This contribution was originally published in:

**The UK after Brexit**  
Legal and Policy Challenges

Michael Dougan (ed.)

Published in July 2017 by Intersentia  
www.intersentia.co.uk

---

**For more information on the book or to purchase:**


This contribution is made available under the terms of the Creative Commons Attribution, NonCommercial, NoDerivatives Creative Commons Licence (https://creativecommons.org/licenses/by-nc-nd/4.0/), which permits to non-commercially redistribute the material, provided the original work is properly cited.

For any queries, or for commercial re-use, please contact Intersentia at mail@intersentia.co.uk.
The UK after Brexit. Legal and Policy Challenges
© The editor and contributors severally 2017

The editor and contributors have asserted the right under the Copyright, Designs and Patents Act 1988, to be identified as authors of this work.

No part of this book may be reproduced, stored in a retrieval system, or transmitted, in any form, or by any means, without prior written permission from Intersentia, or as expressly permitted by law or under the terms agreed with the appropriate reprographic rights organisation. Enquiries concerning reproduction which may not be covered by the above should be addressed to Intersentia at the address above.

ISBN 978-1-78068-471-0
D/2017/7849/80
NUR 820

CONTENTS

List of Authors ................................................................. xi

Editor’s Introduction
Michael DOUGAN ............................................................ 1

1. About this Book .............................................................. 1
2. On the Importance of the Academic Contribution to Better Public
   Understanding ............................................................ 6
3. Acknowledgements ......................................................... 11

PART I. CONSTITUTIONAL ISSUES

Chapter 1. Brexit: The Relationship between the UK Parliament
and the UK Government
Michael GORDON ............................................................ 15

1. Introduction ................................................................ 15
2. The Nature of the Relationship between the UK Parliament and the UK
   Government ............................................................... 17
6. Conclusion: Tensions in the Constitutional Process of Brexit .... 31

Chapter 2. Devolution
Jo HUNT ................................................................. 35

1. Introduction ................................................................ 35
2. UK Regions and their Relationships with and within the EU .... 38
3. The Devolution Settlements Following EU Withdrawal ......... 45
4. Conclusion .................................................................. 51

Chapter 3. The ‘Brexit’ Threat to the Northern Irish Border: Clarifying
the Constitutional Framework
Michael DOUGAN ............................................................ 53

1. Introduction ................................................................. 53
2. The Physical Border for Goods: The Northern Irish Border as a Customs Frontier .......................................................... 56
3. The Physical Border for Persons: Maintaining the Common Travel Area? ................................................................. 60
4. The Question of Mutual Residency Rights: A Non-Physical Border, but still a Crucial One ............................................ 68
5. Conclusions ......................................................................................................................................................... 70

Chapter 4. Brexit and UK Courts: Awaiting Fresh Instruction
Thomas Horsley ........................................................................................................................................ 73

1. Introduction ......................................................................................................................................................... 73
2. The Current Framework: The ECA as 'Constitutional Instruction' to UK Courts ......................................................... 75
3. The GRB and UK Courts: Two Models for Change ............................................................................................... 79
5. Concluding Remarks ........................................................................................................................................ 90
6. Postscript .......................................................................................................................................................... 92

Part II. SUBSTANTIVE POLICIES

Chapter 5. Brexit and Employment Law
Catherine Barnard .................................................................................................................................................. 97

1. Introduction ......................................................................................................................................................... 97
2. What Does it Mean that EU-Derived Workers’ Rights will Continue to Apply to the UK? ................................... 100
3. What Role will Decisions of the Court of Justice Play Post-Brexit? .................................................................... 108
4. What about the Opportunities for Workers Promised by Theresa May? .......................................................... 110
5. What if there is No Deal? .................................................................................................................................. 113
6. Conclusions ....................................................................................................................................................... 114

Chapter 6. UK Environmental Law Post-Brexit
Veerle Heyvaert and Aleksandra Čavoški ............................................................................................................. 115

1. Introduction ......................................................................................................................................................... 115
2. Areas of UK Environmental Law that will be Impacted by Brexit .......................................................................... 116
3. Prospects for EU-UK Law and Policy Cooperation Post-Brexit ............................................................................ 118
4. The Great Repeal Act and its Likely Consequences for UK Environmental Law .................................................. 120
5. Devolution before and after the Great Repeal Act ................................................................................................. 123
6. UK Environmental Law after Brexit ................................................................................................................... 125
7. Conclusion: Post-Brexit Challenges for Environmental Law .................................................................................. 133
PART III. EXTERNAL RELATIONS

Chapter 11. Membership of the World Trade Organization
Gregory Messenger .......................................................... 225
1. Introduction ................................................................. 225
2. UK Membership at the WTO ......................................... 227
3. Membership of the WTO within the UK ......................... 236
4. Conclusions ............................................................... 244

Chapter 12. UK Trade Policy
Marise Cremona .............................................................. 247
2. Existing EU Trade Agreements – a Possible Continuity Strategy .... 251
3. Preferential Trade Agreements ....................................... 253
4. Mutual Recognition Agreements ..................................... 259
5. Autonomous Trade Measures ....................................... 260
6. The Multilateral Trading System and Global Trade Environment .... 261
7. Trade and Politics .......................................................... 262
8. Timing and Sequencing .................................................. 264

Chapter 13. UK Foreign Investment Protection Policy Post-Brexit
Mavluda Sattorova .......................................................... 267
1. Introduction ................................................................. 267
2. Legal Significance of UK International Investment Agreements .... 268
3. Telos: Why Sign Investment Treaties? ............................... 277
5. Conclusion ................................................................. 285

Christian Henderson ......................................................... 287
1. Introduction ................................................................. 287
2. The United Nations ....................................................... 288
3. The North Atlantic Treaty Organisation ................................ 292
4. The European Union ..................................................... 295
5. Conclusion ................................................................. 302
Chapter 15. Brexit and Relations between the EU and the UK
Paul Craig .......................................................... 305

1. Withdrawal .................................................. 306
2. Trade ......................................................... 309
3. Security ...................................................... 322
4. Conclusion .................................................. 324
LIST OF AUTHORS

Professor Catherine Barnard, University of Cambridge
Dr Aleksandra Čavoški, University of Birmingham
Professor Paul Craig, University of Oxford
Professor Marise Cremona, European University Institute
Professor Michael Dougan, University of Liverpool
Dr Michael Gordon, University of Liverpool
Professor Christian Henderson, University of Sussex
Dr Veerle Heyvaert, London School of Economics
Dr Thomas Horsley, University of Liverpool
Dr Joanne Hunt, Cardiff University
Dr Luke McDonagh, City University of London
Dr Gregory Messenger, University of Liverpool
Dr Marc Mimler, Bournemouth University
Professor Valsamis Mitsilegas, Queen Mary University of London
Professor Niamh Moloney, London School of Economics
Dr Stephanie Reynolds, University of Liverpool
Dr Mavluda Sattorova, University of Liverpool
EDITOR’S INTRODUCTION

Michael Dougan*

1. ABOUT THIS BOOK

The UK’s decision to leave the European Union marks a fundamental reorientation in UK law and policy: both internally, when it comes to the structures, processes and outputs of our own domestic legal systems; and externally, as regards the UK’s place in and relations with the broader European and international legal orders. Many of those who heartily championed and/or supported the ‘Brexit’ cause seem to have harboured only a limited comprehension of the scale and profundity of the changes they worked so hard to initiate. Many others positively delight in the prospect of being able, fundamentally, to rewrite the country’s future direction, yet evince a comparable lack of understanding about the internal and external factors that will actually shape and constrain their grand revolutionary visions. This book seeks to offer its readers – be they students and postgraduate researchers, fellow academics and practitioners, policy-makers and NGOs, or indeed the interested public in the UK and abroad – a more informed and realistic basis upon which to understand the nature and importance of the challenges now facing the UK.

It goes almost without saying: this collection of essays is not intended to be either definitive or exhaustive of the legal and policy issues raised by the UK’s withdrawal from the EU. The sheer range of fields which will be affected, combined with the general state of uncertainty about how events might now unfold, would militate against any such ambition. Instead, our aim is to highlight some of the key challenges which are likely to arise in selected areas of

* Liverpool Law School, University of Liverpool. The views expressed in this introduction are my own and do not necessarily represent the views of any of the other contributors to this edited collection.
the UK legal system – thus providing a reference point for future discussion as the situation continues to develop, while also helping to identify parallel issues potentially affecting other policy sectors.

The essays are grouped into three main sections. Part I deals with some of the key constitutional issues arising from UK withdrawal. Michael Gordon addresses the fundamental question of how Brexit will affect relations between the UK Parliament and UK Government: not just in the short term, when it comes to execution of the decision to leave the EU, particularly in the aftermath of the Miller judgment; but also in the longer term, for example, as the regular democratic legitimacy of both Parliament and Government is challenged by the irregular democratic authority of popular referendums. Joanne Hunt then discusses some of the chief questions Brexit poses for the UK’s devolution settlement – taking as her cue the tension between the ‘unitary approach’ towards the referendum result adopted by the UK Government versus the reality of ‘remain’ votes in Scotland and Northern Ireland; and highlighting how withdrawal from the EU might well demand a fundamental reform of the UK’s entire devolution system. My own chapter focuses on the difficult challenges posed by Brexit for the land border between Northern Ireland and the Republic of Ireland: first, as regards the free movement of goods, once that border becomes a customs frontier between the UK and the EU; and secondly, as regards the free movement of persons, depending upon choices still to be made by the UK about its future immigration policies. Thomas Horsley analyses the potential impact of UK withdrawal from the EU upon the functions and powers of the domestic judges. What might be the effect of replacing the European Communities Act 1972 with a new (but as yet unclear) ‘constitutional instruction’ from Parliament about how the courts should interpret EU-derived legislation in the period after withdrawal? And how might this inform the judicial interpretation of future international agreements between the UK and the EU or indeed other international trade and cooperation partners?

Part II then considers a selection of substantive internal policy fields likely to be significantly affected by the UK’s withdrawal from the EU. Catherine Barnard highlights the tension between the demands of many Leave campaigners to cut ‘Brussels red tape’ in the form of EU employment rights, the Prime Minister’s promise (at least in the short term) to respect and build on existing worker protection legislation, and the potential longer-term consequences of leaving the EU for employment law in the UK. Veerle Heyvaert and Aleksandra Čavoški remind us that the UK may well be leaving the EU, but many of the most important challenges in environmental law and policy will still require the UK to cooperate closely with the EU and its Member States; while at home,

---

1 R (on the application of Miller and another) v Secretary of State for Exiting the European Union [2017] UKSC 5.
those concerned with environmental protection need to be particularly vigilant about the removal of the EU’s minimum regulatory standards as well as the loss of the EU’s relatively effective environmental enforcement mechanisms. When it comes to the high-profile yet fiendishly complex field of financial services, Niamh Moloney argues that Brexit is unlikely to lead to any major upheavals in UK regulation, at least in the foreseeable future: not only due to the need to maintain equivalence with EU legislation in order to minimise future trade barriers; but also (for example) because there is little evidence of significant industry or regulator pressure for extensive reform, while the UK will in any case remain bound to respect international standards for the sector. Luke McDonagh and Marc Mimler consider how, when it comes to intellectual property law, EU regulation affects the different categories of IP rights in very different ways, with some subject to more extensive regimes of coordination or harmonisation than others. UK withdrawal will therefore have significant but essentially variegated implications for different branches of intellectual property law.

Of all the policy fields certain to be affected by Brexit, arguably none has occupied a more prominent or controversial place in the public and political debate than the situation of existing migrants currently protected under EU citizenship law. Stephanie Reynolds offers a critical assessment of that debate – arguing that the UK Government’s rejection of any unilateral protective action, in preference for seeking a high-priority reciprocal guarantee of residency rights with the rest of the EU, may well sit uneasily with the need to address a series of more complex issues (such as cross-border social security coordination) which actually make bare rights to residency meaningful in practice. Valsamis Mitsilegas addresses the prospects for future cross-border cooperation in criminal matters – a field where the utopian claims of the Leave campaign were starkly contradicted by academic experts and competent policy actors. The essential message is simple: the UK cannot hope for more effective cooperation from outside the EU than it enjoyed as a Member State; indeed, even to access a more limited degree of police and security cooperation, the UK may well be expected to respect yet more EU obligations as a third country than it did as a Member State.

Part III turns to consider the future of the UK’s external relations in several crucial arenas. Gregory Messenger addresses the UK’s membership of the World Trade Organization: not only the short-term challenges of ‘regularising’ the UK’s terms of membership and ensuring effective British representation at various international decision-making and decision-influencing fora; but also the need to mainstream understanding of core WTO obligations into the UK’s own policy-making processes and indeed to understand the very different legal and economic realities of (non-)compliance with WTO law. Marise Cremona discusses the main issues which will arise as the UK seeks to articulate an independent and effective trade policy: from coping with the immediate
consequences of withdrawal for economic relations with the numerous countries with which the EU had already concluded trade agreements; to making decisions about the UK’s preferences as regards the various elements – from preferential tariffs to regulatory barriers, trade-related policies and dispute settlement mechanisms – that go to make up an integrated trade policy. Mavluda Sattorova deals with the importance for the UK of international investment law: when it comes to securing the UK’s future economic success, the Government has placed considerable emphasis on attracting foreign investment; yet the reality of many international investment treaties is that they are designed to protect the interests of foreign investors rather than respect the sovereignty of the host country or contribute to a balanced economic development across its population.

Christian Henderson considers the implications of UK withdrawal for the system of international peace and security. The impact upon both the UN and NATO may prove to be relatively limited, but when it comes to the EU’s Common Security and Defence Policy, the picture is more complex and uncertain. On the one hand, the removal of the UK is a potentially significant loss in terms of military spending, hardware, personnel and leadership. On the other hand, the elimination of the UK’s veto power over EU ambitions to develop an autonomous military capability might well provide opportunities for the EU27 to redefine the CSDP’s aims and capacities. Finally, Paul Craig confronts the over-arching question which has been raised in so many previous chapters of this edited collection: what might the future hold for relations between the UK and the EU? His chapter discusses three keys issues: the withdrawal negotiations now governed by Article 50 TEU; the potential for future trade relations either under a bespoke trade agreement or defaulting to WTO terms; and non-trade issues, particularly concerning crime and security cooperation.

No editorial attempt to synthesise those diverse and rich contributions could possibly hope to do justice to their complex and multifaceted analyses and discussion. Perhaps it will suffice to highlight just several of the key points which emerge from across this collection. First, even if the future remains clouded in uncertainty, basic constitutional principles and legal frameworks do already allow us to identify many of the key issues which need to be addressed and many of the inherent parameters which will inevitably limit the available room for manoeuvre. Those observations can perhaps best be summed up in the concept of ‘de-Europeanisation’: what might it look like to undo 40 years of legal co-evolution between the UK and the EU? Secondly, such de-Europeanisation is inevitably going to affect different parts of the legal system in very different ways: some fields are likely to be impacted upon much more directly and strongly than others. But de-Europeanisation might also have effects which are more indirect and unexpected, as the reshaping of legal powers and relationships produces unintended or unforeseen consequences. Thirdly, although withdrawal from the EU will affect the basic legal framework of UK policy-making most obviously in those fields (such as agriculture, fisheries, immigration and customs) where
the state will effectively need to design a new regulatory system, the impact may prove just as important and controversial in those sectors (such as employment or environmental protection) where EU law currently provides a safety net below which the Member States are not permitted to deregulate, but as regards which it may soon become open to future governments, if they so wish, to engage in more fundamental processes of deregulation. Fourthly, de-Europeanisation is not just about deciding which EU rules the UK should keep, amend or reject. It also implies important changes to the methodologies and cultures of our legal and political institutions; to the efficiency and effectiveness of our regulatory and problem-solving capacities; and at a more fundamental level, to the balance of power between our legal and political actors; as well as between concentrations of public and private power within our economy and society. Fifthly, all these questions about the future evolution of the UK legal system are inseparable from the issue of the UK’s future external relations. For example: depending on the deal the UK eventually reaches with the EU about future trade and broader cooperation, we might well be obliged to adopt many of the EU’s rules, in a whole series of policy fields, just as if the UK were still a member – though without having any real influence over the content of those rules any more. Or again: as the UK sets about designing its own independent trade policy, the balances struck by/imposed upon the UK in its external economic relations will have tangible and potentially significant effects upon its internal legal system – influencing the choices we make about not only economic regulation but also environmental protection, workers’ rights and consumer protection.

In short: UK withdrawal is not just about finding a new relationship with the EU. It is also about opening our own legal and political systems to processes of far-reaching change. Much of that change will inevitably be a matter of deep contestation and division among politicians, stakeholders and citizens. But much of it will also be driven and/or constrained by our new place in the world and the new balances of power which emerge between the UK and our international partners.

The various chapters contained in this book were all completed during the period late March-early April 2017. Given the rapid pace of contemporary political developments, some contributions were therefore able to incorporate the most recent events – such as the UK’s official notification of withdrawal under Article 50 TEU,2 or the public release of the European Council’s draft negotiating guidelines,3 or publication of the UK Government’s White Paper on the so-called Great Repeal Bill4 – while other texts had already entered the

---

2 Letter from Theresa May to Donald Tusk, 29 March 2017.
3 European Council, Draft guidelines following the United Kingdom’s notification under Article 50 TEU (published on 31 March 2017, expected to be adopted in late April 2017).
publication process by the relevant time. Needless to say: besides being invited to focus on broader themes, rather than get too bogged down in technical details, our authors have enjoyed complete freedom in the conception and content of their own contributions. However, it is inevitable, given their sometimes complex and technical subject matter, that certain chapters will presuppose a substantial degree of prior knowledge about the specific field and will perhaps be less accessible to a general reader than some of the others.

2. ON THE IMPORTANCE OF THE ACADEMIC CONTRIBUTION TO BETTER PUBLIC UNDERSTANDING

Besides seeking to inform its readers of some of the key issues in law and policy raised by the UK’s withdrawal from the EU, this book serves another and perhaps even more important purpose: to vindicate and indeed celebrate the value of academic expertise as well as its potential to improve and enrich public understanding of the most pressing challenges facing our society.

I have had no hesitation in making and repeating the assertion that – taken together, since they were not one but several (often mutually contradictory) movements – the Leave alliance of 2016 conducted the most dishonest political campaign in modern British history. In doing so, those responsible not only demeaned and debased our democracy. They also sought to inflict immeasurable damage upon some of the most important values which the academic profession is entrusted to represent and defend: the commitment to pragmatic, rational, evidence-based scientific investigation, which seeks to inform and better our society through the cultivation of expert skill, knowledge and experience, to be tested and refined through a process of objective and rigorous peer review. It is simply impossible to reconcile those values with a politics which is proudly ideological and, with it, indifferent to evidence, immune to persuasion, cynically selective and self-serving in its analysis, and ultimately anti-democratic in its intolerance of dissent.

That irreconcilable conflict perhaps helps to explain the ferocity of the attacks which so many Leave campaigners (in particular) launched against so many academics (including several contributors to this edited collection) who volunteered to perform the public service of participating in various debates surrounding the 2016 referendum.

---

5 See eg <https://www.youtube.com/watch?v=eyMcesYSLk8> and <https://www.youtube.com/watch?v=oHm9QOfpyE>.
Politically motivated hostility is one of the chief downsides of the otherwise important and positive ‘impact agenda’ that has strongly informed the direction of academic research in the UK since preparations for the Research Excellence Framework of 2014. Universities could undoubtedly do more to prepare and support those staff whose academic work and public engagement exposes them to such hostility. But in the meantime, there can be real value in categorising then analysing the standard methods of abuse directed at academics – after all, the publication of abuse need cross no threshold of originality – as an important step in building up personal resilience as well as formulating an appropriate professional response.

My own experience might provide a useful example upon which to reflect. During the period from around June 2016 to March 2017, I received in excess of 20,000 personal messages (mostly by email but also sizeable numbers by more traditional post) from the general public – and that was besides the many tens of thousands of social media and other internet comments about my work, of which I remain largely ignorant, due to my own technical limitations and personal inclinations. Although those messages and comments included a great many expressions of gratitude or support, and myriad genuine questions and queries that their senders hoped I could help to answer, they also included vast amounts of abuse. For present purposes, the latter can conveniently be divided into four main strains.

Our first category consists of messages/comments which are best described as simple malice in the form of personal insults: from the straightforward (for example, ‘I hope you watch your children die painfully of cancer before you die painfully of cancer yourself’); to those aggravated by racism or homophobia (such as ‘fuck off back to paddyland you IRA cunt’); and those which sought to be threatening in a generically foreboding way (including ‘watch out: we are about to go public with material about you that will ruin your life then maybe you’ll learn to shut your fucking mouth’). It would be easy for me to say: this was all so much water off a duck’s back. Growing up in working class Belfast in the late 1970s and early 1980s has apparently gifted me a rather thick skin. But I know too many colleagues whose personal and professional wellbeing were seriously adversely affected by precisely this sort of abuse – again, often aggravated by issues of gender or race – for nothing more than the crime of having dared to employ their expertise to help inform some important aspect of our current political debate about the very future of the UK. Unfortunately, there is perhaps little one can do against the army of cowards who use the distance and/or anonymity of the internet to vent the depths of their own spite against total strangers – apart from being prepared to involve the police in the case of

---

6 See further <http://www.ref.ac.uk>.
any potential criminal offence; and otherwise to remind oneself on a regular basis that such behaviour says an enormous amount about them, yet absolutely nothing about you.

Our second category also employs personal abuse with the primary intention of intimating its recipient into silence, but this time with a more specific focus: the allegation (mostly pre-referendum) of being an unpatriotic traitor and/or (mostly post-referendum) of being an anti-democratic subversive. Of course, such abuse was hardly unique to academics: we should neither forgive nor forget the comparable *Daily Mail* attack on members of our senior judiciary as ‘enemies of the people’; or indeed the countless times that a fellow citizen was insulted and harangued as a ‘remoaner’ for daring to express their sincerely held and well-founded views and preferences. Here, our response surely needs to be significantly more proactive and robust: we cannot afford to allow any ideological movement cynically to self-appropriate fundamentally contested concepts such as ‘patriotism’ or ‘democracy’ and then seek to convert them into political weapons designed to suppress public freedom of expression in general, or hinder academic enquiry and debate in particular.

Screeching general abuse is one thing. Our third category was rather more targeted and also perhaps more sinister in nature: seeking to undermine public faith in the professional ethics and independence of academic researchers; usually by alleging some vested interest which rendered their work suspect if not altogether untrustworthy. Some such allegations were pitched at a level of abstraction and of such an irrational nature that it is difficult to believe anyone could take them seriously. Consider the argument that, since universities receive research funding from the EU, anyone who works at a university must therefore be biased in favour of the EU. It is rather bizarre to attack UK universities for succeeding (as they are actively encouraged to do by every UK Government) in securing public money from one of the largest funders of academic activity on earth. It is also curious that the allegation of bias only relates to EU money: apparently academics are capable of resisting the talismanic corruption of every other source of public funding for our work. And one would suppose that the same abstract allegation of bias should really apply also to anyone else who has ever indirectly benefited from some form of EU intervention: say, the entire populations of Scotland, Northern Ireland, Wales, Merseyside, Cornwall …

Another personal favourite, in this category, was the oft-repeated argument that of course anyone doing work about the EU would be automatically biased in favour of ‘remain’ because otherwise they would be putting themselves out of a job. As if only someone living in America can work on American politics; or as if only an academic based in France is allowed to research French history; or

---

7 *Daily Mail* headline, 4 November 2016.
as if the UK will no longer have any need in the future to know and understand
the law and policy of the European Union. Rest assured: we most certainly will.
Indeed, the irony is: Brexit is any UK-EU legal researcher’s lifetime gift.

But more pernicious than the abstract claims of academic bias were those
that sought to undermine the credibility of particular researchers through
false allegations of personal corruption. Let’s take just one small yet influential
example. In an internet story dated 21 June 2016, Leave campaigner Richard
North claimed that ‘[Dougan’s] post is supported by EU funds, typically worth
€50,000 over three years. And, while post-holders deny bias, they are in effect
paid agents of the EU’.

North’s claim was (indeed, continues to be) circulated widely on social media – part of a widespread and no doubt partly successful attempt to undermine my own professional integrity and reputation. But if North had bothered to check even his most basic facts, he would have known – from information clearly and publicly available, not least on the University of Liverpool website – that the University was awarded a Jean Monnet Chair (a form of EU grant, not an academic position, despite its title) consisting of €36,000 (approximately £24,000 at the time) over the period from 2006 to 2009. For reference, that is estimated to account for significantly less than 0.0001 per cent of the institution’s turnover since 2006. Under the terms of the grant, part of the money was spent on a major academic conference and publication (the latter undergoing the usual process of international peer review). The remaining funds were allocated to the department’s general teaching resources and spent (to be precise) on enabling several PhD students to gain teaching experience in order to assist their academic career progression. My only obligation? To teach some EU law each year during the period 2006–09 – hardly very taxing for an EU lawyer teaching in a jurisdiction where EU law is compulsory for all law students seeking professional exemption: I teach some EU law every year. In accordance with the University’s original contract, since my CV was included in the grant application, I may continue to refer to the 2006 award among my own professional distinctions. I am very happy and proud to do so, since such awards carry considerable prestige within my academic discipline.

Let’s not even get so far as to query North’s unsubstantiated and unwarranted
allegation that anyone in receipt of EU funding through a long established and
well respected scheme such as the Jean Monnet Chairs is to be dismissed as
some ‘paid agent’ of the EU. Let’s content ourselves with just the more specific
query: was North correct to claim that my post is supported by EU funds? Not
in the slightest. This was nothing more than an attempt to discredit someone
who dared to express an opinion different from North – though as things
turned out, his 21 June 2016 story proved only the first of several increasingly
ggressive diatribes against ‘Monnet Professor Dougan’ or ‘Dougan the

---

Dishonest’, some of which repeat the same fake claims about my non-existent EU funding. Several generous citizens have offered to fund a legal action on my behalf seeking substantial damages in defamation against North. I suggested they give the money instead to charity. By providing another example of the incompetent and mendacious abuse of academics, North has served his useful purpose. Though at this point, we should not let another example of ideological hypocrisy go past unmentioned: perhaps those academics so easily bribed into spreading pro-EU propaganda when their institutions received modest sums of EU funding for designated research and educational purposes, should have learned some of the moral fortitude of (say) UKIP, whose army of MEPs were never accused of pro-EU bias despite the fact that they took (and in some cases, allegedly misappropriated) far larger sums of public money from the very same EU cashcow.

Our fourth and final category of abuse – questioning the professional competence and abilities of academic researchers – also has its abstract as well as its more personalised variants. The ‘ivory tower’ jibe – attacking the capacity of those who work at universities to make any valuable contribution to public understanding and debate, on the curious grounds that we do not ‘live in the real world’ – is almost as commonplace as it is so obviously bankrupt. Yet how many times did one hear the apparently serious suggestion that, if you really wanted to know about UK or EU constitutional law, it was better to ask someone who had run their own small business (it being only a coincidence if they happened also to be a vocal Leave campaigner) rather than listen to some academic who has never had to worry about ordinary people’s lives (it being immaterial that they happened to be a so-called ‘expert’ precisely on the topic of UK or EU constitutional law)? I have never got to the bottom of whether the same advice should apply if one needed to know about building a bridge (don’t ask an engineer), or flying an airplane (no pilots, please) or performing heart surgery (anyone but a qualified doctor).

In its more personalised form, the attack on professional competence was – if anything – even more curious. I assumed that I knew (either personally or at least through their published work) the relatively small number of specialist EU lawyers (many internationally recognised, some of world leading stature) based here in the UK. I was rather surprised to find, during the course of the 2016 referendum campaign and now still afterwards, that the UK in fact boasts countless legions of legal commentators with a far superior understanding of the EU and its relationship to the UK legal system than any mere academic researcher. Those commentators may well lack any relevant qualifications, skills or experience in the field. Their rather idiosyncratic theories about EU law may not have made it through the process of international peer review for publication in any of the scientific legal journals. But none of that can deter them from directly questioning the competence of myself, or any number of my colleagues, to make even the most basic assertions of UK or EU law. Again, not that such
challenges are in any way unique to the 2016 referendum experience: many colleagues will recognise the increasing importance of teaching undergraduate students how to discriminate effectively between reliable and unreliable sources of evidence, in an era when many people believe ‘research’ to be synonymous with ‘typing something into Google’.

Allocating one’s latest experience of anti-academic abuse to such a rough-and-ready system of categories-plus-variants provides a useful mechanism for both bursting the abuser’s self-importance (‘just another example of type 3 abuse, variant: personalised, to be put alongside its equally unoriginal peers in this little box …’) and bringing to hand an effective response on those occasions when one is required (‘could you please share, with myself and the rest of this audience, your evidence for the otherwise defamatory allegation that I am a “paid agent” of the EU …’).

But the challenges are not just for academic researchers as individuals: such politically motivated abuse, systematic as well as diffuse, represents an attack on our entire profession and its fundamental scientific values. And nor does the responsibility for responding to those challenges lie solely with individual researchers: it is shared by every university, and the higher education sector as a whole, as well as those wider public institutions – not least the Government – that should be defending the importance of independent science in at least equal measure to touting its economic potential. This edited collection is very consciously intended as a symbol of how public engagement is among the most valuable and important responsibilities of our profession. Far from giving ground to personal intimidation or professional defamation, the experience of the 2016 referendum and its continuing aftermath should reinforce our collective determination to act as enthusiastic advocates for academic expertise and its invaluable contribution to public enlightenment.

3. ACKNOWLEDGEMENTS

I will close with some thanks. First and foremost, sincere gratitude to my colleagues who gave freely and considerably of their time and expertise in order to contribute the chapters for this book – a task which was surely even more challenging than usual, thanks not only to the general state of upheaval and uncertainty surrounding the entire research field, but also to the need for a remarkably tight timescale between the original invitation to contribute and the final deadline for submission.

I am also extremely grateful to Intersentia Publishing – and above all to Ann-Christin Maak – for their unwavering support in both conceiving and executing this project. It has been an unqualified pleasure to work with Ann-Christin and her team: their professionalism, enthusiasm and experience cannot be too highly commended.
We also acknowledge the generosity of the School of Law and Social Justice at the University of Liverpool: together with Intersentia Publishing, the School’s Research Development Fund supported a workshop in February 2017, at the University of Liverpool’s campus in London, where many of the contributors were able to present and discuss their papers as work-in-progress. Particular thanks to my colleagues from the Liverpool Law School – Eleanor Drywood, Katy Sowery, Nikos Vogiatzis and Andrew Woodhouse – who acted as panel chairs at that workshop.

Finally, I am indebted to my fellow citizens who – in their many, many thousands – wrote to express their support for the importance of the academic contribution to our public debate and to call upon myself and my colleagues to continue sharing our work as researchers with a wider audience of political and social actors. Even if I was (and remain) unable to acknowledge let alone properly reply to each and every such message, I can nevertheless guarantee that their collective force provided the core inspiration to produce this book – and will carry on inspiring our efforts to inform and improve public understanding into the future, as the nature and consequences of the UK’s decision to leave the EU continue to unfold.

17 April 2017
Liverpool