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THE JURIST BETWEEN ACADEMY AND SOCIETY[1]

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1. FOREWORD

The purpose of this paper is to discuss the way the role of the jurist should be understood both *within the Academy* and in its *relationship with society*. In the writer's opinion, the two things can, and indeed must, be held together. In fact, it is a question of reasoning on whether and how the jurist's *way of being within the Academy*[3] affects his *relationship with society*[4]. And viceversa.

We firmly believe that one should remain within the usual distinctions between *jurist-professors* and *professor-lawyers*, or between *jurist-academics* and *jurist-consultants*, and should not go beyond them[5]. For the university 'mission', as a matter of fact, it does not seem primary to question where and how the scholar can perform an important and recognized function for the development of society. On the contrary, it should be considered a problem that there are an increasing number of cases of scholars who consistently change their training and research itinerary, devoting themselves to entirely different activities, in the judiciary as well as in the administration.

Let it be clear. Without any doubt there is a need for a highly qualified legal presence at crucial junctions of the highest institutional dimension. But this has always been the case.

The question is whether, and to what extent, this affects the status of professors, of academics. Or whether it implies, instead, a change of 'job', which imposes a radical twist of the role to be played. The *jurist scholar* may also be a consultant. But – without misunderstandings – while doing so, he is not serving the academic specific primary public

[3] Whether he is a *full-time* scholar, or *part-time*; whether he is solemn, or easy going; whether he is focused on himself and his success, or on the advancement of knowledge, and so on.

[4] Whether he looks at the university as the place where he can profitably make the effects of his studies pay off, or as the framework for his success, both personal and professional.

[5] In the consolidated legal scholars' common opinion, indeed, we wonder if and how a scholar can play an important and recognized role for the society's development. In a significant part of this common opinion, it is believed that one shouldn't distinguish anymore between *jurist-professors* and *professor-lawyers*, or between *jurist-academics* and *jurist-consultants*. This because an increasing number of scholars consistently change their training and research path, devoting themselves to a career in the judiciary or in the public administration.

interest, which is the cause and purpose of his institutional task. This remains and must remain *research functionalized to teaching*.

Moreover, it does not seem that there has been a substantial rarefaction of the presence and enhancement of legal *expertise* in the public debate[6]. Rather, what should raise some concerns is something else. Perhaps, we should ask ourselves which are the modalities and reasons for involving such *expertise*, since the choice does not always appear to be justified for cultural reasons, often seeming to derive, rather, from belonging to a political party or a professional 'circle of influence'. And this, quite evidently, also imposes some serious considerations about the real freedom in carrying out the academic role.

We will return to this. But there can be no doubt that the university professor – not only a law professor – is increasingly exposed to many forms of conditioning (economic, social, cultural and sometimes political ...) that undermine the most deeply rooted opinions about the freedom of science and teaching[7].

Viceversa, what will not be object of the paper – except to point out the risks involved – is a different profile. That of the *new commitments* to which the academic scholar is called. On one hand, the so-called 'third mission', which, however, continues to remain difficult to understand[8], if not ascribing to it the meaning of mere *marketing* of each single University[9].

[6] There is no media (press, radio and TV) that does not record the presence of a jurist (not infrequently, moreover, with indication of inappropriate qualification). It seems, however, that there is a full and widespread awareness of the crucial nature of the many legal problems that are posed by the profound processes of transition, both ecological and technological, currently underway.

[7] Freedoms understood not only as individual prerogatives, but also as fundamental interests of the community as a whole.

[8] An effective explanation is given by M. RUOTOLO, *The 'third mission' of the University*, in *The State*, No. 10 (January 2018 - July 2018), pp. 109 ff.

[9] Indeed, the explicit references to the 'third mission' in the primary legislation are very meagre and in any case not very explanatory of its contents. Annex E, D. MIUR 30/1/2013, no. 47 [establishing the system of self-evaluation, periodic evaluation and accreditation (AVA) of universities, in implementation of Legislative Decree no. 19 of 27 January 2012, in which, however, the term 'third mission' does not appear], lists the "Indicators and parameters for the Periodic Evaluation of research and *third mission* activities" as follows: «1. Percentage of professors who have not published in the last 5 years (inactive); 2. Scientific production by area in the last 10 years/university professors;

On the other hand, the great changes that are affecting the methods, times and horizons of teaching and research, which also impact (and impinge) on the purely university dimension, inevitably also involving the jurist.

In any case, 'interdisciplinarity', which remains an indeclinable methodological duty, does not seem to be of particular concern. Instead, it is in the definition of the content of 'service to users' that a significant disorientation can be appreciated. Under this perspective, for example, a serious consideration should be made with regards to the incredible amount of formal telematic fulfilments that absorb an enormous amount of time, this affecting, in no small measure, the tasks actually performed by administrative staff.

Moving from this preliminary framework, two external boundaries are set as prerequisites for the reasoning that will be attempted. On one hand – risking the accusation of traditionalism and anachronism –, to consider as our reference the material world, and not the so-called 'metaverse'[10]. On the other hand, to refer to a legal system defined by a shared

3. Number of national and international awards; 4. Percentage of products in the last 5 years with international co-authors; 8. Average number of doctoral theses per faculty member; 9. Average number of patents per faculty member in the last 10 years; 10. Ratio of turnover and research projects won in competitive calls/number of faculty members in the last 10 years; 11. Number of extra-moenia activities linked to research areas (e.g. organization of cultural or training activities, management of museums and archaeological sites, organization of conferences...); 13. Number of man-months of foreign lecturers/researchers spent at the university; 14. VQR results». Art. 2, co. 6, D. MIUR 27/6/2015, no. 458, states: «As part of the evaluation process and for cognitive purposes, the *competitiveness profile of the Institutions for "third mission" activities* will also be considered, also using the information from the annual Single Departmental Research Form. This assessment shall take into account the Institutions' fundamental institutional mission. In addition to the parameters that will be defined by ANVUR, the following aspects shall be considered as common assessment elements: income from third-party activity, patenting activity, spin-off companies. This assessment may in any case be taken into account for the purposes of allocating state resources to the institutions concerned» (emphasis added).

[10] Not only because it is hard to accept it (the idea that, instead of experiencing a *love affair*, one can enjoy the pleasure it gives in an exclusively virtual manner is demeaning). But also because, if ontologically virtual reality tends to reproduce the real one, the sense of reasoning by referring to the former and not the latter still remains unclear. Of course, the *metaverse* isunderstood as that plurality of virtual spaces in which 'avatars' act. Something that seems to go even beyond virtual reality and that objectively remains difficult to define precisely. According to the *online TreccaniEncyclopaedia*, however, it corresponds to the «virtual universe, which goes beyond reality, projecting it into the virtuality of the telematic network». The term was «first employed in 1992 by N. Stephenson in the cyberpunk novel *Snow crash* to refer to a 3D virtual world populated by digital human replicants». It «defines an area of convergence of interactive virtual spaces, located in cyberspace and accessible by users through an avatar

pre-legal axiological framework poured in the Constitution, and therefore a paradigmatic element of reference for doing legal science. Because – extremely simplifying – outside such framework, Kelsen does not work[11], and enters Carl Schmitt. The *state of exception*, finding oneself in which it seems senseless to reason about the role of the jurist between academy and society[12]. Another thing, of course, is to reason about the *state of emergency* (such as the one generated by the pandemic)[13].

acting as a representative of individual identity». Furthermore, we read *ad vocem*, «The m. is described as an enormous operating system, regulated by demons working in the background, to which individuals connect themselves, transforming themselves into software that interacts with other software and with the possibility of leading an autonomous electronic life. The m. is governed by specific rules that differ from real life, and the prestige of individuals derives from the precision and originality of their avatar. The m. has been used to define three-dimensional chats and multiplayer online role-playing games». In short, in the metaverse – which develops in the digital world – one can have virtual experiences, from creating objects to meeting others, from travelling to attending conferences or going to stadiums or concerts, and so on. It is, in short, a zone, a world that lives in that particular universe conceived by global communication networks that goes by the name of *cyberspace*.

[11] It does not work without a peaceful and consolidated pre-definition of the essential elements of the State: people, territory and sovereignty. In short, if the definition of the people and the definition of the boundaries of the territory over which people exercise sovereignty are questioned, Kelsen's theory of democracy (H. KELSEN, *La democrazia*, ilMulino, Bologna, 1981; but also ID., *Teoriagenerale del diritto e delloStato*, Edizioni di Comunità, Milano, 1952) cannot work.

[12] The prerequisite for this can only be a constituted order. A constituent power contained within constitutional law, where constituted power and its construction according to the democratic method is not in question, and it is necessary to keep legal reflection within administrative law and using the Constitution as the indisputable legal paradigm of reference. Otherwise, one finds oneself in Schmitt's 'state of exception', which describes the factual situation in which it is improper to speak of a 'state of emergency' within the rule of law, and one must instead take note – having ascertained the impossibility of preserving or restoring the constitution in force – of the clash in progress from which the establishment of a new order will arise. Moreover, the observation is even banal since a Constitution – obviously – can provide for its modification, but not its 'legitimate' overthrow. If it is therefore a sovereign subject – to use Schmitt's words (*Political Theology*, in C. SCHMITT, *Le categorie del 'politico'*(edited by G. MIGLIOand P. SCHIERA), ilMulino, Bologna, 1972, p. 33) – is the one that «decides on the state of exception», it is quite evident that the political fact underway is generating a new and different legal order, and therefore, due to its effects, the law cannot but be considered inoperative.

[13] Incidentally. In the debate on the war in Ukraine, it is worrying to hear the positions of those who believe that the defense of Western values is at stake. Which values? The freedom to dissent? But on which of its two sides: the negative freedom to be able to express oneself without the hindrances of censorship; or the positive freedom to be

Within the boundaries just stated, five profiles will be addressed – obviously in extreme synthesis – that cross the theme of the jurist's role with reference to both his *way of being within the Academy*[14] and his *relationship with society*[15] : 1) science and politics; 2) schools; 3) associations; 4) the territory; 5) the professions.

2. THE ROLE OF THE JURIST IN THE RELATIONSHIP BETWEEN SCIENCE AND POLITICS: VALUES AND SCIENTIFIC METHOD

The first profile of the jurist's *way of being in the Academy* is undoubtedly related to the way he does legal science. It is a matter, therefore, of telegramming the issues of the scientific-legal method, the role of values in practicing it, and the political repercussion of the results it leads to. This last aspect, in a certain sense – but manifestly –, also touches the relationship (between science and politics, which is, with all evidence, the one) between the legal scholar and *societas*.

guaranteed the means to express oneself in a way that can reach anyone? And then, more generally, is it the freedom that guarantees the preservation of the privileges of the wealthy few, or the freedom that allows the extension of social rights to everyone, through a redistributive tax policy of wealth? Never forget in this regard the words of Sandro Pertini: «Always fight for freedom, for peace, for social justice. *Freedom without social justice is but a fragile conquest, which for many results in the freedom to starve*» (emphasis added).

[14] The following issues are considered to be ascribed to this way of *being*: *a)* the way of doing legal science, the scientific method in law; *b)* the role of the Schools and *cooptative* 'recruitment' through competitions; *c)* the relationship between teaching and research; *d)* the doubt between self-referentiality and confrontation with the 'rest of the world' (the perception in most of the academic 'job'); *e)* the role of associations (the AIPDA and the San Martino).

[15] The following issues, instead, are considered ascribed to the *relationship with society*: *a)* the relationship between legal science and politics [does the *neutral technician* at the service of a party, of a political structure, who translates a political content into legal language, do legal science? And what about the *partisan technician* who (is such because) espouses and pursues a given *Weltanshauung*?]; *b)* the relationship between the university and the liberal profession; *c)* the relationship between the University and the training of young people; *d)* the relationship between the University and the territory (between the autonomy of territorial bodies and the autonomy of functional bodies).

First of all, it is good to state what, at least conventionally, is meant in this paper with the terms 'jurist' and 'academy'. As for the term 'jurist', a few years ago we had the opportunity to clarify why it is convenient to distinguish the «locution *jurist scholar*» from «*jurist* law*technician*»[16]. This paper has as its reference the *jurist scholar* (also because the other is, as a rule, structurally external to the Academy and a constitutive and integral part of society).

As for the Academy, this word must be considered a synonymous of 'scientific community'. Which – in the writer's opinion – is not a collective subject (no one can speak on behalf of it), but rather the sphere, the place in which scholars of a given disciplinary area live and confront one with another. Moreover, in the *online VocabolarioTreccani*it is stated that 'Academy' is both the «permanent union of people established for the purpose of promoting letters, sciences and the arts» and, precisely, «the set of academics and the places where they teach»[17]. And, again, that *Academic* stands for *Universitary*, corresponding exactly to what «pertains to the university or university teaching», or what «belongs to the university or universities and university teachers»[18].

On the jurist, we already explained why it is necessary to refer to the *jurist scholar*, and why, in order to define his role, it is necessary to agree on the object of legal science, and on

[16] At the San Martino in Florence on November 26, 2015, on "*The history and methodological perspectives of San Martino 35 years after its birth*". The text of the report was turned into an essay and published under the title *The Role of the Jurist Scholar in the Process of Modernization of the Public Administration*, in *Dir. Pubb.*, 2016, no. 3, pp. 2019 ff., to which reference is made.

[17] Regarding the etymological origins of the term, *Enc. Treccani on line*, reports *ad vocem*: «Ακαδήμεια or Ἀκαδημία was the name of a place not far from Athens, near which Plato around 387 B.C. began his teaching; he also bought a piece of land there, from which the philosophical school he founded took the name Platonic Academy, which he retained even after moving to Athens. It was a school and at the same time a religious association, modelled on the Pythagorean communities. It had legal personality, land, buildings and other assets of its own. It was directed by the *scolarco*, elected for life by the members of the school; both the *scolarco* and the best of the members devoted themselves to both teaching and scientific research».

[18] It is also true – and this should never be underestimated when outlining the relationship between the jurist and society – that (again in the words of the *online Treccani Vocabulary*) the lemma can also be understood in a negative sense: as in the expressions «arrogance a.», or «hubris a.», or when it refers to «abstract, idle, inconclusive discourse, made for mere pastime, without real practical utility».

the scientific method that should be used to make it[19]. A method that combines induction and deduction. Scientific analysis cannot start but from the observation of the phenomenological datum, derived from living law (expressed by the rules in force and the case law that applies them), with the ultimate aim of being able to scrutinize the results of this observation in the light of general theory and legal logic[20].

There was the opportunity to return to the subject more recently[21], stating that «the imposition of a scientific 'vision' that is not constantly 'challenged' should not be allowed. Truth', even scientific 'truth', must always be contestable. The democratic resilience of the institutional system, in fact, lies in guaranteeing *pluralism* in the relationship between science and politics. For this reason, [...], attention must be paid on the risk of repression of dissent. Certainly, pluralism *of* and *in* information has a serious enemy in *infodemics*. This, however, can only be fought with the ability to convince through the demonstration in thesis of the advanced hypotheses. For sure, not by silencing dissenting voices»[22].

Therefore, the legal scholar must operate coherently to the scientific method, and in the awareness that since *truth is* ontologically relative, the contribution he offers to the search for (and the construction of) it, by being continuously *in progress*, is by definition partisan, and therefore debatable.

The 'juridical' depends on the 'pre-juridical', which means that– in a correct relationship between structure and superstructure (of Marxian memory) – it depends on the values that in a given historical moment find the strength to be codified.

[19] In the report of the San Martino in Florence, cited *back* at footnote 14.

[20]See G. CLEMENTE DI SAN LUCA, *Il ruolo del giurista studioso nel processo di modernizzazione della P.A.* cit., especially pp. 2029-2032.

[21] In the San Martino of the 40th anniversary, held in the middle of the pandemic, remotely (but Bologna), of November 2020 («*The necessary change. Strategies and constraints for reforms*»), and, specifically, in § 3 of the essay derived from the report: G. CLEMENTE DI SAN LUCA, *Emergenzapandemica e strumentariogiuridico-istituzionale*, in *Dir. Pubb*, 2021, no. 1, pp. 83 ff.

[22] G. CLEMENTE DI SAN LUCA, *Emergenza pandemica e strumentario giuridico-istituzionale* cit., p. 111.

The question of values immediately leads to the relationship with Politics. The jurist – it is obvious – can do Politics, understood in an objective sense. It is also possible to state that even the methodology assumed to do legal science may be understood, in itself, as a form of doing Politics.

Expressions such as «'militant' scholar», «'democratic' or 'progressive' jurist», or «'conservative' jurist», are frequently used, alluding, more or less, to guiding the interpretation of norms, favouring certain values over others (naturally among those codified in the legal system).

The jurist, however, can also place himself at the service of Politics understood in the subjective sense. His being a 'neutral technician' at the service of a political party – while not expressing in the terrain proper to legal science (at most in the politics of law) – must nevertheless remain underpinned by deontology. Indeed, there is a great risk of allowing oneself to be guided, in operating, by interests that are not always commendable.

3. UNIVERSITY AND SCHOOLS. MASTERS, STUDENTS AND COMMUNITY. COOPTATION AND COMPETITIONS. EVALUATION

The second profile concerning the jurist's *way of being in the Academy* may well be said to consist in his belonging to a School. In this regard, it is even trivial to recall the role of the Masters and their relationship with their students. If the University is *comunitas* of teachers and learners, within that community the role of the Master is crucial.

In the words of Natalino Irti, «Master [...] is the one who knows and is "beyond" [...]. But it is not enough that [...] he knows, it is also necessary that he reveals and spreads this greater knowledge: and expresses it in doing things, in creating works, and, above all, in offering it to his students. The master is, in his very essence, a giver, a sower in the furrows of humanity, in a circle, vast or narrow, of individuals who listen to and retain his words. The figure of the teacher is joined to the 'docere', the teaching and proposing to others»[23].

[23]N. IRTI, *L'Università vive nella continuità maestri-allievi*, in *Il Sole 24 ore*, December 12, 2021.

The distinguished scholar continues by affirming that «On the relationship between master and pupil [...] university genealogies were built». And indeed, «University is either built upon the unbroken chain of masters and pupils, who later rise to masters, and so over the centuries, or it is not so. There may well be schools of 'know-how', of technical skills, of organizational and managerial abilities, of professional talents; but not Universities. Which lives and goes on in the continuity of masters and pupils: the latter, albeit impatient for autonomy and seekers of new paths, but bearing the mark of the masters. Pupils, worthy of the master, in whom the latter recognizes himself and is reborn, are not the servile repeaters, the unfruitful bailees of schemes and formulas, the fatuous 'overachievers', but the sharp-eyed pupils, who have become sowers for other generations. How many times does the schoolboy, even if he travels down other paths and departs from the lesson learnt in university lecture halls, perceives a movement of study, a set of phrases, an argumentative rhythm, in which he rediscovers the method of the master, the voice of the old teacher. Who thus continues to give and rejoices – wherever he is – that the gift is well kept and flourishes over time. The unity of master and pupil does not lie in the extrinsic agreement on one or another theme, on one or another solution to problems, but – in Goethe's words – in "proceeding in the same direction": which is a going together in the diversity of characters and in the fruitful multiplicity of individual lives»[24].

The relationship between research and didactics is sublimely summarized in this quotation. The academician's study is not an end to itself, but is aimed at determining *formative action*, by this generating new research: in education, didactics is constitutive of the research process, and viceversa.

Moreover, there are no more effective words than those of Irti to represent the indispensable centrality of the *cooptation* principle in the construction of Academy. The School's intrinsic logic lies in *cooptation*[25]. Competitions are nothing more than a legal form necessitated by the legal system in order to give concrete form to this principle. The media show very little awareness of this. On the basis of prosecutions that often turn out to be

[24]AgainN. IRTI, *L'Università vive nella continuità maestri-allievi* cit.

[25] On thissubject, pleaserefer to G. CLEMENTE DI SAN LUCA, *Autonomia universitaria e cooptazione*, Editoriale Scientifica, Napoli, 1996.

unfounded at the end, their representation of the *cooptative* task is rendered between an obtuse justicialist manichaeism and an aptitude for scandalistic spectacularization, in a clear unawareness of the physiological functioning of the system[26].

In this regard, the significantly widespread incomprehension of the academic world, which also stems from the self-referentiality from which the academy suffers in no small measure, constitutes more than a risk. Incommunicability with the 'rest of the world' is a fact. The public opinion suffers an inadequate perception of the 'profession' of the academic scholar.

But, it is equally true that, not infrequently, there is a very poor deontology of some actors of the academic 'universe'. This is no longer tolerable, not only because it harms the individual unit forced to endure 'corrupt' *cooptation,* but also because, by discrediting the whole, it creates enormous, if not insurmountable, obstacles to the preservation of the mechanism.

A corollary of the principle of *cooptation* is the contrariety (if not even visceral idiosyncrasy) for scientific evaluation entrusted to agencies, especially when linked to the distribution of research resources. The irremediable flaw of such bodies lies in the presumption of their structural neutrality, from which would derive the neutrality of the judgements they make.

In the writer's opinion, in order to 'evaluate', the appropriate forms, because of their consistency with the academic function, still remain, on one hand, reviews (or, in any case, responses in essays) expressed in the physiological places of scientific confrontation and debate – the journals –, openly (and loyally, without hiding behind *blind review*) taking responsibility for the opinions expressed. And, on the other hand, competitions: as the motivation of the candidates' evaluations expressed on such occasions represent an adequate and congruent, and therefore useful and convenient, way of soliciting the revitalization of the deontology of the scientific community.

[26] A characteristic that, according to a well-established line of thought, is ontological to journalism. The first rule that is taught in all schools of journalism around the world is well known: «It is not news if a dog bites a man, but if a man bites a dog».

It is not difficult to understand how – due to the considerations just made – this profile of the jurist's *way of being in the Academy* (the Schools and Masters, *cooptation*, competitions and evaluation) is also reflected in its *relationship with society*.

4. UNIVERSITY AND SCHOLARS ASSOCIATIONS

A further relevant profile of the academic way of being is to be found, without any doubt, in participating in academic associations. Telegraphically: it is indisputable that relating to others with whom one shares – within the academic function – a certain *worldview*, is a connotative element of the scholar's *way of being*.

A concrete example of this in Italy is the San Martino group: an association (deliberately *de facto*) between scholars who share a certain conception of being in the university conjugated with a common reading, of a – we may say – 'democratic' kind, of public institutions and their discipline. In short, an organization that can correctly be qualified as 'political-culturally oriented'.

Equally (albeit differently) connotative is the participation in legally recognized associations, such as the Italian Association of Administrative Law Professors (AIPDA) or the Italian Association of Constitutionalists (AIC), which – although the purposes formally indicated in their statutes consist of promoting disciplinary interests[27] – objectively are, for

[27] Textually, AIPDA: «promotes the study and teaching of Administrative Law and favours the exchange of ideas and information, also through conferences, debates, publications, book reports and reviews, on Administrative Law and public institutions and their functioning. It promotes the circulation of the writings of members and non-members, organizes initiatives on institutional issues and reform proposals, and disseminates the results of its activities» (art. 2, par. 1, Statute). And, for the AIC, in «fostering the deepening of the study and teaching methods of Constitutional Law, promoting and coordinating meetings between scholars and collective research», as well as «the promotion and defense of the peculiarities of constitutional culture, also with reference to university training, the evaluation of research, the selection of professors, researchers and other teaching staff» (art. 1, Statute), to this end aiming «- to organize congresses, conferences, debates and publish their proceedings; - to coordinate the organization of other meeting and study initiatives concerning Constitutional Law; - to join or collaborate with international and foreign organizations with similar objectives; - to implement all activities considered appropriate for the pursuit of the objectives indicated in art. 1; - to take, in any forum (including jurisdictional), all initiatives that are functional to the objectives it pursues and the interests it represents» (article 2).

better or worse, representative of 'categories'. In them, therefore, the exponential capacity of all tendencies and their absorbing vocation to represent both the interests and objectives of the category (defending them in legislative as well as in governmental arenas), and the *plural* scientific point of view of the category itself, are physiological.

Both types, anyway, express modes of being an academic scholar. Nonetheless, for certain (easily intuitable) profiles, they also constitute part of his *relationship with societas*. It is quite evident, in fact, that one is an academic scholar (also) by participating in the life of the social formations in which the related function is manifested. But, at the same time, the capacity expressed in these participations determines the action of that social formation in such a way as to influence the functioning of institutions.

5. UNIVERSITY AND TERRITORY

The most explicit manifestation of the relationship between academic scholars and society is undoubtedly in the spill-over of their work over the territory on which the University is located. With regards to this specific aspect, the question concerns the *an* and the *quomodo* of the relations between each single University and the interests of the territory on which it insists.

That means asking ourselves if these relations should be built, and, above all, how they should be conceived. And this in the twofold perspective of reasoning and dealing with the *cultural needs* of the territory and of having to relate to *local political leaders*. How to do education, for example, cannot remain impermeable to the vocations and problems of the territory[28].

There is no doubt that this presents – once again – the dilemma between self-referentiality and confrontation with the 'rest of the world', or, in other words, the problem

[28] One thinks, on one hand, of the socio-economic connotation of the territory (industrial, agricultural, commercial vocation, etc.); and, on the other hand, of the degeneration resulting, especially in certain areas of the country, from the influence of criminal associations.

of the external perception of the academic 'profession'[29]. In this regard, however, a calibrated action seems necessary, in which to find the right compromise between the weight of scientific-cultural *expertise* and the actual connotations of the anthropological reality in which one operates.

It is, in essence, a matter of finding the right balance between the exercise of territorial autonomy (that of local representative bodies) and the exercise of the functional autonomy (that of institutional bodies based on a professional structure) which is proper to the University.

About this aspect, the interaction with the issue of the so-called 'third mission'[30] is not irrelevant. It is clear, in fact, that activities such as consultancy for institutions and social enterprises, or professional training and update activities for the staff of public and/or private entities – *spin-offs*, *start-ups*, *placements*, etc. – have a clear impact on the cultural, social and economic structure of the territory.

6. UNIVERSITY AND PROFESSIONS: *PECUNIA NON OLET*, BUT... MORE ON EVALUATION

Finally, what probably is the most central question – which concerns both the jurist's *way of being in the Academy* and his *relationship with society* – still needs to be answered: how should the relation between academy and legal professions be intended?

The writer had the good fortune to have Donatello Serranias a guide for his dissertation (back in 1976). The memory is clear of meetings with him, even immediately after graduation, during which, discussing the relationship between *full-time* and *freelance work*, he explained to the young aspiring scholar why the argument used by professors-lawyers to support the indispensability of solid and constant forensic experience in the overall preparation was totally specious. Not that this was useless, quite the contrary. However, for

[29] Mentioned *back* in footnote 16: academic can also be a qualifying attribute of nouns such as 'arrogance', 'hubris', when it does not even mean 'abstraction from reality', or 'substantial inconclusiveness'.

[30] To which we will return in the following §.

the scholar – he said – it is sufficient to thoroughly and rigorously examine the guidelines of jurisprudence. In other words, to guarantee the indispensable knowledge of the concrete side of the discipline (the entrepreneurial activity that characterizes the liberal profession is not indispensable, but) the seriousness in analyzing the production of judges is necessary and sufficient.

To be unequivocal. It is certainly good to set aside any fundamentalism in banning 'defined time'. Nevertheless, 'full time' (incompatible with the profession) stems from the need for absolute dedication to the specific primary public interest of the University: studying in order to teach[31]. This 'job' is radically different from professional activity. True, one cannot teach – and help young people train to operate in a given subject area – without having adequate experience of how the technical operators of the law (judges, lawyers, notaries, managers) operate[32].

However, one cannot but claim the diversity of vocations. And this also applies to the so called 'third mission'. *Mutatis mutandis*, the distortion of the core vocation resulting from the, shall we say, professional 'deviation' is not dissimilar to the one originating from the 'third mission'. Given in abstract 50 the number of hours to be devoted to work in a week, how many hours should the professor absorb for the first, second and third mission? If for the 'third mission' one overcomes (at most) 10 hours, the ultimate goal of the University is diverted. Reasonableness would dictate that at least 4/5 of the time should be devoted to research and teaching.

In this regard, it should not be overlooked that a substantial part of this diversion derives from the role that the 'third mission' plays in the evaluation of the Universities'

[31] Certainly, among the objectives of the scientific research of legal-administrative scholar, the one of improving the public administration cannot be excluded. And it is undoubtedly not useless to gain the experience of working inside the public administration. One can go and return. However, while performing activities outside the Academy, one fulfils another function. Being inside the P.A. leads to lose freedom of thought. Of course, the experience gained can later be valuable once returned to the Academy, when the physiological functionalization of research activity – studying in order to teach – is resumed.

[32] In the small community led by the writer, a dozen or so students (of whom one cannot be but proud) continue to work, giving a precious contribution to the complex process of teaching and research, although they have well established themselves in the profession or in the P.A.

performance: it is on this – as mentioned before – that the obtaining of resources depends on, in no small part[33].

Let it be clear. *Pecunia non olet*! Even more when one considers the low remuneration of 'full-time'academic commitment. The spread between the salaries of academics and those of other legal 'professions' (senior administrative managers, magistrates, notaries, lawyers) is objective. It is therefore fully justified to try to remedy this inequity. In fact, any radical and manichean (of neo-franciscan style) 'fundamentalism' in considering the possibility of increasing the non-rich public salaries as immoral is to be avoided. However, there is a very high risk of contributing to a radical distortion of the main function of the university[34].

As legal-administrative experts, it could be concluded that – since a secondary interest (the third mission) is satisfied in such a way that the primary specific public interest (teaching and research) is not adequately pursued – there is a clear 'excess of power' (intended as a flaw of legitimacy of the administrative act).

7. CONCLUDING REMARKS

To conclude, it is sufficient to briefly point out the 'short circuits' that emerged from the analysis of the two profiles.

As can easily be deducted from a mere observation of the issues recalled, the interactions between the jurist's *way of being in the Academy* and his *relationship with society* find many points of intersection and mutual influence.

[33] Deeply thinking, the real problem with the 'third mission' has been precisely its formal institutionalization. The need to influence the progress of society, indeed, is in the ontology of Academy. This need, at least substantially, has always been the ultimate goal of the combined action of research and teaching. It can well be said that the third mission has been denatured by institutionalization, which is negatively linked to the allocation of resources.

[34] In this regard, it is not useless to emphasize that the special relationship between research and teaching marks the difference (and thus the boundary) between academic research and 'pure' research (think of the distinction between a National Research Council - CNR - scholar and a university scholar).

First of all, with regards to the method of doing legal science, it has been seen that the jurist's *way of being in the Academy* has a natural repercussion on the *relationship* with Politics – whether understood in an objective sense, referring to the figure of the 'militant' scholar ('progressive jurist', 'conservative jurist'), or in a subjective sense, referring to the figure of the 'neutral technician' at the service of a political party – and therefore *with society*. However, the spirit and ethics of service must be preserved[35].

For what concerns the question of the interdependent relationship between teaching and research – which is part of the jurist's *way of being in the Academy* – questions dealing with the training of young people and the territory, which characterize the *relationship of the jurist with society*, are by no means irrelevant. Indeed, there is no doubt that whether or not the mutual influence of how to do research and how to do teaching is understood cannot but have a considerable impact on the training of young people, guiding in one direction or another the evolution of the *societas* and the territory in which they grow up.

Furthermore, on the subject of Schools, Masters, *cooptation*, competitions and evaluation, the *way of being of the jurist in the Academy* reflects not a little on his *relationship with society*. Because of the fundamental importance of the value of *testimony*, which is in danger of being obscured by the misleading media narrative.

In the same way, the more or less active participation in associations – these being either political-culturally oriented or category associations – is by no means irrelevant, insofar as, obviously, one works to condition the orientations to be taken in the relationship with the country's institutions.

Finally, the most relevant profile – in the writer's opinion – remains the one that pertains to the indispensability of pursuing the two physiological missions of the university – research and teaching –, which requires a peculiar *forma mentis*, and such a timeframe, that is almost always difficult to reconcile with the so-called 'defined-term' regime.

[35] And ethics escapes legal rules. Ethical Codes are almost an oxymoron. Morality and Law are different, although tangential, sets. Morality is outside the Law. When a moral imperative becomes a legal rule, it leaves morality and enters in the law domain.

On the other hand, it is not possible to do legal science simply by transposing into papers the (albeit fine, sophisticated and interesting) reconstructions matured in the study of events related to concrete cases encountered in the professional activity.

The scholar's study aims to seek the Truth[36]. In the awareness that this does not exist. That it is the outcome of a constant and infinite process, during which the main interlocutors are the young people who are trained in the didactics rendered by researchers. The scholar's study, in short – representing, in the search for the Truth, his mental projection – cannot coincide with the mere technical resolution of a possible concrete problem (whether reflected, or not, in a possible legal dispute). It goes far beyond that.

In other words, one must study to form, and forming conforms to studying. That is to succeed in stimulating a taste for the search for Truth in young people in formation, because in doing so lies the main stimulus in continuing research. It is in this biunivocity that the most decisive intersection between the jurist's *way of being in the Academy* and his *relationship with society* takes place.

The style with which one acts inside the university is reflected significantly in how one accompanies young people in their education, thus ending up being one with the *relationship with society*. Although this can sometimes be overshadowed in the common thinking, nothing is more important than the 'civic' imprint that young people – destined to constitute the *ruling class of* the future – receive during their years in the academic community.

The conclusion can only be addressed to the young scholars. Recalling the *beauty* of this 'job'. Academic scholars are privileged, because they are paid to do a *wonderful*

[36] On the freedom of art and science, amongmanyothers in the Italiandoctrine, see: F. MERLONI, *Autonomie e libertà nel sistema della ricerca scientifica*, Giuffrè, Milano, 1990; M. AINIS, *Cultura e politica: il modello costituzionale*, Cedam, Padova, 1991; G. CLEMENTE DI SAN LUCA, *Libertà dell'arte e potere amministrativo*, Editoriale Scientifica, Napoli, 1993; F. MERLONI, *La ricerca scientifica tra autonomia e indirizzo politico, tra uniformità e differenziazione*, in *Le istituzioni del federalismo*, 2002, pp. 797 ff.; ID., *Autonomia, responsabilità, valutazione nella disciplina delle Università e degli enti di ricerca non strumentale*, in *Dir. Pub.*, 2004, pp. 581 ff.; ID., *Ricerca scientifica e «territorio»*, in M. CAMMELLI (a cura di), *Territorialità e delocalizzazione nel governo locale*, Il Mulino, Bologna, 2007, pp. 757 ff. And, more recently: F. MERLONI, *Libertà della scienza e della ricerca*, in *Dir. Pub.*, 2016, supplement to n. 3, monographic file; R. CAVALLO PERIN, *Il contributo italiano alla libertà di scienza nel sistema delle libertà costituzionali*, in *Diritto Amministrativo*, 2021, n. 3, pp. 587 ff.

activity. Doing university in its most authentic meaning, in its deepest value, is a *wonderful* thing. To be loved with even immoderate passion. And – as is typical of the most intense loves – without calculation, without expecting to see the results.

The results of their work can be seen in the long run. One sows for a harvest that for the most part will not be seen until many years later. Everyone knows, it is difficult to plant seeds knowing that you cannot collect the harvest. One must romantically limit oneself to imagining it. Sustained by an unshakeable confidence: that this is the 'good fight' to be fought, and that the season will come, even if others will likely see the fruits. The *wonderful* task of the academic jurist is to keep sowing.

***Abstract**. The purpose of the paper is to discuss the way the role of the jurist should be understood both within the Academy and in its relationship with society. To do so, moving from the preliminary distinction between jurist-professors and professor-lawyers, the paper focuses on five different profiles that cross the above mentioned theme: 1) science and politics; 2) schools; 3) associations; 4) the territory; 5) the professions.*