Ratio Juris. Vol. 32 No. 4 December 2019 (509–520)

How to Be a Transnational Jurist: Reflections on Cotterrell's *Sociological Jurisprudence*

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1. Introduction

In 2017 Brian Tamanaha's book *A Realistic Theory of Law* was published, which argues that there is a forgotten third branch of legal theory that studies law in society, taking empirical knowledge seriously. Tamanaha (2017) makes a good case for Montesquieu, Savigny, Ehrlich, and Holmes as contributors to this social or realistic legal theory. Contemporary scholars, however, are strangely absent from his lists. This is surprising, because Roger Cotterrell's *Sociological Jurisprudence*, and the earlier work on which it builds, is a great example of what a legal theory informed by sociological knowledge can be (Cotterrell 2018). Where Tamanaha stresses the empirically and historically informed character of this "third branch" of jurisprudence and argues for its recognition in legal theory, Cotterrell combines a similar argument for empirically grounded jurisprudence with a distinct focus on the role of jurists in society. Although I believe their sociologically informed jurisprudence is an important way of theorizing law, I am more intrigued by Cotterrell's additional argument about the connection of jurisprudence with legal practice.

A crucial strand in Cotterrell's book is an argument for jurisprudence as opposed to analytical legal theory, seeing it as a form of theorizing to support legal practice (ibid., 4). Cotterrell does not treat jurisprudence as an abstract body of legal thought, but as the main resource for jurists. There is much to be said about the distinction Cotterrell makes between jurisprudence and legal theory, and I touch upon this briefly in the next section, but my main concern here is to understand the role of the jurist. Cotterrell explains the idea of the jurist with the help of Gustav Radbruch's legal philosophy, which Cotterrell sees as a vision on how jurists may be the guardians of law's values and advance those values in society. Although this role is practical, in the sense that it engages with the problems and conflicts in legal practice, it is also general: Jurists stand for the idea of law as a whole, promoting law's coherence to achieve broader social unity (ibid., 42). This formulation makes it sound as if Cotterrell's claim is a straightforward moral appeal to jurists to promote the idea of law, but that is not the case. Cotterrell emphasizes the variability of values, and the diversity of views on justice, and therefore also the need for sociological insights in how these are shaped. As Cotterrell says: "Sociological study of law has the potential

to explore these matters by showing law as an aspect or field of social life and by clarifying its relation to the cultural understandings of its time and place" (ibid., 72).

One of the aspects of law in our time that Cotterrell highlights in his book is its transnational character. Law is not simply part of a nation-state, but crosses borders and does so in various ways. Cotterrell theorises transnational developments in terms of legal pluralism and as posing a conceptual question on the character of law. I would have expected this account of transnationalism to extend to the idea of the jurist: What does the transnationalisation of law imply for the jurist? That question is not taken up by Cotterrell, although he hints at it from time to time. To my mind, this leaves a gap in the book's argument. If we grant the importance of the role of the jurist in promoting the idea of law, while simultaneously saying that the idea of law is changing profoundly in light of transnational developments, the question inevitably arises: What is the role of the jurist in a transnational context? In this comment, I aim to construct an argument on what the idea of a transnational jurist implies. To that end, I first discuss Cotterrell's explanation of what it means to be a jurist, and how the juristic role relates to legal scholarship and the legal professions (Section 2). I then try to locate the jurist in Cotterrell's discussion of transnational themes (Section 3). In Section 4, I turn to the values of transnational law as a key to the idea of a transnational jurist. It does not seem plausible that the three values distinguished by Radbruch and Cotterrell have the same meaning in the transnational context as they do in a national legal system. In Section 5, finally, I draw the implications for the role of the transnational jurist.

2. The Profile of the Jurist

The term *jurist* is an ambiguous one, not least because it is a term shared by many legal languages and traditions going back to Roman law. In the French and German legal traditions, *juriste* or *Jurist* simply denotes a person with expertise in law, or maybe even a person studying law. This may be a legal practitioner or legal scholar, an advocate, a judge, a company lawyer, or a professor. As a lawyer raised in a Continental legal system, I was therefore slightly surprised to see Cotterrell describe the jurist as someone with a rather specific interest and role.

For Cotterrell, the jurist is someone who specializes in jurisprudence. The jurist, one could say, is the central character in Cotterrell's story, which is otherwise about forms of scholarship. He has a special role in mind: "The role is that of maintaining *the idea of law* as a special kind of practice and enabling that idea to flourish" (Cotterrell 2018, 32). What this means and requires of jurists is best explained in contrast to two other legal roles.

First, Cotterrell makes a point of distinguishing the jurist from the legal philosopher, in a way similar to how he distinguishes jurisprudence from legal philosophy. Whereas current legal philosophers, according to Cotterrell, focus "on abstract problems defined by philosophical interest" and "on the universal or the necessary" (ibid., 54), jurisprudence focuses on legal practice and experience, "theory that can support that practice or make sense of that experience" (ibid., 55). Legal philosophy is criticized as being insufficiently relevant to legal practice, and not taking note of the variability of legal experience. This implies that working out the universal characteristics of law is not a way to achieve a flourishing idea of law.

As an intermediate point of criticism, I think this distinction is too harsh: It is very well possible to focus on figuring out what necessary features of the idea of law in general are, while at the same time being interested in how this might be seen as a form of practice, and even in how this might affect practice. Cotterrell readily admits that his critique of legal philosophy is mainly aimed at the more limited Anglo-American tradition of analytical legal theory, which is the main branch of legal philosophy associated with a universalistic and philosophy-oriented approach. However, in the same breath he disqualifies all searches for universalistic and necessary features and all solvers of abstract problems of law. Unfortunately, this also disqualifies the work of his main hero: Gustav Radbruch. To Radbruch I will return shortly.

Second, the jurist is not an everyday legal professional. Although jurists engage with legal practice and worry about its well-being, they go beyond everyday lawyering towards a broader view of law (ibid., 33). The jurist's role is not just to keep practice going, but to reflect on that practice and "its meaningfulness as a social institution" (ibid., 33). In addition, Cotterrell distinguishes the jurist from the makers of legal systems and their administration: Jurists are not legislators or administrators who use law as a tool. From these groups that dominate law in practice, jurists distinguish themselves by being committed to a general idea of law. To be clear, Cotterrell's jurists are not a distinct group: A judge or lawyer might be a jurist, if he or she is able to transcend the everyday concerns of legal work.

The commitment to the general idea of law in practice makes the jurist a rare bird, displaying the interest in theory of the legal philosopher combined with the commitment to practice of the lawyer. It is not so easy to point to examples of jurists, but there is clearly one that Cotterrell has in mind: Gustav Radbruch. Radbruch plays a central role in Cotterrell's sketch of the jurist in two ways: His theory is the main inspiration for the jurist's focus and his biography shows the features of the ideal jurist. Radbruch's main theory is put forward in his *Rechtsphilosophie*, in which he describes law as the part of social reality that is oriented towards the idea of law.[1] The idea of law is comprised of three interconnected values: justice, order, and purpose (in Cotterrell's terms).[2] To Radbruch, law is a cultural phenomenon, which means it is concerned with value-realization, but also that the particular realization of law's values varies with time and place. Radbruch emphasizes relativism of values. Although the three values of law are necessary to the idea of law, in what way and to what extent they are realized is relative to the particular social and political context of a legal system. It is the latter aspect that is highlighted by Cotterrell in his linking of Radbruch to sociological jurisprudence. It is not the timeless quest for a universal value that interests Cotterrell: It is the particular appearance of values in a society and the way they play out in struggles over the direction of law. We need to understand that empirical variation to get a grip on the meaning of law for social life (Cotterrell 2018, 72).

[1] Radbruch 1993. There is only one translation in English: Wilk 1950 (which misses certain nuances in terminology).

[2] In German, the values are *Gerechtigkeit*, *Rechtssicherheit*, *Zweckmäßigkeit*, usually translated as "justice," "legal certainty," and "purposiveness." See, e.g., Bonnie Litschewski Paulson and Stanley L. Paulson's translation of Radbruch's postwar article "Gesetzliches Unrecht und übergesetzliches Recht" (Radbruch 2006). Cotterrell broadens their meaning slightly, but I use Paulson's more literal translation (ibid., 6).

Radbruch exemplifies this combination of value-orientation—trying to achieve justice, order, and purpose—with attention to the particular practical context in which these values are at play. It is the task of the jurist to think through what the general idea of law may mean in his or her own time and place. There are clear indications that Radbruch tried to do this: He was not only a legal philosopher, but also a criminal law scholar, and, more importantly, he was also active as a social-democratic politician, serving briefly as minister of justice in Weimar governments in the early 1920s. It is clear that Radbruch fits the profile of the jurist as constructed by Cotterrell.

There is, however, one aspect of Radbruch's scholarship that disappears into the background when he is portrayed as a jurist: He was also a legal philosopher with an outspoken commitment to a particular branch of neo-Kantian philosophy. On the basis of that philosophy, under the influence of Heinrich Rickert and Emil Lask, he developed his *Methodentrialismus*, his way to negotiate the separation of fact and value and argue for law as a value-oriented cultural reality. In terms of the distinction Cotterrell makes between legal philosophy and jurisprudence, this part of Radbruch's thought is clearly within the domain of legal philosophy (if that is taken to be slightly broader than analytical Anglo-American theory) with its universalistic bent. I think the figure of Radbruch calls into question the antiphilosophical stance of Cotterrell's discussion: The problem of universalistic and abstract truth-seeking is not so great, since it clearly does not stand in the way of a juristic attitude. In the end, I do not believe the contrast between legal philosophers and jurists should really matter to Cotterrell: Legal philosophers may be jurists too, if they display commitment to the idea of law, do not engage in sterile philosophizing for its own sake, and have an orientation towards legal practice and sensitivity to the variable needs of a society at a particular time and place.

3. Transnational Law and the Disappearing Jurist

The second part of *Sociological Jurisprudence* is devoted to the transnational dimension of law. If we take seriously the idea that jurisprudence needs to address the problems and challenges of our own time, this attention is deserved. There is abundant evidence for the importance of transnational phenomena in today's legal world, and still insufficient general theorizing about these issues. Cotterrell (2018, 75) uses a broad conception of transnationalism, encompassing all phenomena crossing state borders and legal systems or disregarding these systems. His approach to the transnational is through the lens of legal pluralism, and his main aims are to offer conceptualizations of transnational law and transnational legal authority that can account for (global) legal pluralism.

Given the description of the jurist as someone committed to advancing the idea of law in practice, one would expect that the jurist would also appear prominently in Cotterrell's discussions on transnational law. If there is one area of contemporary legal development that challenges the meaning of the idea of law and where the threats to law's integrity may be seen as great, it is the transnational realm. This is not the case. The jurist is virtually absent from this part of the book. To my mind, the main reason for this is that the meaning of law and the idea of law in the transnational context are insufficiently developed. It seems that Cotterrell gives priority to constructing a conception of law over developing the idea of law in transnational legal practice. This is understandable from a theoretical point of view: How can we speak of a transnational idea of law and the role of the jurist in it if we do not know

how to conceptualize law in the first place? On the other hand, one might argue that this is precisely the argument a *legal philosopher* would give, not a jurist: The priority of theory over practice is not really jurisprudential. That would be a misinterpretation of Cotterrell, because he emphasizes the contingent features of transnationalism: It is a part of law that is dynamic and therefore not really suitable for a philosophical investigation of universal and necessary features. The variable and conflictual elements of transnational law are what interests Cotterrell, and these are not easily grasped in an analytical philosophical framework, as Cotterrell shows in his discussion of a Hartian approach to a concept of law that can address pluralism (ibid., 92–100). However, because he is in conversation with analytical philosophers here, the value-laden idea of law is not addressed.

In this part of the book, the jurist appears implicitly in the form of juristic thought. In the chapter on legal pluralism, the juristic approach to authority is contrasted with the philosophical and the sociological. It is analytical and normatively focused (concerned with judging authority claims) but also sensitive to context, seeing "authority as an idea that has meaning in the specific contexts of its use" (ibid., 82). Here, juristic thought is portrayed as tentative, relying on empirical studies, and a "continual learning process" (ibid., 82). At the end of the chapter, Cotterrell proposes a juristic model of law as institutionalized doctrine, which combines a focus on norms, or "normative materials" (ibid., 86), with a focus on the agencies busy with regulation of various stripes. To me, this dual focus seems sensible; in order to make sense of transnational law and its various incarnations, it is necessary to combine a broad account of norms with attention to the actors engaging in making and applying them. At the end of this chapter, the jurist makes one of his rare appearances. Just before the conclusion, Cotterrell adds that "the model of law as institutionalized doctrine would need to be combined with reflection by jurists on the values they associate with law and which they interpret in terms of their cultural experience" (ibid., 87).

Because of the empirical variation which is so obvious in transnational law, it seems to me that the jurist in the transnational context needs to be even more of a legal sociologist than in a national context. The variety of social conditions and consequences of regulation is greater once you leave the context of the society of which you have lived experience, although I would by no means claim that empirical knowledge outside of direct experience is not necessary within the national context. It is necessary to get an empirical sense of the practices of transnational law in order to understand what is going on. If this need for a sociological basis for the jurist's work in transnational law is granted, there seem to be two directions for putting flesh on the skeleton of the model of law: exploring social context and reflecting on juristic values. It is clear that empirical socio-legal work on the variety of forms of transnational law is necessary for the exploration of context. It is not so clear, however, what juristic values are involved. Cotterrell says they are "the values of the cultures in which law is practised" (ibid., 88), as well as Radbruch's values of justice and security. But how do these values together form an idea of law to which the transnational jurist could be committed? This question requires a more extensive look into Radbruch's idea of legal values.

4. The Values of Transnational Law: Building on Radbruch

In this section, I take a closer look at Radbruch's theory of values and investigate how to extend this to the transnational realm. As was made clear in Section 2, Radbruch's

theory is based on the connection between social or cultural reality and the idea of law. The three values he distinguishes—justice, legal certainty, and purposiveness—require each other, and it is worthwhile to look at his argument for this. Justice is the abstract and necessary value that must be presupposed to understand the part of cultural reality that is law. It is a formal value, which requires that like cases be treated alike. Because it is formal, it needs to be filled with substantive criteria by other means. That means legal purpose. Depending on the political system of the day, certain criteria are given for what is just and what needs to be treated equally. A liberal political system will be based on different criteria than a social-democratic system. Combining formal equality with substantive criteria of equal treatment is not enough, however. The discussion on the proper criteria could go on forever. Therefore, Radbruch argues, there needs to be a final judgment on the criteria to be applied, which calls for the value of legal certainty. Thus, it is the combination of three values that forms the idea of law towards which the cultural reality of law is oriented (Radbruch 1993, chap. 9).

Radbruch claims that these three values not only require each other, but also contradict each other. A final judgment may not always be perfectly just, and discussions on purpose may move away from equality and certainty. Radbruch speaks of the antinomies of the idea of law in order to highlight this combination of mutual dependence and conflict. Cotterrell (2018, 40–1) uses the antinomic character of the idea of law to point to the difficulties of the jurist's role of guarding the idea of law. Moreover, Cotterrell emphasizes the relativistic aspect of Radbruch's theory. Radbruch's relativism concerns two aspects of the idea of law: the value of purposiveness and the relation between the three values. What purposiveness requires is dependent on the political system: Radbruch sees it as an opening to the ethical value of the good, which needs a conception of the good to take shape. These conceptions differ depending on the political theory they are derived from. In addition, Radbruch sees the balance between justice, legal certainty, and purposiveness as changeable and relative to the particular circumstances of a legal system. Legal systems differ in the extent to which they emphasize justice, purposiveness, or legal certainty; they may give prominence to one value and subordinate the others. In his late work, after 1945, Radbruch (2006) famously claimed that a legal system that completely disregards the value of justice cannot be called law, a claim which has been interpreted as his turn to natural law. I share the opinion that this is not really a turn, but a reinterpretation in reaction to the circumstances of the time (see Paulson 1995). Radbruch still defends the idea that the idea of law may vary, but specifies the limits of that variation. For the argument here, this does not matter, because Cotterrell uses the broad sense of the idea of law as connected to three values but subject to specific interpretations at a particular time and place.

Cotterrell (2018, 88) states that the values of justice and legal certainty, or order, as he calls it, are also relevant in the transnational context. But what do they require there? This is an open question, and one not really answered by Cotterrell's book. There are two ways to approach it: to investigate how the various forms and regimes of transnational law deal with justice and legal certainty, or to consider what the broader idea of transnational law means for the reconceptualization of these values. Since I lack detailed knowledge of the breadth of transnational legal phenomena, the first approach is difficult to pursue: It really requires a socio-legal look into the functioning of transnational regimes. The broader question can be answered by

theorizing the meaning of justice and legal certainty under conditions of (global) legal pluralism. If I take Cotterrell's conceptualization of law and legal pluralism in the global context as a starting point, it should be possible to elaborate on this point.

What do justice and legal certainty mean for global legal pluralism? The requirements, on the one hand, seem light: As long as legal systems and regimes respect formal equality and provide procedures for final decision-making within their own order, the orientation towards justice and legal certainty is sufficiently guaranteed. It becomes more interesting when justice and legal certainty are seen as values that also apply across legal orders. With regard to justice, it may be problematic to ask for formal equality of subjects of different orders. It seems that the context of a specific order or regime is a good enough reason to argue that cases are then not sufficiently alike: How can we compare the legal situation of an individual in an English criminal case to that of an individual in an International Criminal Court case? Similarly, it seems too demanding to ask that the closure demanded by legal certainty be provided in more than one legal order; this would require decision-making by multiple actors or complicated procedures of recognition.[3] The situation is different, however, when a case is subject to the rules of different regimes. In such cases, where legal pluralism comes to the fore as a problem, one could argue that a notion of justice as equality should extend to all the applicable regimes. For instance, this applies to the *Kadi* case, the well-known case in public international law in which Mr. Kadi was blacklisted on the basis of a United Nations Security Council resolution and subjected to freezing of his assets (Kokott and Sobotta 2012). Having assets in Sweden, he complained to the European Union Court of Justice, since the EU had given effect to the UN resolution through its regulations. An important underlying reason for his complaint was that he did not have the possibility to ask for a review of the UN decision at the level of the UN. One could see the judgment of the European Union Court of Justice as based in part on an argument that it is up to the EU to uphold fundamental rights, because the UN Security Council did not respect the idea of procedural justice, by not providing a sufficient complaints mechanism (ibid., 1018). One could interpret the stance of the European Union Court as using the value of justice to criticize another legal order and as thereby arguing for a broader reach of (their interpretation of) that value across legal orders. Similarly, in such a case, legal certainty may demand that all legal orders involved accept the final judgment of the court belonging to one of these orders. This would, however, create additional points of tension between these values, because actors in different legal orders may have different interpretations of justice and legal certainty, and may give them different relative weights. The descriptive orientation of Cotterrell's theory of transnational law and Radbruch's relativism make it difficult to do more than mark these tensions. Whether that is enough for the jurist, who needs to guard the idea of law, is doubtful.

Although justice and legal certainty may thus be given meaning beyond a particular legal order, and retain their relevance in the transnational context, things may be different for the value of purposiveness. As the value that is filled in by variable ethical and political value choices, it has a rather fluid character. In the transnational realm, the purposes of law are not always clear, which makes the content of this value

[3] The latter is done, of course, in international private law by conflict rules. My point here is that the basic demand for legal certainty is to give finality in the form of a single judgment.

rather obscure. One could look at specific legal regimes to determine what their main purpose is, but this is less straightforward than in a national legal system, in which the purpose of law is mainly determined by political choices.[4] Many transnational regimes are special-purpose networks, such as the Internet Engineering Task Force (IETF), setting technical standards for the Internet (Cotterrell 2018, 111). While some, like the IETF, are very clearly technical and aim to be nonpolitical, others have a specific political purpose such as promoting environmental sustainability, which is a guiding value for certification bodies such as the Forest Stewardship Council (FSC) and the Marine Stewardship Council. As Cotterrell points out (ibid., 111), there are also many economic networks that are mainly aimed at profit for their members. Cotterrell deals with the variety of transnational regimes by conceptualizing them as communal networks based on various types of relations—instrumental, traditional, or based on shared ultimate values (ibid., 113). In my view, this openness to variety, to an even greater extent than in the national context, needs to be incorporated in the conceptualization of purposiveness. If this value is seen as open to ethical and political conceptions of the good, then in the transnational realm this needs to be extended to economic and social purposes more generally. Purposiveness in the transnational realm is still relative to political choice, but these choices will lead to the more limited purposes of transnational networks, such as specific economic, environmental, or technical goals.

What does all this entail for the idea of law in the transnational realm? The main problem seems to be the almost endless variety of its content. If the importance of purpose is granted, then the idea of law needs to be filled in with an enormous range of different social values. This does not detract from the importance of the values of justice and legal certainty, which also shape the idea of transnational law. However, on the basis of my discussion of all three constitutive values of the idea of law I would argue that this is not really enough to guide transnational legal reality. In the transnational context, it is not sufficient to construct the idea of law for discrete legal orders, because this means that the fragmented area of transnational law is treated as a collection of unrelated regimes. This does not reflect what happens in the transnational arena: These regimes interact, collide, and respond to each other. It seems that something more is needed to address the interactional component of law. An idea of law for transnational relations needs to incorporate some value that may govern its interactional side.

It seems possible to draw at least three options from Cotterrell's book for a fourth value to constitute the idea of law transnationally. In his discussion of a concept of law for global legal pluralism, networks and community structures are prominent features (ibid., 100). These call for a value that orients the diverse set of networks and communities. A first possibility is the value that Cotterrell highlights in his discussion of the idea of law in the first part of the book: solidarity. As Cotterrell puts it: "So, the jurist has to hold the justice-order-purpose triangle of law together in a way that not only promotes law's unity and coherence as a structure of values but also

[4] I realize that I am circumventing the problem of legal pluralism in the national context here. That complicates legal purpose in the national context, but within Radbruch's framework there is space for competing conceptions of the good (which he associated with political parties), which to my mind could and should be extended to the (political) purposes of various groups in society.

promotes social unity or an overall solidarity in the society the jurist serves" (ibid., 42). However, thinking of social unity in the transnational realm is problematic; given the diversity of communal networks, working towards unity seems a far-fetched ideal and not in keeping with the sociological insights on diversity and flexibility of relations in the transnational context. A second option builds directly on Cotterrell's discussion of communal networks in the transnational realm and his idea that these depend on some form of mutual interpersonal trust (ibid., 113). If communities are built on trust, is trust then not also important for relationships between transnational networks? From a sociological angle, it seems difficult to argue for the centrality of trust *between* networks rather than *within* a network: Aren't relations between different networks primarily marked by social distance and suspicion? Trust is more adequately characterized as a condition of communal networks, a quality of interpersonal relations, rather than as a legal value to aim for. A third option, then, in line with these sociological arguments, could be the value of reciprocity. Reciprocity is widely discussed as an aspect of political theories of justice, most notably that of John Rawls (1999; see also Brooks 2012; Hartley 2014, 409–32; McMahon 2014). This third option seems to fit Cotterrell's discussion of transnational legal authority and the importance of exploring negotiation between communal networks and frameworks for managing coexistence (Cotterrell 2018, 138). To me, it seems crucial that a transnational idea of law be relational and include a value that expresses this aspect to extend beyond one particular order. The core notion of reciprocity is cooperation for mutual benefit (Hartley 2014, 415). The value of reciprocity means responding to another person's voluntary offer to communicate or exchange. To reciprocate is not only to return the gesture, but also to be willing to make a voluntary move yourself next time. Some (e.g., Pessers 2014) would say that reciprocity is also dependent on trust within a community, and may therefore think it too demanding for the transnational realm. However, as a value that serves as a point of orientation, I do not think it is a problem that it tends to be incompletely realized. The suitability of reciprocity, its guidance potential, lies in the relational aspect, the notion that there is value in recognizing another legal order as having legitimate authority in transnational governance on the assumption that this recognition will be returned.[5] Transnational reciprocity may exist in degrees, not in the sense that it may be more or less symmetrical,[6] but in the extent of the reciprocal relationship. By this I mean that the relationship may be limited to formal mutual recognition, for instance, of some specified types of legal decisions, or may extend to a far-reaching cooperation towards shared goals under conditions of equality.

The argument for including reciprocity in the idea of law in a transnational context requires that reciprocity must always be minimally present in transnational legal regimes, in a similar way as the minimal presence of justice: If there is no acknowledgement of other regimes at all in some regimes, including the value does not fulfil the role of guiding legal practice. I think that this minimal presence is plausible: None of the transnational regimes operate in empty legal space. They refer to other legal orders, and some even include reciprocity as a core part of their framework. An inter-

[5] An alternative way of conceptualizing the relational aspects of authority in transnational relationships is in terms of relative authority, as argued by Roughan (2013, esp. 173–92).
[6] This does not mean that asymmetry does not matter, empirically it does, but that it does not come into the variable orientation towards reciprocity.

governmental organization such as the World Trade Organization works with national legal orders and asks for reciprocity in its trade rules. A supranational order such as the European Union also includes reciprocal elements in principles of subsidiarity and mutual recognition. Most special-purpose regimes, such as certification schemes, refer to other legal orders such as human rights regimes or the International Labour Organization (ILO) conventions to support their own normative frameworks.[7] Including reciprocity in the transnational idea of law thus allows for acknowledgement of the interconnectedness of transnational legal orders.

5. The Role of the Transnational Jurist

Finally, the question remains what this revised account of the idea of law means for the jurist. Is there a special profile that a transnational jurist should match? In Cotterrell's vision, the jurist combines sociological sensitivity with a moral stance towards the idea of law. Jurists are both acutely aware of the particularities of their own legal system and its social context and stand for the importance of law as a force for a just society. In the transnational context, living up to these traits is more complicated. The legal pluralism of the transnational world makes it difficult to figure out what the specific features of the various regimes are and also destabilizes the commitment of the jurist to protect law in society. What society would that be?

With regard to the sociological dimension, *Sociological Jurisprudence* gives the reader a nuanced view of the transnational as an area in which different communal networks engage in governance with a more or less legal character. Of course, many questions remain but Cotterrell gives a framework that a sociological jurist can build on. There is no world society, but there are interconnected communal networks that form transnational law's social context. The jurist needs to gather empirical information on these networks in order to work with them and cannot rely on accumulated practical knowledge, as they might in a national context.

The jurist must navigate this terrain not only in a sociological way, but also by reflecting on the best ways to uphold the idea of law in a pluralistic context. The idea of law pulls in different directions: Justice and legal certainty ask the jurist to become cosmopolitan; these are values that are best served if there is coherence between different legal orders and a shared vision of transnational justice. Purposiveness and reciprocity ask the jurist to be attentive to the particular aims of a transnational legal order or regime and to foster its relationships with other legal orders. In my view, this tension between the values of the idea of law entails that a jurist needs to have a dual commitment.

On the one hand, transnational jurists need to be committed to their own legal order. This may be a national legal order, but it may be European Union law for a European lawyer and WTO law for an international economic lawyer. What makes such an order the jurist's own will depend on training and identification: I regard the Dutch legal order as my own because it is the legal order I have studied first and because I feel a particular commitment to it both as a citizen and as a jurist. I can imagine that this may be very different for a European or international law

[7] For instance, the first principle of the FSC standards ("Compliance with Laws") reads: "The Organization shall comply with all applicable laws, regulations and nationally-ratified international treaties, conventions and agreements" (FSC 2015, 10).

specialist with a different social and professional upbringing. Although speaking of one's own order in a transnational context is less straightforward, sociologically it seems unlikely that there will be many jurists without a stronger commitment to the particular legal order with which they identify most professionally. The jurist then needs to figure out what the idea of law demands in the context of this order and to work towards realizing that idea.

On the other hand, a transnational jurist needs to be curious and open to investigate the networks beyond their own legal order. A truly transnational lawyer cannot be satisfied with the view that a particular legal order is autonomous and in pursuit of its internal values only. This asks the jurist to take a relational attitude, to work towards reciprocity and inter-order justice. Transnational jurists should consider how their primary legal order interacts with other orders and whether these relationships are sufficiently oriented towards reciprocity.

The combination of particular commitment and relational openness is a demanding one, and it does not make the life of a jurist easier. However, I do think that it gives the jurists of our time normative guidance: to counter nationalistic uses of law and criticize narrow interpretations of law as an instrument for populist policy.

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