



Legal Disruption

Jurisdiction, Old regulation and new technologies



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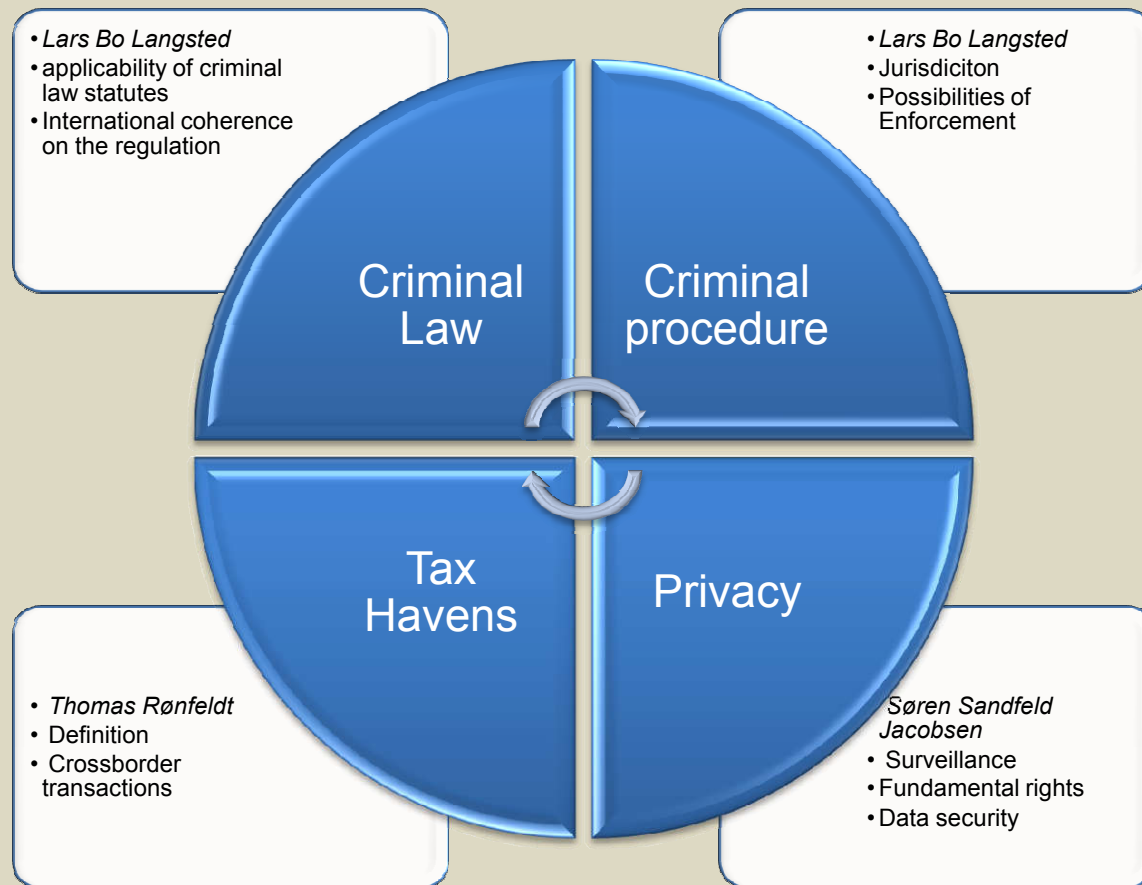
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Research interaction



- ECHR
- Convention on Cybercrime
- Community law
- National Laws



Disruption

- The digitalized world of today:
 - New ways to interact, to communicate to do business – and to do crime
 - Business disruption: Uber, AirBnB, Postal services etc.
 - **Legal disruption**
 - From Roman Law to cyberspace
 - from trading to e-commerce
 - from blackmail to ransomware
 - from documents to e-mails
 - from robbery to hacking
 - from territory to cyberspace



An example

DK

D

National states – sovereignty – jurisdiction on own territory
Investigation on own territory only

DK
Police
investigation

—————>
Search and seizure

D
enforcement



An example

DK

D

National states – sovereignty – jurisdiction on own territory
Investigation on own territory only

DK
Police
investigation

Search and seizure

D
Information
stored at a
server



An example

International Law: you are not allowed to make investigations in another country by your own police force!

Convention on Cybercrime (Budapest-convention) 2001:

Article 23

—

General principles relating to international cooperation

The Parties shall cooperate with each other, in accordance with the provisions of this chapter, and through the application of relevant international instruments on international cooperation in criminal matters, arrangements agreed on the basis of uniform or reciprocal legislation, and domestic laws, to the widest extent possible for the purposes of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence



An example

Convention on Cybercrime (Budapest-convention) 2001:

Article 29

–

Expedited preservation of stored computer data

A Party may request another Party to order or otherwise obtain the expeditious preservation of data stored by means of a computer system, located within the territory of that other Party and in respect of which the requesting Party intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the data



An example

Convention on Cybercrime (Budapest-convention) 2001:

Article 32

—

Transborder access to stored computer data with consent or where publicly available

A Party may, without the authorization of another Party:

- a) access publicly available (open source) stored computer data, regardless of where the data is located geographically; or
- b) access or receive, through a computer system in its territory, stored computer data located in another Party, if the Party obtains the lawful and voluntary consent of the person who has the lawful authority to disclose the data to the Party through that computer system



An example

Danish Supreme Court Decision of May 12, 2012 (UfR 2012.2614H):

Access to closed Facebook and Messenger profiles

(Information of the access codes obtained through wiretapping in connection with an ongoing narcotics-investigation in Denmark)

Facebook: server in USA

Messenger: server in the Netherlands

“Since the crime with which T is charged is subject to Danish criminal jurisdiction, as the matter is under investigation by the Danish authorities, and as the interventions can be made without involving foreign authorities, it cannot lead to a different result, that T from February 2010 to February 2011 was abroad, and that the information contained in the profiles reside on servers abroad”

Breaking new grounds?



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Other examples

CC § 291: **Vandalism**: "things" = data?

CC § 281: **Extortion**: "by means of violence, threat of violence, gross damage on goods or deprivation of liberty" = Ransomware?

CC § 282 **taking advantage of another persons ... lack of knowledge or insight .. In order to obtain undue economic gain** = consent/acceptance of terms of use, that allow the application/program access to every inch of your personal life including access to cameras and microphone of your mobile or laptop?

If "data are the new dollar" should undue access of other peoples data resemble the undue access of other peoples money?



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More disruption

- **The digitalized world of tomorrow:**
 - Internet of Things (moving from cyberspace and back to the physical world – one jurisdiction?)
 - Machine Learning & Artificial intelligence (I didn't do it – the computer did it!)
 - Cross device tracking
 - ???



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- Thank you for your attention

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