

Editorial

I Law in context: past, present and future

In 2014, the *International Journal of Law in Context (IJLC)* celebrates its tenth anniversary. In this Editorial, we look back briefly at the first decade and, as new Editors-in-Chief, we present our ambitions for the *Journal* for the next decade (and beyond). The *IJLC* is the companion journal to the *Law in Context* book series, which was founded in the early 1970s. As William Twining recalls in a paper about the genesis of the series, their aim was ‘to challenge the existing textbook orthodoxy’.¹ Rather than the typical ‘black letter’ law books, in which law is studied ‘in isolation’, the aim was to promote a more ‘contextual approach’ to law. ‘Context’ has many different meanings. In one case, it may include ‘the practices and expectations of the people most directly affected by the rules under consideration’. In another case, paying more attention to ‘context’ refers to the idea that ‘light may be thrown on particular problems by the techniques and findings of other disciplines’. And, finally, ‘context’ may also include ‘the consideration of policies underlying the rules’.² In short, the principal objective of the founders of the *Law in Context* series was to move from narrow ‘statements of law’ to broader ‘statements about law’. According to one of us (David), ‘building on the heritage of the American Legal Realists, this series successfully set out to transform law teaching in the UK’.³ David also observes that, over the past decades, numerous other books and essays about law, especially those published in other common law countries such as the US, Canada and Australia, have some reference to context in their titles. These publications demonstrate that law can be placed in ‘a variety of linguistic, literary, ideological, social, psychological, political, cultural, and material contexts’,⁴ and that law often rests on important underlying assumptions. According to Twining, ‘[a] characteristic of the contextual approach is that these assumptions are articulated, examined, and subjected to critical scrutiny’.⁵ For us, as editors, the contextual approach is more than a well-established research tradition, but also an exciting challenge for future research on law and society. Following the philosophy of the *Law in Context* book series, our mission is to establish the *IJLC* as ‘a global forum for interdisciplinary legal research’, capturing the best of socio-legal research and critical thinking. This means that we are engaged in fulfilling several key aims, outlined further below.

II Global

Our first ambition is to establish the *IJLC* as a truly global journal. One illustration of this is the new section ‘Law in other contexts’, which includes specially commissioned reports of socio-legal research in places where English is not the first language. In this way, the *IJLC* hopes to bring attention to work which may not be easily accessible to those without knowledge of the relevant language (and culture). In his introduction of the section, David indicated that it was also hoped that it may – eventually – ‘make some contribution to putting into question the Anglo-American hegemony

1 William Twining, ‘Reflections on “Law in Context”’ in William Twining, *Law in Context: Enlarging a Discipline* (Oxford: Oxford University Press, 1997) at 36.

2 *Ibid.*, at 44.

3 David Nelken, ‘Introduction’, in David Nelken, *Beyond the Law in Context: Developing a Sociological Understanding of Law* (London: Ashgate, 2009) at xii.

4 *Ibid.*, at xvi.

5 Twining, *supra* note 1 at 44.

over how this academic field is constituted, which questions are considered important to ask, and which methods are thought appropriate for studying them'.⁶ This global ambition is not limited to this new section, but applies to the whole journal. We invite papers from all parts of the world, from Europe and North America but also from Africa, Asia and South America, which are usually less visible in international law journals.

III Forum

Our second ambition is to develop the *IJLC* into an open forum for innovative research and academic debate. The founders of the *Law in Context* book series chose the word 'contextual' deliberately for its open-endedness. According to Twining, law in context 'is neither a distinctive theory of or about law, nor an academic orthodoxy'.⁷ While much contemporary research is compartmentalised in many different disciplines, and most other law journals are highly specialised with a narrow focus on a particular (sub)field of law, the *IJLC* seeks to accommodate papers from 'a variety of standpoints, ideologies, perspectives, and methods'.⁸

IV Interdisciplinary research

Our third ambition is to publish groundbreaking critical interdisciplinary research. As indicated earlier, part of the contextual approach to law is to explore the techniques and findings from other disciplines. The *IJLC* aims to publish papers about law and its relationship with other disciplines including, but not limited to, science, literature, humanities, philosophy, sociology, psychology, ethics and geography. Both in Europe and in the US there is a growing interest in the role of methodology in legal scholarship.⁹ While some authors are critical about traditional doctrinal research and argue for more interdisciplinary research, others question whether legal research is not drifting away from legal practice. The *IJLC* welcomes papers that contribute to this important methodological debate. Unlike other law journals that specialise in quantitative or qualitative methods, the *IJLC* promotes the idea of 'methodological pluralism'. We agree with Twining that 'there is plenty of scope within "the contextual approach" for differences of method, for disagreement, and for experiment'.¹⁰

V Opportunities for young scholars

In recognition of the difficult climate of contemporary academia (research exercises, corporate takeovers, managerialism, funding crises, etc.), our fourth objective is to offer opportunities to new and young scholars. We will provide constructive feedback and advice on papers submitted to the *IJLC* by such scholars and aim to prioritise the publication of their work. This commitment is also a response to what Hazel Genn, Michael Partington and Sally Wheeler identify as a serious lack of

6 David Nelken, 'Law in Other Contexts: A New Initiative for the Journal' (2012) 8 *International Journal of Law in Context* 133.

7 Twining, *supra* note 1 at 62.

8 *Ibid.*

9 See, e.g., Rob Van Gestel, Hans-W. Micklitz and Miguel Poiaras Maduro, *Methodology in the New Legal World* (EUI Working Papers) (Florence: European University Institute, 2012); Bart Van Klink and Sanne Taekema (eds), *Law and Method: Interdisciplinary Research into Law* (Tübingen: Mohr Siebeck, 2011).

10 Twining, *supra* note 1 at 44.

capacity amongst academics to carry out empirical research.¹¹ Taking into account that the bulk of empirical research is carried out by ‘mature’ (i.e. reaching retirement) academics, this has the potential to develop into a crisis. We recognise that the reviewing process is (ideally) capable of being a positive source of information, guidance and sharing of expertise, often across generations of scholars (and across jurisdictional boundaries), and we aim to ensure that peer review for the *IJLC* is carried out with this in mind.

VI A tribute

As new editors we would like to take this opportunity to pay great tribute to the founder of the *IJLC*, Professor Michael Freeman, and his co-editor Carrie Menkel-Meadow. The *IJLC* very much reflects the breadth and depth of Michael’s formidable intellect, his constant searching for new ways of understanding law and legal process, and his talent for making important connections and foregrounding context. A review of the most downloaded papers of the *Journal* over the past ten years reads like a record of Michael’s projects and interests (and which have clearly found a grateful audience in academics developing their own work in these areas): mental health and incapacity,¹² analytical jurisprudence,¹³ justice,¹⁴ human rights,¹⁵ courtroom evidence,¹⁶ racism,¹⁷ homophobia and bullying,¹⁸ corporate responsibility¹⁹ and marriage in its various forms.²⁰ Even this very partial review of the rich diversity of papers published in the *IJLC* over the past ten years gives us a clear picture of Michael’s conception of ‘law in context’. An important refrain is how legal institutions depend upon underlying realities of class and power, most often determined by race and gender, and exercised in a range of contexts – the family, the workplace, the village, the city, sport, hospitals, schools. It further becomes clear that during his editorship Michael has been gloriously alert to controversy (often flagging up soon-to-be highly controversial issues), and tracking their entry into political and legal processes and, as Selznick identifies, ‘even into the streets’.²¹ We have all in the course of our careers benefited from Michael’s generous and irrepressible spirit, and his idea of an academic ideal – relevant, frequently irreverent, linked up, searching, campaigning and radical.

Michael’s co-editor, Carrie Menkel-Meadow, played a key role in exposing the *Journal* to a North American audience and authorship. She is regarded as one of the most innovative legal scholars in the US and elsewhere. A pioneer in several fields of legal inquiry, ranging from alternative dispute

11 *Law in the Real World: Improving Our Understanding of How Law Works* (London: Nuffield Foundation, 2006).

12 J. Craigie, ‘Mental Capacity and Value Neutrality’ (2013) 9(1) *IJLC* 1.

13 W. Twining, ‘Have Concepts Will Travel: Analytical Jurisprudence in a Global Context’ (2005) 1(1) *IJLC* 5.

14 C. Arjona *et al.*, ‘Senses of Sen: Reflections on Amartya Sen’s Ideas of Justice’ (2012) 8(1) *IJLC* 155.

15 O. Cabrera and L. Gostin, ‘Human Rights and the Framework Convention on Tobacco Control: Mutually Reinforcing Systems’ (2011) 7(3) *IJLC* 285.

16 N. Feigenson, ‘Brain Imaging and Courtroom Evidence: On the Admissibility and Persuasiveness of fMRI’ (2006) 3(2) *IJLC* 233.

17 D. Herman, ‘Hopeless Causes: Race, Racism and the ‘Vexatious Litigant’ (2012) 8(1) *IJLC* 27.

18 D. Monk, ‘Homophobic Bullying in Schools: the Politics of Progress’ (2011) 7(2) *IJLC* 181.

19 K. Buhmann, ‘Integrating Human Rights in Emerging Regulation of Corporate Social Responsibility: The EU Cases’ (2011) 7(2) *IJLC* 139.

20 A. Campbell, ‘Bountiful’s Plural Marriages’ (2010) 6(4) *IJLC* 343; R. Grossi, ‘The Meaning of Love in the Debate for the Legal Recognition of Same-Sex Marriage in Australia’ (2012) 8(4) *IJLC* 487.

21 P. Selznick, ‘Law in Context Revisited’ (2003) 30 *Journal of Law and Society* 177, at 179.

resolution, legal ethics, and feminist jurisprudence, to clinical legal education, Carrie has explored with vigour the possibilities of law, legal processes and legalism. A foremost interdisciplinary, international and comparative legal scholar, she has brought exciting insights to her empirical work on several continents and in several legal settings. For her pioneering and breaking research and scholarship, she has received several awards, including the first-ever Award for *Outstanding Scholarly Work* from the American Bar Association's Dispute Resolution section, who lauded her as a 'tireless, prolific and influential researcher and writer' who put forth the transformative idea of lawyer as problem solver twenty-five years ago. On three occasions she has been the recipient of the Center for Public Resources' First Prize for Scholarship in Alternative Dispute Resolution.

We aim to uphold both Michael's and Carrie's remarkably good work on this *Journal* and to be faithful to their founding ideas for it. Needless to say, as Editors-in-Chief we can only achieve these objectives with the help from the *Journal's* Reviews Editor, Helen Reece, and the members of our International Editorial Board, Cambridge University Press and – most importantly – the authors, readers and reviewers. Finally, the best illustration of our ambitions and objectives are the papers in this first issue of 2014.

Penny Andrews
Marc Hertogh
Jane Holder
David Nelken