

THE WILLI STEINER MEMORIAL LECTURE 2017

Brexit and Access to Legal Information

Abstract: The 6th Willi Steiner Memorial Lecture was delivered by David Allen Green and took place on 8 June 2017 during the Annual Conference of the British and Irish Association of Law Librarians (BIALL) which was held in Manchester. His talk concerned libraries and public policy with particular reference to Brexit. He addressed the issues of how a debate like Brexit can be better informed and to what extent reliable legal and policy information makes any difference. In essence, he looks at how good information can help shape Brexit. This article is a later write-up from David's speaking notes. The lecture was, coincidentally, given on the same day as the general election.

Keywords: public policy; libraries; legal information; European Union; Brexit

LIBRARIES AND PUBLIC POLICY

As this is a talk about, in effect, libraries and public policy, I am going to start with an anecdote about a library and policy-making. The library is the British Library, formerly hosted in the reading room at the British Museum and other sites. The year is 1983. Nicolas Barker, then the library's head of conservation, tells the story of how he and Lord Dainton, then the chair of the British Library Board, went about convincing the then prime minister Margaret Thatcher about the need for the move of the library to a new purpose-built building. They decided to keep the issue simple: no lengthy paragraphs in a wordy report, still less charts or tables. And certainly no eloquent or reasoned arguments. They instead took her half a dozen books, as well as a novel by one of her favourite authors, which were falling apart, regardless of the care being taken to conserve them. They put the books in front of her and said 'Mrs Thatcher, we need a new building because all our books will fall to pieces if they stay where they are.' So horrified was the prime minister at the potential fate of the national collection that they got the go-ahead for the new building.¹

What this tale shows is two things. First, that the information which influences public policy can come in many forms. And second, never underestimate the resourcefulness and ingenuity of librarians.

This talk is about a huge area of public policy, Brexit, and the role access to legal information will have in influencing that area of policy. But before discussing Brexit and access to legal information, I want to make a few preliminary points.

LIBRARIANS AND THE VALUE OF LIBRARIES

First, I will pay tribute to Willi Steiner, in whose memory this annual lecture is organised. The invitation to give this talk was an opportunity to find out about this remarkable

person. The impression one gains is of a bibliographical Hercules, who not only ran libraries but, almost in passing, re-classified and re-catalogued entire collections. He was the general editor of the index to Foreign Legal Periodicals and made important contributions to comparative law around the world. He once, it is reported,² listed himself as bilingual in German and English, fluent in French, moderately fluent in Italian, and with 'sufficient reading knowledge for the purposes of law librarianship in Dutch, Spanish, Portuguese, Hungarian, Rumanian, Scandinavian and Slavic languages; Latin and Greek'. One can perhaps imagine what such a polyglot and internationalist would think of Brexit. If it was an honour to be invited to give this lecture, it was a privilege to learn about Willi Steiner.

Second, I want to praise libraries and librarians. I happen to come from a working-class background, brought up on council estates in Birmingham, where I attended a local comprehensive and then tertiary college, having failed the eleven plus to the city's King Edward Schools. But there were libraries, where I devoured collections one after another: Quinborne library, where I borrowed three times as many books by reason of my grandparents' library cards; Halesowen College library; and the old Birmingham Central Library, in that horrible brutal building marginally less ghastly than the new one. At eighteen, with a specially procured letter of introduction from a member of parliament, I even managed to get a readers' card for that old reading room in the British Museum, where I asked a bemused librarian to point me to where Karl Marx had sat. And when I got to university, I had the pleasure of working in the Codrington Library at All Souls and the Bodleian.

For anyone from a less advantageous background, access to public and academic libraries and those who work in them can make real and long-lasting differences. Things will go differently in life but for that access. The range of opportunities becomes broader, and your ability

to take advantage of those opportunities becomes greater. Access to libraries is an engine of personal development and social mobility. (As an aside, I prefer to call them libraries and not ‘information centres’ as an ‘information centre’ usually seems to be what a library calls itself, in desperation, shortly before it closes down.)

And law libraries can be especially democratic and egalitarian. A well-stocked law library, with trained and experienced librarians, will provide the trainee solicitor or junior barrister, or the underpaid legal-aid practitioner, with access to the same legal information as any senior partner or QC, or high-resourced opponent. Being able to read and study expensive or inaccessible texts is not the preserve of City law firms or the more exclusive chambers.

A good law library is a public good, for it serves not only the interests of lawyers, and their clients, but also the overall interest of justice by granting an equality of legal arms. And a good law library is not just books and people: it is a place arranged and designed for books and other resources to be looked at properly, with regard to space, light and acoustics. And it is because of this I must mention the intended vandalism of Inner Temple library and that I hope the Inn changes its mind.

REVOLUTION IN INFORMATION AND COMMUNICATIONS

Before I move onto Brexit, there is one further general point maybe worth making, which would be the case whether Brexit was happening or not. We are currently at a time of a genuine revolution in information and communications, comparable with the inventions both of writing and of the movable type.

In the lifetimes of most people here, it was difficult to publish or broadcast beyond one’s own circle. You could perhaps write a letter to the paper, pamphleteer, or publish a book by paying a vanity publisher, or you could sail to the North Sea and do a pirate radio show. But unless you did something this extreme, you had to go through the gates and gatekeepers of established newspapers, publishing houses and broadcasters, with expensive printing presses and transmitters.

Now anyone with an internet connection can, instantly, publish or broadcast to the world. This is a fundamental shift in human history, the repercussions of which will still be felt when Twitter and Facebook are forgotten.

BREXIT

And now, Brexit – that is the intended departure of the United Kingdom from the European Union, following and in accordance with the referendum result of 26 June 2016. This is not the time and place to assess the merits of Brexit, a topic on which many here may have strong views. In this talk I want to look at Brexit in the context of legal and other information, and to set out why this is perhaps the best context to understand what is happening and will

happen. I will then conclude by setting out what I believe will be the role of librarians and others involved in providing access to legal information in how Brexit unfolds.

The starting point here is the European Union. What is the UK leaving? What is it and what unites it? Only by answering these questions will we know what it means to depart. The European Union has no common language nor, the “single market” notwithstanding, a single economy, as opposed to twenty-eight economies. The union is not kept together by force of arms or by a pervasive police state. There are immense cultural differences, from Finland to Malta, and from Ireland to Slovenia.

A legalistic person would say the European Union is held together by laws: the treaties, regulations, and directives, and so on. But much of the day-to-day existence of the European Union is not legalistic: it is the mundane creation and sharing of information, from mutual recognition schemes to flows of data between regulators and agencies. The European Union is not ultimately a creature of language, economics, force or culture, and not even of laws. The European Union is built primarily from information, some of it legalistic, but a lot of it is not.

And if the European Union is ultimately about information, then the intended departure of any member state will thereby be a process about managing information. Legal changes will not be enough: there will be masses of information about, say, trade and customs, citizenship and migration, the environment, justice and home affairs information, aerospace, agriculture, fisheries, and so on. Information, like fog at the start of *Bleak House*, everywhere. For example, the difficult questions about the Irish border are not about the movement of people – the common travel area will be unaffected – but about information about goods and services crossing the border between an EU member and what will be a third country.

Brexit will be an immense exercise in the management of information, perhaps the greatest one in the history of this country in peacetime. Who will manage this information? It will not be the politicians who campaigned, nor will it be many of the voters who said that the United Kingdom should depart the European Union. It will be the officials and civil servants and information professionals, many of whom probably opposed Brexit. But it will be these people who will be most responsible for making Brexit work in practice.

But Brexit is not just a chore for those charged with managing information. There is, I would venture, a fascinating side to it too, from the perspective of those interested in access to information. This is because the Brexit negotiations, and all the domestic legal changes such as the ‘Great Repeal Bill’ will take place on the internet in ‘real time’.

One example of this is that the European Union is publishing all their key negotiation documents. In a trilogy of posts at the *Financial Times* called ‘Brexit by timetable’ (echoing A. J. P. Taylor’s ‘war by timetable’) I have been able to set out a detailed account of the evolution of the European Union’s positions on Brexit just by careful reading of public domain information. And this has been

a better guide to understanding the European Union's approach to the Brexit negotiations than the off-the-record briefings of lobby journalists.

This is not to say public domain information will give a full account of Brexit – but is the most useful source for anyone wanting to work out what is happening, and you can do it from your computer and telephone. Brexit is therefore a process which is about managing masses of information, taking place with instantly available information. A fundamental political event is taking place at a time of a fundamental shift in how information is shared and published.

FAKE NEWS AND GOOD INFORMATION

There is, of course, a dark side to these rushes and springs of information. This is the phenomenon of 'Fake News'; the circulation of false information. Just as bad currency drives out good, bad information can drown out good information. And without the gates and gatekeepers of established newspapers, publishing houses and broadcasters, and competent journalists, there is a sense of anything goes.

There is no magic solution to 'Fake News'. Like the internet itself, it cannot be un-invented. People can now quickly find things to nod-along at, click like and share with friends, regardless of accuracy and fairness. It is just another form of consumption. And it can be disillusioning; many of the problems of Brexit, and also Donald Trump, were obvious in advance, if you cared to look. Journalists and commentators set out relevant

information on both sides of the Atlantic; but people voted for Brexit and Trump anyway.

But to be disillusioned is perhaps to misunderstand the role of the information provider. The provision of information is not indoctrination or even instruction. You should not expect that by providing accurate and fair information that people will suddenly do the 'right thing' – that is what you think they should do. Instead providing information is an exercise in liberalism: it respects the autonomy of the person receiving the information, and it gives the option for a person to make better decisions than they would do otherwise – even if they do not make those better decisions. The objective of the information provider, be they a librarian or indeed a commentator, is to provide sound information for those who want it. It is a public good, even when nothing good comes from it straight away.

And so with Brexit, the important thing is to inform the debates rather than to control them. And to accept this will not mean that there will be a happy ending, only the possibility of one. Good information can be ignored or distorted or crowded out by 'Fake News'. But at least good information will be there, for those who do want to make sensible and realistic decisions.

The challenge of providing accurate and fair information in an age of 'Fake News' would be big enough, even without the colossal exercise in information management which will be Brexit. This is an exciting, as well as scary, moment in the history of information. Brexit may mean Brexit, but this is what Brexit will mean for information providers.

Footnotes

¹ The story has been told many times with variations, but this version accords with the obituary of Lord Dainton by Nicolas Barker, *The Independent*, 22 December 1997: <http://www.independent.co.uk/news/obituaries/obituary-lord-dainton-1290249.html> accessed 5/10/2017

² Jules Winterton, (2003) *In Celebration of Willi Steiner* 3(3–4) *Legal Information Management* 140–149

Biography

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