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REVIEWS SYMPOSIUM

Response to comments

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1 Introduction

Four friendly, overgenerous reviews by commentators, all of whom have been supporters of 'law in context' and the series of that name, three of them having contributed to it in significant ways. Perhaps I should just blush and say thank you. Moreover, a lengthy earlier 'conversation' with David Sugarman has just appeared in *The Journal of Law and Society* dealing inter alia with the concepts of law in context, legal realism, doctrine and some other points raised by these reviews.[1] However, the editor has reminded me that I promised to respond to comments and to join in this celebration of the *Law in Context* series, which is very much a collective effort. In doing so, I shall try to avoid much overlap with the earlier exchange, focusing first on specific points in the individual comments and then briefly saying something about the series.

2 Peter Cane

With Cane as editor and myself as admirer of Atiyah, it is unsurprising that I agree with almost everything he says here. However, he defends *Salmond* from my strictures on the ground that Sir John Salmond assumed that he knew his audience (present and intending practitioners) who would understand the background of his working assumptions: 'Salmond, we might say, presented tort law not *without* context, but *for* a context' (emphasis in original). In short, his audience would *understand* the operation of this branch of doctrine in practice.[2] *Salmond on Torts* was a useful source for some barristers and judges considering questions of law in the upper reaches of a common-law system. My complaint was that the book was divorced from solicitors' practice when I first encountered it; it may have been of practical value to law students in preparing for examinations, but this was because of the kind of examinations they were subjected to, not very far from the Bar Finals on which I was advised by Gradgrind personified at a private crammer whose attitude was 'indeed practical so far as the exams were concerned' (*Jurist in Context*, Twining, 2019b, hereafter '*JiC*', pp. 23–24). My objection was not to the realities of practice, but to a form of education that seemed a world away from it. One of the aims of the *Law in Context* series was to get more of the action into the books.

I felt misled by *Salmond* because no mention had been made of insurance, settlement out of court, the damages lottery and so on. I was frustrated not because I disliked the world of practice, as Cane suggests, but rather because I wanted to understand that world. The jurisprudential question is: What is involved in understanding such topics as the tort of negligence?

Adopting a contextual approach does not involve a commitment to a view that a rule can never be understood unless a context is articulated. When a cadet obeys the order 'right turn', if he complies, we may infer that he understands the order and its context adequately for the purpose. In many practical contexts, consulting the text of a statute is adequate for some routine purposes. Cane and I agree that

[1]Twining and Sugarman (2020).

[2]It is important to distinguish Sir John Salmond the author from *Salmond on Torts* the book as an example of a genre that I was objecting to. The eleventh edition of *Salmond* that I used as a student was the responsibility of Robert Heuston with whom I corresponded about it (Heuston, 1953).

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exposition of legal doctrine often relies on background knowledge of many things. I make the point in *JiC* that the nearly all the authors of the great American practitioners' treatises were written by people with extensive practical experience. They assumed extensive tacit knowledge, much of which was quite local (*JiC*, pp. 171, 326). In the 1950s, *Salmond on Torts* was viewed mainly as a student textbook; how was I, as a nineteen-year-old undergraduate, expected to have such knowledge?

I agree with Cane that one needs to keep an eye on the danger of throwing the baby out with the bathwater, by for example setting 'law in context' against doctrine or providing all context and little doctrine, or by just tacking on a bit of 'context' that has little explanatory value – I would add equating 'law in context' with policy orientation. I also agree that 'there can be no law *in context*, no realism *about law*, without law *in itself* to be realistic and contextual about' (emphasis in original). However, the word 'law' in the term 'law in context' includes doctrine, but need not be restricted to it; 'law in context' is not necessarily 'doctrine in context'. Finally, 'law in context' has its own historical context, as Peter admirably illustrates in his sketch of the development of modern private law in England.

3 Nicola Lacey

Niki Lacey and I became colleagues at University College London in 1983. Since then, we have been friends, colleagues and allies in the cause of building bridges between broader and more traditional approaches to law and legal theory.[3] We were both influenced by Herbert Hart, but moved away from his constrained agenda. Her brilliant *A Life of H.L.A. Hart: The Nightmare and the Noble Dream* (2004) saddened me, but helped to explain some of my ambivalence about him. Her revealing parade of the books in the *Law in Context* series that influenced her and her reflections on its future will be dealt with below.

Lacey invites me to update my thoughts on 'unfinished business' (*JiC*, pp. 259–273). I delivered the manuscript of the book in March 2018. Two years later, I have some bits and pieces to report. When I talk of 'unfinished business', I am reminded of Maurice Zapp's comment on the Rummidge English Department:

> 'Any damn fool. he maintained, could think of questions; it was *answers* that separated the men from the boys …. One couldn't move in English Studies these days without falling over unanswered questions which some fool had carelessly left lying about.'[4]

I plead guilty to two unfinished projects. I had hoped to do another volume on 'Southern Voices' and to plan a further programme, not limited to human rights. I have long been interested in problems relating to law in multilingual societies. I collected material on this neglected topic for some years, but have never managed to develop a specific project. I have bequeathed these to Warwick: I think that both are significant and neglected topics, but it may look as if I have just left them lying about.[5]

[3]See especially Lacey (2006; 2013; 2017); cf. Twining (2009), especially Chapters 2 and 15. This acknowledges the value of Hart's contributions and urges analytical jurists to take an interest in a wider range of concepts, including those relevant to empirical understandings, such as tradition, system, group, dispute, function, claim, institution, court, judge, legal services and even social norm. On constructing and refining concepts that might 'travel well' across legal traditions, cultures and jurisdictions, see Twining (2005). For a recent succinct restatement of my general approach to jurisprudence and globalisation, see Twining (2020).

[4]Lodge (1975, p. 45), quoted in *JiC*, pp. 25–26.

[5]Paliwala and Twining (2020). The archive relating to these two projects is promised to Warwick Law School, via Abdul Paliwala. Two other areas of concern mentioned in *JiC*, Chapter 20 relate to general campaigns or enterprises to which I have contributed in a modest way: Evidence as a multidisciplinary field and a general theory of norms. Several participants of the UCL programme on the development of Evidence as a multidisciplinary field have tried to keep the flame alive ('Evidence II', *JiC*, p. 265). Two recent papers on 'Bentham's theory of evidence' (Twining, 2019a) and 'Evidence as a multi-disciplinary field' (Twining, forthcoming) continue that enterprise. The news is less good about a similar interest: the development of a general theory of norms. David Miers, John McEldowney and I had hoped to work on a sixth edition of *How to Do*

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Two other works that were 'unfinished' in March 2018 have made progress. Both were briefly summarised in *JiC*, but have since been expanded. First, I reported a substantial change of perspective on the field that is normally labelled 'Legal Education'. A fuller account became the Lord Upjohn Lecture (ALT) for 2017.[6] The starting point is that most legal educators pay lip service to two mantras: 'focus on learning rather than teaching' and 'take lifelong learning seriously'. However, in thinking, research, policy-making and practice, we have almost without exception narcissistically concentrated on teaching and formal primary legal education and training up to the point of the initial certification of practitioners. The Upjohn Lecture is a statement of why I think this is wrong and some implications of a switch of perspective to learning about law in society as a whole, including what has been hitherto treated as a quite separate subject: 'Public Understanding of Law.' I have reiterated the call for the establishment of Chairs of Public Understanding of Law as has been done in several other fields. This is as much an activist as an intellectual concern and I do not promise to stay silent on this in future. I support the four Professors of Legal Education responsible for the Legal Education and Training Review (LETR 2013) who have clearly proclaimed: 'NEVER AGAIN.'[7] A better organising concept for the field would be 'Learning about Law'.

Relabelling and rethinking the subject traditionally called 'Legal Reasoning' has been another active concern. 'Reasoning in Legal Contexts' as a label is a reminder that 'reasoning' by many different actors takes place at all stages of litigation and beyond, in non-contentious practice and in other spheres of 'legal action'. It is a failure of jurisprudence that almost all attention has been focused on reasoning about questions of law, mainly by judges in appellate cases; reasoning about other decisions[8] and the similarities and differences of this form of reasoning and their relations to each other have rarely been systematically addressed. This is not only a glaring gap in jurisprudence, but also an arena where bridges might be built or chasms enlarged between narrower and broader approaches to understanding law. In 2020, this is now my main project.

One notable event since the publication of *JiC* is the forceful resurrection of R.G. Collingwood by Ray Monk. In 2019, a paper on Collingwood by Monk (Wittgenstein's biographer) was published in *Prospect*.[9] It suggested that English (especially Oxonian) philosophy suffered a disastrous narrowing because of Collingwood's early death at fifty-three and the baneful influence of Gilbert Ryle as his successor in the Waynflete Chair of Metaphysics at Oxford.

In *JiC*, I reported how reading R.G. Collingwood's *An Autobiography* (1939) was an epiphanic moment for me just after I had first graduated in 1955 and that he influenced my ideas on standpoint (pp. 117–122), questioning (pp. 124–126), history (p. 312, n. 6), reading texts contextually (p. 100) and even the idea that one illuminating way of looking at rules is as attempted responses to perceived problems – an important aspect of setting them 'in context' (pp. 142–144).[10] Furthermore, Collingwood stimulated me to think in terms of an intellectual memoir rather than a conventional autobiography. I deviated from the 'relentless intellectualism' of his book, but for Collingwoodian reasons: I was trying to set my writings in the context of times and places and my underlying concerns at different periods.

Things with Rules in 2020–2021; this would have set out to be more ambitious theoretically than earlier editions, but the uncertainties of the Brexit process led us reluctantly to decide not to proceed. However, this area is far from dormant, as is illustrated by the interdisciplinary Legalism project in Oxford that has resulted in four significant volumes: Dresch and Skoda (2012); Pirie and Scheele (2014); Dresch and Scheele (2015); Kantor *et al.* (2017) (cf. *JiC*, pp. 260–263, 362–363, n. 15).

[6]Twining (2018); cf. Twining (2015).

[7]'[T]he model of a self-contained time-limited, profession-centric review typified by Ormrod *et al.*, and by LETR itself, needs to become a thing of the past', Ching *et al.* (2014).

[8]For example, decisions in investigation, prosecution decisions, settlement out of court, plea bargaining, sentencing and other post-trial decisions are all meant to be susceptible to reasoned justification by participating actors. Controversially, juries and individual jurors are not allowed to state reasons for their verdicts.

[9]Monk (2019); the paper is more balanced than the headline title. See also Jeffries (2012).

[10]All of these ideas were developed at greater length elsewhere and merely summarised in *JiC*. On rules as responses to problems, see Twining and Miers (2010, Chapter 2). On my reservations about some of Collingwood's ideas, see *JiC*, pp. 312–313, nn. 10, 11, 14.

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Monk's paper suggested to me that I was influenced by Collingwood even more than I had realised and that my conception of Jurisprudence is Collingwoodian in an important sense. Collingwood took conceptual clarification seriously, but also gave room for empathy and imagination; his philosophical interests were very wide and he was very interested in Continental philosophy, especially Vico and Croce. Ryle, by contrast, narrowed the focus and was obnoxiously nationalistic about the superiority of one narrow English tradition over all Continental ones. Monk's paper is of particular interest not only because of his revival of Collingwood, but also by his suggestion that English philosophy has recently recovered from its period of isolation. If analytical legal philosophy shows itself open to similar broadening, the prospects of building bridges and a genuinely pluralistic but less fragmented jurisprudence are very much brighter.

4 Bronwen Morgan

Bronwen Morgan is a leading socio-legal scholar with a broad transnational outlook rooted in Australia, Zimbabwe, California and England, but extending to a global perspective. She and I have some shared post-colonial concerns and worked for over a decade as co-editors of the *Law in Context* series, so her reflections on that are of particular interest.

Her blending of *Jurist in Context* with ideas of identity, place and general well-being go beyond what I had consciously articulated. Linking it with Bruno Latour, whose work I have enjoyed, is particularly intriguing.[11] While her interpretation took me by surprise, it seems both fair and perceptive. It especially resonates with my concerns about standpoint and puzzles about the connections between participants and observers in understanding law. Collingwood taught me to read a text in the context of the author's immediate concerns as well as its time and place; Bronwen interestingly extends this to the intersections of place and identity, correctly emphasising my strong sense of being an expatriate not only in Sudan, Tanzania and the US, but also in Northern Ireland and the Republic (my wife is from Dublin). When I began my first full-time job in England, seventeen years into my career, I also found aspects of the culture, politics and student attitudes quite strange, even though I thought of myself as socially and culturally English (I *loyally* support England at cricket, Rugby Union and other sports). Bronwen has stimulated me to recognise that the question of professional identities is closely related to my ideas on standpoint, in particular the idea that most legal discourse is strongly participant-oriented, for example Dworkinians striving to make their own legal system 'the best it can be'[12] or students pretending to play the roles of legislators, law officers, appellate judges, Q.C.s and other members of their legal establishment, rarely looking at law from the points of view of external observers.[13] The jurist as public intellectual becomes a participant, while often maintaining a posture of the relative detachment of the scholar. I must brood on this further.

Much of Bronwen's comment centres on the *Law in Context* series of which she has been co-editor as well as contributor (see further below).

5 David Sugarman

David Sugarman is a distinguished English legal historian with strong American connections.[14] We have known each other for about forty years, for at least twenty of which we have been engaged in

[11]I have not read the particular work of Latour's that she cites but I have drawn on him in relation to ideas about diffusion and technology. See Latour (1996).

[12]Ronald Dworkin invited me to comment on the manuscript of *Law's Empire*. I tried to press him to clarify how his approach might accommodate the view of a foreign observer (and by implication the standpoint of a comparative lawyer). I used the example of a 'Moscow watcher' (a journalist or a spy or a foreign scholar) trying to predict some politico-legal event, attempting to combine the lenses of a detached observer with his own role as a participant in his own profession. Dworkin did not respond and I found no trace of this in *Law's Empire* (1986); cf. my treatment of the view that Neil MacCormick's seeming shift from Hart to Dworkin reflected a return to his Scottish intellectual roots, which transcend the supposed Hart/Dworkin divide, and greater involvement in activist politics in his later years (*JiC*, p. 213).

[13]'For law students the commonest form of stupidity may be forgetting who they are pretending to be' (*JiC*, p. 119).

[14]He was elected an Honorary Fellow of the American Society for Legal History in 2019.

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friendly dialogue in private. I owe David many debts, including for his role as the convenor of two public events in which *JiC* was discussed. This is only the second occasion on which our fencing will be in print. In our first 'conversation' about the book, he pressed me on a number of points on which we seem to at least differ and possibly disagree. I thought that I had answered all of his questions in the edited version.[15] However, he clearly has not been satisfied with some of my answers; in particular, he charges me with being reticent or modest about my political beliefs and orientation. I shall suggest that this is more revealing about his views than mine.

Two preliminary points. First, this symposium is concerned with one particular book and to commemorate the *Law in Context* series as a collective enterprise. Apart from some minor quibbles,[16] Sugarman may give one fair interpretation of my personality and attitudes, but I shall only respond to that insofar as it is directly relevant to my ideas as expressed in the book. Second, he has been an important supporter of 'law in context' – the approach, the series and broader approaches to law. His criticisms and doubts are those of a well-informed and generally sympathetic insider.

Sugarman's comment starts with a comparison of *JiC* and the recent autobiography by our mutual friend, Harry Arthurs.[17] He portrays the latter as a pessimist and myself as an optimist who is deluded about the prospects for the discipline of Law, realising its potential in 'the real world' of academia. This is intriguing. We can all agree that academics generally are not suitable subjects for biography or memoirs, for their professional lives tend not to be very interesting. Our two books belong to different genres: his is a mainstream autobiography, whereas mine is a work of jurisprudence masquerading as a memoir. He is an important public figure in Canada. Much of his fascinating book is taken up with his experiences as Dean of Osgoode Hall Law School, President of York University and his role as activist in labour relations, public intellectual and 'useful idiot' in chairing commissions and advising on policy, as well as being a leading scholar and educator.[18]

The tone of much of Arthurs's book is quite sardonic, though not completely disillusioned, and he is quite pessimistic about the future of legal education as he sees it in Canada. As a legal nationalist, far more than Sugarman, I celebrate the achievements as well as the potential of Law as a marvellous humanistic discipline, and in this respect I am upbeat. But there also runs a sceptical, even fatalistic, thread in *JiC* that may be more pessimistic than either of my friends, not least because of the tragic history of one of my main reference points, Eastern Africa, over the past fifty years or so (*JiC*, pp. 55–56, 231). This is summed up at the end of a passage rehearsing that history: 'Like Robert Frost, I believe the world will end in fire or ice, but I still think that it is worth soldiering on to mitigate suffering until it happens' (*JiC*, p. 231). After the past year, I might well have to insert the words 'soon' and 'or pandemic' in this sentence.

This underlying agnosticism is relevant to responding to Sugarman's complaint. Since adolescence, I have had a problem about beliefs that I have never outgrown (*JiC*, pp. 14–15, 18, *et passim*); I accept belief pluralism as a social fact that we have to live with and, without being a strong cultural relativist, I reject simplistic moral universalism (*General Jurisprudence*, 2009, hereafter '*GJP*', s. 5.3, pp. 126–132; *JiC*, p. 105). In addition, as Morgan noted, I have been an expatriate, hence a kind of outsider, for much of my career.

[15]Twining and Sugarman (2020).

[16]One quibble: Sugarman does not make it clear that I consider socio-legal studies to be one part, of course a very important one, of the broad field of empirical understanding of law and justice (*GJP*, Chapters 8–10). This includes lessons of experience and empirical understandings that are not based on rigorous social-science research. As Llewellyn said, 'knowledge does not have to be "scientific" to be useful and important' (*JiC*, p. 88). I now regret not having made it clear that I did not give much space in *JiC* to this topic or to Law and Development, because these had been treated at great length in *GJP*, Chapters 8–13.

[17]Arthurs (2019). A third recent memoir by an academic lawyer is Celia Wells, *A Woman in Law* (2019).

[18]Our views on legal education overlap and have converged despite significant contextual differences between England and Canada. In discussing 'globalisation', Arthurs focuses on economic aspects, especially strong versions of neoliberalism, whereas I adopt a broader interpretation of the complex processes of increasing interdependence. See Twining (2017).

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In the earlier 'conversation', Sugarman asked: 'Wouldn't most people see you as a liberal?' I replied in some detail to that ambiguous question.[19] Some people might say that this was quite candid, especially for an academic lawyer. But still not satisfied, Sugarman says that '[Twining] is reluctant to discuss and analyse at length his core values and politics'.[20] Maybe that is more revealing about the questioner than the respondent. The key lies in an intellectual disagreement. As a post-graduate at Harvard, Sugarman was heavily influenced by his generation of American critical legal scholars (CLS) including Duncan Kennedy, Morton Horwitz and Robert Gordon, a formidable trio. In posing some questions, David's vocabulary seems to me to be straight out of the CLS playbook. The gist of his comment is that Twining has been too apolitical and insufficiently 'critical', as that term is used in the phrase 'critical legal studies'.

I am not a 'crit'. In the 1980s, I found American CLS an interesting phenomenon and even attended two or three of their conferences. But I did not join or even become a fellow traveller, for several reasons. The movement as I encountered it seemed to me to be very American in orientation, focus and style; it was an outlet for a wide range of frustrated local progressives of different kinds who were estopped from calling themselves socialists, let alone Marxists. Some attacked any distinction between law and politics; some exaggerated the indeterminacy of legal doctrine; they focused on doctrine in order to trash it, but they were dismissive of empirical legal studies. Counter to this, I learned from Tom Hadden and Kevin Boyle in Belfast the importance of a nuanced view of the intricate relations between law and politics (*JiC*, p. 96); I have never been a rule sceptic (*JiC*, pp. 138–146) nor a supporter of radical indeterminacy (*JiC*, pp. 138–146); and I think that doctrine and empirical understandings are both necessary but not sufficient ingredients of understanding law (p. 173). I thought CLS concerns were quite parochial and did not travel well to other countries. Nevertheless, I found several 'crits' intellectually stimulating and congenial as colleagues. I was saved from involvement in the bitter political battles that erupted in some law schools. I was particularly sympathetic to feminist and racial concerns, but felt on the whole that involvement with CLS did not always advance these greater causes.

In David Sugarman's case, I think he has assumed that all forms of jurisprudence presuppose some kind of political ideology, but he was not satisfied that the ethos of a liberal scholar and teacher is enough. That may be an ideology, but it is not a political ideology. This analysis helps to explain two other aspects of his comment: first, he plausibly characterises me as middle-order theorist and a middle-of-the-road radical and, surprisingly, he is puzzled by that; second, he suggests that 'law in context' is doomed to fail as a political movement (hence his emphasis on Harry Arthurs's pessimism).

It may well be correct that, especially in recent years, I could be interpreted as a 'radical' not in the ideological or political activist sense, but rather because of a commitment to bringing to the surface and examining quizzically key working assumptions of particular texts or theses or academic enterprises (*JiC*, pp. 4, 106, 245–252). Insofar as I treat such working assumptions as unstable rafts in a stormy ocean of beliefs, lack of strong ideological commitments makes it easier to challenge nearly all such assumptions.[21]

Unlike the three other commentators, Sugarman suggests that 'law in context' fruitlessly challenged the citadels of 'doctrinalism' in the context of broader political struggles and he thinks it is unlikely to do so without a more effective politics. These judgments flow from his CLS stance: in his view, the only success for any attempt to change legal scholarship and legal education is a political victory over the enemy 'doctrinalism'. This conflates two aspects of 'doctrinalism': in *JiC*, I am careful to differentiate excesses of some doctrinal traditions[22] from more nuanced ideas of doctrine appropriately

[19]Twining and Sugarman (2020).

[20]Sugarman also complains that I do not go into detail about internal faculty politics at Warwick. I did not think them sufficiently relevant to the development of my ideas. Dar-es-Salaam's brief Marxist phase happened long after I left.

[21]This statement is qualified by Collingwood's idea of 'absolute presuppositions' – a topic too complex to pursue here.

[22]Such as its domination of the academic legal landscape and some claims to exclusivity or to be 'scientific' (pp. 169–174).

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contextualised as a necessary part of our discipline (pp. 169–174). I agree with much of Sugarman's criticism of the state of university legal education in England, except that I think that he exaggerates its weaknesses. Here, he does seem to be throwing the baby out with the bathwater. He has, however, thrown down a challenge: Have attempts to broaden the study of law been a failure? What can the series claim to have contributed so far and promise for the future? What in short is there to celebrate? That leads on to the next section.

6 The *Law in Context* series 1970–2020

To celebrate the fiftieth anniversary of the *Law in Context* series, I stepped down as general editor. It was time to hand over to a new team in a period of rapid change (*JiC*, p. 273). The early history of the series is well documented – some in print,[23] more in an extensive archival collection at the Institute of Advanced Legal Studies.[24] A blow-by-blow account of all the successes and disappointments, tensions and friendships, surprises and longueurs could fill a book, but that would probably not be very different from other publishing stories to say nothing of issues of libel, data protection and confidentiality.

Briefly, an early venture into academic publishing by George Weidenfeld was remarkably successful. This was an economics textbook by John Vaisey, who advised that Weidenfeld and Nicolson could hardly fail in law publishing because law books were unintellectual, unempirical, fustian and DULL DULL DULL. DULL. The managing director, Nicholas Thompson, came to New Haven to discuss this with Robert Stevens, who already had a reputation as an iconoclast and critic of the legal establishment and of legal education in England.[25] I was at Yale at the time, Robert was a close friend and we had been discussing the issues in anticipation of my move to Belfast. I was invited to join the consultation. We first proposed a journal, as we doubted that there would be enough authors for a book series. However, Weidenfeld and Nicolson did not do academic journals and wisely suggested a series. When a title for this was discussed, *Law in Context* was our third choice, because two other publishers were launching series called *Law and Society* and *Law in Society*. That suggests that the time was ripe for this kind of development and that not too much should be read into the label (*JiC*, pp. 92, 94). Fortunately, Weidenfeld's were not only adventurous, but also patient. They realised that it would take time for an innovative series to get established: Stevens and I were appointed as co-editors in 1966; we held a seminar in London in May 1967 to discuss proposals from three authors. Patrick Atiyah delivered his manuscript ahead of schedule in 1970. This got us off to an excellent start, but we then had to wait for three years for the next book. It took until the late 1970s for the series to become accepted. To start with, some law librarians were reluctant to accept them as 'law books'.[26]

The main objective of the series was to provide an outlet and a stimulus for innovative books that were 'broader' in approach than traditional law textbooks, but broader in what ways was deliberately left open. Some series are intended to advance a particular methodology or perspective or even ideology. However, the main criterion of success for us was whether it did in fact provide an opportunity to produce good distinctive books. The four commentators have paraded a selection of about twenty books in the series that they think have been significant. I could list at least as many more, including some of the early ones that are no longer in print but were influential on teaching and scholarship in their time.

Other significant dates include the transfers to Butterworths in 1993 and to Cambridge University Press in 2003. On neither occasion were the general editors consulted before the takeover and we were

[23]Twining (1991). This paper reproduces our original thoughts on the series ('Law in context: a tentative rationale' (1967), for which I must accept the main responsibility.

[24]Available at https://ials.sas.ac.uk/library/archives/ials-archives-collections (accessed 7 July 2020).

[25]In 1966, Robert was working on two influential cross-disciplinary books, with Brian Abel-Smith, a sociologist (Abel-Smith and Stevens, 1967; 1968). Later, he also collaborated with Basil Yamey, an economist (Stevens and Yamey, 1965). In England in the 1960s, he was the leading pioneer of cross-disciplinary legal studies.

[26]See Abel (1973).

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quite apprehensive. However, we were assured that the basic ethos of the series would continue and the various undertakings were honoured both in letter and in spirit.

What was that ethos? The first statement of intent on the covers of early books read as follows:

> 'The *Law in Context* series provides a new departure in scholarly legal writing. The impetus behind it is a desire to broaden the study of law by proceeding beyond the exposition of legal doctrine to consider critically the law-in-action in its social and economic context. A contextual approach involves treating legal subjects from a broader base than has been normal in the past, using material from other social sciences, from business studies and from any other discipline that helps to explain the operation in practice of the subject under discussion. This orientation is both more stimulating and more realistic than the bare exposition of legal rules.'

On at least two occasions subsequently, in 2003 and 2015, this paragraph was redrafted, but the changes were almost entirely verbal, the main difference being that the regional, transnational and global orientation of some books was proclaimed. The basic aims and values remained the same: scholarly, innovative, substantial, stimulating, realistic, crossing disciplinary boundaries. As editors, we deliberately avoided giving 'contextual' a precise meaning, but very rarely did we have difficulty with the question: 'Is this contextual enough?'

There were not surprisingly some internal tensions in a venture of this kind. The most persistent has been the difficulty of reconciling our academic objectives with market realities. A neat partial solution to this was to persuade the publishers to accept that, with innovative books, it is important to judge the commercial performance of the series as a whole rather than individual books. Fortunately, some progressed into several editions and it was these that sustained the venture as a whole. Related to this has been the point that most 'law-in-context' books just do not fit a publishing dichotomy between 'textbooks' and 'monographs'. The series was explicitly launched as promoting 'counter-textbooks' and, in the early days, I regularly attacked the textbook form as inimical to the liberal educational values. I may have overdone this but, in 1972, it succeeded in stimulating controversy, especially with the then-president of the Society of Public Teachers of Law (SPTL), Professor T.B. Smith, an enthusiastic Scottish nationalist (*JiC*, p. 169). This exchange, among other things, stimulated me to distinguish between textbooks and institutional treatises, and to exempt some of the latter genre from my strictures because they tended to presuppose background, usually tacit, knowledge, often local, which practitioners (but not law students) could be assumed to possess. This led on to exploration of the ambiguous roles of expositors as being both external observers and participants in their own legal system.[27] This is the basis of my reply to Peter Cane: *Salmond on Torts* may have been useful for practitioners at an early stage of the development of the modern law of torts, but it did not provide students with the contextual knowledge that they lacked and it did not further the value of teaching them how to think. Despite some admirable qualities (it was my favourite textbook), it was misleading in terms of understanding and illiberal educationally.

What have I learned after fifty years as editor of a series? Many of the lessons are obvious: one needs to understand the publisher's concerns, expectations and procedures, and, if necessary, to explain them to authors, especially less experienced ones. Series editors are non-specialists in respect of most books and their role is different from those of supervisors of theses or peer reviewers or in-house editors. As managerialism has taken over much publishing, the old publisher–author relationship has become more impersonal, with some notable exceptions; a conscientious academic editor can up to a point fill that role, especially as a mediator between the inevitably different interests of the parties. In the early days, I commented in detail on draft manuscripts, but I learned over time that I

[27] *JiC*, pp. 169–171, 326–327; my longest account of the expository tradition and its strengths and weaknesses is in *Blackstone's Tower* (Twining, 1994), Chapter 6. I have slightly modified my views since then. On historical aspects, see David Sugarman's much-cited paper 'Legal theory, the common law mind and the making of the textbook tradition' (1986) and Lobban (2016).

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could be more useful at an earlier stage. For example, commenting on draft proposals provides an opportunity to push potential authors quite hard to think about their audience(s), the clarity and coherence of their message and how to make this book the best it can be. I sometimes even used the portentous phrase 'the soul of your book', while subjecting it to a ten-year test: 'How much of this will be worth reading in ten years' time?' One thing I learned is that the author of an academic book proposal needs to be aware of four quite different audiences: the commissioning or in-house editor(s), the series editor(s), the peer reviewers and the marketing department; the last will want succinct answers to some specific questions and maybe a first attempt at a blurb.

One of the first lessons I learned was during an early visit to Weidenfeld's. I had made an appointment to see the commissioning editor and was waiting dutifully in reception. One of our contracted authors came in, walked straight past reception to the backroom and introduced himself to everyone there. Some of them had never met an author before; he got excellent service. Thereafter, I tried to establish direct relations, preferably meeting face to face, with copy-editors, indexers, the marketing department and so on. Publishers often have good reason to 'protect' their staff from pushy anxious authors, but the game is one in which personal relations are crucial.

The main point to emphasise is that a publishing venture of this kind is a collective enterprise. Since its inception, the series has involved about 100 books (including new editions), well over 100 authors and potential authors, probably as many people working in publishing, many academic colleagues as readers and advisers and, until January 2020, only five general editors.[28] Many of these relations involved friendships, tensions, occasional disputes, intellectual exchanges, lengthy conversations, editorial and publishing dilemmas, successes and failures, much of it not publishable or worthy of publication. However, it is really the story of a variety of unique books and individual authors. In *JiC*, I said that, for me, 'it has been like being a midwife for over a hundred babies' (p. 92). The maternity simile may be appropriate but, in my experience, the role of editor is closer to that of sex therapist, more concerned with conception than delivery. There are many people involved in the process, but the key players are the parents and their babies – unique individual books.

I have sometimes found authors surprisingly passive about promoting their own books. There is a tendency to sit back and expect the marketing department to do the rest. The most common complaints from authors were about the inadequacy of promotion, often linked to unrealistic expectations about free copies, reviews and so on. The author often has specialised information about courses, potential overseas markets, trends, fashions and likely reviewers. Publishers love translations (provided someone else bears the cost of translation) but authors may have better contacts. When I was young, actively seeking reviews was widely considered pushy and a breach of academic etiquette, especially in the UK, less so in the US. For younger generations, it seems that self-promotion is a duty, however unedifying that feels. At least up to a point, such inhibitions are no longer appropriate.

I once attended a grand event at Blenheim Palace as the guest of Butterworths. The climax of the evening was a spectacular firework display. This ended with a splendid rocket, which, at its peak, hesitated, then plunged to Earth in a shower of sparks. 'A metaphor for publishing,' said my host.

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[28]Robert Stevens for about thirty years from 1965; Chis McCrudden for almost twenty years from 1993; Bronwen Morgan from 2007 to 2020; Maks Del Mar from 2017 (continuing). In January 2020, Kenneth Armstrong and Sally Shelden joined Maks as co-editors.

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