



Bringing the “human problem” back into transnational law: The example of corporate (ir)responsibility

Transnational Law Institute, The Dickson Poon School of Law, King's College London, 19-20 March 2020

Call to contribute to a workshop and subsequent special issue publication in Transnational Legal Theory which – using the example of corporate (ir)responsibility – aim to refocus transnational law as an analytical framework on the concrete, border-transcending human problems that it had once set out to address.

Abstract

Over 60 years ago, transnational law began with the realisation that “[p]art of the difficulty in analysing the problems of the world community and the law regulating them is the lack of an appropriate word or term for the rules we are discussing”.¹ Thus, Philip C. Jessup famously coined the term ‘transnational law’ in his 1956 Storrs Lectures on Jurisprudence as “all law which is concerned with actions or events that transcend national frontiers. Both public and private international law are included, as are other rules which do not wholly fit into such standard categories”.² While this definition has been used time and again since, what seems to have been much less noticed is that his motivation was primarily a practical one, focusing on concrete, border-transcending human problems. Jessup not only devoted the entire first part of his lectures to *The Universality of the Human Problems* but also made the central observation that “some of the problems that we have considered essentially international, inevitably productive of stress and conflict between governments and peoples of two different countries, are after all merely *human problems* which might arise at any level of human society – individual, corporate,

¹ Philip Jessup, *Transnational Law* (Yale University Press, 1956), p. 1.

² *ibid*, p. 2.

interregional, or international”.³ Accordingly, his thinking about transnational law had from the very beginning on been orientated towards concrete situations such as “[a] private American citizen, or a stateless person ..., whose passport or other travel document is challenged at a European frontier ...[,] an American oil company doing business in Venezuela ... or the United States Government when negotiating with the Soviet Union regarding the unification of Germany”.⁴

Following Jessup’s spirit that “[i]f what the scholar says is not subject to criticism, it might as well be left unsaid”,⁵ we contend that much of today’s transnational legal scholarship has lost its early analytical grips on concrete, border-transcending human problems to the benefit of abstract conceptual and theoretical debates. At the same time, considering the growing diversification and interconnectedness of legal regulation across state borders, the flexible analytical framework transnational law can provide seems to be more needed than ever to examine the available legal rules (or identify a lack thereof) in relation to pressing transnational human problems.

The legal regulation of corporate (ir)responsibility is a prime example. While corporations and their complex business activities play an extremely important role in today’s societies, serious attempts at analysing the regulation of concrete problems of corporate (ir)responsibility in areas such as the environment, climate change and food security, human rights and labour, migration, economic competition and integrity, or technology and the internet quite rapidly hit intra-disciplinary borders in the form of traditional classifications of laws.⁶ Already over 60 years ago, Jessup recognized that “the liability of a corporation ... may be determined by national law, foreign law, conflict of laws, or public international law” and, while the formulation may have been somewhat too categorical, he also emphasized that “[t]here is no distinction between civil and criminal law in terms of its applicability to ... corporations”.⁷ Today, the regulation of corporate (ir)responsibility has become even more complex, regularly involving not only many different international and national laws which can all and variously be ‘criminal, private or public’ in nature but also legal norms that are created by non-state actors and “do not wholly fit into such standard categories”.

³ *ibid*, pp. 15-16 (emphasis added).

⁴ *ibid*, pp. 3-4.

⁵ *ibid*, p. 10 with reference to Myres S. McDougal, “International Law, Power, and Policy: A Contemporary Conception”, 82 *Recueil des Cours* (1953, I) 140.

⁶ In the context of discussing the (jurisdictional) power to deal with problems, Jessup already noted that “[j]ust as the line between the international and national should be questioned as a basis for legal classification, so should the standard distinction between criminal and civil” (Philip Jessup, *Transnational Law* (Yale University Press, 1956), p. 70).

⁷ *ibid*, pp. 102 et seq.

Using the example of corporate (ir)responsibility, the workshop and subsequent special issue publication in *Transnational Legal Theory* aim to refocus transnational law as an analytical framework on the concrete, border-transcending human problems that it had once set out to address. Our objective is to critically discuss some of the ‘theory-focused’ developments in transnational law scholarship and explore the analytical benefits of a ‘problem-focused’ transnational law based on several case studies of corporate (ir)responsibility in thematic areas such as environmental protection, climate change and food security, resource extraction and global supply chains, migration, economic competition and crimes, data protection, cyber security and artificial intelligence. The hope is also to inspire future conversations and cooperation among the participants.

Workshop

Co-organized by the Transnational Law Institute, The Dickson Poon School of Law, King’s College London and the International Law Department of the Graduate Institute Geneva, the workshop is planned for **19-20 March 2020** at King’s College London. We are primarily looking for early career legal researchers interested in thinking about transnational law and corporate responsibility in today’s societies. The workshop will also be attended by senior academics from the Transnational Law Institute and the International Law Department of the Graduate Institute Geneva. The workshop is free to attend, and a limited number of travel and accommodation stipends are available upon request. In case of interest, please submit an abstract of your paper proposal and a short biography by **1 October 2019**. Draft papers will need to be provided by **15 February 2020** for circulation (final papers circa 8000 words).

For more information and proposal submissions, please contact Laura Knöpfel or Felix Lüth at bringingthehumanproblemback@gmail.com.

Workshop Conveners

Laura Knöpfel is a PhD Candidate and Research Fellow at the Transnational Law Institute, The Dickson Poon School of Law, King’s College London and a Swiss National Science Visiting Fellow at the European University Institute.

Felix Lüth is a PhD Candidate at the Graduate Institute of International and Development Studies in Geneva and a Swiss National Science Visiting Fellow at the Transnational Law Institute, The Dickson Poon School of Law, King’s College London.

In our PhD researches, we explore the transnational rise of negotiated settlements for complex corporate crimes (Felix) and develop a legal anthropological approach to the governance of global value chains in the extractive industries (Laura). Besides academia, we have been working on issues of corporate responsibility and liability in practice for several years. Both our research and practical experiences have led to a growing frustration with traditional classifications and an often resulting compartmentalisation of legal scholarship. In our view, transnational law can provide a

promising analytical framework to overcome many of these intra-disciplinary (as well as some inter-disciplinary) limitations if it focuses on actual human problems.