International Journal of Law in Context (2020), **16**, 469–474
doi:10.1017/S1744552320000221

§

REVIEWS SYMPOSIUM

Law in context as terrestrial politics?

Bronwen Morgan*

Professor of Law, UNSW Sydney
*Corresponding author. E-mail: b.morgan@unsw.edu.au

Reading *Jurist in Context* (Twining, 2019, hereafter '*JiC*') provides an absorbing and highly engaging journey in its own right, as well as an opportunity to reflect on the field of law in context. William Twining's book positions itself as an intellectual memoir, and more specifically a contribution to reflecting on what it means to educate for the disciplinary health of legal studies. The intellectual journey that it documents traces the intersection of place and identity. In relation to place, the reader moves biographically through Africa, the US and the UK. Identity is embodied in the hybrid figure of the jurist, who braids together multiple roles of teacher, professional, public intellectual and activist.

This brief response to the book seeks to unpack that intersection of place and identity, first for the author and his hybrid braided roles, and then for the series in which the book is placed. After these two steps, which engage with the book on its own terms, I extend the reflection to a more personal engagement with how the book resonates for myself as a scholar and mild activist currently located in Oceania. More specifically, I suggest that, for William Twining the author, law in context can integrate place and identity through the figure of the jurist, in ways that help readers of his book appreciate how legal studies can thrive. Then, given the systemic challenges of law, economy and society that confront our planet at the present time, I ask what it would mean to consider the *Law in Context* series as a whole through the lens of governing for planetary well-being. Can the *Law in Context* series educate jurists across the globe to integrate place and identity in ways that connect law with planetary well-being? I suggest it can, especially if we read Twining's intellectual memoir along with Bruno Latour's call for terrestrial politics (Latour, 2018).

1 Place and identity: the author

William Twining in this book takes the reader on a journey through Africa, the US and the UK that connects the detailed context of these places and times to his evolving intellectual identity. It is an absorbing story for any reader intrigued by law and by the vocation of scholarship. The first third of the book is almost entirely grounded in place, giving us an account of a childhood and an undergraduate education in England, followed by the formative experience of his first seven years of teaching, located in newly post-colonial Africa but bookended and punctuated by time spent in the US. Both Africa and the US in their different ways operated as a form of shock treatment that clarified his taken-for-granted assumptions. This energised Twining to formulate ways in which he could understand the social purpose and meaning of law, and integrate that into the heart of legal education.

Despite the profound differences between Chicago in the late 1950s and Sudan and Tanzania in transition to independence, a parallel could be drawn between those times and contexts. Both displayed capacious ambitions for law's contribution to shaping society: Twining encountered the law and economics movement at its inception in Chicago and the early stages of post-colonial African governments: in both cases, witnessing the beginnings of a movement that sought to remake institutions both conceptually and pragmatically, albeit towards very different political ends. In both contexts, Twining learned to see law as just one part of a much broader social and political assemblage. In this, he was stimulated not only by the intellectual influence of realism in the US, but also by the

political enormity of the task facing the two African countries in transition where he helped establish first the early (in Sudan) and then the founding (in Tanzania) stages of local legal education.

The second two-thirds of the book are structured around the three institutions within Great Britain where Twining spent the rest of his professional life: Queens in Northern Ireland, Warwick and University College London (UCL). Here, the interaction between place and intellectual identity takes on a certain pattern that deepens Twining's engagement with jurisprudence at every step: at Queens, he develops his thinking on normative jurisprudence and the skills of thinking like a lawyer; at Warwick, he extends this to develop the *Law in Context* series and his renowned work on evidence; and at UCL, he ventures onto his still extant dialogue with the dynamics of globalisation. Each of these stages produces significant books, but it is interesting to track how they take five to ten years to gestate from the activities and priorities that initially generated them. To take one example most pertinent to this comment, the idea of the *Law in Context* books very first germinated in the mid-1960s in Dar es Salaam, in conversation with Robert Stevens, in part inspired by a Sudanese student's puzzlement about a case involving a camel in London Zoo who bit a child's hand. The student was baffled by the idea that a camel could ever be in a zoo – impossible in the context in which he lived (*JiC*, pp. 46, 91). For Twining, who had initially selected the case thinking its cultural relevance was heightened by the centrality of the camel, this was a productive jarring between his identity as teacher and the place in which that teaching was embedded. In helping to surface contextual assumptions that shape the understanding of law, it inspired the idea of the series, which did not officially launch until 1970.

The memoir powerfully illustrates how scholarship grows out of multiply iterated action and reflection that are deeply embedded in each place. Moreover, in each of these places, multiple identities jostle – professional, scholar, teacher, public intellectual – even activist, though Twining uses this word specifically to refer to advocacy and engagement in relation to changing modes of legal education, rather than in any broader political sense. Even in relation to the most conventional (in academic terms) identity of the scholar, Twining's output deeply imbricates scholarly enquiry and pedagogical intent, producing books that challenge the split between student texts and research monographs – still a characteristic of the series today. The initial experience of teaching in Africa seems to have been seminal to his conscious hybridity of roles: the questions of what kind of role legal professionals might play in newly independent former colonies inherently demanded participants to blend professional, teaching and public intellectual roles. While the experience of the realist-influenced US legal academy provided a model for the law teacher as public intellectual, Twining had to grapple in Africa with the political and pragmatic salience of expatriate participation, and this made the influence of Llewellyn enduring: his ideas 'had more resonance than most other juristic ideas for young expatriates who were trying to make sense of the bizarre unrealities of the common law in a social context, nay a climate, that was not hospitable to Carbolic Smoke Balls' (*JiC*, p. 79).

In each phase of his career, Twining's response was in a sense to exceed the place he was in (*JiC*, p. 75) – to draw on his experience elsewhere but not to transplant that experience; rather, to provide a standpoint that demonstrated normative and institutional pluralism precisely to enable more locally informed contextual understanding and dialogue. In Northern Ireland, the context was politicised in a way that particularly challenged the role of a public intellectual, given the depth and political salience of religious division. In response, Twining in part developed an 'activist' identity at several steps removed from the immediate politics, drawing on his knowledge from the US and Africa to contribute to the drafting of legislation and the reform of legal education, and meanwhile supporting others to speak in activist mode on those politics in part by engaging closely, through teaching and research, with the *general principles* raised by those issues. The memoir has a very engaging illustration of how this stance shaped his enquiry into the topic of the use of emergency powers and the human-rights dimensions of interrogation practices that may constitute torture. His stance here was in favour of empirical research that explores patterns of behaviour in order to understand how best to prevent harm. He viewed this 'epidemiological' approach as a vital supplement to (rather than replacement of) analytic conceptual analysis and the unravelling of ethical puzzles about morally charged issues.

While this stance at an abstract level is core to the series, discussed below, the memoir brings it alive in a much deeper way by tying it to the specifics of negotiating place (Northern Ireland) and identity (of public intellectual). This sense endures throughout the book so that, as we trace the ways in which Twining's England-based experience advances the cause of pulling the identity of the teacher continually away from a narrow focus on the techne of legal analysis, we gain a powerful sense of how he models for students the capacity to engage with law in its full social context, articulating how it relates to their personal morality and through that process building character. This underpins an engaged stance that demurs from taking political positions as such – an approach that flourishes equally in the very different political cultures of Warwick and UCL.

These various integrations of place and identity at the personal level are linked conceptually in the memoir by an ongoing commitment to fostering 'disciplinary health'. For Twining, this is anchored in the idea that 'one's conception of a discipline and how it is in fact practised are both susceptible to criticism and rational debate, here in terms of its mission on advancing and disseminating knowledge and understandings of its subject matters' (*JiC*, p. 256). The commitment noted above to helping students integrate their personal moral and social commitments into their understanding of law and to connect them to broad normative jurisprudential traditions is the more personal side of that thread. While Roger Cotterrell interprets the idea of a jurist with a direct moral inflection connected to the well-being of law (Cotterrell, 2017, p. 31), for me, that moral inflection is more indirect, at least in this memoir: it is underpinned by strong commitments to normative pluralism, to making space for such pluralism in teaching and scholarship and for connecting that endeavour to the well-being of the discipline more broadly, rather than the well-being of law. As such, it translates into, and resonates with, a broader institutional and field-building commitment to extend the focus of research and teaching about law beyond (doctrinal) 'law talk' to 'talk about law' (*JiC*, p. 255).

2 Place and identity: the series

That 'talk about law' is a vital component of disciplinary health is core to the establishment of the *Law in Context* series. The nub of this was the importance, in relation to all the hybrid roles of being engaged in teaching law, of moving beyond doctrinal study ('law talk') to understanding institutions, disputes, social rules and any concepts that help comparison, diffusion or hypothesis-testing (*JiC*, p. 255). And, as before, the integration of place and identity is a lens that illuminates the evolution of the *Law in Context* series over time.

The series began as UK-based, with an emphasis (*JiC*, p. 91) on challenging the then dominant 'expository' style for textbooks, focused on detailed exposition of the core 'Priestley 11' subjects required by the profession for entry into the legal profession. Yet, even this quite UK-specific (in both substance and location) orientation was simply where the books initially focused, while the intellectual genesis for the idea of the series was born, as noted above, in the much earlier context of moving between Dar es Salaam and Yale University. This is a consistent theme in the life of both Twining and the series – that what appears to be a locally embedded and place-specific move is actually only made visible and possible by means of a standpoint taken from 'beyond' (beyond doctrinal law in substantive terms and beyond the UK in geographical terms).

That earlier context produced a statement that very much underpins the rationale for the series. In the early 1960s, Twining helped draft a mission statement (noting wryly the anachronism of the terminology) for the new Faculty of Law at Dar es Salaam, the first faculty in a new university established as the flagship of the freshly minted Tanzania under Julius Nyerere's pragmatic socialism. Responding to the 'single important consideration' of educating 'much more than a competent legal technician' (*JiC*, p. 60), the statement argues for the importance of studying law against the social and economic background of its particular context, explaining why in the following terms:

> 'With the coming of independence, the manifold problems that beset developing countries have to be faced and, in in doing this, great changes will have to be made in the framework of society.

https://doi.org/10.1017/S1744552320000221 Published online by Cambridge University Press

> Lawyers have a vital role to play in these developments for upon them will fall a major share of the work of putting into practice the principles and ideas of their colleagues in the fields of politics, economics and science and ensuring that the resultant system works fairly and efficiently.' (*JiC*, p. 60)

This sense of law's larger work underpinned the UK series, and the variety of titles fleshed out the substance of 'beyond' in two main ways. Initially, the substance of 'beyond', or the content of the 'context' to which the series title alludes, was primarily a thicker sense of the social and political settings in which UK law operated locally, whether in relation to contract, property, trusts, constitutional law and so on. But the series also changes the angle according to which a field is cut, whether through interdisciplinary fields of enquiry (the Western legal tradition, the welfare state, economic governance, democracy, regulation) or through the interrogation of a concept or issue that is core to a range of different legal subject areas (choice, relational self, the public–private divide).

At the same time, the series has expanded the *geographical* boundaries of both these senses of 'beyond'. The EU has been one very important context for this, generating texts on public law, families, human rights, competition, jurisprudence, health law, labour law and public services. More internationally, there have been books on transnational legal processes, globalisation, internationalisation, comparative law, citizenship, human rights, Internet law and explorations of law and society (or laws and societies) that consciously push beyond national in the global context. This trajectory of the series connects to the memoir's exploration of Twining's growing interest in globalisation in the latter half of the decade: while sceptical of the precision of the terminology, he was energised by the way in which the accelerated interdependence and increased intensity of interaction between different jurisdictions (and across all levels of governance) was an opportunity to 'test general theories and generalisations about law' (*JiC*, p. 231). From this perspective, extending the geographical boundaries of the series was crucial to the ongoing health of legal education.

Importantly, local context continues to matter just as much in these geographically expanded analyses: for example, both Eve Darian-Smith's exploration of *Laws and Societies in Global Contexts* (2013) and Boaventura de Sousa Santos's *Toward a New Legal Common Sense* (2003, with a new edition imminent) relate their contextual material to the US and to Latin America, respectively – but both also show repeatedly how even the most apparently 'local' pattern of events is conditioned by regional, national and international dynamics and vice versa. Moreover, the diverse approaches within the series share a feature that makes the contextual approach particularly valuable, in that its relevance often transcends changes in formal legal relationships. Thus, for example, the books that explore legally relevant fields in the context of the EU are not in any way made redundant by Brexit: rather, the salience of informal dynamics and institutional path dependency increases, shaping the still-socially-interdependent jurisdictions to an even greater extent than formal EU law might have done in the past.

In addition to the dual sense of 'beyond' doctrine and its geographically expanded trajectories, there is a kernel of a third sense of 'beyond' that is arguably nascent in the series. Related to finding new angles to cut through legal fields, this third sense challenges taken-for-granted assumptions embedded in legal fields at a philosophically more fundamental level. The point can be illustrated by comparing the angle of analysis of two equally excellent books in the series. Anne Davies (2009), in *Perspectives on Labour Law*, cuts into the field of labour law by framing it alternately through dual lens of economic analysis and human rights – this is a reframing *within* the tensions of current paradigms. A decade later, Jonathan Herring, in *Law and the Relational Self* (2019), cuts into medical, family and criminal law through the prism of the relational self. This latter approach is much more of an ontological shift, trying to reposition the subject in law so as to understand systemic issues from a different standpoint with a different texture. The earlier book pulls along one thread or other in the current weave, while the later book is trying to alter the underlying warp and weft. I would argue that this is possibly an indication of grappling with the deep system shifts that seem to be demanded by the current cocktail of problems undermining planetary well-being: inequality, the climate crisis, an intensifying neoliberalism and a populist backlash.

https://doi.org/10.1017/S1744552320000221 Published online by Cambridge University Press

3 The stakes of the memoir and the series

This cocktail provides the context for the final part of this reflection, which asks: What would it mean to extend the integration of place and identity offered by Twining's memoir to address questions of governing for planetary well-being? We can approach this via an echo of Twining's early ambitions for law in post-colonial Africa: if the mission statement for that early law school cited above was reframed in the first sentence, I suggest it would remain just as relevant in contemporary times:

> 'With the coming of the climate crisis, the manifold problems that beset all countries have to be faced and, in in doing this, great changes will have to be made in the framework of society. Lawyers have a vital role to play in these developments for upon them will fall a major share of the work of putting into practice the principles and ideas of their colleagues in the fields of politics, economics and science and ensuring that the resultant system works fairly and efficiently.'

Just as the taken-for-granted assumptions underpinning the notion that a camel could be in a zoo were surfaced by Twining's teaching in Sudan, so too could the series be catalysed in new directions by the ways in which the crises of planetary well-being challenge the once taken-for-granted context of effectively infinite natural resources, economic growth and the priority of humans over non-humans. To explore, we could consider how the memoir's integration of identity and place gives insight into two standpoints: what subject *position* and what subject *content* could support planetary well-being?

To begin with subject position: If a jurist standing at the door of the opportunities opened by post-colonial independence at the start of his career is the subject that animated this memoir, what subject would best appreciate the possibilities opened by the series now? Is it still a jurist? Bruno Latour's suggestion that terrestrial politics is one answer to the triptych of wicked problems undermining planetary health provides an entry point into this imaginative thought experiment. It is a useful entry point because the notion of terrestrial politics resonates deeply with integrated identity and place. It refers to a reorientation of lines of political conflict such that alliances across right and left can move towards a politics that is grounded in a sense of belonging to a land, but without links to ethnic homogeneity. Instead, terrestrial politics opens up to multiplicity, including letting go of the notion that the social and the ecological are in opposition to each other, posing 'geo-social questions' that imbricate the two. The terrestrial is neither global nor local – and is only meaningful in context.

Latour links this standpoint to the insights of political ecology but, in a fascinating move, he actually draws on a legal vignette to illustrate how terrestrial politics might begin. That legal vignette is the notion of a twenty-first-century version of the *cahiers de doléance* or ledgers of complaint that were constructed over the period of five months in 1789 in the run-up to the French Revolution. Latour depicts this as a '*geography* of grievances', the start of 'drawing maps of the struggles of geo-social loci', to *redescribe* from the bottom up the 'dwelling places' making up a new common world, articulating what is shared, along with the material stakes that matter most in each place. In short, the work of putting together an encyclopaedic collection of problems chronicled at the local level is how one begins to establish a material sense of the ground that can nurture the sense (both rational and affective) of being a terrestrial subject – of acquiring a form of collective identity that can recognise the ecological interdependence between human and non-human.

This work leads directly to a consideration of subject content. In a very loose sense, it could be that the collective future direction of the *Law in Context* series could be an aid to such a task. Picking up on what Twining himself notes as a path so far relatively underexplored with the series, the series could address itself much more consciously to (and in dialogue with) non-lawyers. At the most general level, this might entail exploring problems (climate change, public health, ageing, unpaid care work) in bounded physical sites (cities, festivals, new kinds of organisations, forests) but in the company of teams of differentially qualified scholars. These approaches could also link to emerging interdisciplinary fields (e.g. community economies (Gibson-Graham *et al.*, 2013) or urbanism (Barnett, 2014)) to

https://doi.org/10.1017/S1744552320000221 Published online by Cambridge University Press

help create new fields of legal enquiry (urban law, or diverse legalities in community economies). Standard doctrinal areas could be reimagined from this starting point as well: the ways in which constitutional law might be reshaped by the cross-cutting effects of legal regimes relating to climate change, or international law by way of cumulative studies of the bottom-up or everyday life of international law in localised settings.

The authors in the series would, over time, become the figures that carry forward terrestrial politics. Is this too grand? I would suggest it is in a way 'both laughably small and heroically ambitious' (Solnit, 2014). It is, in the end, no more than the brief reflection of a scholar with her own post-colonial trajectory built on a childhood in Rhodesia, seduced for perhaps too long by the apparent abstractions of the metropole culture and currently preoccupied with the legal lineaments of re-imagining economy and place. Twining's memoir is a book that is at once a guide to the good (scholarly) life and a very particular evocation of his own unique trajectory:

> 'In this book I have tried to tell a story about my thoughts and writings as a mid-Atlantic jurist, who has never fully disengaged from the postcolonial hangover, nor the romance of the Serengeti and the Mountains of the Moon; nor adolescent agnosticism, the spell of Oxford, the grounded horse sense of Llewellyn and Mentschikoff, nor the love of books and the urge to write.' (*JiC*, p. 280)

This memoir is truly a celebration of the love of books and the urge to write. There may be no better first step to planetary well-being.

References

Barnett J (2014) A short guide to 60 of the newest urbanisms, *Planning*, 23 October 2014.
Cotterrell R (2017) *Sociological Jurisprudence: Juristic Thought and Social Inquiry*. London: Routledge.
Darian-Smith E (2013) *Laws and Societies in Global Contexts: Contemporary Approaches*. Cambridge: Cambridge University Press.
Davies A (2009) *Perspectives on Labour Law*, 2nd edn. Cambridge: Cambridge University Press.
Gibson-Graham JK, Cameron J and Healy S (2013) *Take Back the Economy: An Ethical Guide for Transforming Our Communities*. Minneapolis: University of Minnesota Press.
Herring J (2019) *Law and the Relational Self*. Cambridge: Cambridge University Press.
Latour B (2018) *Down to Earth: Politics in the New Climatic Regime*, 1st edn. Cambridge/Medford, MA: Polity.
Santos B de Sousa (2003) *Toward a New Legal Common Sense: Law, Globalization, and Emancipation*, 3rd edn. Cambridge: Cambridge University Press.
Solnit R (2014) *The Encyclopedia of Trouble and Spaciousness*, 1st edn. New York: Trinity University Press.
Twining W (2019) *Jurist in Context: A Memoir*. Cambridge: Cambridge University Press.

Cite this article: Morgan B (2020). Law in context as terrestrial politics? *International Journal of Law in Context* **16**, 469–474. https://doi.org/10.1017/S1744552320000221