

Editorial

Guest Editorial

I am delighted that this collaboration between *Retskraft – Copenhagen Journal of Legal Studies* and Artificial Intelligence and Legal Disruption (AI-LeD)¹ has come to fruition. In my mind, Retskraft fills the important role in any Law Faculty worth its salt by giving its students experience with regard to the academic publishing process: as writers and contributors, and as editors. Beyond this, however, I think that a student-edited law journal such as Retskraft provides an important platform for publishing the best work produced by its student body, especially where that work may provide relevant and timely inputs to the public policy debates.

As the convenor of the AI-LeD master's elective,² I have been simultaneously impressed by the quality of some of the final essays that my students submitted, and frustrated by the fact that I was essentially the only person who would get to read this work. These final essays often developed original ideas or wove disparate concepts together in intricate ways, and the thought often crossed my mind that there were several papers from each class which could pass peer-review.

The “grading” model, in which the professor-assessors grade the paper in front of them in private, may make sense in more orthodox courses that seek to assess the student's comprehension of an established legal field and where the emphasis is placed upon the student to demonstrate mastery.³ A different way of putting this might be that there is no need to consider publication of student work in the context of “orthodox” education because the student is not pushed to undertake original research. If the model of education does not envisage original work, then concomitantly there is no need to contemplate publication.

In AI-LeD, however, the aim of the final written assessment is to engage the student in actual research (or failing that, at least research-integrated work), and

¹ <https://jura.ku.dk/english/ai-led/> or <https://jura.ku.dk/ai-led-dansk/>

² <https://kurser.ku.dk/course/jjua55235u/>

³ Akin to the old apprenticeship model where the apprentice produces a “masterpiece” of a sufficiently high standard to attain membership in a guild or academy.

not “just” education, so the possibility for subsequent publication of good work is only fitting. With this in mind, and once Retskraft was up and running, I ran a pilot for this Special Issue with a former student with his article ‘Artificial Intelligence in Court’ in an earlier volume of this Journal.⁴ The success of that pilot project suggested that we would build up the momentum, both in terms of pushing the students in the course towards more risk-taking research papers, and with Retskraft for providing a platform for such work.

This in turn changed the nature and orientation of the AI-LeD course, which can be maddeningly research-integrated (anecdotally at least, from the student’s perspective), and probably research-obsessed: there is complete free-rein within the wide parameters of the course for students to define their own topic, approach, and execution of their final written assessments. Contextualise this broad latitude for the paper within a problem-*finding* orientation⁵ that informs the course, where students are expected to proactively explore the potential policy problem space opened up or revealed by AI, and we have a recipe for confusion, uncertainty, creativity, and criticality. Indeed, if legal education was a pizzeria most courses would simply take your order, make your pizza, and then bring it to you. AI-LeD, on the other hand, would invite you behind the counter, present you with the ingredients and the wood-fired oven, show you a few throwing techniques, and leave you to it (with a few pointers for those who want them). My hope in setting such loose parameters is to set the students up to potentially produce some fresh and original work, some of which is showcased in this Special Issue.⁶

Beyond the specific context of the course, the AI-LeD course is also embedded within a Research Group at the Faculty of Law of the same name, as well as a burgeoning approach to the law, regulation, and governance relating to

⁴ Thomas Buocz, ‘Artificial Intelligence in Court’ (2018) 2(1) Retskraft – Copenhagen Journal of Legal Studies 41.

⁵ Hin-Yan Liu and Matthijs M Maas, “Solving for X?”: Towards a Problem-Finding Framework That Grounds Long-Term Governance Strategies for Artificial Intelligence’ (2021) 126 Futures 102672.

⁶ With the exception of Karen M. Richmond’s contribution, ‘AI, Machine Learning, and International Criminal Investigations’, the contributions all originated from final written assessments submitted for the class.

AI.⁷ The attraction and difficulty with AI-LeD is that it combines the two complex moving parts: Artificial Intelligence and Legal Disruption. As we have sketched out the AI-LeD model⁸ there are benefits to adopting “legal disruption”⁹ as the focal point for law and policy, and to deploy AI as the driver and lens through which to identify these trends and meet their challenges. As an approach, a framework, or a model, AI-LeD thus provides some structure and direction when attempting the problem-*finding* work that we had advocated for.¹⁰

We have only begun to scratch the surface of both AI and legal disruption, but the publication of this Special Issue I think signals an important milestone in this endeavour to make sense of the legal, regulatory, and governance implications raised by AI and its applications.

*Hin-Yan Liu**

Editorial

The Editorial Board would like to extend its thanks to Dr. Liu for proposing this special issue on *Artificial Intelligence and Legal Disruption*, and all the authors who have contributed articles to it. The free reign of the AI-LeD course described by Dr. Liu in his guest editorial is evident from the breadth of topics covered by the articles, and we hope that there will be something of interest to any reader with an interest in the interplay between artificial intelligence and the law.

In the inaugural editorial of *Retskraft*, the Editorial Board explained how Danish legal education ‘was focused on craftsmanship rather than scientific production’,

⁷ Hin-Yan Liu and others, ‘Artificial Intelligence and Legal Disruption: A New Model for Analysis’ (2020) 12 *Law, Innovation and Technology* 205.

⁸ *ibid.*

⁹ See also, Roger Brownsword, ‘Law Disrupted, Law Re-Imagined, Law Re-Invented’ [2019] *Technology and Regulation* 10; Roger Brownsword, *Law, Technology and Society: Reimagining the Regulatory Environment* (Routledge 2019).

¹⁰ Liu and Maas (n 5).

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and that the Journal was founded with an explicit goal of fostering a scientific approach to law among students and encouraging contributions investigating ‘how the law is produced, [and] how it operates and impacts society.’¹ This issue reflects this scientific promise – while perhaps flipping the script in describing how *the law is impacted* by AI, and not the other way around – and goes somewhat beyond the typical boundaries of legal research with the problem-finding as opposed to problem-solving approach described by Dr. Liu.²

The advent of this special issue also touches upon another aspect of the founding of *Retskraft* which is the idea that scientific inquiry into law can take many different forms and utilize a plurality of theories and methodologies.³ While traditional doctrinal legal scholarship – the definition of which is in itself disputed – remains a central part of legal education, students should be exposed to other ways of examining the law and its effects as part of their education. The contributions to this issue contain both descriptive and normative elements, questions regarding concrete rules and more philosophical and principled questions, showing how courses like AI-LeD, and other research and methods-oriented courses, have an important part of play in this area. It is our hope that *Retskraft* will remain an attractive avenue for publishing varied legal scholarship.

¹ ‘Editorial’ (2017) 1(1) *Retskraft* – Copenhagen Journal of Legal Studies 1, 3. It is sometimes pointed out that the use of the English words ‘science’ and ‘scientific’ when discussing law can be misleading due to those words having connotations related to the natural sciences or quantitative social science. In this context, it is used in the sense of the Danish *videnskab* or the German *wissenschaft*, which also encompass the other disciplines in academia. See Jakob vH Holtermann and Mikael Rask Madsen, ‘European New Legal Realism: Towards a Basic Science of Law’ in Shauhin Talesh, Elizabeth Mertz and Heinz Klug (eds), *Research Handbook on Modern Legal Realism* (Edward Elgar Publishing 2021) 68.

² While the problem-finding/problem-solving distinction used by Dr. Liu has a particular definition, parallels can be drawn to other critiques of legal scholarship. Cf Hin-Yan Liu and Matthijs M Maas, “Solving for X?": Towards a Problem-Finding Framework That Grounds Long-Term Governance Strategies for Artificial Intelligence’ (2021) 126 *Futures* 102672, pt 2.1.4.; Rob van Gestel and Hans-Wolfgang Micklitz, ‘Why Methods Matter in European Legal Scholarship’ (2014) 20 *European Law Journal* 292, 302.

³ ‘Editorial’ (n 1).

This issue marks the first time that we have published an issue dedicated exclusively to a specific topic. As readers of volume 4, issue 1 will know, the subsequent issue will also be on a specific topic, *EU Law & Politics*.

The process of working on a special issue has not been markedly different than that of a regular issue as far as the articles go. The standard article screening and selection procedure was followed, with the exception that we now had to determine whether an article was ‘within scope’ of the special issue. The most noticeable difference was the difficulty in finding subject matter experts to conduct the peer reviews. Finding, say, a scholar of general criminal law who has enough time to conduct a peer review can be difficult enough, but when one needs to find someone who is both knowledgeable about artificial intelligence and a particular legal subfield, the process becomes more arduous. *Retskraft*, like most scholarly journals that use a peer-review system, is dependent on volunteer reviewers to evaluate the quality of articles, and we are extremely thankful toward the reviewers who have given their time and expertise for this issue.

Given the positive experience we have had working on this issue, we will continue to host themed contributions in the future. In order to allow for regular publishing of non-thematic articles, we will most likely opt for a symposium model, where collections of subject-specific articles can be published alongside regular articles.⁴ Once COVID-19 restrictions have been lifted, this could be combined with conferences where students present and discuss each other’s work. Students at the Faculty of Law at the University of Copenhagen with an interest in organizing such events should feel free to get in contact with the Editorial Board.

The present issue contains five articles, which, despite the common topic of artificial intelligence and legal disruption, span a wide range of issues.

First, Robbe van Rossem uses the issues that arise when proxies for protected characteristics exist in the datasets used by AI, to critically examine the limits of discrimination law.

⁴ See, eg. (2019) 10 *Journal of International Humanitarian Legal Studies* 77–202; (2020) 31 *European Journal of International Law* 489–619.

Second, Karen M. Richmond uses the history of national litigation concerning probabilistic genotyping in DNA analysis to examine questions of opacity that might arise in the use of forensic artificial intelligence, with a focus on these questions as they relate to international criminal justice.

Third, Laure Helene Prevignano examines how the use of artificial intelligence might blur the public/private law distinction central to most legal systems.

Fourth, Anna Kirby examines how artificial intelligence will affect the field of international diplomatic law.

Finally, Caroline Serbanescu examines whether manipulation enabled by artificial intelligence will disrupt, and therefore threaten, the concept of democracy.

We once again thank the authors for their contributions, and Dr. Liu for proposing the special issue, and hope that you enjoy reading the issue.