

Law, Community and the 2011 London Riots

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1	Introduction	80
2	Law's Community	85
	2.1 The Interviewees and Their Conception and Experience of Communities	89
3	Concluding Reflection	96

Can the state charge local communities, which exist precariously on the margins of society, with the responsibility of maintaining their own social order? What type of law (if any) can bring social order to these communities? Using semi-structured interviews with social workers, police officers, lawyers and other professionals familiar with the 2011 Tottenham riots, this chapter offers an inside view into what community means in a rundown London suburb and how it is linked to law, justice, social order and identity. The interviews will help us to tease out the empirical complexity of the interplay between the public political discourse on community, the everyday reality of those who live and work in areas such as Tottenham and social order. They will also allow us to explore Roger Cotterrell's idea of community as a source of self-governance and law.

Keywords: London riots, law, community, trust, identity, hyperindividualism, civil society, regulation, late modernity, consumerism, social movements, cosmopolitanism

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1 Introduction

Tottenham riots: A peaceful protest, then suddenly all hell broke loose.

The Guardian headline on 7 August 2011²

On 6 August 2011, a group of people marched to the police station in Tottenham demanding answers over the fatal shooting of a local black man, 29-year-old Mark Duggan, by the police. The protest, which had been initially peaceful, spiralled out of control when the police restrained a sixteen-year-old girl who had allegedly thrown a missile at them. This triggered public disturbances in Tottenham which in turn generated waves of violent unrest that spread first across many parts of London and then to other cities such as Birmingham, Bristol and Manchester.³ The violence, looting and arson which followed were reminiscent of the Brixton and Toxteth riots of 1981, which were also triggered by confrontations between the police and ethnic minorities. However, the 2011 riots distinguished themselves from the previous disturbances on several points. Social media “speeded up the exchange of information,”⁴ allowed the rioters to organize themselves once they were out on the street⁵ and, according to the tabloid press, to prolong the looting.⁶ Moreover, there was a break in the unfolding of the events, whereby a peaceful political protest was transformed into widespread looting. Admittedly, the previous riots also had been used as a catalyst for looting, but whereas the Brixton and Toxteth riots of 1981 retained their political character throughout the unrest, the 2011 riots quickly lost their political dimension. The apolitical character of the riots remains highly contentious and yet one of the most important aspects of the riots, which might reveal more about how the riots were reported in the media and discussed in the public political sphere, than about how some young people defined and experienced their involvement in

2 Guardian, *Tottenham riots: A peaceful protest, then suddenly all hell broke loose* at “www.theguardian.com/uk/2011/aug/07/tottenham-riots-peaceful-protest 7 August 2011”. Accessed on 14 August 2013.

3 Mark Duggan was shot dead by officers working for Operation Trident, which is a Metropolitan Police unit that investigates gun crime among the black community in London. This caused a great deal of anger among many people in Tottenham, who suspected that Duggan, who was black and allegedly involved in criminal activity, had been executed by the police. Trident had apparently mounted this operation without informing the local police. See Lammy, D. *Out of the Ashes: Britain after the Riots*. London, Guardian Books 2011.

4 Morrell, G. et al. *The August Riots in England: Understanding the Involvement of Young People*. National Centre for Social Research 2011, p.3.

5 Baker, S.A. *The Mediated Crowd: New Social Media and New Forms of Rioting* in 16 (4) Sociological Research Online 2001.

6 Sun, *Rioting thugs use Twitter to boost their numbers in thieving store raid* at “thesun.co.uk/sol/homepage/news/3738786/Tottenham---riot---thugs---use---twitter.html, 8 August 2011. Accessed on 14 August 2013.

the unrests.⁷ Perhaps because of their seemingly apolitical character, there were no similar attempts as in previous riots to identify the *social* causes of the 2011 riots in terms of, for example, class differences. Instead, they were presented by politicians and the media generally as random acts of sheer criminality⁸ and eventually blamed on the police service's slow reaction to contain the rioters.⁹ Riots in the 1840s in England were about bread and food, the Brixton riots in 1981 were about racial discrimination and racism, and the 2011 riots came to be presented in public political discourse as a meaningless and mindless case of random looting by people who had no legitimate grievance and were only seeking symbols of consumption.¹⁰ Some observers have thus argued that the 2011 riots can only be comprehended fully in the context of a society which is becoming increasingly consumerist in orientation.¹¹

In a message to the rioters the Prime Minister, David Cameron, promised that they would “feel the full force of the law,” and if they were old enough to commit these crimes they were also old enough to face the punishment.¹² Accordingly, magistrates were advised by the courts service to “disregard normal sentencing guidelines when dealing with those convicted of offences committed in the context of ... [the] riots.”¹³ Tough custodial sentences were

7 NatCen report on August riots in England (see Morrell et al. 2011, above note 4) distinguishes between various categories of “watchers,” “looters” and “rioters” who were involved in the disturbances. The media reporting makes, however, no such sharp distinction and therefore ignores the fact that not all the rioters were involved in looting and that some young people considered their attacks on chain stores as political acts.

8 Cavanagh, A. and Dennis, A. *Behind the News: Framing the Riots* in 36/3 Capital & Class 2012, pp. 367-81.

9 Police sources and David Cameron, the British Prime Minister, referred to “pure criminality” (*Guardian*, David Cameron on the riots: “This is criminality pure and simple” video at “www.theguardian.com/politics/video/2011/aug/09/david-cameron-riots-criminality-video” 9 August 2011) to describe the riots; the account of one shop owner was given air and press coverage regarding her description of those involved as “feral rats.” Iain Duncan Smith, the Work and Pensions Secretary, claimed that gangs played a “significant part” in the riots, and he argued that Britain had to tackle the “violent gang culture” which had infested the inner cities. (He was, however, proved to be incorrect, as fewer than 10% of those arrested were gang members. See *Mirror*, “UK riots: Fewer than one in 10 arrested were gang members” at “www.mirror.co.uk/news/uk-news/uk-riots-fewer-than-one-in-10-275604” 24 August 2011). The Justice Secretary, Kenneth Clarke, described the rioters as “a feral underclass” and added that in his opinion the riots could be seen “in part as an outburst of outrageous behaviour by the criminal classes – individuals and families familiar with the justice system, who haven’t been changed by their past punishments” (*Guardian*, Kenneth Clarke blames English riots on a “broken penal system” at “www.guardian.co.uk/uk/2011/sep/05/kenneth-clarke-riots-penal-system” 5 September 2011).

10 Frost, D. and Phillips, R. *The 2011 Summer Riots: Learning from History- Remembering '81* in 17(3)19 Sociological Research Online, 2012.

11 Moxon, D. *Consumer Culture and the 2011 Riots* in 16(4) Sociological Research Online 2011.

12 Daily Mail, *Fightback! London’s looters stay home as 16,000 police flood the streets ready to use plastic bullets* at “www.dailymail.co.uk/news/article-2023874/UK-riots-2011-16k-police-ready-use-plastic-bullets-lid-Londons-looters.html” 10 August 2011.

13 *Guardian*, *Riots: magistrates advised to “disregard normal sentencing”* at “www.the

subsequently handed out for offences such as theft and burglary. *The Guardian* reported that:

In Manchester a mother of two, Ursula Nevin, was jailed for five months for receiving a pair of shorts given to her after they had been looted from a city centre store. In Brixton, south London, a 23-year-old student was jailed for six months for stealing £3.50 worth of water bottles from a supermarket.¹⁴

In the weeks following the riots, over 3,000 people were arrested and gradually appeared in court¹⁵ on charges “ranging from incitement, violent disorder and assault to burglary, theft, handling of stolen goods and criminal damage.”¹⁶ As it transpired, the rioters were a diverse group of people “drawn from a complex mix of social and racial backgrounds.”¹⁷ According to the Ministry of Justice (MoJ) and Home Office,¹⁸ “the ethnic background of those in court varied considerably from area to area but overall, 42 per cent were white and 46 per cent black, with only 7 per cent described as Asian” (each of these categories are diverse in themselves). They were, however, predominantly from poorer suburbs.¹⁹ Notwithstanding this diversity, frequent references were made to communities in general and to the role of various migrant communities – and among these to the black community in particular – when discussing the breakdown of social order.²⁰ The rioters were said to be harming their own communities, and “communities were urged to keep young people off the street.”²¹ According to Nick Clegg, the deputy Prime Minister, the rioters demonstrated through their actions “a total and utter lack of responsibility or

guardian.com/uk/2011/aug/15/riots-magistrates-sentencing” 15 August 2011.

14 Ibid.

15 BBC News, *London Riots: Who had been charged* at “www.bbc.co.uk/news/uk-18681866” 4 July 2012.

16 Roberts, J.V. and Hough, M. *Sentencing Riots Related Offending* in 53 *British Journal of Criminology* 2013, p. 234.

17 Guardian, *Who are the rioters? Young men from poor areas ... but that's not the full story* at “www.theguardian.com/uk/2011/aug/09/london-riots-who-took-part” 10 August 2011.

18 Quoted in Guardian, *UK riots analysis reveals gangs did not play pivotal role* at “www.theguardian.com/uk/2011/oct/24/riots-analysis-gangs-no-pivotal-role” 24 October 2011.

19 See the Guardian/LSE study entitled *Reading the riots: LSE/Guardian, “Reading the riots: investigating England's summer of disorder”* at “eprints.lse.ac.uk/46297/” 2011.

20 Sociologically, community may be regarded as a relational concept expressing the socio-cultural similarities of those who belong to its circle and the differences distinguishing them from other groups and communities (see Cohen, A.P. *The Symbolic Construction of Community*. London, Tavistock 1985, p.12). It usually has positive connotations, invoking a sense of belonging, togetherness and harmony (also see Bauman, Z. 2001. *Community: Seeking Safety in an Insecure World*. Cambridge, Polity Press and Delanty, G. *Community*. London, Routledge 2010, 2nd edition).

21 BBC News, *Merseyside sees second night of rioting* at “www.bbc.co.uk/news/mobile/uk-england-merseyside-14461363” 10 August 2011.

any kind of loyalty towards the communities in which they live.”²² David Lammy, the Member of Parliament for Tottenham, talked about the “community” being devastated by the looters: “A community that was already hurting has now had its heart ripped out.”²³ Bloggers talked about “mindless thugs vs. community spirit,”²⁴ while headlines such as “Community spirit keeps the peace in Southall”²⁵ and “Police and communities have been considering what has fueled the violence in London” became commonplace.²⁶ Even in a study of the public’s attitude to sentencing responses to riot-related offences,²⁷ published two years after the unrest, the notion of community continued to loom large, albeit in a more general sense:

In our view, public opinion is relevant to determining the limits of sentencing practices. If these practices drift too far from the community on whose behalf offenders are censured, there will be a loss of perceived legitimacy, and support for the sentencing process.²⁸

It is unclear to which “community” the authors are referring, but their survey of attitudes to sentencing is based on a representative sample of the UK population. Their study suggests that there is a single community in the UK whose values and moral standards can and should guide the law (alternatively, one could argue that their study represents an attempt to construct such a community). By contrast, the journalist and broadcaster Cristina Odone stated that:

[T]he TV reports keep bleating the word ‘community.’ London’s riots are precisely the opposite: there is no such thing as community. At least, not among

22 Inside Housing, *ALMO works with police to evict rioters* at “www.insidehousing.co.uk/tenancies/almo-works-with-police-to-evict-rioters/6517176.article” 11 August 2011.

23 Sun, *Tottenham rioters have ripped out our hearts* at “www.thesun.co.uk/sol/homepage/news/3738875/David-Lammy-MP-Tottenham-rioters-have-ripped-out-our-hearts.html” 8 August 2011.

24 Hayhurst Consultancy, *Social Media – enhancing or quashing the London Riots* at “hayhurstconsultancy.co.uk/social-media/social-media-enhancing-or-quashing-the-london-riots/” 8 August 2011.

25 Ealing Gazette, “www.ealinggazette.co.uk/ealing-news/riots/2011/08/10/community-spirit-keeps-the-peace-in-southall-64767-29210921/” 10 August 2011.

26 BBC News, *Communities consider motives behind riots in London* at “www.bbc.co.uk/news/uk-14452050” 8 August 2011.

27 Sentences meted out to those who committed offences during the riots departed from existing sentencing guidelines; they were more severe, thus reflecting the judiciary’s view that the riots created an aggravating circumstance “completely outside the usual context of criminality” (see Sentencing Remarks, *R. v. Carter*, [2011] EW Misc 12 (CrownC)). Roberts and Hough’s survey of general attitudes to riot-related sentencing shows, however, that “the courts and the community differ in the quantum of additional punishment deemed appropriate” (see Roberts and Hough 2013: 235, above, note 16). The offenders who were sentenced to prison for riot-related offences “could have been sentenced to a community order, without attracting great public opposition” (ibid.).

28 Roberts and Hough, 2013: 235, above note 16.

the residents of Tottenham. The trouble is, there's no such thing ... The broadcasters and the talking heads may try to paint a politically correct portrait of a united community that has come upon hard times (all the fault of the cuts, of course) and is now rent apart by violence; but it's unconvincing. The young hoodies rushing across our screens, plasma screens under their arms, shiny trainers dangling from their hands, have no sense of wronging a community, because they've never felt they belonged to one in the first place.²⁹

After the riots, instead of setting up a formal inquiry into the causes of the riots, the Government set up the *Riot Communities and Victims Panel (RCVP)* to investigate, among other things, "how communities can be made more socially and economically resilient in the future to prevent future problems."³⁰ The RCVP report found the causes of the riots in the breakdown of families, absent fathers, lack of resilience, ill-discipline and the lack of character in the young, but it stopped short of addressing the societal conditions which generated these social problems in the first place.³¹ They subsequently recommended a number of measures aimed at transforming the lives of "individuals, families and, in turn, communities."³² Politicians who employ the idea of community often know that they are not dealing with functioning associations of people, yet in their rhetoric on law and social order they charge local communities with maintaining their own form of social order. Community is invoked as a distinctive place where solutions to all social problems may be sought and where the state may unburden itself from the responsibility of providing public services. To give an illuminating example, Andrew Ashworth, Professor of English Law at Oxford, recently launched a public debate on sentencing, suggesting abolishing imprisonment for property offences such as theft and fraud. He thought that we should instead "deal with such offences in the community."³³ Thus, community is where all social problems may be transported to and where solutions to all our collective challenges may be found – preferably at the level of individual responsibility and without reference to the larger society or societal conditions.

Can the responsibility for bringing social order to people living on the margins of society be passed on to communities whose existence as a functioning association is highly questionable? What type of law (if any) can bring social order to these people? Before addressing these questions we shall

29 Telegraph, *London riots: the TV reports keep bleating the word 'community' The trouble is, there's no such thing* at "blogs.telegraph.co.uk/news/cristinaadone/100099938/london-riots-the-tv-reports-keep-bleating-the-word-community-the-trouble-is-theres-no-such-thing/" 8 August 2011.

30 Gov.UK. *After the Riots: The final Report of the Riots Communities and Victims Panel* at "webarchive.nationalarchives.gov.uk/20121003195935/http://riotspanel.independent.gov.uk/wp-content/uploads/2012/03/Riots-Panel-Final-Report1.pdf 2012", p. 4.

31 For a discussion see Bridges, L. *Four Days in August: The UK Riots* in 54/1 *Class & Race* 2012, pp. 1-12.

32 *ibid.* p. 117.

33 BBC News, *Do not jail thieves and fraudsters, says Andrew Ashworth* at "www.bbc.co.uk/news/uk-23686277" 14 August 2013.

consider in the next section how Roger Cotterrell has conceptualized the relationship between law and community. The paper will then employ ten semi-structured interviews with social workers, police officers, a barrister, a solicitor and other professionals familiar with the Tottenham riots, in order to offer an insider's view into what community means in today's London and how it is linked to law, justice, social order and identity. These pilot-study interviews will not allow us to draw general conclusions about law and community, but they will at least enable us to tease out the empirical complexity of the interplay between the public political discourse on community and social order. This will in turn allow us to reflect critically on the law-and-community approach as developed by Cotterrell.

2 Law's Community

I believe in the law, I believe that the law in essence is a fantastic thing, but the delivery of it can be very twisted and one-sided. The law ... is designed to sit in the middle ... very black and white. There should be a real understanding about fairness – this is what the law is all about. As soon as you start taking the fairness out of the law you start losing the community and losing people's respect and their trust.

This quotation, taken from one of our interviews with a gang intervention worker in Tottenham, places law, community, authority, fairness and trust in relation to each other. It draws attention to the tension between state law (with its one-sided authority) and the expectations of fairness at the community level. It thus offers a socio-legal angle from which to view and describe the London riots while reflecting on why law's delivery is "twisted and one-sided," why its authority does not command local people's respect and trust and why it cannot be applied with fairness. In this section, we throw some light on these questions by briefly discussing Roger Cotterrell's law-and-community approach, which he first formulated in *Law's Community*³⁴ and later elaborated in *Law, Culture and Society: Legal Ideas in the Mirror of Social Theory*³⁵ and subsequent publications.³⁶

Cotterrell's law-and-community approach cuts across numerous discourses in law and social theory, lending itself to multiple interpretations and applications. It may be discussed in relation to law and to capture "the deep embeddedness of legal ideas, practices and problems in social experience,"³⁷ or in relation to various sociological reflections on the transformation of *Gemeinschaft*, in order to draw attention to the diversity of forms of social

34 Cotterrell, R. *Law's Community*. Oxford, Oxford University Press, 1995.

35 Cotterrell, R. *Law, Culture and Society: Legal Ideas in the Mirror of Social Theory*. Aldershot, Ashgate 2006.

36 See, for example, Cotterrell, R. *Living Law*. Aldershot, Ashgate 2008a and Cotterrell, R. *The Struggle for Law: Some Dilemmas of Cultural Legality* in 4/4 *Journal of Law in Context* 2008b, pp. 373-84.

37 Cotterrell 2008a, p. 18, above, note 36.

experience in contemporary society. It could also be viewed as an idea rooted largely in a common law tradition, which lends itself more easily than its civilian counterparts to the horizontal regulation of social organization and behaviour.³⁸ Furthermore, it may be employed to explore various socio-legal contexts ranging from ethnic communities existing at the municipal level to transnational corporations operating at the global level. Moreover, we may apply it in the debate on how to develop civil society alternatives to governmental control, or we could employ it as a point of departure for exploring how the forces of globalization are transforming the omnipotent nation state.

Our reading of Cotterrell's law-and-community is, however, in the context of the classical sociology of law, a discourse which has also informed Cotterrell's approach to the relationship between legal and social theory. Cotterrell is treading along the same path as Eugen Ehrlich³⁹ and Georges Gurvitch,⁴⁰ developing their ideas and replacing their concept of law (Ehrlich's in particular) with "more precise characterizations of basic types of communal relations."⁴¹ Ehrlich sought the source of law and the origin of legal authority not in the state – and not as a top-down exercise of political power – but as a horizontal process which starts with the collaborative association of ordinary people. The attempt of a group of people to organize themselves over time is a source of normativity that generates "living law" (or social order). Ehrlich's "living law" does not refute the legislative power of the state or the ability of the executive to endow authority upon positive law by bringing the force of the state and the threat of sanctions to bear on non-compliance.⁴² As we saw in the case of the London riots, the political and legal systems reacted to the disorders by bringing "the full force of law" upon those who were arrested, by meting out severe sentences. Nevertheless, as the above quotation suggests, it was an order without fairness.⁴³ By contrast, "living law" emerges as the normative expression of the inner ordering of social associations, thus enjoying a form of

38 According to Ernst Freund "*communa*" or "*communitas*" were employed in common law prior to the fifteenth century to express "the collective conception and capacity of an aggregate body, but it appears to have been applied chiefly to municipalities and guilds." Freund, E. *The Nature of Legal Corporations*. Ontario, Batoche Books 2000, orig. publ. 1897, p. 7.

39 Ehrlich, E. *The Fundamental Principles of Sociology of Law*. New Brunswick, Transaction Publishers 2002, orig. publ. 1913.

40 Gurvitch, G. *Sociology of Law*. London, Routledge & Kegan Paul 1947.

41 Cotterrell, R. *Images of Europe in Sociological Traditions* in V. Gessner and D. Nelken (eds.) *European Ways of Law*. Oxford, Hart 2007a, p. 24.

42 Living law, according to Ehrlich (see above, note 39, p. 493), is "the law which dominates life itself even through it has not been posited in legal propositions" and it may indeed exist in "contradiction to [the law] which is enforced in the courts and other tribunals."

43 Also see Roberts and Hough's study of the sentencing of riot-related offenders, 2013 above, note 16.

legitimate authority which does not require the threat of formal sanctions administered by state officials.⁴⁴ Cotterrell develops these ideas in this way:

... [L]aw is not limited to the law created by the centralised state agencies (it could be created, for example, by churches or localities), though state law will usually be especially significant. Where social relations have a degree of stability, duration and trust, they can be thought of as relations of community. Law's role is to protect community and to express and to support conditions for it.⁴⁵

While Ehrlich and Gurvitch worked with a concept of society that was emblematic of the era of industrialization – when social institutions, structures and relations appeared and were treated as enduring and “solid” – Cotterrell develops his project in view of the consequences of globalization,⁴⁶ growing multiculturalism and with an awareness of the postmodern critique of knowledge and truth,⁴⁷ which has irrevocably undermined the foundations of classical social theory. As the recent debate within social and legal theory indicates,⁴⁸ the need to identify sources of legal authority, which can exist independently of the state and its institutions, is gaining urgency as globalization transforms the nation state and paves the way for transnational law and legal orders.⁴⁹ As Cotterrell explains:

The long-established ‘modern’ view has been that law is in essence the law of the nation state ... But transnational law – harmonising legal practices and legal thought across nation state jurisdictions or irrespective of them – is assuming increased importance, especially in Europe. So also are the problems of

44 Barden, G. and Murphy, T. *Law and Justice in Community*. Oxford, Oxford University Press, 2011. More recently, Barden and Murphy have developed a theory of living law which also emphasises the role of community. According to them, the living law is a moral tradition (or a “communal moral law”) consisting of “the set of communally accepted norms that express how in certain types of situation, members of community are obliged to act” or “the set of those ways of acting that, in a particular community are admired and thought appropriate to common types of situations” (ibid: 3). Also see Murphy, T. *Living Law, Normative Pluralism and Analytic Jurisprudence*. 3(1) *Jurisprudence* 2012, p. 178.

45 Cotterrell 2008a, p. 23, above note 36.

46 Cotterrell 2006, above note 35 and Cotterrell, R. *What is Transnational Law?* in 37/2 *Law & Social Inquiry* 2012, pp. 500-24.

47 Cotterrell 2008b, above note 36, and Cotterrell, R. 2007b. *Is It So Bad To Be Different? Comparative Law and the Appreciation of Diversity* in E. Örtücü and D. Nelken (eds) *Comparative Law: A Handbook*. Oxford, Hart, pp. 133-54.

48 See Cotterrell 2012, above note 46, and Zumbansen, P. *Transnational Legal Pluralism* in 10/2 *Transnational Legal Theory* 2010, pp. 141-89.

49 The idea of transnational law is not new and was first coined by Philip Jessup in 1956: “I shall use, instead of ‘international law’,” wrote Jessup, “the term ‘transnational law- to include all law which regulates actions or events that transcend national frontiers. Both public and private international law is included, as are other rules which do not wholly fit into such standard categories” (Jessup, P. *Transnational Law*. New Haven: Yale University Press 1956, p. 136. Also see R. Cotterrell, 2012, above note 46.

autonomous or semi-autonomous regulations of regions, localities, groups and enterprises.⁵⁰

Cotterrell's concept of community is a social formation below the level of a centralized state, smaller than "society" and with its own source of normativity. It expands Ferdinand Tönnies' *Gemeinschaft*⁵¹ from a close-knit and relatively static social construct, based on kin and neighbourhood relations, to a dynamic association or a network of people who do not necessarily constitute tight-knit groups or live in single geographic localities.⁵² This notion of community, which Cotterrell conceptualizes using Weber's ideal types of action, "embraces the diverse, contrasting kinds of moral bonds and legal challenges that arise from many kinds of instrumental, traditional, affective and belief-based social relations".⁵³ These communities are held together by a form of *mutual interpersonal trust*, which facilitates "sustained, stable interaction" between the community members while giving rise to a sense of attachment and belonging among them.⁵⁴ We are dealing here with a moral force reminiscent of Durkheim's social solidarity, a moral force which varies from community to community, governs the everyday practices of the community members and therefore can be treated as the ultimate source of law. Viewed in this way, Cotterrell's concept of community can explain why the gang intervention worker from Tottenham feels the tension between state law, which exercises its own brand of top-down authority, and his community, with its own sense of normativity, which grows horizontally and perhaps independently of the state. It also provides a methodological approach to socio-legal research, which does not depart from the centralized state (or state law) and is independent of the all-encompassing macro understanding of society we encounter in classical sociological analysis. From this standpoint, society becomes a collection of "fluctuating, continually reshaped networks of social relations of community, which combine ... components of culture."⁵⁵ In this particular scheme of things, even the centralized state may be regarded as a form of community network – a political community generating its own form of law, i.e. state law.⁵⁶

50 Cotterrell, 2006: 66, above note 35.

51 Tönnies, F. *Community and Association (Gemeinschaft und Gesellschaft)*. London, Routledge and Kegan Paul 1955.

52 Cotterrell, R. *Rethinking "Embeddedness": Law, Economy, Community* in 40/1 Journal of Law and Society 2013, pp. 49-67.

53 Cotterrell, 2006 p. 161, above note 35. Cotterrell employs Max Weber's ideal types of action to develop the four categories of traditional, instrumental, belief-based and affective communities (see Cotterrell 2006: 69, above note 35). Since these forms of community are Weberian ideal types, they "rarely, if ever, exist in pure form in actual social reality. They combine and interact in complex ways as networks of community" (2008a, p. 23, above note 36).

54 Cotterrell, 2006, pp. 70-1, above note 35.

55 Cotterrell 2008b, p. 377, above note 36.

56 see Cotterrell 2006, p. 165, above note 35.

Each community has its own form of “sociability” (to borrow from Gurvitch),⁵⁷ interpersonal trust, legal consciousness and subsequently its own specific form of social order, which Cotterrell elevates to a source of law par excellence. Thus, the law which emanates from community – or, alternatively, the form of law which corresponds to community’s normativity – reflects the “social solidarity” of its members (to borrow from Durkheim)⁵⁸ and the form of social order which makes the durable association of community members possible. In contrast to the positive law of the centralized state, which makes general laws applicable to diverse groups of people, laws emanating from or corresponding to the inner social ordering of communities are created specifically to regulate life within the community in accordance with the value system of its members. Thus, community law governs horizontally and by definition is therefore legitimate and authoritative, while state law exercises (imposes) its authority and legality in a top-down manner and thus requires legitimizing mechanisms.

What would happen if the moral codes of various communities, their socio-cultural values, forms of legal consciousness and their laws clashed? Such conflicts are not unusual in multicultural settings, where different communities define themselves by reference to divergent value systems and different historical accounts and beliefs. Cotterrell distinguishes between the “normal plurality of modern society [consisting of] the different value commitments, traditions and allegiances that are combined in networks of community” and a form of pluralism (often associated with multiculturalism) which turns these elements into “rigid, unbridgeable social divisions.”⁵⁹ Cotterrell means that various communities have to recognize each other’s values (even when some aspects of these values might be a matter of on-going public political debate and negotiation) and demonstrate “universal respect for others as individuals.”⁶⁰ The role of state law is to coordinate varying and at times conflicting forms of legal consciousness. State law should therefore be recast into a form of democratic governance designed specifically to aid communication between various communities, foster plural legal forms and cultivate moral commitments at the level of communities: “What law itself must communicate,” Cotterrell adds, “is a need for adequate respect for the autonomy and dignity of all other individuals.”⁶¹ This proposed type of state regulation, which breaks with all the fundamental premises of legal positivism, “can contribute significantly towards restoring moral authority to law in contemporary society.”⁶²

57 Gurvitch 1947, above note 40.

58 Durkheim, E. *The Division of Labor in Society*. New York, Free Press 1933, orig. publ. 1893.

59 Cotterrell 2008b, p. 377, above note 36.

60 Ibid. pp. 382-3.

61 Cotterrell 2008b, p. 382, above note 36.

62 Cotterrell 1995, p. 337, above note 34.

Cotterrell does not assume that all forms of community are good and worthy of support though, and goes on to argue that:

[T]he social phenomena of community – the existence of social relations based on mutual interpersonal trust – is valuable in itself, because social life in any stable and rewarding sense is impossible without it. To facilitate social relations of community in general is to enrich social life in its various forms. Hence empirical studies of community may help in deciding how the social should be organised and regulated legally.⁶³

We are therefore dealing with a *normative* theory of community law in this respect. However, it is a normative theory designed in view of the empirical reality of law, i.e. “what people experience in relation to law and how the experience varies for different parts of a population.”⁶⁴ Therefore, it is a theoretical construct crafted intentionally to acknowledge the multiplicity of communities and the plurality of laws in contemporary society and to accommodate the diverse moral codes, worldviews and experiences of groups of people. The question is how can such a pluralistic legal order be realized? In *Law’s Community*, Cotterrell argues for “the devolution of regulatory power from the centralized state to the community as a way for law to retain moral authority and to diminish the current overextension of the regulatory capacity of the state in modern societies” (1995: 336). This approach to law should, on the one hand, allow passing on the responsibility for some forms of regulation (which do not deal with complex national policy matters) to communities, while on the other hand it should strengthen civil society, safeguard the interests of citizenry, promote collective participation in the public political sphere and thus also promote social justice.

In the remaining part of this paper, we confront Cotterrell’s law-and-community ideology with the empirical realities of the late modern age, in order to tease out its points of strength and weakness.

2.1 *The Interviewees and Their Conception and Experience of Communities*

Ten semi-structured interviews were conducted with lawyers, social workers and other professionals, some of whom had first-hand experience of Tottenham or the riots. The interviews started by asking what triggered the riots on 8 August and why they spread to other parts of London and other cities. These questions were used to create a context for the other parts of the interview, which focused on law and community. The following questions were put to the interviewees as points of departure for discussing their experience of community:

63 Cotterrell 2006, p. 162, above note 35.

64 Cotterrell 2008b, p. 19, above note 36.

What sort of an image does the word “community” invoke in your mind?
Do you know any specific communities?
Do you think you belong to a community?
Are there communities which can act in such circumstances (like in the case of the riots) and help to avoid the outbreak of violence and disorder?

The interviews ended by asking about the law, if there had been a loss of respect for law and what the interviewee considered to be the role of law in situations such as the London riots. The average length of the interviews was one hour.

These interviews were conducted as part of a pilot study of the relationship between law and community and do not allow for generalizations. The interviewees were all from London and their sense of community is not necessarily shared by people living in other areas of the UK or even England. This was clearly expressed by one of the interviewees, a 25-year-old police woman:

[...] I grew up in Somerset, and every single child in my school was white and British. When I moved to London a couple of years ago, suddenly I was faced with massive cultural change, diversity and lots of different groups, and I’m awful for knowing [people’s origin]; some people can look at someone and know instantly where they come from. It’s bad, and at least I can say I’d never be judgemental, but half the time I’m ignorant. Working in London now, you do get certain areas you seem to have more of a certain ethnic or religious background of people, but I’m probably ignorant of it.

This interviewee underlines two important characteristics of our area of study. Firstly, there is a socio-cultural disparity between a cosmopolitan area such as London (and other large cities, including Birmingham and Manchester, which were also affected by the riots) and small towns and rural areas which constitute the rest of Britain. Secondly, British society is not a homogeneous entity. In such a diverse context we should expect different ideas and experiences of community to flourish.

Our first interviewee, a gang intervention worker from Tottenham, defines community as a collection of people who share some similar experiences and live in the same block. He then goes on to describe community as his “oasis” – a space with clear social and physical boundaries:

I class this block as my community, everybody ... speaks to each other: ‘I’m going away on holiday, could you do this for me?’ ‘How’s the dog?’ ‘How are you?’ What’s happening now with our ‘communities’ is that we have been taught to fear our own. You live here, I call it my oasis, but you go 100m that way or 100m that way and you’re in war zones, you’ve got gangs of roaming kids, but they come in here and they sit on the wall; they’re cool, they respect everybody – because we demand that. They feel like they’re part of it because we get down and say ‘What’s happening, you lot?’ ‘What you been up to?’ And we say you’re cool and just put your rubbish in the bin. They know they’ve got someone they can look up to and can have a conversation with who is not going to judge them. That’s what I see community is – people helping people in their general area and being able to help people in their area and not to feel fear.

He is also aware of the generational shift which has taken place. When his parents came to England from the Caribbean, they were forced to build their own communities in order to protect themselves against racism directed at them, and “they became a very close-knit community because no-one else wanted to interact with them.” He adds that life is very different for second- and third-generation immigrants, who feel on the one hand socially excluded, while on the other they are exposed to influences (such as consumerism and popular youth culture) outside the old community in a way that their parents and grandparents never experienced. Expressed differently, the societal conditions which defined the old community of migrants from the Caribbean have changed to such an extent that their children cannot but expose themselves to external forces. Put differently, it is increasingly difficult to sustain an ethnic enclave in today’s society because the ideology of individualism constantly undermines a community based on a *collective* sense of ethnic belonging. It also means that what remains of the old community has no authority over its youngsters, and can do very little to either protect them against the outside world or bring order to the way they live their lives. This loss of authority is, however, a characteristic of late modernity and can be described positively in terms of enhanced reflexivity of the individual vis-à-vis social structures.⁶⁵ While late modernity’s enhanced reflexivity generates hyper-individuality – a sense of having rights without corresponding social responsibility – it produces disorder within socially marginalized ethnic populations.

Our second interviewee, a 40-year-old police woman, also mentions the generational problems cutting across migrant communities: “There are youth issues that the community centres don’t know what to do about.” She also paints a less enthusiastic picture of community as a whole. Her views are based on her experience of how people behave once a crime has been committed in their neighbourhood. She asks:

Is there a community? People mind their own business and think: I don’t want to be a witness, I don’t want to give a statement, I don’t want news outside my door, I don’t want to be harassed, I don’t want to do anything ... they don’t have that community feel ... Some people haven’t got a clue who lives in their street and wouldn’t even recognise a burglar if he went next door. You have people who die and no-one knocks on their door for months on end.

Somewhat paradoxically, she nonetheless thinks that there are forms of community at work and these should intervene in cases of crisis such as the London riots. All of these communities are “ethnic,” i.e. non-white and non-British. She says: “I don’t know all the communities, but I can tell you about the Turkish community, black community, the Asian that could intervene.” This echoes the public political discourse in the UK which passes on the responsibility for the riots to “communities,” which once viewed from within are but fragments of ethnic groups with no authority and little sense of

⁶⁵ Banakar, R. *Law and Regulation in Late Modern Society* in R. Banakar and M. Travers, *Law and Social Theory*. Oxford, Hart 2013.

collective belonging. This view is largely shared by the next interviewee, a female psychologist living and working for Social Services in Hackney:

I haven't really ... grown up in a community. I grew up out in the countryside. I felt quite alienated from the local community, and I suppose what I see in my work is that people are more and more alienated.

Although some of the families she works with have their own personal networks, they nonetheless do not have what she calls "a sense of community," a "kind of spirit of doing something for other people ... some sort of common decency, not because you know the person ...". To the question asking if she knows any specific communities in London, she replied:

I suppose religious communities are quite ... like that. I guess the Muslim community. They are quite tight-knit, and ideally they have a sense of their actions attached to a moral framework. I see more of that in my work but I don't particularly see a very big Christian community, although I do know there are ones out there where going to church and stuff like that is seen as a real cohesive force. I suppose there are those sorts of communities.

She also talks about "an anger that's been building up" in places like Tottenham as a result of "an underlying sense of injustice" which has in turn undermined respect for law:

I think there is a massive loss of respect for law, when you see parts of the youth justice system ... It is a few years since I worked in the former youth offending team, the disparity in sentencing that you see, the blatant racism ... The police are not seen as a force [worthy] of respect.

The fourth interviewee, a youth justice worker, emphasizes the role of media reporting and how the riots were described and defined for most people by the media. Laws appeared to have been suspended and a dream had come true for those who were out looting. As regards community, she thought that it did not exist:

I don't think communities exist. Although having said that there was some community behaviour going on, in places like Dalston, for example, where the shopkeepers of Turkish descent did stand up as a community to protect their businesses, so therefore you could say that there are communities in London ... I think communities aren't fixed, well maybe they are – and do I belong to any? I don't think so, and do I want to belong to any? I don't think so; I don't see a need for that.

We already see a tendency to associate "community" with the "other" – the Turks, Blacks and Muslims – while at the same time to regard it as a problematic construction which either does not exist or is precarious, erratic and fragmented. Admittedly this is in the specific context of the London riots, but the community law and order we are seeking is one which can respond to extra-ordinary circumstances. A similar viewpoint is articulated by the fifth

interviewee, a 30-year-old social worker, who did not feel that she belonged to any specific community and was uncertain in respect to her commitment to various communities:

I don't think I belong to just one [community], I feel quite independent within whichever one, I could say my work community, home community, I don't know how much responsibility I feel for people. Work because I have to, home because I have to, not so much because that's what I have chosen. Perhaps a community of friends ... where you find that nurture that I think that a community is and I feel more responsibility because I have chosen that rather than being forced into it ... It's got to be organic communities, it can't be forced communities. I think a community works because people want to be in it, because it is available, that are solid, that don't let people down. People coming out and clearing up after the riots being a community together is one thing, but I wonder where it is now and what did it actually mean. Maybe there has to be some sort of artificial cohesion to begin with, but there also has to be willingness.

We could force people to build communities but as our sixth interviewee, a 40-year-old criminal barrister, remarked, these forced communities will soon "fracture" under outside pressure. On a different note, this interviewee describes the impact of the media on the court district in central London, where she was on duty overnight:

The judges at first were giving bail [to rioters brought before the court] and then when the journalists start coming in and sitting in court, the response of district judges changed ... I still think they [the rioters] ought to be treated fairly and in an appropriate fashion, and that worries me that a judge reacts in a different fashion. We are going to find that cases that are now coming into court after a four-month gap onwards are going to be treated a lot more fairly than those that were dealt with on the days.

The seventh interviewee, a 25-year-old police officer, regards community as a big family of people who live and work in the same area. There is, however, "no sense of togetherness anymore because people don't know who their neighbours are." She also thinks that the police force is a sort of a community. The problem, according to her, is that it does not reflect the diversity of the people living in London:

... In London there are lots of different people of all different races and religions and I don't think the police force is reflective of that. It's not that the police only attempt to employ a certain type of person, but unfortunately the majority of the police officers I come into contact with are white and British. We are in England and the majority are white, but it probably would be more helpful if we had a more diverse police force because it would be easier for people to understand. In terms of cultures I feel ignorant, I've not always had a reason to know more, even just little things that I was doing that I wouldn't know were disrespectful, like walking into a home with my shoes on when that is disrespectful. I think it would be easier if the police force reflected the community a bit better.

The eighth interviewee, a 28-year-old supervising officer for the Central London Youth Offending Office, draws attention to the disparity between what he regards to be his understanding of community and what the Government means:

What [community] is to me and what it is to the Government are very different things. The Government talk about this Big Society, which I think he's been laughed out of now, but his vision of the voluntary sector doing statutory services is a vision of doing things on the cheap and it's this vision of getting away from having to fund services. My understanding and belief in community is that if people are part of their community they are less likely to harm it. So my biggest mantra is I get my young people involved in their community as much as possible and they are less likely to mess with it – that's what I believe.

He also does not think that he belongs to any community as such, but he points out that “in Camden we talk about the Somali community, the Asian community, who typically will live in a similar area or geographical space, and I think they describe themselves as a community as well.” The next interviewee, a 40-year-old criminal solicitor, also suggests that the classification of communities reflects how the Government would like to deal with certain issues:

When we say in terms of criminology the ‘black community,’ the ‘Asian community,’ ‘the young offender community,’ I see those as parcelled off and isolated, and those definitions of community are parcelled off in ways that the Government is quite happy to keep separate and disenfranchised because that is a method of social control ... The communities that kicked off in the riots were the poor and desolate communities; it's a shame you can define a community as poor and desolate ...

Our last interviewee is a Restorative Justice Executive – an ex-career police officer in his 50s. He is keenly aware of what he calls the “multidimensional make-up of communities”:

This is a mistake a lot of people make; they try to put communities in boxes, and say well that is that community and this is how we are going to police and monitor that community, not recognising that within communities are so many different dimensions. That for me is the real hard bit. In terms of policing directly it's having a response that understands and responds to those significantly different dimensions – it can be gender, race or whatever ... I think it is multidimensional; during a week I will engage in a whole host of different communities which I'm a part of. Tonight in London I will be part of a community, professionally I'm part of different communities, my hobby, my home life, all with different values, all with different dimensions.

The interviews suggest that the idea of community as a support network and a source of identity continues to play a role in how the majority of people conceptualize and experience their daily lives. However, almost all of our interviewees are aware of the fact that this is an ideal image rather than the reality of community life. As our last interviewee suggested, what holds these

communities (or rather these loose networks of people) together is a “common purpose,” which means that the associations or networks of people we find today in a place such as London are often not integrated through a web of ethical responsibility, and communities are not the “warm circle” of like-minded and mutually committed people. They are at best *instrumental* communities, to use Cotterrell’s typology. In rundown areas such as Tottenham, people live and work in an environment that consists of fragmented and dysfunctional communities and instrumental transitory networks, riddled with racism, social deprivation, youth unemployment and criminality. The police do not – and probably cannot – reflect the diversity of these fractured communities, and their attempts to police them, as demonstrated by the controversies surrounding the police’s use of Stop and Search powers,⁶⁶ can cause tension and be experienced as discriminatory. The “elders,” first-generation immigrants who created their communities to protect themselves against racism, no longer exercise control over their children and grandchildren. These second- and third-generation migrants, as one of our interviewees explained, have no alternative but to adapt themselves to the reality in which they find themselves, thus implying that their community is exposed to forces which from the outside undermine its cohesion and lead to its disintegration. These forces, as pointed out above, enhance *reflexivity* vis-à-vis social structures – they insistently remind the individual of existing alternative choices, values, identities and forms of being. However, the Government (and the public political discourse) continues to talk about community cohesion and tries to pass on the responsibility of problems in these deprived areas to the people who live there. Is this because they wish to lay the foundation for a stronger civil society or, as one of our interviewees suggested, to cut back on public expenses and wash their hands of the responsibility for failing communities?

3 Concluding Reflection

A community can generate its own inner social ordering or cohesive normative force – its own living law – as long as it can produce rights and responsibilities and ultimately a durable web of ethical commitment capable of integrating its individual members into a form of collectivity. However, rights and a sense of responsibility are not the characteristics of many transitory networks which increasingly define the constitution of contemporary – late modern – society.⁶⁷ Although Cotterrell recognizes the transitory and instrumental character of

66 “Black people are just over six times more likely to be stopped and searched by the police than white people” (*Select Committee on Home Affairs Second Report*, “Nature and Extent of Young Black People’s Overrepresentation” at “www.publications.parliament.uk/pa/cm200607/cmselect/cmhaff/181/18105.htm” 2007.

67 See, for example, Bauman, Z. *Community: Seeking Safety in an Insecure World*. Cambridge, Polity Press 2001; Bauman, Z. *Liquid Time: Living in the Age of Uncertainty*. Cambridge, Polity Press 2007; Banakar, R. 2013, above note 65 and Banakar, R. (ed.) *Rights in Context: Law and Justice in Late Modern Society*. Aldershot, Ashgate 2010.

many contemporary communities,⁶⁸ he nonetheless avoids taking this insight to its final conclusion by acknowledging the need to move beyond a concept of community based on mutual interpersonal trust, durable relational stability and attachment.⁶⁹ Admittedly, we can find old and new communities which foster mutual interpersonal trust in today's society, but the point made here is that these are becoming exceptions to, rather than the rule of, social organization. In late modern society – and the social conditions of large cities such as London are indicative of late modernity – we are moving away from communities based on mutual interpersonal trust to temporary networks of people and interests which neither generate a web of ethical commitment nor require long-term, stable interaction between the members of the network.

In the context of the London riots, for example in Dalston, an area in the borough of Hackney, shop owners and other residents lined up to defend their own shops and property against the looters. In Dudley Road in Birmingham three young Asian men were also reported to have been mobilizing their neighbourhood against the looters when one of them was killed after being hit by a car, allegedly driven by a suspected looter, and the incident was said to have sparked tension between black and Asian communities.⁷⁰ The young Asians in Dudley and the residents of Dalston in Hackney appeared to have acted as a community, but their joint move to protect their property was an instrumental ad hoc transitory venture rather than a reaction motivated and necessitated by a sense of ethical responsibility towards each other. As one of the people we interviewed wondered, where are they now? The fact that Asians in Dudley and the residents of Dalston could mobilize themselves and act collectively are, however, important factors that perhaps indicate a “latent” sense of community – a sense of community which is not realized or does not manifest itself because the everyday conditions under which the residents of these areas live are characterized by relational discontinuities and the diversity of values, norms and commitments of individuals. What remains of communities must constantly struggle against the forces which promote individualism and remind community members of alternative forms of life and identity.

Fleeting communities and transitory networks which constitute late modern societies generate neither webs of ethical responsibilities for their members nor enduring relationships capable of providing a basis for creating a living law. The social control which is exercised by the centralized state moves rapidly towards risk management and increased surveillance.⁷¹ The harsh sentences

68 Cotterrell, 2013, p. 54, above note 52.

69 See Cotterrell, see 2006, pp. 70-1, above note 35. In his more recent reflections (see 2013, p. 55, above note 52) Cotterrell writes that the idea of community as a distinct social phenomenon needs to be abandoned: “Community refers to a *quality* of social relationships. It suggests a *degree* of stability and permanence in them – but not necessarily very much” (original emphasis). Yet he hastens to add that “[t]he stability of relations of community comes from *mutual interpersonal trust* between the participants in them” (ibid.).

70 Guardian, 10 August 2011, see above, note 17.

71 For a discussion see Banakar 2013, above note 65.

handed down to those who had participated in looting during the London riots suggest a central state and a legal system which are more than ever divorced from local communities. The law, which was invoked to meet the riots, did its best to appear in the eye of the public as a forceful deterrent rather than a normative medium for enhancing reciprocity and dialogue. The notion of community survives nevertheless and people continue to act collectively. The protest which started in Tottenham lost its political objective quickly, but even when it had been turned into riots and looting, it continued to signal its “potential for oppositional collective action.”⁷² It is in the collective actions of people seeking justice – a form of justice which transcends their local concerns and recognizes and responds to the rights of the Other – that we should search for a source of law and legality capable of meeting the challenges of late modernity.⁷³ The common law of the future should be a law which recognizes and acknowledges the plurality of forms of legal consciousness, the diversity of social and moral values and, ultimately, the variety of forms of life, without requiring stable community relations based on mutual interpersonal trust. This law will be more in line with the Kantian notion of cosmopolitanism rather than with the living laws of local communities in Tottenham, Hackney or Croydon.⁷⁴ One potential source of cosmopolitan legal order is through late modernity’s networks of social movements – through the protesters who occupied the square in front of St. Paul’s Cathedral in London in 2011, through the Occupy Wall Street Movement in New York and through similar movements in Spain, Italy, Portugal, Greece, Israel and Brazil.⁷⁵

If for empirical as well as for normative reasons we must continue arguing for a source of law which is rooted in community rather than the centralized state, then our concept of community has to become that of a transnational community designed as the vehicle of cosmopolitanism rather than of local interests. Cosmopolitanism as a form of consciousness and practice, as well as an outlook or an ideal, can easily conflate the empirical and the normative while leading us into the trap of universalism)⁷⁶ Nonetheless, it is in its ability

72 Scambler, G. and Scambler, A. *Underlying the Riots: The Invisible Politics of Class*. 16 (4) 25 Sociological Research Online 2012, p. 4.

73 An example of such a collective action is found in Occupy Wall Street (OWS). According to Mulqueen and Tataryn, OWS is an open-ended association of people (a type of transitory network or community) created around a set of common experiences, rather than a set of clearly defined political objectives, which characterise traditional social movements. More importantly, it generates its own kind of law as part of its internal processes directed at determining its own constantly shifting boundaries. This law is “an alternative new law external to the positivist state-centred law,” which is unfolded by the process of negotiating “a set of values that become a community agreement.” Mulqueen, T. and Tataryn, A. 2012. *Don’t Occupy this Movement: Thinking Law in Social Movements* in 23/3 Law and Critique 2012, p. 293.

74 See Benhabib, S. (ed.) *Another Cosmopolitanism*. Oxford, Oxford University Press 2008 and Beck, U. *Cosmopolitanism Vision*. Cambridge, Polity Press 2006.

75 For a discussion on new forms of social movements see Castells, M. *Networks of Outrage and Hope: Social Movements in the Internet Age*. Cambridge, Polity 2012.

76 Inglis, D, *Cosmopolitans and Cosmopolitanism: Between and Beyond Political Theory and*

to link the universal and the particular, thus creating “a synthesis of modern humanism and postmodern identity politics” that we may renew our search for a form of law and legality that can meet the challenges of late modernity.⁷⁷

Sociological Analysis. Journal of Sociology, Sage 2012.

⁷⁷ Douglas-Scott, S. *Law after Modernity*. Oxford, Hart 2013, p. 331.

