



UNIVERSITY COLLEGE DUBLIN

UCD Working Papers in Law, Criminology & Socio-Legal Studies

Research Paper No.17/2017

John Harrington
Professor of Global Health Law
Cardiff University
&

Ambreena Manji
Professor of Land Law and Development
Cardiff University

Legal Education and the End of Empire

Renewing Cosmopolitan Kinship

John Harrington¹ and Ambreena Manji²

Introduction

Addressing an audience in Dublin's Shelbourne Hotel in 1960, Kwame Nkrumah,³ first President of the recently independent Ghana, spoke of the connections between Ireland and Africa and his admiration for the Irish people's campaign for freedom. Inspired by the humanitarian and anti-colonial career of Roger Casement, Nkrumah remarked on "those Irish leaders of the last century who realised that the struggle of Ireland for independence was not the struggle of one country alone, but part of a world movement for freedom".⁴ The speech coincided with the high point of the so-called 'golden age' of Irish diplomacy when the country played a leading role in promoting decolonization and a rule-based international system through the United Nations.⁵ It also highlights the place of Ireland in the imagination of African and Indian independence movements;⁶ and suggests furthermore that this affinity is built on law as much as politics: from the question of whether sovereignty is conceded or

¹ Professor of Global Health Law, Cardiff University.

² Professor of Land Law and Development, Cardiff University. An earlier version of this paper was delivered by Professor Manji as a plenary lecture at the Annual Conference of the Society of Legal Scholars, Dublin, 6th September 2017.

³ [Slide 1]

⁴ K O'Sullivan, *Ireland, Africa and the End of Empire. Small State Identity in the Cold War 1955-1975* (Manchester, Manchester University Press 2012) 1.

⁵ See D de Bréadún, 'Golden Age of Irish Diplomacy Recalled', *The Irish Times*, 20th May 2010.

⁶ A Jackson, 'Ireland, the Union, and Empire, 1800-1960', in K Kenny (ed), *Ireland the British Empire. The Oxford History of the British Empire: Companion Series* (Oxford, Oxford University Press 2004) 123-153, 142-145.

won on the departure of the imperial power, to the priority of international law, and the urgency of humanitarian and human rights principles. Such affinities are constituted by more than abstract principles. They involve real, human connections over time. The term we are using for these affinities, which we will argue offers an orientation and inspiration for our own work in legal education today, is 'cosmopolitan kinship'. We will give three brief examples, before explaining that term a little more.

Three Cosmopolitans

The first is VV Giri:⁷ lawyer, trade union leader and president of India from 1969 to 1974.⁸ Giri's legal career began in Dublin in the early 20th century. As part of a substantial cohort of Indian students, he read law at UCD and the Kings Inns and moved in radical feminist and nationalist circles. Thomas MacDonagh, one of the leaders of the 1916 rising, lectured him in English literature. Giri's separatist and labour activism on his return to India were, he frequently said, informed by his experience of the rising and the fateful mass lockout of Dublin workers in 1913. Speaking with Ireland's ambassador to New Delhi in 1972 he said, 'when I am not an Indian, I am an Irishman'.⁹

The second is Geoffrey Bing¹⁰ who was born in Co. Down, called to the bar in London and served as a Labour MP during the Atlee Government. Bing was active in the Movement for Colonial Freedom which supported a network of lawyers - African,

⁷ [Slide 2]

⁸ This summary is drawn from C Mulvagh, *Irish Days, Indian Memories. VV Giri and Indian Law Students at University College Dublin, 1913-1916* (Sallins, Irish Academic Press 2016).

⁹ C Mulvagh, *Irish Days, Indian Memories. VV Giri and Indian Law Students at University College Dublin, 1913-1916* (Sallins, Irish Academic Press 2016) 94.

¹⁰ [Slide 3]

Indian and British - defending independence movements and trade unionists throughout the Empire, including Jomo Kenyatta and Maken Singh¹¹ in 1950s Kenya.¹² This engagement culminated in his appointment by Kwame Nkrumah, as Ghana's first attorney general in 1957.¹³ In this capacity he played a central, if controversial role in developing and 'decolonizing' legal education in Africa's first newly independent state.

Bing's trajectory from Ireland to Ghana overlaps with that of our third character, Conor Cruise O'Brien.¹⁴ O'Brien had been a key figure in the Irish representation at the United Nations during the late 1950s.¹⁵ During the Congo crisis of the early 1960s he was handpicked as the UN's special representative in the secessionist Katanga province. His protests against western efforts to destabilize the legitimate government brought O'Brien to Nkrumah's attention and on departing the Congo, he was offered the Vice-Chancellorship of the University of Ghana¹⁶ on Bing's advice.

The affinities did not hold, however, as O'Brien clashed with Nkrumah and Bing over academic freedom and legal education in a pattern repeated in many newly independent states.¹⁷ The government was trying to outflank Ghana's elitist,

¹¹ [Slide 4]

¹² For an account of the Movement for Colonial Freedom, with references to Bing's contribution, see S Howe, *Anticolonialism in British Politics. The Left and the End of Empire, 1918-1964* (Oxford, Clarendon Press 1993) 231ff.

¹³ For his memoir of this period, including this work on legal education discussed here, see G Bing *Reap the Whirlwind: An Account of Kwame Nkrumah's Ghana from 1950 to 1966* (London: Macgibbon and Kee, 1968) 91

¹⁴ [Slide 5]

¹⁵ See K O'Sullivan, *Ireland, Africa and the End of Empire. Small State Identity in the Cold War 1955-1975* (Manchester, Manchester University Press 2012) 46ff.

¹⁶ [Slide 6]

¹⁷ For extended discussion of this conflict, see DH Akenson *Conor: A Biography of Conor Cruise O'Brien* (Ithaca [NY], Cornell University Press 1994) 223ff.

Anglophile profession by introducing a fast track system of vocational training and by influencing the work of the University Law Faculty. Ghanaian and expatriate lecturers resisted and were defended stoutly by their Vice-Chancellor. The crisis only ended with the deportation of the American Dean of Law, William Burnett Harvey in 1962; Conor Cruise O'Brien resigning some months later.

Cosmopolitan Kinship

This paper draws on our ongoing study of legal education and decolonization. The project and the examples just mentioned are indebted to the work of Fiona Cownie, Ray Cocks and David Sugarman in law, and to Kevin O'Sullivan and Conor Mulvagh in history, among many others.¹⁸ For us 'cosmopolitan kinship' offers a way of explaining the influence on legal education around the former empire of mobile scholars, of the bonds created between them and the resilience of these ties over time. 'Cosmopolitanism' suggests a universal style, looking beyond the merely provincial, to build communities of intellect and affect across all sorts of borders. There are many cosmopolitanisms. We have written about Lord Denning's work on legal education in Africa as promoting a kind of transnational conservatism of the common law.¹⁹ The shared political and professional commitments of lawyers around the Empire itself should also warn us against simplifications based on national origin.

¹⁸ For samples, see respectively: F Cownie, 'Twining, Teachers of Law and Law Teaching' (2011) 18 *International Journal of the Legal Profession* 121-138; R Cocks, 'The New Associate Member from Khartoum. African Dimensions' (2011) 18 *International Journal of the Legal Profession* 109-119; D Sugarman 'A Special Relationship? American Influences on English Legal Education, c. 1870-1965' (2011) 18 *International Journal of the Legal Profession* 7-57; K O'Sullivan, *Ireland, Africa and the End of Empire. Small State Identity in the Cold War 1955-1975* (Manchester, Manchester University Press 2012); for Mulvagh and O'Sullivan, see the monographs cited above.

¹⁹ J Harrington and A Manji, "'Mind with Mind and Spirit with Spirit". Lord Denning and African Legal Education' (2003) 30 *Journal of Law and Society* 376-399

Not all Indian students in Dublin embraced Giri's radicalism.²⁰ The Irish engagement was evidenced as much by Sir Kenneth O'Connor who served as Chief Justice of Kenya during the suppression of the Mau Mau uprising in the 1950s, as by Casement or Bing.²¹ Nonetheless we insist that there is a rival cosmopolitanism, one given substance by what Aijaz Ahmad has called 'the international political culture of the left':²² anti-colonial and anti-imperialist, often socialist and sometimes feminist. One important moment of this tendency is being tracked by Rohit De in his current project on the 'internationalist culture of civil liberties emerging from decolonization' created by a network of radical criminal defence lawyers across Africa, India and South East Asia in the 1950s.²³

We draw the notion of 'kinship' here from Carli Coetzee's fruitful insights about the literary and scholarly affinities created by academic practices of referencing and quotation.²⁴ In the present context it suggests that the cosmopolitanism we are referring to is not simply realized through the dissemination of abstract ideas. Rather it is built and sustained by real encounters, and interactions. Its fate depends on solidarity in the face of suppression or neglect, but also on the quotidian labour of citation and reading practices, of external examination, guest lecturing and doctoral supervision, of conference organizing, editing work and so on. Less tangibly, but as

²⁰ C Mulvagh, *Irish Days, Indian Memories. VV Giri and Indian Law Students at University College Dublin, 1913-1916* (Sallins, Irish Academic Press 2016) 44.

²¹ O'Connor held this position from 1954-57. On the role of executions and the formal judicial system in British counter-insurgency strategy, see D Anderson, *Histories of the Hanged. Britain's Dirty War in Kenya and the End of Empire* (London, Weidenfeld and Nicholson 2005).

²² Quoted in J Saul, *Development After Globalization. Theory and Practice for an Embattled South in a New Imperial Age* (London, Zed 2006) i.

²³ The project is entitled 'Rights from the Left: Decolonization, Diasporas and the Global History of Rebellious Lawyering', see <https://www.ssrc.org/fellows/7B1B2CEF-DD34-E711-80C4-005056AB0BD9/>

²⁴ See the reference to Coetzee's intervention on this at: <https://www.birmingham.ac.uk/schools/historycultures/research/news/2017/marriage-in-africa.aspx>

important are shared and overlapping biographies, friendships, filiations and the sense of belonging to a given generation.²⁵ Again, it is important not to simplify or romanticize. Friendship can be tricky, as Margaret Atwood has recently written.²⁶ Bing and Cruise O'Brien fell out. Political and intellectual differences, as well as happenstance changes of employment and location can reshape or dissolve existing networks. We insist, however, that affective ties offer an important site for investigating the history of radical legal education after empire.

To Dar and Back, and Back Again

In the late 1950s and early 1960s, a generation of young law teachers was recruited in Britain by the Inter-University Council to take up posts in many of Africa's newly opened law schools. They went to Nigeria (Jill Cottrell²⁷ – a rare woman in a story dominated by male mobility), Ghana (Gordon Woodman), Sudan (William Twining), Zambia (Phil Thomas), Tanzania (Patrick McAuslan, Sol Picciotto and Andrew Lyall).²⁸ They found themselves in countries marked by wide and deep legal pluralism, insecure political leaderships and a popular desire for development as the fruit of independence. Ill-equipped for these challenges by the insular doctrinal focus and magisterial lecturing style then prevalent in English law schools, they sought alliances with ex-patriate American colleagues funded by the Ford Foundation, like

²⁵ D Sugarman, 'From Legal Biography to Legal Life Writing: Broadening Conceptions of legal History and Socio- Legal Scholarship' (2015) 42 *Journal of Law and Society* 7-33. The web of connections which bind a given age cohort and allow it to gain political consciousness is mapped in R Foster, *Vivid Faces. The Revolutionary Generation in Ireland 1890-1923* (London, Penguin 2014). See generally, J Edmunds and BS Turner, *Generations, Culture and Society* (Buckingham, Open University Press 2002).

²⁶ M Atwood, 'Foreword', in E Midorikiwa and EC Sweeney, *A Secret Sisterhood. The Hidden Friendships of Austen, Brontë, Eliot and Woolf* (London, Aurum Press 2017) 11.

²⁷ [Slide 7]

²⁸ The overlapping biographies of this *generation* is the focus of our larger project. The outline of this is sketched in J Harrington and A Manji, 'The Limits of Socio-Legal Radicalism. *Social and Legal Studies* and Third World Scholarship' (2017) 26 *Social and Legal Studies* [in press].

Burnett Harvey in Accra.²⁹ Many absorbed the influence of legal realism, law and policy, and the law and development movement at this stage of their careers.

African law classes were not merely the physical venue for another Anglo-American encounter however. Visiting staff learned from colleagues and students as much as from each other. In many cases and in diverse ways, their view of law and legal education was overhauled by the experience of political struggle on and off campus. A key example is offered by protests at the University of Dar es Salaam³⁰ in 1966. Focussed first on Rhodesia's unchecked unilateral declaration of independence, these extended to the introduction of compulsory national service for students. President Julius Nyerere responded by shutting the University. The archives show personal engagement by lecturers in support of rusticated students. But the effect was wider, providing the impetus for a radical reform of the curriculum. An interdisciplinary foundation course on 'Economic and Social Problems of East Africa', contextualizing and critiquing legal form and rules, was developed in the Law Faculty, and then taught across the university.³¹ Over the following ten years student militancy pushed staff to take a more radical, anti-imperialist perspective in teaching and writing on areas such as trade law, constitutional law and criminal justice.³² Nor was the mobility in one direction. In fact, a tangle of routes can be sketched, with students moving to study at Dar from around the East Africa, including Kenya's future Chief Justice Willie Mutunga and pre-eminent land law scholar Hastings Okoth

²⁹ J Krishnan, 'Academic SAILERS: The Ford Foundation and the Efforts to Shape Legal Education in Africa, 1957-1977', 52 *American Journal of Legal History* 261-324 (2012).

³⁰ [Slide 8]

³¹ For the reflections of expatriate and Tanzanian law teachers, see the essays collected in IG Shivji (ed), *Limits of Legal Radicalism* (Dar es Salaam, University of Dar es Salaam Faculty of Law 1986).

³² For first-hand accounts and recollections from former students, see K Hirji, *Cheche: Reminiscences of a Radical Magazine* (Dar es Salaam, Mkuki Na Nyota Publishers 2010).

Ogendo, and others, like Yash Ghai, Issa Shivji and Abdul Paliwala, following pathways established since at least the 1930s to India or Britain and back again for study, training and employment.³³

This generation of expatriate and African scholars played an important role in founding new British law schools in the late 1960s and 70s, such as Warwick and Kent, which broke with blackletter traditions, innovating in teaching and assessment methods.³⁴ They initiated journals and book series like *Social and Legal Studies*, the *Journal of Law and Society* and *Law in Context*. Many continued to be linked to colleagues and institutions on the continent by a web of personal and professional relationships. This endured as a source of intellectual and material resilience against the depredations of neo-liberal economics and the geopolitical pushback which beset African academia in the intervening decades. The influence endures too. Dar es Salaam, Lusaka and Accra are essential points of origin for the revival of British legal education

Conclusion

What then are the tasks of the legal academy if it is to take seriously the notion of cosmopolitan kinship that we have signalled here? We want to suggest that the

³³ A Paliwala, 'Context, Political-Economy and Good Governance. Avatars of Dar Legal Education', T Zartaloudis (ed), *Land Law and Urban Policy in Context. Essays on the Contributions of Patrick McAuslan* (London, Birkbeck Law Press 2017) 56-78.

³⁴ See W Twining, 'McAuslan in Context: Early Days in Dar and Warwick', in T Zartaloudis (ed), *Land Law and Urban Policy in Context. Essays on the Contributions of Patrick McAuslan* (London, Birkbeck Law Press 2017) 35-55.

production of critical knowledge about law depends on a recognition of the unities of the common law from below and a commitment to political internationalism and cosmopolitan legal scholarship. This requires us to take seriously the deep implication of colonialism and imperialism in the law's creation and evolution, and in present practice and educational routines. William Twining³⁵ gave the idea of a cosmopolitan legal education a positive formulation in his on jurists of the global south, including Upendra Baxi, Yash Pal Ghai, Francis Deng and Abdullahi An-Na'im from the Sudan. He argued that a

just international order and a healthy cosmopolitan discipline of law need to include perspectives that take account of the standpoints, interests, concerns, and beliefs of non-Western people and traditions. Claims to universality sit uneasily with ignorance of other traditions and parochial or ethnocentric tendencies.³⁶

Significant jurists in the Third World tradition and their broader intellectual contexts are still little known by their peers in the global north, nor are they read by our students. The juristic canon remains largely unchanged.

This is more than a plea for generic diversity, a simple demand to refresh the stock of socio-legal knowledge in European and North American academies. We are interested in asking: how might values of critical engagement, political

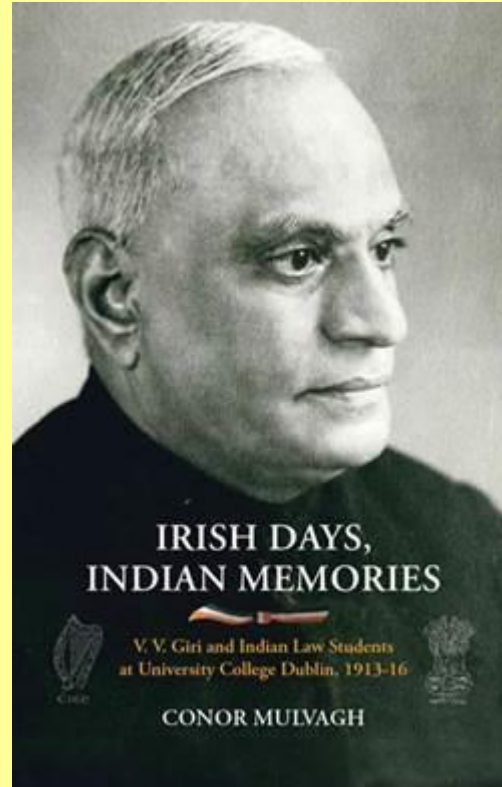
³⁵ [Slide 9]

³⁶ W Twining, 'Introduction', in W Twining (ed), *Human Rights, Southern Voices*. Francis Deng, Abdullahi An-Na'im, Yash Ghai and Upendra Baxi (Cambridge, Cambridge University Press 2009) 1-3, 1.

internationalism and cosmopolitan scholarship be refurbished and mobilized for new times. And we wish to recuperate these diverse unities from below, not in the abstract, but in a new conjuncture when race, exploitation and empire again frame urgent questions for citizens, students and scholars.



Osagyefo (President) Kwame Nkrumah



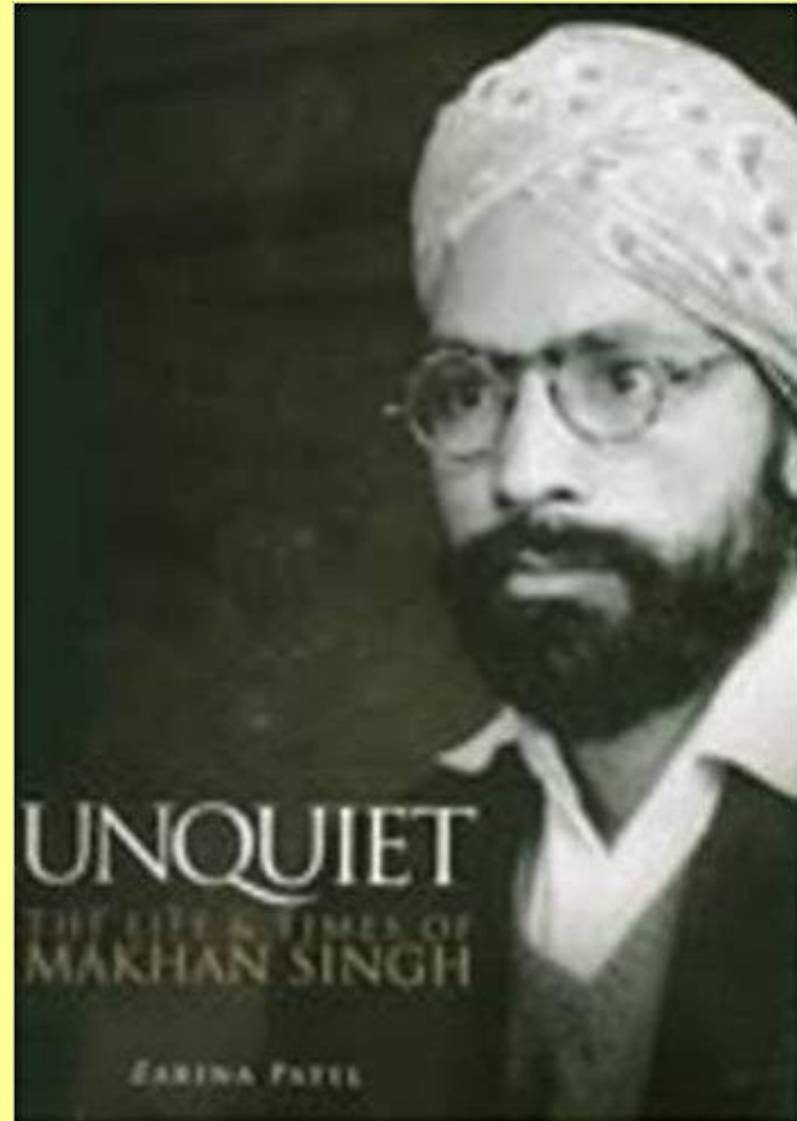


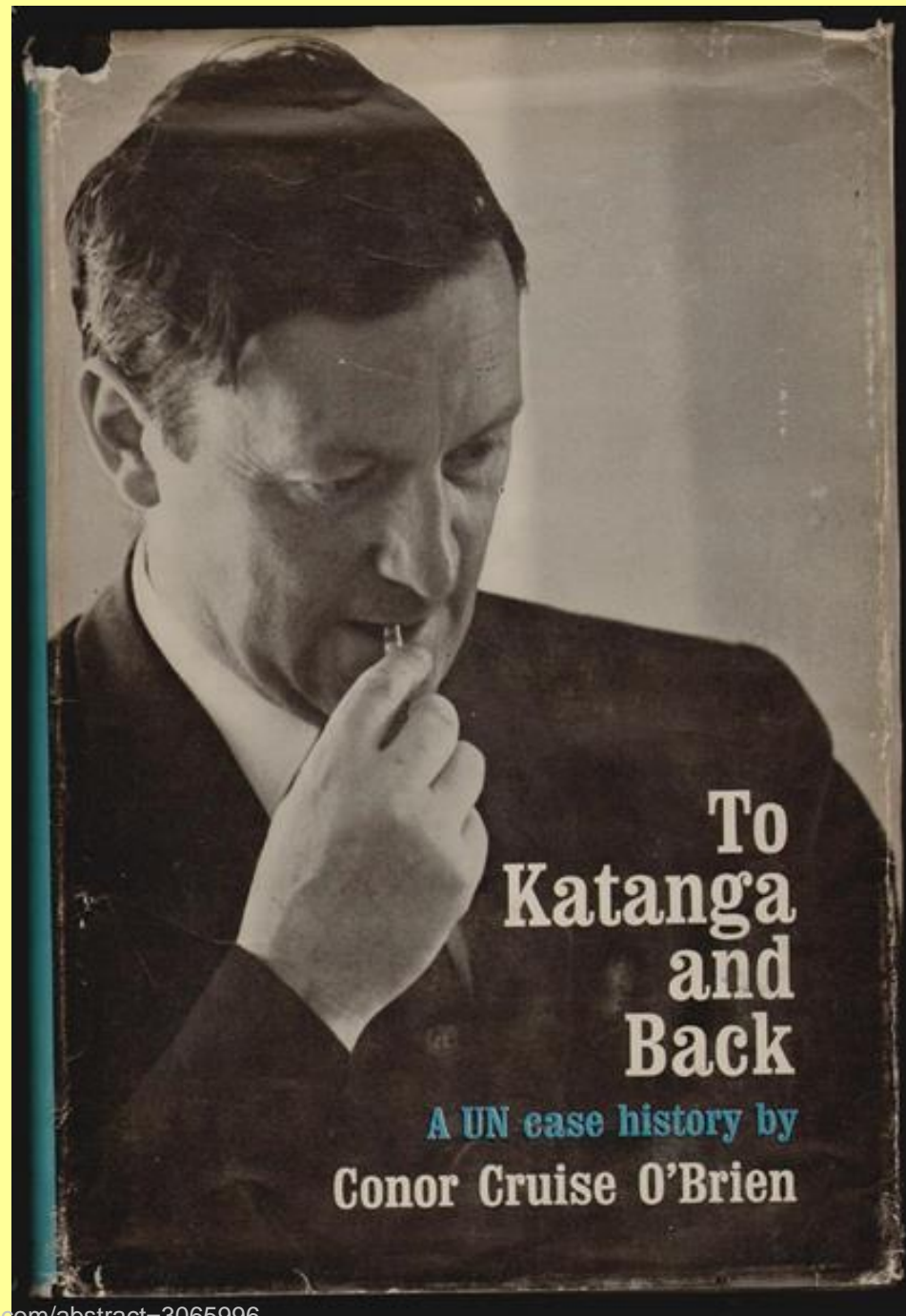
Reap the Whirlwind

An Account of Kwame Nkrumah's Ghana from 1950 to 1966

by Geoffrey Bing

Macgibbon & Kee



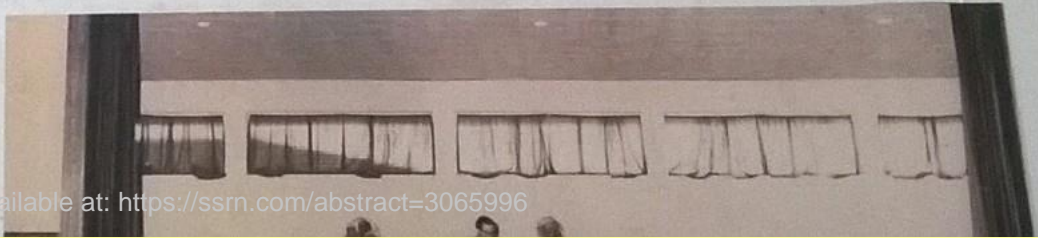




University College of the Gold Coast (later University of Ghana)



Jill Cottrell



§ Law in Context

WILLIAM TWINING

Human Rights, Southern Voices

Francis Deng, Abdullahi An-Na'im,
Yash Ghai and Upendra Baxi

CAMBRIDGE