Law and Business, vol. II, 2. udgave, side 511-526, 2017

Bent Ole Gram Mortensen har udgivet ”Greenland” i Upstream Law and Regulation: A Global Guide af Eduardo G Pereira og Kim Talus (red.), Globe Law and Business, vol. II, 2. udgave, side 527-546, 2017

Camilla Hørby Jensen har udgivet ”Underpantsætning af fordringer” i Nordiske förmögenhetsrättsdagerna af Jan Kleineman (red.), Jure, vol. 29, side 85-95, 2018

Camilla Hørby Jensen har sammen med Nis Jul Clausen udgivet Sikkerhed i fordringer, Karnov Group, 8. udgave, 2018

Frederik Waage har udgivet Forfatningsret: Tekster, opgaver, materialer, Karnov Group, 2018

Hanne Marie Motzfeldt har sammen Ayo Næsborg-Andersen med udgivet ”Regulating E-government in Denmark” i Proceedings of the 17th European Conference on Digital Government af Joao Vieira Borges og Jose Carlos Dias Rouco (red.), Academic Conferences and Publishing International, side 104-109, 2018

Hans Viggo Godsk Pedersen har sammen med Annette Kronborg udgivet ”Et dansk-svensk forældrepar i forældremyndighedstvist” i För barns bästa: Vänbok till Anna Singer af Margareta Brattström og Maarit Jäntera-Jareborg (red.), Iustus förlag, side 217-242, 2017

Henning Bang Fuglsang Madsen Sørensen har udgivet ”Kunsten at læse en dom - og kunsten at skrive den!” i I forskningens og formidlingens tjeneste: festskrift til professor Lars Bo Langsted af Steen Bønsing, Thomas Elholm, Søren Sandfeld Jakobsen og Lene Wacher Lentz (red.), Ex Tuto Publishing, kap. 21, side 327-345, 2018

Jakob Juul-Sandberg har sammen med Per Norberg udgivet ”Rent control and other aspects of tenancy law in Sweden, Denmark and Finland: how can a balance be struck between protection of tenants’ rights and landlords’ ownership rights in welfare states?” i Tenancy Law and Housing Policy in Europe Towards Regulatory Equilibrium af Christoph U. Schmid, Edward Elgar Publishing, Incorporated, kap. 9, side 260-293, 2018

Jakob Juul-Sandberg har udgivet ”Forbedringer – energibesparende foranstaltninger i lejeretlig belysning”, DJØF Forlag, 2. udgave, 2017

Jette Thygesen har udgivet ”Cross Border Rulings (CBR): et EU-pilotprojekt” i Momsloven 50 år: Festskrift i anledning af 50 års jubilæet for Danmarks første momslov af Karina Kim Egholm Elgaard, Dennis Ramsdahl Jensen og Henrik Stensgaard (red.), Ex Tuto Publishing, kap. 19, side 373-383, 2017

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Nyhedsbrev fra Juridisk Institut, Syddansk Universitet, August 2018

Kent Kristensen har udgivet ”Access to the Medical Profession” i International Encyclopaedia for Medical Law: National Monographs/Denmark af Herman Nys og Frank Hendrickx (red.), Kluwer Law International, vol. 95., side 31-36, 2017

Kent Kristensen har udgivet ”Compensation for Medical Injuries” i International Encyclopaedia for Medical Law: National Monographs/Denmark af Herman Nys og Frank Hendrickx (red.), Kluwer Law International, vol. 95., side 59-72, 2017

Kent Kristensen har udgivet ” Control Over the Practice of Medicine” i International Encyclopaedia for Medical Law: National Monographs/Denmark af Herman Nys og Frank Hendrickx (red.), Kluwer Law International, vol. 95., side 43-58, 2017

Kent Kristensen har udgivet ”The dying patient” i International Encyclopaedia for Medical Law : National Monographs/Denmark af Herman Nys og Frank Hendrickx (red.), Kluwer Law International, vol. 95., side 105-111, 2017

Kent Kristensen har udgivet ”Euthanasia” i International Encyclopaedia for Medical Law : National Monographs/Denmark af Herman Nys og Frank Hendrickx (red.), Kluwer Law International, vol. 95., side 118-120, 2017

Kent Kristensen har sammen med Janne Rothmar Herrmann, Søren Birkeland, Helle Bødker Madsen og Caroline Adolphsen udgivet National Monographs: Denmark, Kluwer Law International, 2017

Kerstin Carlson har udgivet “Trading on Guilt: The Judicial Logic of Plea Bargains at the ICTY and Its Transplant to Serbia and Bosnia” i International Practices of Criminal Justice : Social and Legal Perspectives af Mikkel Jarle Christensen og Ron Levi, Routledge Taylor & Francis Group, kap. 7, side 131-148, 2018

Kristina Siig har sammen med Vibe Ulfbeck og Andreas Bloch Ehlers udgivet ”Danish Report on Misconduct” i Digest of European Tort Law af Benedict Winiger (red.), Springer, 2018

Kristina Siig har sammen med Lone Hansen udgivet “Causation in Danish Tort Law” i Causation in European Tort Law af Marta Infantino og Eleni Zervogianni, Cambridge University Press, 2017

Linda Kjær Minke har udgivet Krim - 50 års kriminalpolitik: resultater og visioner, Landsforeningen KRIM, 2017

Martin Mennecke har udgivet ”The African Union and Universal Jurisdiction” i The International Criminal Court and Africa af Charles Chernor Jalloh og Ilias Bantekas (red.), Oxford University Press, kap. 1, side 10-37, 2017

Ole Hammerslev har sammen med Annette Olesen og Olaf H. Rønning udgivet ”Juss-Buss [Law Bus]: A Student-run Legal Aid Clinic” i Outsourcing Legal Aid in the Nordic Welfare States af Olaf H. Rønning og Ole Hammerslev (red.), Palgrave Macmillan, side 147-167, 2018

Ole Hammerslev har sammen med Olaf H. Rønning udgivet ”Legal aid in the Nordic countries” i Outsourcing Legal Aid in the Nordic Welfare States af Olaf H. Rønning og Ole Hammerslev (red.), Palgrave Macmillan, side 1-13, 2018

Ole Hammerslev har sammen med Olaf H. Rønning udgivet ”Outsourcing legal aid in the Nordic welfare states” i Outsourcing Legal Aid in the Nordic Welfare States af Olaf H. Rønning og Ole Hammerslev (red.), Palgrave Macmillan, side 311-328, 2018

Ole Hammerslev har sammen med Olaf H. Rønning udgivet Outsourcing Legal Aid in the Nordic Welfare States, Palgrave Macmillan, 2018

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Nyhedsbrev fra Juridisk Institut, Syddansk Universitet, August 2018

Rikke Gottrup har sammen med Gerd Battrup udgivet Mobilitet og myndighedssamarbejde over grænsen (set fra den dansk-tyske grænseregion), Syddansk Universitetsforlag, 2018

Signe Piilgaard Porner Nielsen har sammen med Ole Hammerslev udgivet ”Gadejuristen [The Street Lawyers]: Offering Legal Ais to Socially Marginalised People” i Outsourcing Legal Aid in the Nordic Welfare States af Olaf H. Rønning og Ole Hammerslev (red.), Palgrave Macmillan, side 169-191, 2018

Sten Schaumburg-Müller har udgivet ”Jura og Kommunikation” i Professionel kommunikation : Dialogisk kommunikationsplanlægning af Jacob Fanth og My Gaarde Andreassen (red.), Samfundslitteratur, side 191-211, 2018

Sten Schaumburg-Müller har udgivet ”Denmark. Freedom of speech and online media” i Human Rights Law and Regulating Freedom of Expression in New Media af Mart Susi, Jukka Viljanen, Eiríkur Jónsson og Artūrs Kučs (red.), Routledge, 2018

Thomas Elholm har sammen med Birgit Feldtmann udgivet ”Nordische Trends im Jurisdiktionsrecht: eine internationale Perspektive” i Strafrechtliche Jurisdiktion: Eine Nordische Perspektiv af Thomas Elholm og Birgit Feldtmann (red.), Djøf Forlag, side 167-206 2017

Thomas Elholm har sammen med Birgit Feldtmann udgivet Strafrechtliche Jurisdiktion: Eine Nordische Perspektiv, Djøf Forlag, 2017

Nyt fra Juridisk Institut

Formandssuppleant i huslejenævnene og beboerklagenævnene

Professor mso Jakob Juul-Sandberg er pr. 1. januar 2018 udpeget som formandssuppleant i huslejenævnene og beboerklagenævnene i henholdsvis Nordfyns og Middelfart Kommune.

Forskningsgruppen: Privatret

På Juridisk institut forskes der i en række forskellige felter, herunder privatret, der udgør en af de fire forskningsgrupper. Den juridiske disciplin ”privatret”, omfatter reguleringen af forholdet mellem de enkelte borgere, borgere og virksomheder samt virksomheder indbyrdes. Forskningsgruppens medlemmer varetager hver især forskning inden for en (eller flere) af privatrettens grunddiscipliner (familie- og arveret, formueret, selskabsret, kreditsikring, civil tvangsfuldbyrdelse og obligationsret). Som et supplement hertil forskes der i udvalgte specialområder inden for den virksomhedsrelaterede jura, hvor fokus er på erhvervsvirksomhedernes juridiske rammevilkår. Enkelte af forskningsgruppens områder har berøringsflader med andre retlige discipliner, f.eks. markedsret og forvaltningsret, der således efter behov inddrages og integreres i den privatretlige forskning. Ligeledes har internationale konventioner og international/EU lovgivning også betydning for den danske privatretlige regulering og dermed for gruppens forskning. I fællesskab beskæftiger gruppen sig med projekter, der søger at koble privatrettens grund- og specialdiscipliner. Formålet hermed er at undersøge den grundlæggende obligationsrets og specialdisciplinernes gensidige betydning og påvirkning samt international rets påvirkning af den danske privatret.

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Forskningsgruppens medlemmer består af ph.d.-stipendiat Anna Holst Fyhn, lektor Annette Kronborg, lektor og institutleder Camilla Hørby Jensen, adjunkt Christian Højer Schjøler, professor Hans Viggo Godsk Pedersen, ph.d.-stipendiat Heidi Løjmand, professor mso Jakob Juul-Sandberg, videnskabelig assistent Jette Bitzow Jørgensen, lektor og forskningsleder Lars Kjærgård Terkildsen, ph.d.-stipendiat Lone Hansen, adjunkt Minie Andersen, Postdoc, ph.d. Niels Skovmand Rasmussen, professor Nis Jul Clausen og postdoc, ph.d. Peter Krüger Andersen.

Ph.d.-kursus: ”Formueretlige principper i forskningen – forskning i formueretlige principper”

Den 21. november 2018 kl. 9-17 afholder Privatretsgruppen et ph.d.-kursus på SDU, Syddansk Universitet, Campusvej 35, 5230 Odense M. Kurset vil blive afholdt i ”Mødelokale M” i nærheden af indgang S.

Formålet med kurset er at synliggøre, hvordan formueretten har indflydelse for retstilstanden på forskellige retsområder, eksempelvis formuerettens påvirkning af familieretlig, selskabsretlig eller lejeretlig regulering eller fortolkningen af lovbestemmelser og deres anvendelse indenfor forskellige retsområder, og hvordan den dermed kan anvendes som grundlag for forskning på nationalt og internationalt plan. Endvidere er formålet at demonstrere, at formueretten og/eller de principper som typisk betragtes som formueretlige kan anvendes i samspil med andre retsområder og videnskaber.

Klik her for mere information: https://www.sdu.dk/da/om_sdu/institutter_centre/juridisk+institut/phd/ph,-d-,d,-d-,-kursus

Karrieredag

Traditionen tro afholdte Juridisk Institut i samarbejde med Juridisk Forening karrieredag for studerende på de juridiske uddannelser den 20. marts 2018. Her kunne de studerende møde kommende mulige arbejdsgivere og få en snak om, hvilke jobmuligheder der er, samt få et indblik i hvordan hverdagen som jurist eller erhvervsjurist kan se ud. I alt havde 30 virksomheder fra både det private og offentlige opstillet stande, hvor man kunne møde medarbejderne og få en uformel snak.

- Andersen Partners Advokatfirma
- Anklagemyndigheden
- Bech-Bruun
- Bonnesen Advokater
- CA Karrierepartner og A-kasse
- Danske Advokater
- De Jurastuderendes Retshjælp, Odense
- DLA Piper
- Energistyrelsen
- Ernst and Young
- Faglige vejledere – mød de faglige vejledere
- Focus Advokater

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- Horten Advokatpartnerselskab
- IDEAL Advokatfirma
- Juridisk Forening
- Kammeradvokaten, Advokatfirmaet Poul Schmith
- Kirk Larsen & Ascanius
- Kromann Reumert
- Moalem Weitemeyer Bendtsen Advokatpartnerselskab
- NJORD Law Firm
- Patriotisk Selskab
- Plesner Advokatfirma
- Retshjælpen Vollsmose
- Retten i Esbjerg
- SDU RIO
- SKAT
- Skatteankestyrelsen
- Spillemyndigheden
- Udlændingestyrelsen
- Kielberg Advokater

Juridisk Institut var repræsenteret på stande med undervisere på bachelor og kandidatstudiet, information om projektorienteret forløb og ph.d.-stipendiater, der fortalte om forskervejen som karrieremulighed.

Igen i år havde vi inviteret deltagerne til at forberede workshops, og programmet var:

- Erhvervsretlig fokus v/Focus Advokater
- Offentligretlig fokus v/Skatteankestyrelsen
- Offentligretlig fokus v/Udlændingestyrelsen

Procedurekonkurrence

Igen i år afholdte Juridisk Institut procedurekonkurrence, hvor de studerende havde mulighed for at prøve kræfter med proceduren i praksis.

Der var tilmeldt 10 hold, hvoraf 4 hold gik videre til semifinalerne. Dernæst blev der afholdt finale mellem den bedste sagsøger og den bedste sagsøgte. Til at bedømme deltagernes præstationer var retspræsident Henrik Agersnap fra Retten i Odense, advokat Henrik Thorup Pedersen fra Odense Advokatforening og partner, advokat Niels Banke fra Kammeradvokaten, Advokatfirmaet Poul Schmith.

Efter procedurekonkurrencens afslutning blev der afholdt reception og præmieoverrækkelse i kantinen ved retten i Odense.

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Årets vindere blev:

- Vinder af procedurekonkurrence: Catalina Frederiksen, Rafel Shamri og Martin Pauch Larsen - 8.000 kr. sponsoreret af Odense Advokatforening
- Bedste procedør: Natasha Lykke Mogensen og Mikkel Otzen - Gavekort på 5.000 kr. sponsoreret af Maare Advokatfirma
- Bedste procedure for sagsøger: Louise Damkjær Ibsen - 5.000 kr. sponsoreret af Kammeradvokaten, Advokatfirmaet Poul Schmidt
- Bedste procedure for sagsøgte: Alexander Bentsen, Katja Lyng og Cecilie Daastrup Andersen - 5.000 kr. sponsoreret af Bech-Bruun Advokatfirma
- Bedste svarskrift: Søren Lucas og Danny Johansen - 5.000 kr. boglegat sponsoreret af Karnov Group
- Bedste stævning: Natasha Lykke Mogensen og Mikkel Otzen - 4.000 kr. boglegat sponsoreret af DJØF Forlag
- Næstbedste svarskrift: Natascha Dam Lukoschewitz - 2.500 kr. sponsoreret af Hans Reitzels Forlag
- Næstbedste stævning: Louise Damkjær Ibsen - 2.500 kr. sponsoreret af Hans Reitzels Forlag
- Udmærkelse for fortrinlig procedure: Mads Benjamin Hansen
- Udmærkelse for glimrende svarskrift: Mads Benjamin Hansen

Dimittendafslutning

Fredag den 29. juni 2018 afholdte Juridisk Institut dimittendafslutning for det forgangne års erhvervsjuridiske og juridiske dimittender på bachelor- og kandidatniveau.

Årets talere var Ole Friis, prodekan for Uddannelse ved det samfundsvidenskabelige fakultet, Ulla Greibe, Chefanklager og Emma Hadrovic, EU konsulent, ITD. Dimittendtalen blev holdt af Jan Bach Andersen, Cand.merc.jur.

Det musikalske indslag blev leveret af Therese Andreasen og Hans Henriksen.

Juridisk Institut havde fået en række legater fra diverse samarbejdspartnere til uddeling til dimittenderne. De blev uddelt således:

- **Moalem Weitemeyer Bendtsen**
  25.000 kr. til det bedste gennemsnit på cand.jur. Legatet blev givet til Emil Agerskov Thuesen, Aske Østergaard og Julie Abildgaard Poulsen
- **Kammeradvokaten - Advokatfirmaet Poul Schmidt**
  25.000 kr. til det bedste gennemsnit på cand.merc.(jur.). Legatet blev givet til Jan Bach Andersen
- **Moalem Weitemeyer Bendtsen**
  10.000 kr. til det bedste gennemsnit på BA jura. Legatet blev givet til Andreas Aagaard Krarup
- **Kammeradvokaten - Advokatfirmaet Poul Schmidt**
  10.000 kr. til det bedste gennemsnit på HA(jur.). Legatet blev givet til Signe Bukdal Kristiansen
- **DJØF**
  Boglegat på 2.500 kr. til den studerende, der har bidraget mest til studiemiljøet på SDU. Legatet blev givet til Cecilie Søgaard Rasmussen

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Efteruddannelse

Valgfag (tompladsordning)

Juridisk Institut udbyder et stort antal valgfag på kandidatniveau. Der er mulighed for at følge et eller flere af disse fag på den såkaldte tompladsordning. For 4.100 kr. kan man følge og gå til eksamen i et fag. De udbudte fag fremgår via nedenstående link:

- Se valgfagsoversigt på cand.jur. og cand.merc.(jur.):
  mitsdu.dk/da/mit_studie/kandidat/jura/uddannelsens_opbygning/fagbeskrivelser/f18
- Se valgfagsoversigt på Master of Social Sciences in International Security and Law:
  mitsdu.dk/en/mit_studie/kandidat/int_sec_law/uddannelsens_opbygning/fagbeskrivelser/fagbeskrivelser+foraar+2018

Man bør være opmærksom på, at der vil være forskellige undervisningsformer afhængig af antal tilmeldte til faget. Bemærk at et fag typisk vil udgøre 30 lektioner.

Yderligere information kan fås på Studieadministrationen, Studienævn for Jura ved Diana Bredal Midskov på dbmi@sam.sdu.dk

Skræddersyet efteruddannelse

Hvis du har forslag til et efteruddannelseskursus, der kan indgå som en del af den obligatoriske efteruddannelse for advokater eller revisorer, hører vi gerne fra dig. Send en mail konstitueret institutleder Camilla Hørby på chj@sam.sdu.dk.

Udtalelser om tompladsordningen

Advokat Claus H. Schultz og advokat Nils-Erik Kallmayer fra Advokatfirmaet Skjøde Knudsen & Partnere (www.skj-advokat.dk) har erfaring med tompladsordningen og udtaler:

"*Vi har fulgt faget **International Transport Law**, og kurset har givet et godt overblik over retsområdet. Faget har været relevant i forhold til de efteruddannelseskrav, der stilles til advokater.*"