

Jurist in Context. William Twining in Conversation with
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by

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Jurist in Context: William Twining in Conversation with David Sugarman

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*This discussion derives from extended conversations between William Twining and David Sugarman in which William talks about his latest book, *Jurist in Context. A Memoir (JIC)*. JIC recounts the development of William's thoughts and writings, addressing topics central to his life and research. The dialogue conveys and extends the arguments on a selection of the topics addressed in the book, engaging with issues of particular interest to readers of this journal. Here, William adds a more personal commentary to his formal publications. The conversation facilitates reflection on issues such as law teaching and legal scholarship, the meaning, use and limitations of "law in*

context”, and the role and character of jurisprudence. It also offers a fascinating window on the development of, and the struggles surrounding, legal education and academic legal thought over the second half of the twentieth and early twenty-first centuries.

INTRODUCTION

William Twining needs no introduction. He is Quain Professor of Jurisprudence Emeritus at UCL, a leader of the Law in Context Movement, and a hugely influential contributor to Legal Education, Evidence, Jurisprudence and Globalisation and Law. This discussion arises out of lengthy recorded conversations in which William talks about his latest book, *Jurist in Context. A Memoir* (hereinafter JIC).¹ It recounts the development of his thoughts and writings in the context of Africa, the UK and the USA, addressing topics which have been central to his life and research, including the complexities of decolonisation, the troubles in Belfast, the contextual turn in legal studies, rethinking evidence and law and globalisation. It advances a conception of Jurisprudence that contributes to the academic discipline of Law in several ways, and it provides a vivid and often amusing context for all William’s writings.² Addressed to academic lawyers and non-specialists alike, William’s story demonstrates the importance of the discipline of Law, its future development and potential. JIC has a distinct identity, covering a wide range of topics unified by a particular tone that is at once valedictory, self-critical and personal. It has the character of its author: humane, generous, and rational; ambitious in aim though modest in tone; and acerbically direct in its diagnosis of what is wrong with legal education and what needs to be put right.

¹ W. Twining, *Jurist in Context. A Memoir* (2019). All references are to JIC unless otherwise indicated.

² For a representative conspectus of William’s most recent thinking both JIC and W. Twining, *General Jurisprudence* (2009) should be read together. See below n.10.

In this dialogue we focus on only a selection of the topics addressed in JIC, aiming to convey the flavour of William's latest thinking, and to extend its arguments.³ We concentrate on topics we hope will be of particular interest to readers of this journal.⁴ The discussion illuminates a range of issues including the significance of Africa, colonialism and decolonisation; how William felt betrayed by *Salmond on Torts*; how his period in Belfast shaped his thinking; his conception of Law as an academic discipline and the role of theorising within it, responding to those who regard his own approach as insufficiently critical or simply 'liberal'. It also delineates some of the most important thinkers that have influenced him; his criticism of 'Law in Context'; his critical reflections on his own work, his *mea culpas* and changes of mind; his latest thoughts on legal education; and the value-added that 'globalisation and law' brings to the discipline of Law. Brief reflections on the message that William would most like JIC to convey, brings the conversation to a close.

Here is William adding a more personal reflection to his formal publications. Illuminating the ideas and biography of such an influential figure facilitates reflection on issues such as law teaching and legal scholarship, the meaning, use and limitations of "law in context", and the role and character of jurisprudence. The conversation also offers a fascinating window on the development of, and the

³ This essay is the latest in a series of interviews I have undertaken with leading legal and socio-legal scholars, some of which have been incorporated into my publications: David Sugarman, 'Hart Interviewed: H.L.A. Hart in Conversation with David Sugarman,' (2005) 32 *J. Law and Society* 267; 'In His Own Voice: H.L.A. Hart in Conversation with David Sugarman' <http://blog.oup.com/2012/12/h-l-a-hart-in-conversation-with-david-sugarman/> (21 July 2018); 'Beyond Ignorance and Complacency: Robert Stevens' Journey Through *Lawyers and the Courts*,' (2009) 16 *International J. of the Legal Profession* 7; 'A Special Relationship? American Influences on English Legal Education, c. 1870-1965,' (2011) 18 *International J. of the Legal Profession* 7; 'Brian Simpson's Approach to Legal Scholarship and the Significance of *Reflections on The Concept of Law*,' (2012) 3 *Transnational Legal Theory* 112; 'Robert W. Gordon in conversation with David Sugarman', (2018) 1 *The Docket (Law and History Review Digital Edition)* Issue 3, October <https://Lawandhistoryreview.Org/Article/Robert-W-Gordon-In-Conversation-With-David-Sugarman/>

⁴ Thus, Warwick, law in context and legal R/realism constitute a large proportion of this interview relative to JIC.

struggles surrounding, legal education and academic legal thought over the second half of the twentieth and early twenty-first centuries.

THE CONVERSATION

1 *Why A Memoir?*

SUGARMAN: Could we begin by you outlining why you wrote JIC?

TWINING: JIC is an intellectual memoir modelled, to some extent, on R.G. Collingwood's *An Autobiography*, which was a seminal work for me at the start of my story.⁵ It traces the story of my intellectual development through thinking, teaching and writing. It tries to give an account of where I was coming from, why I believe or doubt what I believe or doubt about law and its study, the immediate concerns behind my main writings, and some changes of mind, some unfinished business and why I call myself a 'legal nationalist'.

Why a memoir? I was persuaded to go into print because I felt that much of my writing had not been reaching my main intended audience - that is academic lawyers generally (xix-xx). Frustratingly, nearly all of my publications have been seen as specialised: Evidence is treated as a rather esoteric subject for specialists, an absurd idea; if I'm writing about Jurisprudence: 'Too abstract for me', say most academic lawyers; many view Legal Education as 'not a serious subject'; even 'globalisation' is treated as a specialism; jurists, in particular, have been slow to react.

A central theme of the book is that all academic lawyers should be concerned with the health of their discipline and the role of theorising within it. Globalisation affects all human beings; everyone constructs, interprets, applies and breaks rules; we all worry about fairness and injustice; draw inferences from evidence; encounter disputes from many points of view and are hooked on stories. Law is a humanistic discipline because it deals with subject-matters that are the concern of everyone. My motivation for going public, as it were, is to try to attract the attention of people I had

⁵ R.G. Collingwood, *An Autobiography* (1927).

been missing when I thought I had been addressing them but hadn't reached them. JIC tries to do this.

2 Key Projects

SUGARMAN: What are the major projects that have dominated your scholarship?

TWINING: I have written about many topics, but four major projects dominated my scholarship in an approximate sequence. My scholarly work on Karl Llewellyn and American Legal Realism started in 1962-3 and continued for more than a decade, so this belongs to the Chicago and Belfast periods (Ch. 7 and 8). At my interview for Warwick in 1972 I was asked: what subject are you going to Warwickise? - meaning rethink in a broader way than traditional. I settled for Evidence which became my priority for the next 15 - 20 years. It remains an active interest.⁶ In the late 1980s at UCL I started on a project on the implications of globalisation for Law as a discipline (theory, scholarship, and teaching) and this was my primary interest for the next twenty five years or so (Ch. 18 and 19).⁷ Of course, these projects overlapped in time and, more important, they are all interrelated through a direct link to my conceptions of Legal Theory and Law as a discipline.⁸

The main exception to this periodisation is Legal Education.⁹ I was interested in education before I was interested in Law; and I was an activist and polemicist in the area for much of my career; in retirement my ideas have undergone a significant shift

⁶ The main works are W. Twining, *Rethinking Evidence* (1990, 2nd ed., 2006) and *Analysis of Evidence* (1991 with Terry Anderson, 1990/1, 2nd edition with Terry Anderson and David Schum, 2005).

⁷ W. Twining, *Globalisation and Legal Theory* (1999/2000), *General Jurisprudence* (2009), *Human Rights: Southern Voices* (2009) and *Globalisation and Legal Scholarship* (2011).

⁸ In fact, several works make the link explicit in the title, for example: William Twining, 'Academic Law and Legal Philosophy: The Significance of Herbert Hart' (1979) 95 *Law Quarterly Rev.* 557; 'Evidence and Legal Theory' (1984) 47 *Modern Law Rev.* 261; 'Theory in the Law Curriculum' (with Neil MacCormick) in W. Twining (ed.), *Legal Theory and Common Law* (1986) 238; *Globalisation and Legal Theory* (2000); *Globalisation and Legal Scholarship* (2011). My ideas on Law as a discipline, Legal Education, and Legal Theory have evolved over time, but my thinking in each of the areas mentioned has been closely interrelated at every step.

⁹ Now re-labelled 'Learning about Law' (JIC, Ch.17, 20) and on which, see below.

- not a recantation, but a significant change of focus and emphasis (Ch.20). Whilst Llewellyn, Evidence and Globalisation could be loosely called 'projects', this was more a continuing involvement, with a partial break of about 15 years (late 1990s to 2013) because I felt that I did not understand what I had been talking about.¹⁰

3 Africa, Colonialism and Decolonisation

SUGARMAN: One of the abiding themes of the book is the significance of Africa and colonialism, being born in Kampala on the periphery of the Empire. You wrote in the book, I quote, 'I had a colonial childhood, an anti-colonial adolescence, a neo-colonial start to my career and a post-colonial middle age' (8). Could you say a bit more about the importance of Africa, both personally and professionally?

TWINING: Well, that quotation is a bit glib. I spend quite a lot of time elaborating, and to some extent qualifying it (e.g. 290-91); but, yes, I was born in Kampala; yes, I had a colonial childhood; yes, my growth was stunted because, like most British colonial children, I was sent to boarding school in England for seven years and I was a late developer, physically, intellectually and politically. I only became politically conscious in my early 20s, mainly in Oxford. The alleged anti-colonial adolescence was slow in developing and came to a head in 1955/56; partly because of the Suez crisis, but also from getting to know a lot of embittered and neglected African students in London, mainly at Lincoln's Inn, also in Paris. I got converted to a moderate form of anti-colonialism, attested to the fact that I chose to spend the first seven years of my academic career teaching in two newly independent countries.¹¹ I

¹⁰ JIC may be a summation, but it is not a summary of my ideas. For example, I do not attempt to summarise my detailed writings on Llewellyn, Evidence, Legal Education or on specific topics connected with my Globalisation project, such as diffusion and normative and legal pluralism. In particular, there are three topics dealt with in *General Jurisprudence* which I in effect incorporated by reference in JIC: Empirical Legal Studies (GJP Ch. 8), Law and Development (Ch. 11) and Human Rights, Southern Voices (GJP Ch. 13). I suggest that for a representative conspectus of my later thinking both books should be read together.

¹¹ The first question from the audience was: 'how can anti-colonialism be moderate?' A good question, partly answered in the text (290-1, Ch. 5-7). The context should make it clear that Suez was an epiphanic moment near the start of my belated political awakening. This was the summer of 1956 and I was 21 nearing 22. I was shocked both by the invasion, but also by much more overt racist talk

learned that 'colonialism' does not end at Independence. Ever since, I have been making modest contributions to decolonisation (Ch.5, 6, 7, 229, 267-9, 284, 290-1). The main theme there is that the processes of decolonisation last much longer, are very complex, and full of contradictions, dilemmas and ironies. The cover of the book is an example of post-colonial hybridity: This is a Papua New Guinea sculpture appropriating Rodin, with me culturally appropriating New Guinea art. The term 'post-colonial' has been used by literary theorists in a much narrower sense than I meant. Perhaps Marlon James' 'post-post-colonial' expresses it better.¹² The Empire sits on one's shoulder when one thinks one has left it behind. In Dar es Salaam in the early '60s we all thought we were being radical, but as Issa Shivji, a Dar graduate, astutely pointed out, there are severe limits to 'legal radicalism'.¹³ Path dependence' (i.e., what has occurred in the past persists because of resistance to change) explains quite a lot.

4 Betrayed by Salmond

SUGARMAN: In your account of your undergraduate legal education at Oxford you state that *Salmond on Torts* (1953) had been your favourite textbook, but that subsequently you felt "misled, let down even betrayed by Salmond and my teachers" (24). Can you elaborate on this?

TWINING: That was very important personally and theoretically. Shortly after graduating in 1955 I spent a week in a solicitors' firm. The partner I was attached to was a specialist in personal injuries litigation and he performed the standard Hard-

than I was used to; this happened especially in a village in Kent where I heard ex-soldiers who had served in the Middle East openly expressing their contempt for and disgust against all things Egyptian. Racism in Oxford and Dar-es-Salaam was present, but much more muted than that. Moderate? Even then I treated self-determination as a principle and favoured accelerated decolonisation (part of the Suez discourse suggested that Egyptians were not competent to operate the Suez Canal, as Africans were often said to be 'not ready' for independence). However, I never supported revolution or violence in this context. Julius Nyerere in the 1950s and early 1960s was seen as a 'moderate' leader at the time for this kind of reason.

¹² M. James, *A Brief History of Seven Killings* (2014).

¹³ I. Shivji, *The Limits of Legal Radicalism* (1985).

Nosed Practitioner act for a young graduate: 'You don't want to believe what you read in the books; it's got almost nothing to do with what we do.' He then pointed out that books like *Salmond on Torts* didn't mention insurance or settlement out of court, or the damages lottery or other kinds of compensation for harm. *Salmond* had been my favourite textbook: and I felt *betrayed*, not just misled or given the wrong impression. I felt strongly about it but when I went complained to anyone in Oxford who would listen to me their responses were pathetic: 'We're not a trade school' (true); 'we didn't hold ourselves out as being realistic' (only half true); 'you must master the rules before you criticise' (irrelevant); 'you learn about that in Civil Procedure' (untrue: the subject was not taught at undergraduate level - one of the weaknesses of our system - and at vocational level it was taught as blackletter law). We were given a totally misleading picture of what Negligence was about. How could it be said that we had *understood* that subject? This was my first step down a 'realist' path.

This experience also raised a broader question about classification of legal fields.¹⁴ For example, was Torts, let alone Tort, a good organising concept? How can cattle trespass, defamation, negligence, conversion, interference with contract and other torts form a single coherent subject? Not all of them even involve harm. The situations in which they arise and some of the most important values involved (freedom of speech, good neighbourliness, workers' rights, for example) are quite diverse. At Warwick in the 1970s, we redistributed Torts around several different courses: Trespass and Nuisance to Land; Defamation to Civil Liberties, Economic Torts to Labour Law and Commercial Law. Even before he came to Warwick, Patrick Atiyah substituted the organising category 'Compensation for Accidents' for 'Negligence' and showed up the remarkably anarchic differences between different compensation systems. He met all the points raised by my Hard-Nosed Practitioner. I no longer felt betrayed.¹⁵

¹⁴ On to the topic of fact-based classification, theorising about which seems to have been largely forgotten since the 1970s, see JIC 101, 307, n.17.

¹⁵ I am surprised that some theorists still talk of a 'Theory of Tort(s)' as a sensible concept and indulge in debates in which insurance, settlement, class actions, and assessment of damages hardly feature, let alone more sophisticated socio-legal work on strategic litigation (e.g. by insurance companies). For

5 Queens University, Belfast, 1966-72

SUGARMAN: How did your period at the Queen's University, Belfast, impact on your thinking?

TWINING: There are four themes in my chapter on Belfast (Ch.8), two of them not closely connected with the place. First, I had been appointed to a chair absurdly young and I felt that I had to justify that by some serious scholarship. This was mainly achieved by my intellectual biography of Karl Llewellyn, which was my main writing project at Queen's.¹⁶ Second, Queen's, like Scottish universities, had a four-year undergraduate Honours Law degree, taken by almost all undergraduates. Thanks to the enlightened curriculum left by my predecessor, Jimmy Montrose, I was responsible for three compulsory theory courses. An almost unprecedented opportunity for a Professor of Jurisprudence. These courses became the main vehicles for developing my knowledge, thinking and teaching about Jurisprudence. Most significant was the first-year course on Juristic Technique which was the arena for developing ideas about rules, interpretation and reasoning that became over time *How To do Things With Rules* (with David Miers).¹⁷ Third, my focus in teaching theory courses at Queen's was largely on particular issues and thinkers and intellectual skills, but anticipating the move to Warwick in 1972 made me ask: what might a legal theorist contribute to the project of 'broadening the study of law from within'? In reflecting on this I began to develop a coherent view of the nature and potential role of legal theorising in Law as a discipline as a whole.¹⁸ This is quite

example, the index of J. Oberdiek (ed.), *Philosophical Foundations of the Law of Torts* (2014) (JIC 321, notes 20-22) does not mention any of these, except one mention of insurance. Some contemporaries treat the Tort/ Torts distinction as unproblematic. See S. Hedley, 'The Rise and Fall of Private Law Theory' (2018) *Law Q. Rev.* and 'Is Private Law Meaningless?' (2011) *Current Legal Problems* 1.

¹⁶ *Karl Llewellyn and the Realist Movement* (1973; 2nd ed. 2012). This was published after I arrived at Warwick in 1972, but I had essentially completed it in 1971.

¹⁷ 1st edition, 1976; 5th edition, 2010.

¹⁸ These were developed in W.L. Twining, 'Some Jobs for Jurisprudence' (1974) 1 *British J. Law and Society* 149, first delivered as my inaugural lecture at Warwick in 1973.

close to the view of Jurisprudence outlined in Chapter 1 of JIC. However, regularly adopting a global perspective led to the further development of my ideas, so I will defer this topic until we deal with General Jurisprudence below. Fourth, towards the end, having followed the local troubles with both fascination and horror, I became involved in a staff student working party on emergency powers and techniques of interrogation.

The Queen's four-year undergraduate degree persuaded me that the Achilles Heel of primary legal education in England and Wales was - and is still - the three-year degree for eighteen-year olds and that most of the unsatisfactory polemics about legal education have been due to trying to squeeze too much into a three-year course. Curriculum overload is still the greatest problem.¹⁹

In my last year in Belfast (1971-72) some students asked why was the university not involving itself more in the community? Queen's had taken a great pride in being above the local conflicts; sectarian nonsense was not tolerated on campus, so how was the university to respond? When students pressed us to get down off the fence, a knee-jerk answer was: 'on which side?'²⁰ This was too glib, so we created a small working party, staff, student, catholic, protestant, gender male, female.²¹ We took on, first of all, interrogation techniques of suspected terrorists and then emergency powers generally. We produced a pamphlet which I was quite pleased with at first, until various Tory MPs started quoting bits out of context, cherry picking from what was a compromise package. I learnt a lesson there politically, but the working party was a worthwhile exercise for the participants. For example, the interrogation of

¹⁹ In brief, Queen's provided progressive maturation, a requirement to study at least one subject at advanced level, the opportunity to take options not widely available in English undergraduate degrees at the time (e.g. Social Legislation, Labour Law, Consumer Protection) and a wide range of perspectives on theorising. Which undergraduate law degrees in England and Wales match that?

²⁰ They were probably 55% Protestant, 40% Catholic, with the rest from outside the province.

²¹ One of the students was Mary Leneghan, who as Mary McAleese became the President of the Republic of Ireland; another was Chris McCrudden, recently knighted for his contributions to the study and practice of human rights, especially in Ireland. Tom Hadden, a colleague, played a major role in the working party.

suspected 'terrorists' in Northern Ireland in the late 1960s led me to the dreary literature on torture. This sent me back to concerns about utilitarianism and rights.

I don't like reading or thinking about torture, but it forced me to clarify my own views on utilitarianism. At that stage the focus was on 'the justification' of using torture in extreme cases posed largely in terms of utilitarianism and various forms of Kantianism, including human rights. I found such debates somehow missing the point. I ended up (much like Herbert Hart), in a sort of unsatisfactory position that utilitarianism takes you so far but you've got to have principles independent of utility because some things stick in your throat. That doesn't have a very sound and stable philosophical foundation but it's where I am at. However, the debates about the 'morality' of torture and ludicrous examples about ticking bombs made me sense the unreality of much of the literature and of distorted perspectives on the practical problem of actually preventing and reducing the disease of torture in 'the real world'. 'The problem' had been misdiagnosed. There are, of course, very serious problems regarding purposive torture inflicted out of sight often with political/ideological motives with no colourable 'justification'. However, a very high percentage of torture in today's world takes place in police stations and is applied, often routinely, to recently arrested people suspected of a wide range of serious and minor crimes. Where there is the political will, behaviour in police stations can be monitored and made transparent and accountable and this has been done in some countries and has significantly reduced the incidence of institutionalised brutality.²² In neither type of scenario, and some others, is the morality or legality of the practices really in issue. The research and discussions need a breath of realism focussing on actual patterns of behaviour.

6 Significant Intellectual Influences

SUGARMAN: From your many intellectual influences, can you identify some of the most important?

TWINING: I deal in detail in the book with five individuals who might be termed 'gurus', only two of whom were my teachers: Italo Calvino, R.G. Collingwood,

²² R. Carver and L. Handley, *Does Torture Prevention Work?* (2016) discussed in Ch. 9.

Herbert Hart, Karl Llewellyn and Jeremy Bentham. Briefly, Calvino (chs.1 and 20) emphasises complexity without becoming an epistemological sceptic; he helped me to sort out my ambivalences towards post-modernism; and gave me two contrasting characters with whom to feel affinity: Mr Palomar and Marco Polo. Collingwood stimulated me to think about standpoint, questioning, especially putting texts to the question (100) and intellectual history, including intellectual autobiography (Preface and Ch.10 and 258-60).

Herbert Hart first aroused my interest in law, alerted me to how questions can be criticised, and introduced me to conceptual analysis; but he stuck with a largely inherited agenda and was too unconcerned with empirical questions. I shared Hart's ambivalence about utilitarianism and, like Hart, I ended up as a rather shaky moral pluralist: (105-7). I was less impressed than many by *The Concept of Law* for many reasons,²³

My relationship with Karl Llewellyn (Ch.4 and 7) and his papers is sketched in this book. As with Calvino, it was as much affinity as influence, although a lot rubbed off through immersion in his writings and papers. As for Bentham, about whom I wrote a lot elsewhere, I shall quote myself: '...I am the very model of an ambivalent Benthamist - viewing him with awe, but treating him variously as inspiration, formidable opponent, useful sounding-board, and as a crackpot' (206).

SUGARMAN: Can one be a loyal disciple of both Hart and Llewellyn?

²³ H.L.A Hart, *The Concept of Law* (1961). A major weakness of the book is the author's treatment of the concept of rule(s). He usefully distinguished between commands, rules, habits, and predictions, but he failed to give an account of the diversity of prescriptions, most strikingly in letting Dworkin suggest that he overlooked principles and attribute to him a concept of rules as categorical precepts that Hart did not need. Hart's concept of law as a system of rules might have been less vulnerable if he had acknowledged that legal doctrine consists of more or less consistent agglomerations of prescriptions or norms of different kinds.

TWINING: Kipling wrote: 'But his own disciple shall wound Him worst of all.'²⁴ I hope I did not do that to either of them. Hart was mystified by my 'conversion' to Llewellyn, but I never saw it that way. We might say that there was some creative tension in following both.²⁵

7 The Personal and the Professional

SUGARMAN: Whilst JIC is about ideas and places, it also illuminates aspects of the interaction between your personal and professional life. You appear, for example, to describe several successive oedipal rebellions: against your parents (especially your father), Hart, and to some extent, Llewellyn. Can you comment?

TWINING: An intriguing question. Oedipal is a bit strong. I have acknowledged defining myself against Bentham. As a colonial child, separated from my parents for long periods, I built strong defences against all grown-ups: teachers, uncles and aunts; inquisitive strangers; and even my parents, who complained that my brother and I were too 'independent'. They were both formidable, and I probably became an academic to get out of their shadow. I disagreed strongly with my Dad over Suez and his benevolent paternalism (towards Africa as well as me!), but this did not spoil our relationship. Rather he respected me for openly disagreeing with him and wishing to stand on my own feet. (Ch. 2 and 3). I owed a lot to Hart. I differed from him, but never rejected him, although he may have thought I did. With Llewellyn the relationship was more complex: by the time I met him I had already tutored in Oxford, knew quite a lot about African anthropology and Jurisprudence, had developed ideas on standpoint and so on. I learned a very great deal from him and I think that we both recognised an affinity; but we were culturally quite different and, as Soia Mentschikoff observed, I never understood the idea of a credit economy, meaning, that I was commercially naïf.

8 Warwick, Law in Context and Legal R/realism

²⁴ R. Kipling, 'The Disciple' (1932).

²⁵ See, W. Twining, Afterword to *Karl Llewellyn and the Realist Movement* (2nd ed. 2012 at 404-409).

SUGARMAN: This brings us onto Warwick, *Law in Context*, American Legal Realism, and your concept of realism.

TWINING: Before focusing on Warwick, I shall first sketch how the book deals with the development of my ideas in this regard. We have touched on the epiphanic moment when I felt betrayed by Salmond. That was in 1955 and I already had a predisposition to contextual or realist approaches: Ch. 3. My first encounter with Karl Llewellyn, hence with American legal Realism, was in Chicago in 1957-58 (Ch. 4) and this was reinforced by my work on Llewellyn from 1963 to 1973 (Ch. 7). A central theme of the chapters on Khartoum and Dar-es-Salaam (1958-65, Ch. 5 and 6) was that teaching and writing about English law in two very different, newly independent African countries was that *we had to be 'contextual'* (58-63). That is, we had to ask of every body of doctrine or specific rule, every institution and every alleged solution to a problem: does this fit local conditions and aspirations? (58-61).

The *Law in Context* series was dreamed up with Robert Stevens at Yale in 1965 and it was launched and rationalised during the Belfast period (91-2).²⁶ It is for others to assess the influence and significance of the series and whether individual books have in practice been 'contextual'. Here the phrase 'law in context' is vague, but it is not vacuous.

Warwick is particularly significant here for three reasons: first because Geoffrey Wilson had a very specific conception of 'law in context' or what we preferred to call 'broadening the study of law from within'; second, in the early years every member of staff was challenged to 'rethink' the subject they were teaching in a broader way; and third, I try to explain how it is a mistake to try to theorise 'law in context' and related terms as theories of law, specific methodologies or precise kinds of 'ism'.²⁷

²⁶ I tell the story of the start of the series in Chapter 7. It would anyway have been foolish for the editors to give a precise or restrictive interpretation to the label.

²⁷ I shall say almost nothing here about American Legal Realism, Critical Legal Studies, or the 'Law in Context Movement' as historical phenomena that can be roughly assigned to particular periods, places and individuals. I have written a lot about these elsewhere. However, later, I shall touch on my recent attempts to treat 'realism' as a useful concept for Jurisprudence.

The story of my involvement with Warwick Law School (Ch.12) begins in 1966 with my first encounter with Geoffrey Wilson at a conference in Cambridge when the Young Members Group of the SPTL was launched. We immediately recognised each other as allies and over the next two or three years we had long discussions about what a broader approach to legal education might involve in the UK.

Wilson was appointed Founding Professor of Law at Warwick after lengthy consultations (which began in about 1966). By the time the first students arrived, he had developed a very clear idea of his objectives and ethos for the institution. His approach is epitomised in a rhetorical question that he often asked: how can anyone (not just lawyers) understand a capitalist society who has not studied both Labour law and Company law? He argued that the discipline of Law can provide distinct lenses on society and an undergraduate degree should do just that. Other key ingredients were starting with real-life social and political problems rather than formal legal rules and freeing legal studies from insularity by emphasising foreign, regional and international law, thus anticipating concerns with 'globalisation'. Warwick was to be a *law school* peopled by law students and academic lawyers who were committed to broader approaches to learning, teaching and scholarship about law. This involved 'broadening the study of law from within' rather than Sunday supplement add-ons or bits and pieces of 'Law and...' A Warwick graduate once remarked to me that what he had learned at Warwick was how to understand every page of the *Financial Times*. Geoffrey would have been pleased with that.

In the early days Warwick was 'Wilson's Law School', but his vision was fairly quickly diluted by two factors: First, it was not possible to squeeze all his desiderata into a three-year undergraduate degree. I had tried to persuade him to insist on four years, but that was felt to be too risky in recruiting students to a new university. Second, as the institution grew members of staff and students pressed for more options, though their motives were different. This forced us to make some compulsory subjects optional; significantly this happened to Labour Law and Company Law at the first curriculum revision in 1974. Third, although this was less problematic than some felt, the LLB had to be recognised for purposes of professional exemption, so some semblance of covering core subjects was required and over time the core crept up. The lack of Torts as an organising concept, the omission of a few torts and other problems of coverage were easily settled over a bottle of claret with Robert Goff QC,

who agreed that the subject of recognition of single honours law degrees was a charade and was causing unnecessary *angst* (153, ch. 12).

Despite the dilutions of the Wilson vision, a recognisable Warwick ethos was maintained both in the broader approach to teaching and in the teaching materials and publications of staff. This is illustrated by the fact that at least ten Warwick authors, beside myself, have contributed to *the Law in Context* series.

The most interesting aspect of Warwick for me was the injunction to every member of academic staff to rethink their subject in a broader way. This applied first to teaching and then more generally to research and scholarship. I chose Evidence because my friend, Patrick McAuslan, had already occupied Land. In JIC I explore in some detail how this injunction was interpreted in different ways by Atiyah (Negligence/Accidents), McAuslan (Land), Chesterman (Trusts) (153-7), and Twining (Evidence, Ch. 14). This illustrates the open-endedness of 'broadening the study of law from within.'

SUGARMAN: Has Law in Context, both the book series and in general, sufficiently challenged the dominant legal doctrinal mindset?²⁸

TWINING: In discussing terms like R/realism and 'law in context' one needs to keep separate labels for historical phenomena (e.g. the American Realist Movement) from usable concepts that have some analytical purchase (e.g. realism not Realism). One needs to distinguish between the series, the concepts and the practice. It is clear that from a publishers' point of view that the primary audiences and markets for books in the series were academic lawyers and law students. The aim was to broaden lawyerly minds. Most, but not all, of the authors have been lawyers of one kind or another. Whether in practice they all adopt 'contextual perspectives' is a

²⁸ See, generally, R. Collier, 'We're All Socio-Legal Now?' Legal Education, Scholarship and the 'Global Knowledge Economy' - Reflections on the UK Experience' (2005) 26 *Sydney L Rev.* 503; E. Mertz, *The Language of Law School: Learning to "Think like a Lawyer"* (2007); S. Bartie, 'The Lingering Core of Legal Scholarship' (2010) 30 *Legal Studies* 345; D. Sandomierski, *Aspiration and Reality in Legal Education* (2020). On the problematisation of 'law in context', D. Nelken, *Beyond Law in Context: Developing a Sociological Understanding of Law* (2009).

matter for debate. I thought in the 1970s and 1980s that some authors tended to identify a law in context approach with policy orientation and there may have been a core of truth in the idea that during that period the predominant Warwick approach was underpinned by 'Neo-Fabian Jurisprudence'.(p. 226) But taken as a whole the series has been more diverse.

Whether 'law in context' is now a part of mainstream English academic culture is difficult to gauge. Fiona Cownie reported half of her respondents 'describing themselves as adopting a socio-legal or critical legal approach' and that doctrinal work had changed 'with the majority of black-letter lawyers regarding the introduction of various policy-related matters as crucial to their analysis of legal phenomena.'²⁹ This seems plausible, but the concepts are vague and this is a report about what people claimed rather than their practices fifteen years ago. Clearly there has been change in academic legal cultures in England, but where, how and to what extent, I cannot say.

SUGARMAN: Insofar as both University College Dar-es-Salaam and Warwick Law School became arenas within which Marxism and socialism did battle with pragmatic liberalism, how did you deal with these conflicts, and what impact (if any) did they have on you?

TWINING: The period I was at Dar has been called the 'nationalist phase' when the national priorities were nation-building, fighting 'poverty, ignorance and disease', and protecting the country's newly achieved independence. This preceded the Arusha Declaration of 1967 and a hardening of the idea of African Socialism. Later Nyerere was criticised from the right (mainly by foreign commentators) and from the left, including by Marxists. The Law Faculty went through a relatively brief Marxist phase, but that was some time after I left. Of course, the Cold War was part of the backdrop in the fifties and sixties, but Tanzania was non-aligned.

²⁹ Fiona Cownie, *Legal Academics* (2004) 72.

As for Warwick, there were both ideological and political battles at university level with various kinds of Marxian ideas involved, including E.P. Thompson's controversial defence of the Rule of Law as an unqualified human good.³⁰ Intellectually within the Law School there was over time a spectrum of ideological views expressed ranging from Maoist, Leninist, Marxian, British Socialist, Fabian, liberal, centrist, neo-liberal and so on. But these were accommodated within a liberal tolerance of diverse opinions and academic freedom. There were, of course, some tensions within the domestic politics of the Faculty. These were complex and shifting and involved personalities and concerns about hierarchy as well as differences of ideology. The main arena for this was an elected but unofficial appointments committee which I treat ironically as an example of an interposed norm, in this case an unauthorised arrangement quietly infiltrated into a formal set-up (152).³¹ However, I think we weathered these largely because of a shared commitment to 'the Warwick ethos'.

SUGARMAN: 'Law in context', your brand of Jurisprudence, and your general approach are sometimes seen as insufficiently critical, as, for example, giving insufficient weight to the connections between law, power and domination. Can you comment?

TWINING: This is quite complex. I am agnostic about most belief systems and quite sceptical about abstract ideologies. As a scholar I strive for relative detachment, but I have some commitments. Obviously, self-interest is an important driver, but we also need concepts such as altruism and self-delusion. I think that the idea of power is very elusive, and that dichotomies like Santos' distinction between hegemonic and counter-hegemonic forces are rather simplistic, but can sometimes have explanatory force. I am a fascinated, sometimes appalled observer of political antics with a strong

³⁰ E.P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (1975) at 266. On the battles at Warwick University see, E.P. Thompson, *Warwick University Ltd* (1970).

³¹ I based a fictional account on this example to illustrate the idea of 'surface law', in this case the University's Charter and statutes on their own gave an incomplete and hence misleading picture of the actual processes of academic appointments in the Law School, and no doubt other departments. (*General Jurisprudence* Ch 19).

sense of their absurdity, and I don't join in often. For a high proportion of my life I have been an expatriate, to some extent feeling inhibited about active involvement in local politics.

Two passages in the book may throw some light on this. In the second chapter I give an account of my perception of power and authority in my 'house' at boarding-school, suggesting that despite looking like a top-down hegemonic hierarchical system, a lot of the micro-politics involved jungle skills: 'much was negotiable and the ways in which one protected one's private space can be interpreted in terms of resistance to authority and alien rule.' (13). The second concerns human rights. When I analysed my ambivalent attitude to human rights, I found myself ending up quite close to Yash Ghai, who does not believe that we 'have' universal rights, but that talking as if we do is pragmatically useful.³² On this issue I end up siding with a pragmatic materialist view, although I am clearly not a Marxist or even a Socialist; nor do I feel easy with grand differentiations between 'hegemonic' and 'counter-hegemonic' forces, as my friend Boa Santos does.³³

SUGARMAN: Wouldn't most people see you as a liberal?

TWINING: A pigeon-holing question. 'Liberal' is a weasel word, but I can give some indications. I subscribe to traditional liberal values in education (*passim*). I am against strong versions of free market liberalism. (31-32,79-80); I think that I have fairly 'progressive' views on, for example, self-determination, tolerance, gender, racism, inequality, war, poverty, and so on; I am probably more a social democrat than a liberal democrat; in 1955-6 I joined the Liberal Party, following my brother, but did not take it seriously and have not subscribed to any political party or club since; I don't recall ever voting Conservative in UK; there is a strong strain of agnosticism in my beliefs and attitudes, sceptical about most kinds of dogma and abstract ideology; I was brought up on the dictum 'politics and dishonour are

³² For Ghai this was especially the case in the context of settling disputes and negotiating settlements between majority and minority ethnic groups in constitutional negotiations (p. 268).

³³ E.g. B. de Sousa Santos, *Toward a New Common Sense* (2002).

synonymous', but I am committed to a few 'good causes'. In short, a rather boring kind of conservative.

SUGARMAN: Is there anything that you would do differently at Warwick if you were able to do so today?

TWINING: Raise more money! During my time there the achievements of the Law School were very much a team effort. We did try to implement a coherent, but reasonably flexible ethos, make the undergraduate degree more transnational and open to other disciplines, and consistently adopt broader approaches than the doctrinal tradition. I was generally quite pleased with these achievements. In retrospect, I could have pushed harder for four-year undergraduate degrees, including mixed degrees, or a more popular opting-in provision (347-8). My greatest regret was when our plans for a four-year Law and Social History degree crumbled because the Social Historians considered teaching undergraduates burdensome rather than as an income stream. I think that it was right to concentrate at first on undergraduate teaching and innovative teaching materials rather than rushing into print; however, we might have started emphasising original research, especially empirical research, a bit sooner. Initially postgraduate studies were rather ad hoc and we might have given more thought to these, but they flourished later. We were justifiably proud of our 'rethinkings' of different fields, but I regret that Patrick McAuslan switched his attention to planning before he had produced a contracted book on Land Law (155-6). That might have changed the teaching of the subject nationally. Maybe I should have pushed him harder.

SUGARMAN: JIC criticises 'law in context', particularly, the way the term has been used. Could you elaborate?

TWINING: Again, one needs to distinguish between historical phenomena, how they are labelled, and concepts used to analyse both the phenomena and the ideas. There is a cluster of loosely related terms and concepts that are used with varying degrees of precision. Some are associated with particular times and places; for example, American Legal Realism, Sociological Jurisprudence, Critical Legal Studies, Critical Race Theory and the New Legal Realism are mainly rooted in the United States. Feminist Jurisprudence and Law and Development are more transnational. I think that all of these are generally best treated as rough labels for

historical phenomena and ideas. Attempts to distil such terms into coherent theories or schools or isms have often involved futile debate. (xiv, 2-30).³⁴

In Britain, Socio-Legal Studies was originally coined in the 1960s as a bureaucratic term in connection with funding activities involving interdisciplinary, cross-disciplinary and multidisciplinary relations between Law and *all* Social Sciences. It has segued into a broad, dynamic, but vague field concept.

Law in context', also British, is quite interesting as a concept. In ordinary usage the term is vague and open-ended, but not meaningless. It has a loose historical association with American Legal Realism (ALR), but the English context in the 1960s was very different from the American one in the 1920s and 1930s (163). It is natural that the term should have been used loosely and in different ways. Some have conceived of 'context' as just as an add-on to doctrine; in the 1970s and 1980s some contributors to the book series thought of it mainly in terms of policy-making and law reform; some thought of it as critique; others interpreted it much as I have (161-4). These are all different.

I don't think that the term 'law in context' should be used to represent a field or an approach or a theory of law or a specific methodology or anything else like that. It may be quite useful as a broad-brush term provided one does not attribute too much meaning to it. Part of the ambiguity lies in the specific words. To put it briefly, some have assumed that 'law' in this phrase applies just to doctrine; others, including myself, have assumed a broader conception of law that includes institutions, processes, personnel, and technology, as well as doctrine. 'Context', a word now attracting philosophical attention, has been variously interpreted to mean 'law in action' or 'historical, political or social context', or cross-disciplinary perspectives. One way of putting this is to say that what counts as context itself depends on context (163).

SUGARMAN: Are you suggesting that we abandon the term, 'law in context'?

³⁴ Here let us treat Empirical Legal Studies, Socio-Legal Studies, Sociology of Law and Law and Development as broad field concepts, with no precise or stable borders and, only rarely, any analytical purchase.

TWINING: As a useful analytical term, yes. But in case anyone thinks this is question-begging I quote an earlier statement of my personal interpretation of 'law in context':

'I do not like being labelled, but 'law in context' is better than most: I advocate thinking in terms of total pictures', mainly to set a broad context; I think that judicial and other related decisions are best studied in the context of a total process model of litigation and that the approach applies beyond litigation and dispute-processing to all kinds of legal 'action'. Normally rules need to be interpreted, applied, studied and used with reference to context. Whether the relevant 'context' is mainly historical, social, political or something else depends on the particular enquiry and its standpoint; I am careful not to treat law as context, and to give doctrine its place. For me, 'law in context' as an approach challenges the idea that Law is an autonomous discipline or a 'science' in any strong sense: that there are pure forms of legal knowledge. I think that understanding law requires openness to other disciplines, but I am a jurist rather than a philosopher or a social scientist or historian.'³⁵

I have argued that we need a term like 'realism' to indicate an important ingredient in the idea of understanding law and legal phenomena.³⁶ It conveys the point raised by my anecdote about *Salmond on Torts*. My suggested formulation is a single proposition:

'That knowledge and understanding of empirical dimensions of law and justice are relevant to (weak), an integral part of (moderate), necessary/essential (strong) to understanding law and legal phenomena.'

This opens up a range of theoretical issues which I cannot go into here. Some of these are philosophically as well as jurisprudentially interesting. The notion that I was betrayed or misled by Salmond could be interpreted as an example of strong realism. Moderate as ever, this is my summary in JIC:

'Even moderate realism has a contribution to make to Jurisprudence, not as a theory of or about law, nor as a rounded philosophy of law, nor as a rival or subverter of

³⁵ Unpublished fragment (c.2000).

³⁶ JIC Ch.13 and at greater length in 'Legal R/realism and Jurisprudence: Ten Theses' in *The New Legal Realism*, Vol. I, ed. Elizabeth Mertz et al. (2015) Ch.6.

analytic, idealist or doctrinal approaches, but rather as one integral part of understanding law. In this view, legal realism is best treated as a hedgehog concept, that is that it stands for one Big Idea – the importance of the empirical dimensions of law and justice as part of understanding law. Once that proposition is accepted, the gates open to all of the foxy diversity, controversy, differing traditions and dilemmas and problems within empirical legal studies’ (169).

Elaborating on this will require another occasion.

9 Socio-Legal Work and Empiricism

SUGARMAN: Does socio-legal work have to be empirical?

TWINING: Apart from the obvious answer that socio-legal work or empirical legal studies need to be backed by theory, especially social theory, or make some working assumptions, like rafts (4-5). At least two concerns seem to me to underly this question: one is answered by Llewellyn’s dictum: ‘Knowledge does not have to be scientific in order to be useful and important’.³⁷ Disciplined empirical research is very important, so is less rigorous evidence-backed policy-making (provided one does not expect too much of ‘facts’); but so are the lessons of experience of participants and participant-observers. Understanding law has to be open to rigorous empirical data, more impressionistic lessons of experience, imagination, emotional intelligence and even aesthetics (272-73).

A second concern is about Law as a discipline being lumped under Social Sciences rather than Humanities. That is a headache for bureaucrats, rather than for legal scholars and theorists. When I talk of Law as a humanistic discipline this is not to do with the classification of fields: for example, whether they are ‘hard’ or ‘soft’, Neuroscience, Psychology, Economics, Narrative Sociology, History, Literature, and Ethics are all relevant to understanding law. Perhaps ‘Empirical Legal Studies’ fits

³⁷ K. N. Llewellyn, ‘The Theory of Legal ‘Science’’ (1941) 20 *N. Carolina Rev.* 1, at 22, discussed in W. Twining, *Karl Llewellyn and the Realist Movement* 188-93, cf. *ibid.*, 313-321 on ‘scientism’ see *General Jurisprudence* Ch.8.

this concern.

SUGARMAN: Are not all of these terms related?

TWINING: All of these overlapping ideas and activities have been part of, or closely associated with, the idea of 'a revolt against formalism'.³⁸ Analytically 'formalism' is a contested concept (163,172) and I prefer to refer to 'the doctrinal tradition'. In order to avoid unnecessary polemics, it is helpful to adopt a rich concept of doctrine, such as that advanced by Andrew Halpin (171).³⁹ This includes not only rule-formulations, but also principles, differentiated conceptions of interpretive roles, and a sophisticated understanding of legal materials. Identifying formalism with 'blackletter law' or 'school rules views' invites caricature. The best expositors, such as the authors of the great American treatises and the Scottish institutional writers for the most part had extensive practical experience and their working assumptions took account, usually tacit, of institutional, processual or cultural background factors. Some of that tacit knowledge tended to be quite local.

In law 'the revolt against formalism' was not a rejection of doctrine; rather it was a reaction against *the dominance* of the doctrinal or expository tradition of academic law. Academic law cannot do without doctrine. It is a necessary but not a sufficient element of understanding law. I think a better approach is to adopt a nuanced view of doctrine, which includes more than just rules, and allows that most expository works assume some tacit, often local, knowledge about the institutional, processual and cultural practices in the background. I don't think that concedes too much.

Accepting the importance of doctrine does not preclude a critique of aspects of the doctrinal tradition, especially its dominance and exclusivity. For example, a strong or moderate realist will reject the idea that legal dogmatics or legal science constitutes an autonomous discipline; most realists will reject the idea that law consists only of rules or doctrine and will emphasise the importance of institutions, processes, personnel, legal technology, as well as context, in addition to rules and norms; and

³⁸ M. White, *Social Thought in America: The Revolt Against Formalism* (1949).

³⁹ A. Halpin, *Definition in Criminal Law* (2004) Ch.1.

there is room for differences and disagreements about whether concepts such as officials, institutions, or legal techniques can be elucidated without reference to rules or norms. An important example of the impoverishing influence of a narrow doctrinal tradition is the almost universal practice of treating the term ‘legal reasoning’ as being confined to reasoning about questions of law (263-4). In a recent paper railing against this practice I suggested that “much of the standard literature is narrowly focused, de-contextualised, susceptible to tunnel vision with severe imbalances in the attention accorded to different topics and the relations between them.”⁴⁰ On the positive side it argues that focusing on the broader field of ‘Reasoning in Legal Contexts’ opens up new enquiries and some possibly surprising conclusions: for example, that reasoning about disputed questions of law and of fact in adjudication are much more similar than is commonly supposed in respect of structure, the uses of narrative, and potentially shared concepts (for example, relevance, weight, cogency, admissibility, coherence, and logical consistency). Many explicit legal arguments can only be explained by reference to tacit knowledge of various kinds that need to be brought to the surface; furthermore, much of such knowledge tends to be contextual and local, threatening the generality of bland de-contextualised theoretical statements. Thus, even the Modest Thesis challenges very abstract accounts of ‘legal reasoning’.

10 Self-Criticism and Changes of Mind?

SUGARMAN: JIC includes some critical reflections on your own work, *mea culpas*, and important changes of mind. To quote one example: ‘we as law teachers have only really paid lip service to the twin ideas that we should focus more on learning and teaching and take the idea of life-long learning seriously’ (xvii).

WLT: Learning about law is lifelong, from cradle to grave, and nearly all of that learning is informal in the sense that it takes place outside institutionalised ‘formal’ instruction. On the other hand, nearly all research, public discourse, debate and policy-making about ‘Legal Education’ has focussed on law schools, law teaching, law teachers and law students. To an extraordinary extent, as academic lawyers, we

⁴⁰ ‘Rethinking ‘Legal Reasoning’: A Modest Proposal (Conference paper, EUI, 2017) project with Raquel de Barradas Freitas (continuing).

have focussed obsessively, sometimes narcissistically, on primary legal education and initial professional admission to private practice - one quite small part of a total picture of formal learning about law, let alone learning about law through all the seven ages of man (and belatedly woman) in society as a whole (270-71). I am not saying that formal primary legal education or law schools are unimportant - although that might be true in the greater scheme of things. I think and talk about such specific matters because it is my trade, but I now want to look at the whole field from a different perspective and set particular topics in a much broader context.⁴¹

Briefly, what I am trying to say is:

First, if we want to take lifelong learning seriously, we need to substitute 'learning about law' or some such label instead of 'Legal Education' as the main organising concept for this field. Second, academic lawyers individually should see themselves as professional educators and collectively we should concern ourselves with the general field of learning about law, not just with some narrow patch, such as primary legal education.⁴² Third, a shift of focus from formal institutionalised teaching to lifelong learning produces radically different answers to such questions as who learns (or mis-learns) about law when, why, how, and in what contexts? Under the primary school model, the standard answer in England has been mainly law students aged 18-25 through formal study (assessed taught courses) mainly in institutions called law schools, supplemented by supervised apprenticeship for some in organisations called law firms or chambers. That perspective even leaves out most other formal learning about law.⁴³ The idea of lifelong learning produces a different

⁴¹ This is further developed in W. Twining, 'Rethinking Legal Education' (2018) 52 *The Law Teacher* 241.

⁴² W. Twining, 'The Role of Academics in the Legal System (UK)' in the *Oxford Handbook of Legal Studies*, ed. P. Cane and M. Tushnet (2003) 920-29.

⁴³ For example, the thesis that most formal legal education takes place outside 'law schools' (e.g., in business schools, police training, and courses for legal executives); that postgraduate legal studies are of increasing importance; and that there is little discussion of research on learning, training and certification for specialisation. See, however, The Law Institute of Victoria's Accredited Specialisation program <https://www.liv.asn.au/Learning-and-Networking/Accredited-Specialisation>. See further Twining, *op. cit* (2018).

answer: everyone in society learns (or mis-learns) about law from cradle to grave; most of that learning is informal, through life experience, the media, gossip on Facebook, confronting immediate practical problems and so on and so on. The idea of the 'reflective practitioner' catches an important bit of it, but tends to make rather narrow assumptions about the "who" and the "how". So, taking lifelong learning seriously invites us to adopt Lawrence Friedman's suggestive idea of society as one vast school of law.⁴⁴ Fourth, even if one's immediate interest is undergraduate law degrees or initial professional formation in England - as much of mine has been - adopting the Friedman model or something similar has immediate implications for such specific topics. For instance, it shows up what a tiny proportion of such a picture is taken up by primary legal education in the narrow sense; it challenges the assumption that law students start learning about law at 18 or 19 rather than in the womb; it underlines how little we understand about learning, including the elusive 'lessons of experience'; it raises questions about the self-perceptions of career law teachers as professional educators and about research agendas for the better understanding of learning about law. Fifth, we are not starting from scratch. Some academic lawyers have already taken the idea of learning theory and student-centred learning seriously; we could learn much about experiential learning from other academic tribes, and occupations, such as nursing, engineering and civil service training; there is scattered, but interesting, work in the Sociology of Law on topics such as knowledge and understanding about law and media presentations of law; and, more generally, we can learn from ongoing developments in, for example, IT and Neuro-Science. In short, in taking this step we will not be on our own.

There is some self-criticism, but no wholesale recantation.⁴⁵ Clearly my writings and activities regarding 'Legal education' have been narrowly focused in a quite conventional way and, in some respects, continue to be so. Since about 1994 I have

⁴⁴ L. Friedman, 'Law, Lawyers and Popular Culture' (1989) 98 *Yale L. J.* 1579 at 1598.

⁴⁵ For fuller discussion see W. Twining, 'Punching our Weight? Legal scholarship and public understanding' 29 (2009) *Legal Studies* 519; 'LETR: The Role of Academics in Legal Education and Training: Ten Theses', (2014) 48 *The Law Teacher* 94; 'Let's talk: framing enquiry and discussions about "legal education"', (2015) 49 *The Law Teacher* 388; 'Rethinking Legal Education', op. cit. and JIC 269-73

felt the need for a different set of lenses, but this does not mean that I am repudiating all my earlier work, which might contain some insights worth preserving. After a fallow period I have tried to adjust my thinking, mainly in reaction to the Legal Education Training Review process, which officially started in 2010-11, reported in 2013, and continues today.⁴⁶

11 Globalisation and 'Southern Voices'

SUGARMAN: You have contributed significantly to the literature on globalisation and law. What do you consider to be the principal messages to be taken from this work?

TWINING: I shall confine myself to a few soundbites, which, of course, must be surrounded by *caveats*⁴⁷:

- Almost everyone involved with law, especially jurists, has to take globalisation seriously, but in different degrees, contexts and ways (Ch. 19).
- Words like 'global' pose real dilemmas: they can mean genuinely world-wide, widespread, or transnational; often the first is too narrow, the second is too vague, and the third is too expansive. Their use normally involves exaggeration. Most 'global' is not worldwide (231-32).
- Beware of purported empirical generalisations about legal phenomena and ideas in the world as a whole: 'g-words' are often used or abused as part of generalisations that are trivial, false, exaggerated, misleading, superficial, ethnocentric or a combination of these (GJP 13-18).
- The study of globalisation and law presents serious challenges to some mainstream assumptions of Western academic legal traditions (251-2).
- Most significant transnational patterns for law are *sub-global* - no empire, language, religion, diaspora, war, pandemic or legal tradition has yet

⁴⁶ The four leading specialists in Legal Education, who were mainly responsible for LETR, firmly said: NEVER AGAIN: '[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': Jane Ching and others, 'An overture for Well-tempered Regulators: Four Variations on a Theme' (2015) 49 *The Law Teacher* 143.

⁴⁷ The main themes are discussed in detail in *General Jurisprudence* (2009) passim, JIC Ch. 18 and 19 and in several papers (see above).

covered the whole world; yet such phenomena underpin processes of increased interdependence between human groups and individuals (Ibid.).

- Following Calvino, adopting a global perspective should bring out the variety and complexities of legal phenomena and ideas, rather than reducing them to neat geometrical shapes: concentric circles, vertical hierarchies, horizontals or diagonals. Our heritage of law is much messier than that (279).
- Adopting a global perspective as a jurist requires one to take concepts of 'non-state law' seriously (GJP Ch. 12).

Taking globalisation seriously involves making Comparative Law more central to legal understandings and fashioning many more usable concepts that 'travel well' (242, 254-5).⁴⁸

- The discipline of Law has been reacting interestingly, but unevenly, to the processes and phenomena of increasing interdependence. Jurisprudence, as the activity of theorising about law at different levels and from varied perspectives, may help to bring some coherence into these reactions, provided it does not succumb to the pressures of reductionism.

SUGARMAN: One of the most important and interesting but relatively neglected facets of your work on globalisation is your project on "Southern Voices". Could you say something about it?

TWINING: That's recent and it's part of my globalisation work. As I got into this, I had more and more a feeling that Western legal traditions of academic law were very ethnocentric, parochial and inward-looking in some ways. If you look, for instance, at the index of Lloyd and Freeman, *Introduction to Jurisprudence*⁴⁹, there are well over 500 names and maybe you could count two or three of them as 'Southern'. I felt that if you're starting to take a global perspective on Jurisprudence you need to ask: what are people from 'the global South, or more specifically non-Western jurists, thinking and saying in what languages about what issues? I decided to make a very modest

⁴⁸ W. Twining, "Globalisation and Law: Ten Theses" in *The Law of the Future and the Future of Law Vol. II*, eds. S. Muller et al (2012).

⁴⁹ This analysis was based on the 5th ed. (1985).

start. I picked four people whom I knew well and who had all contributed to the general literature on human rights, but in different ways: One Southern Sudanese Christian, one Northern Sudanese Muslim, one Kenyan and one Indian. Not entirely by coincidence three of them had been born in 1938, so they all belong to the same post-independence generation. In no way could they be said to be representative of the global South or of any other global group.⁵⁰ They were all Anglophone, common law trained, from former British dependencies; They wrote in English for largely Western audiences. They were quick to say that they were hybrids. I'm not a human rights expert but I knew each of them and most of their writings quite well. I first made a summary⁵¹ and then an anthology⁵² of their writings on human rights with introductions, some detail, setting them in context, with all the caveats about post-colonialism.

Although they provide interesting contrasts, I think that this initial project worked quite well because of their homogeneity. They're all unique; they all deny that they were representative in any way, but they were all speaking from the point of view of Global South. This was a very modest step towards breaking down this barrier that you find in our inherited legal culture. The lecture and the book were well-received and stimulated a few people to undertake similar exercises. I had hoped that there would be a follow up project, starting with a sister volume of Southern feminist writings, but this has not yet happened. A modest continuation is in the offing, but something much more ambitious than I can undertake is needed.⁵³

12 Jurisprudence

⁵⁰ All four were male. I thought of including two passages by women winners of the Nobel prize, but decided that this was tokenism. Rather I tried to stimulate a sister volume, but this has not yet materialised.

⁵¹ 11 *Review of Constitutional Studies* 203, reprinted with minor revisions as Ch. 13 of *General Jurisprudence* (2009).

⁵² *Human Rights; Southern Voices* (2009).

⁵³ A. Paliwala and W. Twining, 'Southern Voices: Extending a Project' in *Beyond Development: Vol. 1 The Limits of Law and Development: Neo-Liberalism, Governance and Social Justice*, eds. S. Adelman and A. Paliwala (in preparation).

SUGARMAN: Your first chapter sets out a ‘Personal View’ of Jurisprudence and the penultimate chapter is headed ‘General Jurisprudence’. Could you say something about the relationship between the two?

TWINING: Much of the book hinges on a conception of Law as an academic discipline and the role of theorising within it. As with other disciplines, the mission of Law is to advance and disseminate knowledge (know-what, know-why, know-how) and understandings of its subject-matters, which are extensive, varied, ill-defined and changeable. Jurisprudence (Legal Theory) is the theoretical part of this discipline. It can contribute to the health of the discipline, that is, help it towards fulfilling its mission, in a number of ways: for example by clarifying and constructing usable concepts; by formulating and refining hypotheses and syntheses; by exploring questions about values, morality, and rights; and by articulating working assumptions (one’s own and others’) and subjecting them to critical scrutiny. In this perspective Jurisprudence is the theoretical (or relatively abstract) part of Law as a discipline. It should not be treated as a subject apart. It includes but is much broader than Legal Philosophy, which is the most abstract part.

In Chapter 1, I restate my conception of Jurisprudence as ‘the engine room’ of our discipline.⁵⁴ JIC is not much concerned with teaching Jurisprudence, but rather with how theorising as an activity can contribute to the health of the discipline in a time of change.⁵⁵ A central message is that our discipline and Jurisprudence as its theoretical part need to adjust to the complex pressures of increasing interdependence and interaction that are summed up in the overworked term ‘globalisation’. This is a complex matter. I argue that, whereas until quite recently Western traditions of academic law (including much theorising) were focused almost

⁵⁴ The fullest account of my specific conception of the field is in *General Jurisprudence* rather than *JIC*. Both restate and refine a view of Jurisprudence that I first outlined in my inaugural lecture at Warwick in 1973 (‘Some Jobs for Jurisprudence’ Op. cit) and have merely refined ever since, the main development being addressing the implications of adopting a global perspective.

⁵⁵ I call this ‘a personal view’ because I recognise that there are several legitimate ways of conceptualising Jurisprudence/Legal Theory as a field, especially in the context of formal legal studies when selecting what is appropriate for undergraduates and postgraduates involves difficult problems of selection, organisation and method. Quite understandably, much Jurisprudence teaching has focused on selected (mainly canonical) thinkers and texts.

entirely on the municipal state law of particular countries or jurisdictions, today that focus has to extend to include many kinds of transnational, supra-national, sub-national, regional and even global relations and phenomena. Very few people connected with law can confine their attention to a single municipal legal order. Moreover, our Western traditions have been quite parochial in that their focus has been restricted, with a few notable exceptions, to modern Western municipal legal orders. 'Human Rights: Southern Voices' was a small first step towards de-parochialising Western Jurisprudence.

SUGARMAN: What do you mean by General Jurisprudence?

TWINING: My account of Jurisprudence in Chapter 1 was not confined to any one jurisdiction or tradition. In that loose sense it was 'general'. I have chosen to use the term 'General Jurisprudence' as a label for a vast field which includes transnational, supranational and global perspectives. 'General' here means 'more than one', contrasted with 'particular' (for example, one jurisdiction) and with 'universal' (claiming universality) and 'global' in a strict sense, that is, covering the whole world. Unfortunately, the term 'General Jurisprudence' has several usages: in some civilian writings 'general' means relatively abstract, set between abstract philosophy and particular studies, roughly equivalent to 'middle order theory'. Some analytical Legal Philosophers claim that they are doing 'General Jurisprudence' when their work covers all possible legal orders (244-5). Dickering about labels for fields of study is not important here, provided that it is understood that the shift to transnational and genuinely global perspectives is a shift of focus. As I try to make clear in Ch. 18, adopting a global perspective brings certain topics, such as pluralism, diffusion, regionalism, and problems of comparison and generalisation into prominence and draws attention on the need for usable concepts that 'travel well', but it does not necessarily involve radical change in the basic conception of legal theorising. However, it does present challenges to some common mainstream working assumptions of Western traditions of academic Law (251-2).

Accepting that mine is one among several reasonable views does not preclude me from claiming that my conception is coherent, carefully constructed and particularly important for the health of our discipline, especially in this period of accelerated 'globalisation'. I am critical of some influential assumptions about the field: for

example, that Legal Philosophy is co-extensive with or the only intellectually respectable part of Jurisprudence (2, 201, 212-13); or that jurists should focus on 'philosophically interesting' questions rather than jurisprudentially interesting ones (for example, 211); or the often implicit assumption that the only or main aim of legal theorising is the construction and criticism of all-embracing theories of law; (4, 276-79); or the converse assumption that anything goes; or the prevailing assumption that Hart's *The Concept of Law* is the best starting-point for getting to grips with legal theory today (78).

13 Unfinished Business

SUGARMAN: Could you elaborate on the "unfinished business" that you mention in the final chapter?

TWINING: First, scholarship and thinking have no end and are collective enterprises. All my contributions are obviously unfinished in this sense.⁵⁶ However, there are some specific projects in which I have been involved and which I have continued to think about and hope to push forward a bit before I stop. These include:

- (a) What can the discipline of Law and the heritage of law offer to (i) the general theory of norms?⁵⁷ (ii) Evidence as a multi--disciplinary field?⁵⁸
- (b) Extending the study of Reasoning in Legal Contexts beyond questions of law/doctrine.⁵⁹
- (c.) Continuing the Southern Voices project⁶⁰
- (d) Linguistic diversity and social injustice⁶¹

⁵⁶ Some of these have resulted in publications, but there also are quite extensive files on each of them that will be deposited in due course in the Llewellyn/Mentschikoff/Twining Papers in the Centre Perelman de Philosophie du Droit (Free University of Brussels).

⁵⁷ W. Twining, Work in Progress.

⁵⁸ 'Evidence as a multidisciplinary field: 'What do law and the Discipline of Law have to offer?'' (forthcoming in English and Spanish); 'Bentham's Theory of Evidence: setting a context' (2019) 18 J. Bentham Studies 20.

⁵⁹ See, note 39.

⁶⁰ 'Southern Voices: extending the project' (with Abdul Paliwala, op.cit. forthcoming).

⁶¹ W. Twining, Work in Progress.

14 The Many Messages of JIC

SUGARMAN: We have dealt with a lot of topics, William. Could you conclude by summarising for me the message that you would most like JIC to convey?

TWINING: I hope that it conveys many different messages to different people. However, this is how it ends:

'I have sometimes styled myself 'a legal nationalist'.⁶² I have argued that Law as a discipline deserves respect and a fair share of resources; that its subject-matters are pervasive, fascinating and important; that its heritage of concepts, texts, examples and controversies has much to offer other disciplines, and that, provided that it realises its potential as a humanistic discipline, Law should be accorded a more central place in our general culture rather than continue to be hidden away at the back of a few larger book shops' (282).

⁶² See also JIC 5-6.