

A Normative Sociological Jurisprudence

Author : Brian Tamanaha

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Roger Cotterrell, [Sociological Jurisprudence: Juristic Thought and Social Inquiry](#) (2018).

A sure sign of a terrific book is that various readers can agree that it is illuminating and impressive but identify different aspects of the book as its most insightful and important elements. Contrasting positive reactions are a testament to the richness of a book. That is what struck me upon reading [Sean Coyle's JOTWELL review of Roger Cotterrell's Sociological Jurisprudence](#).¹ I second Coyle's praise for this "very interesting, thought-provoking, and beautifully written book." And I concur with his assertion that all jurists will profit from reading it.

This review provides an account of what makes Cotterrell's sociological jurisprudence so different from other contemporary jurisprudential works. While Coyle's title, "A New Jurisprudence?," suggests that Cotterrell has a novel take on jurisprudence, he does not explain precisely what makes it new. That is what I focus on in this review. I encourage readers to examine Coyle's review. He concisely describes the three-part structure of the book—the role of the jurist, transnational regulation, and legal values in sociological perspective—while raising probing questions about each part. I will therefore forego providing a descriptive overview of the book.

To get at what's new about his jurisprudence I will first say what is not new. His extensive discussion of transnational law and regulatory matters in Part II is a welcome correction to jurisprudential neglect of these topics. Cotterrell frames his analysis in terms of legal pluralism, and rightly argues that the plurality of legal and regulatory forms on the transnational level challenges long held assumptions about the nature of law. These are important issues, but this is not what distinguishes Cotterrell's sociological jurisprudence. Legal pluralism and transnational law are extensively taken up in Nicole Roughan's and Andrew Halpin's [In Pursuit of Pluralist Jurisprudence](#) (2017), which includes essays by a stellar cast of contributors.² Cotterrell's lead theoretical chapter in Part II is also a chapter in their collection. Roughan and Halpin claim that *pluralist jurisprudence* is a *new* jurisprudence. Whether that claim is correct is not relevant here—the point is that this aspect of Cotterrell's book is not unique.

The combination of two distinctive elements make Cotterrell's sociological jurisprudence unlike any other. The first element is that Cotterrell links jurisprudence to the work of jurists in a way that renders it normative as well as narrow. The second element is that Cotterrell incorporates social science within jurisprudence to help fulfill its normative task. This combination is what makes it normative sociological jurisprudence, as the title to this review indicates. There are versions of normative jurisprudence, Finnis's natural law,³ and there are versions of social scientifically infused jurisprudence, like my realistic theory of law,⁴ but I know of no other contemporary jurisprudence that combines the two. Roscoe Pound's sociological jurisprudence also combined the two, so in that sense Cotterrell's sociological jurisprudence is a throwback, though his approach is very different from and far more sophisticated than Pound's.

Now I will fill out these two elements to provide a sense of his theory. His starting point is jurists—legally trained individuals who pursue knowledge about law—whose specific role "is that of maintaining the idea of law as a special kind of practice and enabling that idea to flourish. One might say that the jurist's role, on this understanding, is to safeguard and promote law's general *well-being*." (P. 32.) Drawing on

Radbruch, Cotterrell indicates that law's well-being depends on maintaining a balance between three aspects of a value structure within law: 1) justice, 2) order, or security and certainty, and 3) purpose, or expediency or utility. (P. 38.) The first two are primary, for without order there can be no justice and without justice order can be tyranny. Purpose is taken from ideas, values, and interests circulating in a given society. The jurist's job is to see that law maintains all three.

Cotterrell ties jurisprudence to jurists: "jurisprudence is properly seen as an important body of thought that aims at exploring, aiding, and developing the *prudencia* of jurists." (P. 45.) To serve this role, jurisprudence must be empirically grounded, informed by social scientific research on the operation and consequences of law and on social values. Jurisprudence in his account is not a discipline or field, but rather "a patchwork of insights related to the idea (and ideal) of law as a practice of regulation to serve social needs and social values, as these are recognized in particular times and places." (P. 45.)

Since the role of jurists is normative committed toward law's well-being, yoking jurisprudence to facilitate the work of jurists renders jurisprudence normatively committed. It bears emphasis that this is Cotterrell's view of jurisprudence generally, not just sociological jurisprudence. (P. 13.) "The term 'sociological jurisprudence,' ideally, should indicate no more than jurisprudence *in general* that is aware of its responsibility to link law's enduring value commitments to a systematic, empirically grounded understanding of the diverse contexts of legal experience." (P. 13.) He grants that theoretical approaches not dedicated to serving jurists can also be informative, like the philosophy of law and social legal theory, but asserts that jurisprudence should be reserved for this narrower role.

Social scientific research can shed light on values in relation to law in multiple ways: identify the values people hold and their consequences, explain why value debates and choices matter in given social contexts, guide the implementation of value choices, reveal the likely consequences of value choices, show how value choices can benefit society, and identify moral principles necessary to stable relations. (Pp. 172-203.) This information—provided by sociology, anthropology, and other empirical disciplines—should be integrated into jurisprudence and utilized by jurists in their effort to advance the well-being of law. "Sociological jurisprudence is distinguished from sociology of law, according to the approach of this book, because of jurisprudence's explicit commitment to the pursuit of values through law, indeed its recognition of values as at the heart of legal practice and experience." (P. 226.)

Cotterrell's book contains much more of interest and value than this brief account can relate.⁵ What I have conveyed is the core of what makes his theory not only unique but also essential reading for jurists. He is sounding a call to all jurists to recognize that we have a responsibility for maintaining the good of law while insisting that the way to carry out this responsibility is to be informed by the best available empirical research. In many countries around the world today, including the United States, there appears to be increasing pressure on and threats to the integrity and functionality of law. That is why Cotterrell's message, although unorthodox and against the grain of jurisprudence today, should be taken seriously.

1. Sean Coyle, [A New Jurisprudence?](#), **JOTWELL** (February 11, 2019) (reviewing Roger Cotterrell, **Sociological Jurisprudence: Juristic Thought and Social Inquiry** (2018)).
2. See Brian Z. Tamanaha, *The Promise and Conundrums of Pluralist Jurisprudence*, 82 **Mod. L. Rev.** 159 (2019).
3. John Finnis, [Natural Law and Natural Rights](#), (2011).
4. Brian Z. Tamanaha, [A Realistic Theory of Law](#), (2017).
5. For a detailed look at sociological jurisprudence generally and Cotterrell's version in particular, see Brian Z. Tamanaha, [Sociological Jurisprudence Past and Present](#), **Law Soc. Inq.** (forthcoming).

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