**Rethinking Legal Methods After Brexit**

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**Abstract:**

This article provides a critical, personal appraisal of attempts at designing an introductory Legal Methods module, from the perspective of Brexit. Focusing on the author’s own “cases and materials” collection, it interrogates how, rather than challenging a number of paradigms which subsequently dominated Brexit discourses, it unwittingly reproduced them. The second part of the article seeks to respond by suggesting various ways in which a Legal Methods module might introduce students to legal analysis through the example of Brexit itself.

**Keywords:** legal methods; legal systems; legal education; Brexit

# Introduction

Let me begin by recounting an incident that occurred in the aftermath of the Brexit referendum. At that time, I was Dean of The City Law School. One of our undergraduate students raised a question with the central university management. He asked whether, in light of the result of the referendum, he still would be required to sit his European Union Law examination. Of course, upon being forwarded this question, my immediate reaction was embarrassment that a student would make such an enquiry. However, despite the opportunistic motivation behind the question, the anecdote remained with me. It has given me pause to reflect on the way in which membership of the European Union has been (or has failed to be) incorporated into the law school curriculum in this country. I should add the proviso that my focus here is on law schools within the jurisdiction of England and Wales. I limit myself in this way, first, because of my own knowledge and experience. Furthermore, I acknowledge that legal education in Scotland and Northern Ireland may well produce a different dynamic, given the different legal systems and cultures which underpin them.

My analysis in this article is not focused on the particular module which provoked the student’s question, namely, the core EU Law course. Instead, perhaps counterintuitively, I want to interrogate the module which introduces many law students to the impact of membership of the European Union, namely, the subject variously called “Legal Method”, “English Legal System”, or “Introduction to Law”. I taught this subject for a number of years and I produced four editions of a “cases and materials” collection (the latter two of which were co-edited with Professor Linda Mulcahy).[[1]](#footnote-1) I want to take the opportunity of this article, in the first part, to critically interrogate the paradigms and assumptions which dominated and underpinned (my contribution to) *Legal Methods and Systems*. My central argument is that, although I consciously attempted to create a set of teaching materials which challenged a number of traditions of an English legal education, in retrospect, with respect to the dynamics of the EU, the collection did not sufficiently challenge the dominant discourse. I am particularly provoked to engage in this retrospective critique because it strikes me that many of those outmoded concepts continue to inform much of an intellectually bereft national Brexit conversation.

The second part of the article seeks to look forward and to do so positively. I attempt a blueprint that hopefully might rectify some of the deficiencies of my past efforts. Specifically, I tentatively attempt to devise a number of elements of a Legal Methods and English Legal System module which might be explicitly taught through various aspects of the Brexit experience. In other words, I want to begin to explore Legal Methods through the lens of Brexit.

**Thinking Critically, In Hindsight**

Looking back, what first strikes me about *Legal Methods and Systems* is the central place given to the doctrine of Parliamentary supremacy.[[2]](#footnote-2) This provides a central thread for a series of chapters which began with the question, “what is law?”. Although we deliberately opened the book with a range of materials aimed at troubling a legal positivist paradigm - including material from feminist and critical legal studies[[3]](#footnote-3) - it is now apparent to me that this intention failed to sufficiently and consistently sustain itself throughout the collection. In my view, this is particularly apparent when it comes to the material on the making of law and its definition. This subject is launched by a “classic” excerpt from Albert Venn Dicey on the reconciliation of the “rule of law” and the principle of the “sovereignty of Parliament”, in a section of the book entitled “Constitutional Aspects of Legal Method”.[[4]](#footnote-4) Dicey’s famous theoretical “sleight of hand”, namely, his reconciliation of the rule of law with the principle of Parliamentary supremacy as “counterbalancing forces” of the Constitution.[[5]](#footnote-5) He went on to (in)famously distinguish this state of equilibrium from the constitutional arrangements which existed within continental European civil law systems.[[6]](#footnote-6)

Clearly, it was never my intention to privilege a Diceyan nineteenth century world view; rather, the aim was to enable students to recognise its limitations and to provoke critique. The hope was that Dicey could be placed in a historical context, underscoring how such a mindset could not possibly provide a credible basis for understanding the rule of law within contemporary society. To that end, material explicitly or implicitly critical of Diceyan theory was included.[[7]](#footnote-7) This is followed by consideration of the impact of the Human Rights Act, judicial review, and membership of the European Union, complete with an excerpt from the judgment in *Factortame*.[[8]](#footnote-8)

Regrettably, my experience of introducing students to the constitutional foundations of the English legal system consistently produced outcomes different from what was intended. Rather than approaching Dicey’s rule of law vision through historical contextualisation and critique, its very presence in the book inevitably seemed to lead, in most cases, to its unqualified, uncritical, and rote reproduction by students. Most pertinent to this article, any nuance surrounding the doctrine of parliamentary supremacy failed to gain traction. My experience would seem to provide support for Gordon’s description of the concept of the sovereignty of Parliament, in the context of the European Union Act 2011, as possessing an “ethereal quality, and perhaps therefore the related allure, of a constitutional concept resistant to being captured by law”.[[9]](#footnote-9) For example, I found that students readily conflated what Gordon describes as the internal and external dimensions of sovereignty.[[10]](#footnote-10) So too, it proved extremely difficult to motivate students to reflect on the possibility of Parliamentary supremacy as being a creation of the judiciary, with all that implies in terms of constitutional statutes.[[11]](#footnote-11) Instead, what became apparent was the remarkable resilience of the doctrine of Parliamentary supremacy in capturing the imagination of students. My fear is that this “capture” is one that becomes extremely difficult to dislodge once it occurs.

This phenomenon has major implications for teaching the dynamics of constitutional change to first year students. Devolution, the Human Rights Act and, perhaps most importantly, membership of the European Union, are constructed at best as afterthoughts, complications or exceptions. More worryingly, however, they become interpreted as threats to a pre-existing, perfectly harmonious constitutional order. On the one hand, attempts to raise awareness of the politics of law - such as through a sample of the more infamous judicial review cases[[12]](#footnote-12) - failed to displace a law-politics divide that had already formed in the psyche of first year law students. On the other, introducing students to the development of a “legal constitution” - through, for example, enforceable individual rights as European citizens - was interpreted as a derogation from the supremacy of Parliament rather than as a product of its exercise. Instead of recognising the historical specificity of a particular understanding of sovereignty - and its severe limitations - that paradigm becomes the pinnacle that is highly resistant to intellectual challenge within the consciousness of students.

This experience has implications for the challenge of teaching law critically and, in particular, how we introduce undergraduate law students to the European Union. The fact that much of the pro-Brexit discourse over the past years has been wedded to the same nineteenth century view espoused by Dicey certainly has made me reflect upon the limitations to the approach which I adopted in the past.

I experienced a similar dynamic when introducing students to the principles of statutory interpretation. This section of the text began with material on the legislative process within the United Kingdom, which was then followed by the so called “rules” and methods of interpretation.[[13]](#footnote-13) Of course, the intention was always to emphasise that describing these judicial techniques as rules was a mischaracterisation. To that end, I emphasised the politics of interpretation throughout.[[14]](#footnote-14) This was followed by a chapter on the search for legislative intention[[15]](#footnote-15) and, finally, on the impact of the law of the European Union and European human rights law.[[16]](#footnote-16) In hindsight, this structure was deeply problematic, in that it rendered matters “European” as either a postscript or a complicating contaminant within the English common law mindset. This was unfortunately reinforced by the use of the well known quotation from Lord Denning in *Bulmer v Bollinger*, that English courts “must follow the European pattern” in the changed universe of membership of the European Economic Community.[[17]](#footnote-17) Although I noted in passing that membership of the EEC provided a “handy justification” for Lord Denning’s preferred free wheeling approach to statutory interpretation,[[18]](#footnote-18) I fear that the passage served further to reinforce the ‘otherness’ of a teleological interpretive method.

Chapters on common law reasoning followed those on statutory interpretation. In the first, the doctrine of precedent and the techniques of applying and distinguishing case law were analysed.[[19]](#footnote-19) The European Union made only the briefest of appearances, in an extract which mentions potential modifications to the doctrine of precedent in light of the civilian tradition from which EU law developed.[[20]](#footnote-20) As with my approach to statutory interpretation, in retrospect, it appears that EU law is unwittingly constructed as the civilian “other” to the common law mind. Moreover, in the case of common law reasoning, the EU may well have appeared to be an incomprehensible intruder, adding unnecessary complexity to the apparent - and seductive - simplicity of common law reasoning. However, that threat seemingly disappeared in the following chapter, as we turned to a case study on the law of negligence.[[21]](#footnote-21) In this section, the common law’s coherence was restored without intrusion from the European Union or indeed from any form of statutory intervention.

Having subjected my previous efforts to a critical gaze, I now want to attempt at least a partial redemption by mentioning the book’s final chapter, “Comparative Legal Methods and Systems”.[[22]](#footnote-22) Looking back, it is now obvious to me that this chapter in fact foreshadows the approach which I now would advocate for a Legal Methods and Systems module. Our objective in this chapter was to provide questions for further student reflection, with material on the study of comparative law;[[23]](#footnote-23) the way in which legal traditions are constructed within legal discourse;[[24]](#footnote-24) the contrasting styles of civilian and common law reasoning;[[25]](#footnote-25) and, ultimately, a “taster” of law under the conditions of globalisation.[[26]](#footnote-26) Examples which we employed were the harmonisation of European private law;[[27]](#footnote-27) postcolonialism and postmodernism;[[28]](#footnote-28) and religious arbitration in family law disputes as an example of legal pluralism.[[29]](#footnote-29)

My argument in the next section of this article is that legal education after Brexit must take up these very issues, not as a postscript, but centre stage when we introduce students to the study of law. The impact of Brexit, in other words, must be to approach law *less* parochially (rather than more), as we become an inevitably small jurisdiction impacted by European and global legal orders. To do otherwise, is to make legal education increasingly marginal, local, and intellectually bereft. How we might resist that temptation is the subject to which I now turn.

**Post-Brexit Legal Methods and Systems**

***Setting the Context***

Before turning to the possible content of a post-Brexit Legal Methods and Systems module, I want to situate the discussion within the wider context of legal education in England and Wales today. Boon and Webb have argued that there is an “underlying epistemic uncertainty about the nature of the English legal education project”.[[30]](#footnote-30) This state of uncertainty seems only to have been exacerbated by the passage of time. The expectations of students, they suggest, are “increasingly instrumental and consumerist”.[[31]](#footnote-31) Student debt - amongst other factors - has resulted in an increased emphasis on the improvement of the prospects for graduate employability as the “value added” of higher education. A law degree in particular is widely seen as potentially opening a gateway to a professional career with an assumed level of income and status attached to it. The irony, of course, is that this rationale for pursuing a law degree has intensified at the same time as the number of law students has grown exponentially. Indeed, there is seemingly endless demand to match the growth of supply of places to study for a law degree. However, the number of training contracts and pupillage opportunities at best is static and at worst is in decline.[[32]](#footnote-32) As a consequence of this combination of factors, the professional stage of legal education effectively has become the sole gateway to becoming a solicitor or barrister. Finally, an ongoing process of change within the legal professions is resulting in the deprofessionalisation of significant amounts of the work previously considered to require the direct services of a lawyer.[[33]](#footnote-33)

As a result of this combination of developments, it is increasingly the case that a legal education must be “sold” to prospective students on the basis of the generic, transferable skills of graduate employability which are inculcated as part of the rigours which the liberal education of a law degree supposedly provides. In fact, the career options for most law graduates are likely to be either outside of the legal professions entirely or, if within the legal sphere, attracting a level of professional status which is significantly below that to which they may have originally aspired. In other words, the chances of becoming a high status professional will be reserved for a select few, as well as for some of our international students, for whom an English law degree remains - for the moment - a step in an established career trajectory within their home jurisdictions.[[34]](#footnote-34)

As a consequence, within the current market for legal education, our focus as educators necessarily must be on the provision of a liberal education built on the foundation of a range of skills in order to provide students with as much opportunity and choice as we can manufacture. In considering the content of an introductory course, I have kept in mind the need to cater to such a broad group of students.

***Legal Methods and Systems: Reflections on Content***

I turn now to the possible content of a post-Brexit, first year Legal Methods and Systems module. First, I would argue that, to attempt to provide a liberal legal education in illiberal times, demands that we place English legal reasoning in a genuinely historical context. Such a genealogical approach, as Goodrich has painstakingly shown, reveals the Roman Law origins of common law thinking: “common law, even in its Druidic roots, was a variant upon the *mos gallicus* and, thence, distinctive because of the idiosyncracy of its relation to Roman law and learning”.[[35]](#footnote-35) Moreover, the particularity of the English common law tradition lay in “its paucity of method and distance from scholarship and the university curriculum”.[[36]](#footnote-36) However, as legal historians have shown, there was no shortage of civilian and classical legal learning within Oxford and Cambridge, as opposed to the common law focused Inns of Court.[[37]](#footnote-37) A post-Brexit liberal legal education, I would suggest, needs to reclaim those historical antecedents. It must do so in order to challenge the sharp bifurcation of legal systems which all too easily can be deployed in the service of narrow legal nationalism.

Such a historical and contextual approach would carefully situate the constitutional basis of the English legal system. Rather than viewing Parliamentary supremacy as timeless and static, the doctrine instead could be explored as an historical construction and, as Loughlin and Tierney have recently argued, one that is made up of both legal doctrine and political conviction.[[38]](#footnote-38) Of course, it was Dicey’s “achievement” to merge the two, turning “a political conviction about the need for an unrestricted central power” into a legal doctrine.[[39]](#footnote-39) This idea might be explored through a comparison to classic federal systems of government, in which legislative powers are said to be sovereign within their “watertight compartments” while sovereignty at the same time is said to be divided.[[40]](#footnote-40) In this way, it can be demonstrated that the legal doctrine of Parliamentary supremacy readily could be accommodated within the context of European Union, on the basis that supremacy is simply pooled. Relatedly, the doctrine could be explored as a judicial construct.[[41]](#footnote-41) Pointing to recent case law, it can be shown to be capable of judicial amendment through the recognition of so called “constitutional statutes”.[[42]](#footnote-42) In this regard, the Brexit legal debates, as well as *R (Miller) v Secretary of State for Exiting the European Union*,can provide a prism through which to debate these concepts.[[43]](#footnote-43) In fact, a set of teaching materials might include reference to the relationship between a referendum itself and the principle of Parliamentary supremacy.[[44]](#footnote-44)

Relatedly, English constitutionalism could be approached, not through a claimed timeless “balance”, but instead as dynamic, in flux, and increasingly unstable. At this point, the development of rights discourse through the Human Rights Act, as well as enforceable rights for citizens of the European Union, and the creation of the Supreme Court, could be explored as examples for discussion and debate. For example, a case study on the development of gender equality rights usefully could illuminate these developments.[[45]](#footnote-45) Looking ahead, students could be encouraged to reflect upon the role of the Supreme Court in protecting individual rights and constraining state power post-Brexit, including through the use of proportionality in judicial review.[[46]](#footnote-46)

After examining the foundations of constitutionalism from this internal perspective, we might then turn the lens, and interrogate it from an external perspective. By this, I mean that a module might focus upon the way in which a legal system, rather than being bounded and existing in splendid isolation, inevitably is shaped by a context of legal globalisation.[[47]](#footnote-47) This concept might be analysed through the binary of “subjects” and “objects” of European Union law, in which the influence of the European Union is felt globally and unevenly.[[48]](#footnote-48) This would serve to underline that exiting the European Union will not result in the end of its influence on English law. A module might also touch upon dispute resolution through the prism of international trade and, in this regard, examine the need for dispute resolution bodies.[[49]](#footnote-49) This would provide a further way in which the discourse of Parliamentary supremacy - now from an external perspective - could be contextualised and decentred. The point of such an analysis is summarized in a now famous passage from de Witte: “the isolated national legal order is an invention of the 19th century and not an eternal state of things”.[[50]](#footnote-50)

This consideration of Parliamentary supremacy would lead into an introduction to both statutory interpretation and judicial reasoning within the English legal system. Once again, Brexit can provide a useful pedagogic toolkit. With respect to statutory interpretation, students could be introduced to the idea of legislative intention through the way in which Parliamentary intention was deployed in the Brexit debates with respect to the repeal of the European Communities Act.[[51]](#footnote-51) This could be connected to the idea of a “constitutional statute”, citizenship rights, as well as the continuing role of the Royal Prerogative. In addition, a module might emphasise the ongoing importance post-Brexit of understanding the principles of statutory interpretation in European Union Law and the complex questions that this will raise: “the application of EU law principles of interpretation to retained EU law may well prove challenging: not least because the transplantation of the EU acquis will result in law designed to be applied within the EU being applied in a very different context”.[[52]](#footnote-52) Similar issues could be interrogated with respect to the interpretation of the European Convention on Human Rights.[[53]](#footnote-53)

We could turn next to the principles of common law reasoning. This analysis might be enriched by an examination of how membership of the European Union has impacted upon a specific field of common law reasoning, such as the employment contract or consumer protection.[[54]](#footnote-54) Through a case study, students could analyse, for example, the tension between private law and, as MacMillan describes, “a transnational conception of contract which seeks to provide citizens with fundamental rights”.[[55]](#footnote-55) Thus, the residual impact of membership of the European Union might provide a basis for discussion around the continuing role of EU derived rights within the private law.

**Concluding Thoughts**

My argument in this paper is that a post-Brexit Legal Methods and Systems module will need to open up richer discussions around the role of comparative law, legal pluralism and the colonial legacy of the common law, than has been the case in the past. In fact, I would suggest that these themes must be pervasive when we teach law more generally. What does the common law as a legal “family” actually mean, post-Brexit? Students of tomorrow will need to be aware that the common law has developed in markedly different ways around the world. The colonialist imaginary with respect to the future of the (rediscovered) Commonwealth -- from a legal as well as a political perspective -- needs to be exposed as a fantasy of Empire 2.0. Instead, it becomes imperative that we now reflect upon teaching law in a jurisdiction that is rapidly becoming very *small* rather than *global*, in terms of its relevance. In other words, rather than Empire 2.0, we may need to face the reality of Brexit as Suez 2.0.[[56]](#footnote-56)

Of course, small jurisdictions can “punch above their weight” in terms of legal impact. However, this is achieved by looking outward, through intelligent comparison and the sensitive use of history, rather than through retreat from the wider legal world. In sum, my argument is that future law students need to be aware of what, in fact, is an existential question for the study of law. It mirrors the fundamental issue with which a post-Brexit Britain must grapple. Returning to the anecdote with which I commenced this paper, I hope that such an approach might provide at least a partial answer to the question posed by my student as to why the referendum result did not narrow the coverage of his law degree, but rather required its expansion.

1. Carl F Stychin and Linda Mulcahy (eds), *Legal Methods and Systems: Text and Materials* (4th edn, Thomson Reuters 2011). [↑](#footnote-ref-1)
2. ibid 11-44. [↑](#footnote-ref-2)
3. cf Peter Goodrich, *Reading the Law* (Blackwell 1986) 3-13; Carol Smart, *Feminism and the Power of Law* (Routledge 1989) 10-13; Andrew Altman, *Critical Legal Studies: A Liberal Critique* (Princeton UP 1993) 13-15; David Kairys, *The Politics of Law: A Progressive Critique* (3rd edn, Basic Books 1998) 2-4. [↑](#footnote-ref-3)
4. Albert Venn Dicey, *An Introduction to the Law of the Constitution* (8th edn, Macmillan 1915) 183-197. [↑](#footnote-ref-4)
5. ibid 402. [↑](#footnote-ref-5)
6. ibid 402-409. [↑](#footnote-ref-6)
7. cf Hugh Collins, *Marxism and Law* (Clarendon Press 1982) 12-13; Jeremy Waldron, *The Law* (Routledge 1990) 29-42; EP Thompson, *Whigs and Hunters* (Penguin 1990) 266; Bernard J Hibbits, “The Politics of Principle: Albert Venn Dicey and the Rule of Law” (1994) 23 Anglo-Am LR 25; Jeffrey Jowell, “The Rule of Law Today” in Jeffrey Jowell and Dawn Oliver (eds), *The Changing Constitution* (5th edn, OUP 2004) 7-14; Wade Mansell, “Goodbye to All That: The Rule of Law, International Law, the United States, and the Use of Force” (2004) 31 JLS 433. [↑](#footnote-ref-7)
8. R v Secretary of State for Transport, ex p Factortame (No 2) [1990] UKHL 13, [1991] 1 AC 603. [↑](#footnote-ref-8)
9. Michael Gordon, “The UK’s Sovereignty Situation: Brexit, Bewilderment and Beyond …” (2016) 27 KLJ 333, 335. [↑](#footnote-ref-9)
10. ibid. [↑](#footnote-ref-10)
11. See Mark Elliott, “Sovereignty, Primacy and the Common Law Constitution: What has EU Membership Taught Us?” in Mark Elliott, Jack Williams and Alison L Young (eds), *The UK Constitution after Miller: Brexit and Beyond* (Hart Publishing 2018) 221. [↑](#footnote-ref-11)
12. Bromley London Borough Council v Greater London Council [1981] UKHL 7, [1983] 1 AC 768; Council of Civil Service Unions v Minister for the Civil Service [1984] UKHL 9, [1985] AC 374; Wheeler v Leicester City Council [1985] UKHL 6, [1985] AC 1054. [↑](#footnote-ref-12)
13. Stychin and Mulcahy (n 1) 87-132. [↑](#footnote-ref-13)
14. cf Royal College of Nursing of the United Kingdom v Department of Health and Social Security [1980] UKHL 10, [1981] AC 800; R (Quintavalle) v Secretary of State for Health [2003] UKHL 13, [2003] 2 All ER 113; Brutus v Cozens [1972] UKHL 6, [1973] AC 854; Mandla v Dowell Lee [1982] UKHL 7, [1983] 2 AC 548. [↑](#footnote-ref-14)
15. Stychin and Mulcahy (n 1) 133-96. [↑](#footnote-ref-15)
16. ibid 197-240. [↑](#footnote-ref-16)
17. [1974] 1 Ch 401, 426, [1974] 3 WLR 202, 216. [↑](#footnote-ref-17)
18. Stychin and Mulcahy (n 1) 203. [↑](#footnote-ref-18)
19. ibid 241-70. [↑](#footnote-ref-19)
20. Colin Manchester and David Salter, *Exploring the Law: The Dynamics of Precedent and Statutory Interpretation* (3rd edn, Sweet & Maxwell 2006) 135-39. [↑](#footnote-ref-20)
21. Stychin and Mulcahy (n 1) 271-306. [↑](#footnote-ref-21)
22. ibid 391-415. [↑](#footnote-ref-22)
23. Konrad Zwelgert and Hein Kötz, *An Introduction to Comparative Law* (Tony Weir tr, 3rd edn, Clarendon Press 1998) 2-16; John Bell, *French Legal Cultures* (Butterworths 2001) 6-17. [↑](#footnote-ref-23)
24. H Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law* (2nd edn, OUP 2004) 344-49. [↑](#footnote-ref-24)
25. John H Farrar and Anthony M Dugdale, *Introduction to Legal Method* (3rd edn, Sweet & Maxwell 1990) 247-50; Barry Nicholas, *The French Law of Contract* (2nd edn, Clarendon Press 1992) 1-23. [↑](#footnote-ref-25)
26. B S Markesinis, “A Matter of Style” (1994) 110 LQR 607, 625; Franz Werro, “Notes on the Purpose and Aims of Comparative Law” (2001) 75 Tul L Rev 1225, 1230. [↑](#footnote-ref-26)
27. Efstathios Banakas, “The Contribution of Comparative Law to the Harmonization of European Private Law” in Andrew Harding and Esin Orucu (eds), *Comparative Law in the 21st Century* (Kluwer 2002) 184-89. [↑](#footnote-ref-27)
28. John A Harrington and Ambreena Manji, “‘Mind with Mind and Spirit with Spirit’: Lord Denning and African Legal Systems” (2003) 30 JLS 376, 389-98; Werner Menski, *Comparative Law in a Global Context* (2nd edn, CUP 2006) 32-35. [↑](#footnote-ref-28)
29. Ayelat Shachar, “Privatizing Diversity: A Cautionary Tale from Religious Arbitration in Family Law” (2008) Theo Inq L 573, 574-77. [↑](#footnote-ref-29)
30. Andrew Boon and Julian Webb, “Legal Education and Training in England and Wales: Back to the Future?” (2008) 58 J Leg Ed 79. [↑](#footnote-ref-30)
31. ibid. [↑](#footnote-ref-31)
32. Julian Webb, “The LETRs (Still) in the Post: The Legal Education and Training Review and the Reform of Legal Services Education and Training--A Personal (Re)view” in Hilary Sommerlad, Sonia Harris-Short, Steven Vaughan and Richard Young (eds), *The Futures of Legal Education and the Legal Profession* (Hart Publishing 2015) 97, 99. [↑](#footnote-ref-32)
33. Robert A Brooks, *Cheaper by the Hour: Temporary Lawyers and the Deprofessionalization of the Law* (Temple UP 2011). [↑](#footnote-ref-33)
34. The impact of the proposed Solicitors Qualifying Examination and the decline of the Qualifying Law Degree on the international student market is an important issue, but beyond the scope of this article; see Jessica Guth and Tamara Hervey, “Threats to Internationalised Legal Education in the Twenty-First Century UK” (2018) 52 Law Teacher 350. [↑](#footnote-ref-34)
35. Peter Goodrich, “Mos Americanus or Common Law in Partibus Infidelium” (2015) 60 Vill L Rev 521, 530. [↑](#footnote-ref-35)
36. ibid 529. [↑](#footnote-ref-36)
37. See Ralph Michael Stein, “The Path of Legal Education from Edward I to Langdell: A History of Insular Reaction” (1981) 57 Chi-Kent L Rev 429, 435. [↑](#footnote-ref-37)
38. Martin Loughlin and Stephen Tierney, “The Shibboleth of Sovereignty” (2018) 81 MLR 989. [↑](#footnote-ref-38)
39. ibid 991. [↑](#footnote-ref-39)
40. See Canada (AG) v Ontario (AG) [1937] UKPC 6, [1937] AC 326. [↑](#footnote-ref-40)
41. Thomas Poole, “Back to the Future? Unearthing the Theory of Common Law Constitutionalism” (2003) 23 OJLS 435. [↑](#footnote-ref-41)
42. Thoburn v Sunderland City Council [2002] EWHC 195 (Admin), [2003] QB 151. [↑](#footnote-ref-42)
43. [2017] UKSC 5, [2018] AC 61. [↑](#footnote-ref-43)
44. This would include literature sympathetic to Brexit; see eg David Campbell, “Marbury v Madison in the UK: Brexit and the Creation of Judicial Supremacy” (2018) 39 Cardozo L Rev 921; Richard Mullender, “Transmuting the Politico-Legal Lump: Brexit and Britain’s Constitutional Order” (2018) 39 Cardozo L Rev 1019. [↑](#footnote-ref-44)
45. Roberta Guerrina and Annick Masselot, “Walking into the Footprint of EU Law: Unpacking the Gendered Consequences of Brexit” (2018) 17 Social Policy & Society 319. [↑](#footnote-ref-45)
46. Graham Gee and Alison L Young, “Regaining Sovereignty? Brexit, the UK Parliament and the Common Law” (2016) 22 EPL 131. [↑](#footnote-ref-46)
47. Ralf Michaels, “Does Brexit Spell the Death of Transnational Law?” (2016) 17 German LJ 51; Kenneth A Armstrong, “Regulatory Alignment and Divergence after Brexit” (2018) 25 JEPP 1099. [↑](#footnote-ref-47)
48. Elaine Fahey, “Brexit and the Global Reach of EU Law” (2017) 20 IJEL 16; Dora Kostakopoulou and Anastasia Tataryn, “*Homo Objectus*, *Homo Subjectus* and Brexit” in Samo Bardutzky and Elaine Fahey (eds), *Framing the Subjects and Objects of Contemporary EU Law* (Edward Elgar 2017) 275. [↑](#footnote-ref-48)
49. Raphael Hogarth, “Dispute Resolution after Brexit” (Institute for Government 2017). [↑](#footnote-ref-49)
50. Bruno de Witte, “The European Dimension of Legal Education” in Peter Birks (ed), *Reviewing Legal Education* (OUP 1995) 68, 68. [↑](#footnote-ref-50)
51. Gordon (n 9). [↑](#footnote-ref-51)
52. David Lloyd Jones, “Brexit and the Future of English Law” (2018) 49 VUWLR 1, 19. [↑](#footnote-ref-52)
53. ibid 21. [↑](#footnote-ref-53)
54. See Catharine MacMillan, “The Impact of Brexit upon English Contract Law” (2016) 27 KLJ 420. [↑](#footnote-ref-54)
55. ibid 429. [↑](#footnote-ref-55)
56. I do not wish to minimize the impact of Brexit through this comparison; see Andrew Rawnsley, “A bad Brexit will not be as terrible as the Suez crisis. It will be far worse” *The Guardian* (London, 11 November 2018) <[www.guardian.co.uk](http://www.guardian.co.uk)> accessed 29 December 2018. A combination of Suez and the “Winter of Discontent” might well be a better comparator. [↑](#footnote-ref-56)