



REVIEWS SYMPOSIUM

## William Twining and the *Law in Context* series: a personal reflection

Nicola Lacey\*

School Professor of Law, Gender and Social Policy, Law Department, London School of Economics, UK

\*Corresponding author. E-mail: [N.M.Lacey@lse.ac.uk](mailto:N.M.Lacey@lse.ac.uk)

For over sixty years, William Twining has been at the centre of legal education and legal scholarship in the English-speaking world. Beginning in East Africa in the early days of emergence from colonial rule and going on to span several of the most influential law schools in both the UK and the US, William's remarkable career has witnessed a transformation of legal education and of the scholarly world of the legal academy that has been, in its own way, quietly revolutionary to no less a degree than the political revolutions amid which his professional life opened. We can now follow him throughout this revolutionary journey, thanks to his 2019 book, *Jurist in Context* (hereafter 'JiC'), which sheds so much light on the broader conditions and commitments that have shaped its trajectory. The length, distinction and geographical span of William's career would in themselves make its subject's observations and reflections on this period intensely interesting to legal academics, as well as from the point of view of intellectual and social history. But, in his particular case, this interest is intensified by the fact that he has been not merely a witness to, but a key agent in, the relevant transformation. And the *Law in Context* series has, of course, been a key part of his repertoire in shaping the field of legal scholarship and teaching.

When I read law at University College London (UCL) in the late 1970s, the curriculum – as was standard in most law departments at the time – was dominated by doctrinal legal scholarship, leavened by a moderate helping of analytical jurisprudence and sociology of law. Probably the most impressive textbook that I encountered during my three years as an LLB student was Smith and Hogan's *Criminal Law* – a book of enormous technical sophistication as well as eye-watering coverage, but not one that evinced much interest in the sociopolitical or institutional context in which criminal law was developed, interpreted and enforced. Opportunities to think about the law from beyond its boundaries, as it were, were mainly provided by jurisprudential books, papers and debates. This was still largely the case when William arrived as Quain Professor of Jurisprudence in 1983. But, by then, the 'law-in-context' movement that he and his colleagues had nurtured at Warwick and in a few other departments had begun to change the shape of the discipline even in the more traditional law schools. Socio-legal courses were developing across the sector, enabled in significant part by journals such as the *Journal of Law and Society* and the *International Journal of the Sociology of Law* and, of course, by the distinctive and influential *Law in Context* series that William and Robert Stevens had established at Weidenfeld and Nicolson. And that development has continued – and diversified – steadily, interacting with genres such as socio-legal studies and theory, feminist and critical race theory, and critical legal studies, and generating an ever broader array of teaching materials and publishing outlets – *Social and Legal Studies*, *Feminist Legal Studies*, *Law and Critique*, *feminists@law* and of course this Journal itself. Adapting the old saying about legal realism, contextualism is certainly *not* dead, and there is a real sense in which all legal scholars have to take aspects of context into account today.

My own consciousness of and engagement with 'law-in-context' scholarship had its origins, both directly and indirectly, in my two years as a BCL student in Oxford. Directly, Bernard Rudden's and Anne de Moor's course in comparative tort law encouraged me to think about the various social functions of a whole area of law, as well as the significance of the distinctive ways in which legal rules were

institutionalised in different legal systems. This course brought me into contact with Patrick Atiyah's magnificent *Accidents, Compensation and the Law*, first published almost a decade before I belatedly encountered it.<sup>1</sup> It was a book that not only launched the *Law in Context* series fifty years ago, but epitomised, and continues to epitomise, its intellectual ambition and commitment to examining legal doctrines and arrangements in the round, in terms of not only their normative details, but also their social roles and meanings. Law, after all, not only has practical, regulatory functions in co-ordinating social behaviour and expectations, but creates its subjects and standards on the basis of certain assumptions, transmitting values and ideas that need to be unearthed and subjected to critical examination. Indirectly, the experience of studying criminal law and penology sharpened my sense that to study the details of criminal law's doctrinal arrangements without also interrogating the institutional, social and political context in which it operates was to get a very partial and distorted view of criminal law as a social phenomenon: criminal legal rules being, after all, just one aspect of a complex set of more or less integrated social processes producing criminalisation over time.

By the time that William arrived at UCL, I had followed up on this growing contextual commitment by introducing a criminal justice course on the LLB programme. And, although my own research at the time was primarily in legal and political theory, William quickly identified my broader interests and generously suggested that I consider writing or co-authoring a law-in-context textbook that would make it possible to teach criminal law in a way that was informed by its relationship with the broader criminal justice system. I had formed a close personal and intellectual friendship with Celia Wells, thanks to the Women Law Teachers' Group, and along with Dirk Meure we conceived the idea of a criminal-law text that put the social issues or problems that criminal law seeks to address – disorder, violence, dangerousness – and the goods or interests that it purports to foster – autonomy, integrity, property – at the core of the analysis, building out from these to the criminal justice context and, finally, presenting criminal legal arrangements and doctrines in light of those broader contexts and of the insights of a range of disciplines. The result was *Reconstructing Criminal Law: Critical Perspectives on Crime and the Criminal Process* – a text and materials book first published by Weidenfeld and Nicolson in 1990 and running to four editions over twenty years.<sup>2</sup> In the course of preparing it, we worked closely alongside Alan Norrie, with whom William had put us in touch and who was at work on his important monograph *Crime, Reason and History: A Critical Introduction to Criminal Law* (2012)<sup>3</sup> at the same time. This opportunity to exchange ideas and build a close intellectual relationship as we each worked through our respective texts was among the many privileges of being involved in the series, and a small but telling example of William's influence as a catalyst of intellectual friendships across the whole range of legal scholarship.

In 1990, when *Reconstructing Criminal Law* first appeared, I was several years into my career as a tutorial fellow in Oxford – a job that still in those days required colleagues to teach across a wide range of subjects. In my case, this included not only criminal law, constitutional law, criminal justice and jurisprudence, but also administrative law: a subject that had been taught at UCL as a relatively small part of an overall public-law course, and one that I regarded with some trepidation. This was, of course, also a time of substantial and exciting evolution of the field, as the courts developed the principles of judicial review to adapt to the practices of an increasingly assertive executive during the Thatcher administration. Amid the constant flow of judicial review cases in the law reports, it sometimes felt difficult to keep in view the overall shape and purpose of the field. In this context, Carol Harlow and Richard Rawlings's *Law and Administration* (2012) – another distinguished member of the *Law in Context* series, first published in 1984<sup>4</sup> – was both an inspiration and a boon, allowing readers to keep the emerging role of judicial review within the burgeoning administrative state firmly in view. This was really my first experience of how invaluable a wide-ranging textbook could

<sup>1</sup>Now in its ninth edition, by Peter Cane and James Goudkamp (2018).

<sup>2</sup>Now in its fourth edition, by Celia and Oliver Quick (2010).

<sup>3</sup>First published in 1993 and now in its third edition (2012).

<sup>4</sup>And now in its third edition (2012).

be in enabling me to teach across a much broader canvas than I had been exposed to as a law student myself. Looking across the range of the series at the time, it is clear that it was enabling not only a variety of new subjects to be introduced to the curriculum – as with Andrew Ashworth's *Sentencing and Penal Policy* (2012)<sup>5</sup> – but also, as in my own experience with administrative law, allowing the traditional syllabus to be taught in new ways.

But my engagement with the *Law in Context* series was by no means restricted to its contributions to my lecture and tutorial reading lists. It also shaped quite broadly how I thought about law, and in turn my own research. Perhaps the clearest example of this is Katharine O'Donovan's path-breaking *Sexual Divisions in Law* (1985) – one of the earliest works of feminist legal scholarship in the UK, and arguably the first to move decisively beyond the 'women and law' approach towards a more systematic feminist analysis and critique of not only law's substance, but also its conceptual structure. Around the time it was published, I had the good fortune to participate in a lively reading group that Hugh Collins hosted and in which we discussed a good deal of the feminist and otherwise critical forms of legal scholarship that were flourishing at the time, particularly in the US. The upshot of those discussions is certainly felt in *Reconstructing Criminal Law*, as it was in Collins's innovative *The Law of Contract* (2008), first published in 1986.<sup>6</sup> Indeed, even leaving aside Atiyah's landmark text, by then in the capable hands of Peter Cane,<sup>7</sup> the Oxford faculty's intellectual climate during the time I was at New College (1984–1995) was strongly shaped by *Law in Context*, as evidenced by Paul Davies and Mark Freedland's *Labour Law* (1984, 2nd edn) and Jane Stapleton's *Product Liability* (1994).

William has always been beguilingly open – indeed self-critical – about aspirations that could not be met and projects that remain incomplete – a reflexive mood that is very evident in *JiC*. The continuing lack of true dialogue and mutual respect between philosophically inspired jurisprudence and William's more socio-legal genre of legal theory is one such piece of unfinished business; his ambitious multidisciplinary approach to evidence is, he confesses, another. I find myself wondering whether he has had further thoughts on how each of these issues might be tackled since writing *JiC*. Meanwhile, this anniversary symposium invites a similarly reflexive approach to the *Law in Context* series: its range, its impact and its future. No one could question the series' huge contribution to expanding the range of legal pedagogy and indeed scholarship; and the series' most recent move to its prestigious home at Cambridge University Press was in many ways a coup for the contextual project in the academy – however much some of us may have regretted the original move from a general publisher to the legal specialist publisher Butterworths in the early 1990s.

Amid the burgeoning business of textbook publishing, however, I suspect that continuing care will have to be taken to protect the distinctive quality of the series. For, while it may indeed be true that, thanks to the series, it is far harder for law academics to justify ignoring context in their teaching and research – and far easier to incorporate it – we should not underestimate the powerful dynamics pulling the other way. This is not least the case in a world in which many law students, facing the prospect of leaving university with a considerable burden of debt, have rediscovered a strong vocational motivation that had somewhat dissipated in the years of an expanding profession and free tuition. Successful though the law in context, critical and socio-legal movements have been, our work continues to work against the grain of a doctrinal approach to legal scholarship that many students find less challenging and – largely inaccurately – regard as more directly relevant to legal practice. To add my own self-critical reflections to the record, I continue to find it challenging adequately to incorporate feminist insights into my teaching; and, in the face of students' concern to grasp the technical complexities of criminal-law doctrines, I find the sorts of contextual issues which *Reconstructing Criminal Law* placed at the centre of the subject increasingly difficult fully to accommodate in my teaching. For this reason among others, my undergraduate teaching is currently focused on a first-year course on legal systems that I teach from a strongly contextual point of view – inspired not least by the work

<sup>5</sup>First published in 1983 and now in its fifth edition as *Sentencing and Criminal Justice* (2012).

<sup>6</sup>And now in its fourth edition (2008).

<sup>7</sup>Cane has been responsible for all editions since the fourth, published in 1987.

of my late colleague Simon Roberts, whose foundational work with Michael Palmer on dispute resolution also found its place in the *Law in Context* series,<sup>8</sup> as well as by my colleague Michael Zander's classic *The Law-making Process* (2012).<sup>9</sup> But, even in my current job at the London School of Economics, where our students have chosen to study law in a social-science institution, making broader social perspectives on law appealing in the classroom, particularly in core courses, can be tricky. This, I think, remains a real challenge – as well as an opportunity – for the future development of the *Law in Context* series. In this context, it is cheering to see recent contributions by scholars including Eliza Garnsey (2019), Jonathan Herring (2019) and Arlie Loughnan (2019) pushing forward the theoretical boundaries of the discipline, enlarging the contribution of classic works such as those by Stewart (2011), de Sousa Santos (Forthcoming) and William himself (2000; 2009). There remains so much scope for innovative and, in particular, interdisciplinary approaches to legal scholarship – drawing on a range of resources including anthropology, history, cultural studies, literature and social theory – and it is vital that the *Law in Context* series continue to develop them.

In his memoir, William sheds fascinating light on the intellectual and – with a small ‘p’ – political origins of his intellectual approach in both his experience of living and teaching in the radically different legal and social worlds of colonial and post-colonial Africa, the US, Northern Ireland during the Troubles and England; in the key relationships that he formed with colleagues, mentors and students in each of these countries; and in the main intellectual resources that shaped his thinking from early adulthood onwards. Hart, Collingwood, Llewellyn and Mentschikoff emerge as perhaps the dominant figures in this intellectual history: but many others also feature prominently, underlining the ways in which the trajectory and impact of a single life are strongly shaped by both relational and institutional context. Yet, while he conveys forcefully his deep commitment to teaching and the central role that pedagogy has played in not only the communication, but also the formation and developing of his ideas, he modestly underplays his own impact as a mentor, institution-builder and supporter of younger scholars. Having myself been a beneficiary of these qualities of his, both as someone he commissioned to write a book for the *Law in Context* series early in my career and as someone whose self-confidence was boosted at various important points by William's support and generosity, it gives me great pleasure to celebrate both his intriguing memoir – a fascinating window on legal academic praxis in the late twentieth and early twenty-first centuries – and his influence, his scholarly contribution and his generosity, as exemplified by the *Law in Context* series: fifty years young and, most importantly of all, a work in progress.

## References

- Ashworth A (2012) *Sentencing and Criminal Justice*, 5th edn. Cambridge: Cambridge University Press.
- Cane P and Goudkamp J (2018) *Atiyah's Accidents, Compensation and the Law*, 9th edn. Cambridge: Cambridge University Press.
- Collins H (2008) *The Law of Contract*, 4th edn. Cambridge: Cambridge University Press.
- Davies P and Freedland M (1984) *Labour Law*, 2nd edn. Cambridge: Cambridge University Press.
- de Sousa Santos B (Forthcoming) *Toward a New Legal Common Sense*. Cambridge: Cambridge University Press.
- Garnsey E (2019) *The Justice of Visual Art*. Cambridge: Cambridge University Press.
- Harlow C and Rawlings R (2012) *Law and Administration*, 3rd edn. Cambridge: Cambridge University Press.
- Herring J (2019) *Law and the Relational Self*. Cambridge: Cambridge University Press.
- Loughnan A (2019) *Self, Others and the State*. Cambridge: Cambridge University Press.
- Norrie A (2012) *Crime, Reason and History: A Critical Introduction to Criminal Law*, 3rd edn. Cambridge: Cambridge University Press.
- O'Donovan K (1985) *Sexual Divisions in Law*. London: Weidenfeld and Nicolson.
- Quick C and Quick O (2010) *Reconstructing Criminal Law: Critical Perspectives on Crime and the Criminal Process*, 4th edn. Cambridge: Cambridge University Press.
- Roberts S and Palmer M (2009) *Dispute Processes: ADR and the Primary Forms of Decision-Making*. Cambridge: Cambridge University Press.

<sup>8</sup>Roberts and Palmer (2009), and about to appear in a third edition.

<sup>9</sup>First published 1980: sixth edition (2012).

- Stapleton J** (1994) *Product Liability*. Cambridge: Cambridge University Press.
- Stewart A** (2011) *Gender, Law and Justice in a Global Market*. Cambridge: Cambridge University Press.
- Twining W** (2000) *Globalisation and Legal Theory*. Cambridge: Cambridge University Press.
- Twining W** (2009) *General Jurisprudence*. Cambridge: Cambridge University Press.
- Twining W** (2019) *Jurist in Context: A Memoir*. Cambridge: Cambridge University Press.
- Zander M** (2012) *The Law-making Process*, 6th edn. Cambridge: Cambridge University Press.