FINAL

Advocacy, David Vaughan and European Courts

Middle Temple, 6th November 2018

Lecture in honour of David Vaughan, CBE, QC, 1938 – 2018

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When the UK joined the European Community in January 1973, a number of things changed. In one technical and practical sense, we embarked on collective regulation with our European partners of many aspects of our daily lives, from air brake noise through feed for turkeys and calves, to seatbelt anchorage points, equal pay, access to healthcare, extradition and pesticides. In a less technical and perpetually controversial sense we embarked on a train which might be destined for "an ever-closer Europe". We are currently the object of dismayed fascination by our friends and neighbours as our political leaders seek to reach the sunlit uplands of freedom from EU regulation, without at the same time deregulating.

It is widely believed that Brexit will happen on March 29th at 11pm Greenwich time. Bishop Ussher, a 17th century theologian, and other experts, calculated on the basis of a close study of the Bible's account of births and deaths and other events that God created the World with effect from 9am on Sunday 23rd October 4004 BC. The identification of each date involved a lot of study of complex texts by experts. Each date has been the object of controversy. Each date has been accorded great symbolic, iconic weight with too much precision. It would be

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spurious accuracy to say that at 59 minutes to midnight on March 29th we shall be free of EU law. More specifically for these proceedings, whether or not Brexit happens, one thing will not change, and that is the impact of members of the bar from the UK upon the Court of Justice of the European Union and European law.

David Vaughan was a celebrity, a grand lawyer with a rich voice and a sumptuous presence, an enthusiasm for novel theories, no fear of judicial scepticism, and an instinctive sense of humour. One of his crusades concerned Sunday Trading. He memorably and accurately described the challenge for B & Q which could on Sundays lawfully sell pornography but not Bibles: "My Lords, it is well known that shops sell more when they are open than when they are closed". Delivered full volume and seductively, the message was clear.

We were on one occasion on opposite sides, in Magill, the copyright case about the Radio Times and its Irish competitors. When counsel were called backstage in Luxembourg to meet the judges and plan the hearing, (a nice habit, I always think), the Juge Rapporteur said that he thought the case so plain that there was no need for a hearing. All the very numerous cluster of counsel looked at each other with what the poet Keats called – in other circumstances[2] – "a wild surmise". David wanted to invoke an American precedent (or not), Feist, and provoked guffaws as he stressed that while he knew no English law, he was very expert on American constitutional theory. Self-deprecation can indeed be a valuable technique.

When David invoked American law in reproaching the Commission for overreach I felt emboldened to quote Robert Clive, Viceroy of India, who when under impeachment charges before the House of Lords, about alleged corruption in India, defended his behaviour. The Commission could say, like Clive:

[2] On First Looking Into Chapman's Homer

"My Lords, I stand amazed at my own moderation".

At the end of the Magill argument, the Italian judge came – in plain clothes – back into the chamber and asked that I repeat the quote, the context, and the reference. David was watching regretfully.

It is a truth not universally acknowledged that judges like to be able to smile. Vivid expressions also give them pleasure. That said, judges expect respect. Judge Bosco in the Fediol argument was told by counsel that he would die laughing at a foolish argument of an adversary. He replied coolly, not to say icily, that « La Cour n'a pas besoin de rire ».

Always ready to share and to pass on tips, (not a universal quality among a profession with a fair share of handsome egos), he counselled one younger barrister faced with the daunting task of appearing before Tasker Watkins, VC, the Bar's Great War Hero, with the fierce temperament for which a VC owes no apology, in the fisheries case Factortame. "Mention Milford Haven early in the proceedings". And indeed the learned judge nodded benignly and recalled that Lord Nelson had a great fondness for that harbour (where the Spanish clients had their moorings and considerable investments). Things went more smoothly thereafter, even though the topic was the incendiary one of the alleged illegality due to EC law of a British Act of Parliament.

David was one of the creators of European legal practice at the English bar. He was not just a practitioner but a force of professional nature. He helped found the Bar European Group, a tiny cluster of enthusiasts at the beginning. Relying on barristers' taste for travel to agreeable spots where good food is available, that entity grew through cheerful meetings all over Europe, exploring legal theories,

expressing doubts, chasing hypothetical legal hares, and having a good time while sharing professional opportunities.

Now, I have been asked to speak about the court and about advocacy there. I could preach at great length on the merits of clarity, simplicity, relevance, a touch of humour, a clear order of ideas, an edge of passion and focus on the essence. These are timeless requirements of the effective advocate. David had them, in abundance. But let me share some thoughts about the fascinating court where I sit, albeit a little precariously.

Languages

While I was aware of the concept of a court with 24 official languages and one working language, I didn't realise how important that is. Translation is a great richness, but also a heavy burden in terms of costs, effort and delay. Nearly half of the court's staff are engaged on that task. The translation service produces something like a million pages per year. A competition appeal in a dominance matter may well have 200 pages about a decision of 500 pages.

A trademark appeal in Spanish may have 40 pages, plus ten annexes. Translating that into French will take maybe 6 weeks. This number varies between the different languages and may also depend the time of the year (June and December tend to be busier). As a result, the exchange of four written pleadings in one case may take 28 weeks before the oral hearing can be set[3]. This does not mean the judge sits still for 6 weeks if judge or staff are able to read the original pleadings. In the meantime, the documents have usually already been notified to the parties.

[3] This number can be derived from the statistics for IP cases (status 2017):
Average duration for the written phase in cases with an oral hearing = 4.9 months plus translations of all procedural documents = 1.6 month i.e. 6,5 months in total; if there is no oral hearing it is 5.3 month in total (i.e. about 23 weeks); cf http://intranet/gt/site/statistiques/documents/Statistiques_Judiciaires.pdf (page 36).

The hearing – if one is requested (since hearings are often not requested since they are not part of rational forensic tradition in such cases) – needs interpreters, who will match to the language of the case the needs of the judicial formation. The interpretation can be seamless communication between bar and bench if the job of the advocate is well done. Well organised speech, short sentences and appropriate speed help to deliver to the judge an excellent abbreviated version of what counsel is saying. It is surprising how many counsel read, at too high speed, the self-same points they have already made. When that happens we collectively breathe a sigh of regret and wish for an advocate of the calibre of David Vaughan. Indeed when a hearing is wasted, the utility of the process is put in question. Why bother if we don't learn anything? I can cheerfully record that my fellow judges have frequently commended the quality of UK and Irish advocacy.

By the time the hearing occurs the judicial formation will have discussed the merits and the law and will have a clear preliminary view (it might be "I want to hear the parties on the question of prior use before expressing myself") which will have already been debated within the chamber. But I have certainly attended hearings where we ended up in a different position than we started. So that is why it is best to address orally the key questions upon which the case hinges. No need to recall the obvious; and no need to exaggerate the merits of the argument.

Different judicial traditions

We sit in chambers of 3 and 5, more often than in the past. My current colleagues come from the legal traditions of Austria, Denmark, Italy and Poland.

It has been particularly interesting to see the mixture of personalities at the Court. Those named to a position in the Luxembourg courts have come from a variety of previous careers. Some have been national career judges, others were professors, ministers, civil servants, diplomats, a head of state and a candidate for head of state. One or two were ex-soldiers, and at least one a Resistance hero. Some were practitioners. Most of them have spent over 30 years in their national hierarchies before Luxembourg. We thus are more different than if one were to pick 28 solicitors or 28 High Court judges or 28 clerics or 28 numismatists or 28 policemen, each shaped by common experience in society, profession and culture.

There are fundamentally different notions of the roles, functions, and habits of the civil law (let us say French) judge and the common law (let us say English) judge. In the French constitutional model, judges are merely the mouthpiece that utters the legal principles, already in existence, determining the outcome of a case. Far from being anecdotal, colourful, or even gossipy, a French appellate judgment not so long ago might consist of one short, dense sentence. By contrast, the senior English (or Irish or Scottish) judge is commonly a former advocate, exotically dressed, enjoying immense independence. This robustness and independence have deep roots in national history.

As you well know, in England, Scotland, and Ireland, counsel and judges engage in a public debate. Oral argument forms thus a vital part of the judicial determination. Questioning of the advocate can be so fierce that one could characterise it as a blood sport. In my own jurisdiction of Scotland, an appeal court in the nineteenth century was renowned for the ferocity and intemperance of its judges: due to "constant interruption from and conversation upon the bench the arguments of counsel were torn to tatters." [4] "... a tornado which either engulfed the pleader or laid him out limp and wan ... Several times counsel even sat down and

4. Robert S. Shiels, *The Ordeal of Advocates in 1896*, 2006 SCOTS L. TIMES 209, 211.

confessed themselves unable to plead because of the attitude of the bench . . . ."
"One often sees," wrote one professor,

> "an unfortunate counsel trying to face four questions at once, all on different points, like the early Christian exposed in the arena to fight simultaneously with an elephant, a tiger, a leopard, and a bear. . . . That the Court are entitled to every deference is conceded, but their title depends on their respecting the independence of the Bar. Nor is this a question of personal privilege; the rights of counsel are the patrimony of the Bar held in trust for the public, granted as the main guarantee for justice and security."

In the civil law tradition, counsel are usually heard in silence, at least when making their principal submissions. (There is a practical reason – if two interpreters are at different stages in a long sentence when an interruption comes, confusion is certain). Indeed, in France and Belgium, for example, and other Member States as well, it is somewhat improper for the judge to reveal, via questions, what might be a personal view of the merits. After witnessing a robust bout of sparring between myself and an English QC (and good friend), one of my fellow judges said afterwards that he found such exchanges very interesting but that if he spoke like that he would be the object of judicial discipline.

Visible judges or visible courts

A separate manifestation of the phenomenon is the relative personal prominence of senior judges. Certain English and American judges have achieved celebrity status over the years, their names being well-recognised by members of the public: Chief Justices Warren or Burger, (or, for that matter, Chief Justice Marshall), or

Lord Denning, are well-known figures, celebrated and revered (or reviled by those who dislike their judgments). In continental Europe, however, the identities of individual judges will be less well-known. Of course, lawyers will know the names of the judges and their qualities, but the wider public will not. The European courts fall into the continental tradition. The recent dramas surrounding judicial nominations to the US Supreme Court are far away from the polite private questioning by the 255 Committee which new nominees must undergo.

So the ECJ may have for good or ill a celebrity status but its action is corporate and collegiate. The civilian judge in Luxembourg will be accustomed to a cautious legal tradition of seeking identifiable errors of law; and of addressing only those questions which are put before them. I underestimated the importance of framing arguments as actionable pleas of law. What is the legal error?

As a result, sadly or otherwise, European court judgments are in style less colourful than their UK counterparts. The individualism of judges is diluted in collegiality. (The opinions of Advocates General are an exception to this rule). The key language is stated, not trumpeted, and may have to be searched for. In the early years the ECJ followed the French tradition of drafting the judgment as, grammatically, a single sentence. The judgments of both EU courts are often not easy to read for the layman. Reconciling thoroughness with accessibility is a perpetual challenge.

In competition cases we are regularly faced with the question of how to reconcile the fact that our job is the review of legality with the need to examine carefully in fact and law the determinations of an entity which will almost always have a legal basis for its action. What is the legal error? Why was it wrong, legally, for the institution in a competition case to conclude that big ones and small ones were in

separate markets? Should we be looking for manifest error or mere error? What margin of discretion does the Commission enjoy? Those questions can be much less obvious on the bench than they seemed in private practice.

Sir David Edward, a former judge, describes an episode when his draft judgment needed to be made less lively:

> "When I produced my first draft judgment, one of my colleagues said, 'That is a very good opinion, now we must make it a judgment. We must make it aseptic.' The scope for individuality lies, not in the public expression of one's own opinion, but in the development of personal relationships so as to be able to persuade others of one's point of view and to accommodate or reconcile divergent points of view."

In most European countries, judges' function is to come together to discuss and either unanimously or, if necessary, by a majority decide how the case ought to be decided and then to set out the reasons for that decision in as objective a manner as possible. Judges don't write personal opinions; they participate in the writing of judgments. In other words, we have to make it impersonal, and objective. That is the essential difference between that style of judging and the style of judging in the common law system. As Sir David Edward, surprisingly you might think since he is by no means an unexciting man, says the judgment ideally should be objective and to an extent unexciting.[5]

In appeals before the General Court, the applicant must identify the moyens, or pleas in law, on which it relies. Each moyen may be divided into subarguments (branches). The tradition of the court is to address each of these points. That

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5. Interview by Don C. Smith, Professor, Univ. of Denver Sturm College of Law, with Judge David Edward, European Court of First Instance, European Court of Justice, in Edinburgh, Scotland (Nov. 21, 2005), *in* THE JUDGE DAVID EDWARD ORAL HISTORY PROJECT: SESSION IV: YEARS ON THE COURTS: PART I—1989-2004, HOW THE COURTS OPERATED (2006), *available at* http://www.law.du.edu/david_edward/transcripts/pdf/2006_05_17_session_4.pdf (footnote omitted).

practice contributes to the length of our opinions, but it reassures the applicant that nothing has been overlooked. By contrast, an English judge writing an opinion might focus on the key question and dismiss the subsidiary ones quite briefly.

Dissenting judgments

There are no dissenting judgments from members of the European courts in Luxembourg. Only the judges know how unanimous the judgment was. In some early cases, not every judge signed every judgment.

Today all members of the formation sign. The practice is that the court tries to press on until the judges reach consensus in the form of a decision which is acceptable. The minority and the majority work together in the drafting process, so the final text signed by everyone may be significantly different from the first draft. The juge rapporteur may indeed be in the minority. Compromises may dilute the precision of the ruling, but there is only one ruling. It may be the view of all five or all three, or by a majority (3-2, 4–1, 2–1). The judgment will have been adjusted, quite possibly in the course of lengthy deliberations, to take account of the minority's views.

This bring us naturally to the topic of dissents, a subject which is discussed more outside the court than inside it. The traditional case against dissents is that dissent in a politically sensitive case could mean that ministers, officials, or government departments might feel dispensed from the need to respect the judgment of the majority. Alternative recommendations expressed with vigour might leave the referring national court uncertain of what indeed was the law. Even if the identity of the dissenter were kept secret, the identified risk is that less weight would be

attached to the majority judgment. I note in passing that some supreme courts have dissents, such as Spain and Germany. Depending on the jurisdictions, it may be possible for the dissenter or dissenters to be identified or not to be identified. Dissents exist in our sister court in Strasbourg, where I think they contribute to establishing legal trends.

In some areas the law has developed in a jerky manner, with big decisions, almost violently, such as compulsory licensing in competition cases, exactly because there are so few cases. A dissent, by recording an alternative view, (saying "maybe, but") might help to clarify reasons to hesitate. A "winner takes all" judgment in a new field may suggest that there is only one, unhesitating, line to take. Be that as it may, there is no consistent practice among the Member States with respect to dissenting judgments. And it is not a subject which is in prospect in Luxembourg. Naturally every court is interested in making its judgments as clear and intelligible as possible. And as decisions become longer and longer the judicial challenge gets greater.

Alternative approaches can be expressed in academic articles. It is not improper for a member of the court to commend a particular view of the law in an academic context. So the absence of the dissenting voice in a judgment does not reduce the vigour of the debate about the principle; the challenge is to avoid uncertainty via a majority judgment when both sides get language which satisfies them.

The early days

In the early days, there were empty tracts of legal land to conquer and England was not the only land with knights ready to ride forth in search of wrongs to right. Euro law was a savannah of open parkland which had fertile ground. A new principle could

grow successfully with lots of space to expand. Nowadays undeveloped terrains are rarer. Mr Schrems, the Austrian privacy activist, has maybe discovered a new one regarding data protection.

The first argument which I attended in Luxembourg was Commercial Solvents in 1973. When I first appeared there as an advocate, all the counsel in the case were invited to drinks with the judges afterwards (DCL/Bulloch). A whole day – as best I recollect – was devoted to the case. So the court's caseload was not too large. I used to read every ECJ judgment, some more attentively than others, and it was not a great burden. A case like Watson/Belman was noted, discussed, and fitted into a wider constitutional context. Today, the question of whether an aupair had properly registered at the local town hall would not get a lot of attention by the leaders of the bar!

Other Advocates who expanded the law

European law has advanced, especially, in the early days, thanks to the creativity and tirelessness of talented lawyers. David Vaughan created ructions in several areas of law (Factortame, Sunday Trading, Stanley Adams, Courage / Crehan).

Others changed the law in more specific sectors. Maître Luc Misson identified European law arguments in a succession of matters affecting individual persons. He was early in his career also the counsel of the French citizens in Liège who were threatened with deportation to France for having sat in the red-light district of Liège along with Belgian women engaged in the same activity. And he much later represented Jean-Marc Bosman, the footballer who – for good or ill – brought to an end the system of transferring players who were out of contract.

In between, was student fees. In 1983, a French student, Francoise Gravier, went to Belgium to pursue a course in cartoon art in the city of Liège.[6] She was charged an enrolment fee for the course, which her Belgian colleagues were not required to pay.[7] Now, the Treaty of Rome did not deal with education. Luc Misson brought her case before the Belgian courts, arguing that although educational organisation and policy were not provided for within Community competence, these issues were nevertheless "not unconnected" with Community law.[8] The EEC Treaty provided for general principles to be laid down in relation to a vocational training policy and in order for this training policy to be gradually established and extended, freedom to choose the place of training was important.[9] Freedom of movement of workers was a cornerstone of Community law.[10] The ECJ, to which a preliminary reference was made, conceded that conditions of access to vocational training fell within the scope of the EEC Treaty.[11] Article 7 of the EEC Treaty prohibited discrimination on grounds of nationality.[12] The ECJ held that the imposition of an enrolment fee only on non-national students, as a condition of access to such training, was contrary to article 7.[13] And lots more cases followed on, skilfully chosen.

Students who had already brought an action for repayment of the enrolment fee before the ruling in Gravier v. City of Liège were to be repaid the enrolment fee.[14] Then 17 other French nationals pursuing studies in the gunsmithing section of the municipal technical institute of Liège.[15] The students had paid the enrolment fee, and none of them had contested it until after the Gravier judgement.[16] The ECJ held that a "right to repayment of amounts charged by a Member State in breach of [Community rules] is the consequence and complement of the rights conferred on

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6. *See* Case 293/83, Gravier v. City of Liège, 1985 E.C.R. 593, 607-08.
7. *Id.*
8. *Id.* at 612.
9. *Id.* at 612-13.
10. *Id.*
11. *Id.* at 613.
12. *Id.*
13. *Id.* at 615.
14. *See* Case 309/85, Barra v. Belgian State, 1988 E.C.R. 355, 357.
15. *See id.* at 371-73.
16. *Id.* at 372.

individuals."[18] A national court must not apply a rule which makes impossible the exercise of a right conferred by the EEC Treaty.[19]

Up until this point, only vocational training could benefit from Gravier. Then came Mr. Blaizot, a French student of veterinary medicine .[20] Could a university course in veterinary medicine come within the scope of vocational training for the purposes of the EEC Treaty?[21] Such a course was said to be academic, not vocational.[22] The ECJ held that any form of education which prepares for a qualification for a profession, trade, or employment will fall within its definition of vocational training.[23] In a later case, Belgian State v. Humbel, about school fees, the ECJ held that "a year of study which is part of a programme forming an indivisible body of instruction preparing for a qualification for a particular profession, trade or employment . . . constitutes vocational training for the purposes of the EEC Treaty."[24] In each case, Maître Misson was the counsel.[25]

Anthony Lester, Lord Lester of Herne Hill QC, was involved in a succession of well-timed cases which advanced the law on equal pay. Starting with Macarthys v Smith it was established that equal pay rules were relevant not only where male and female colleagues were working at the same time and in the same workplace. Then came the case of Worringham v Lloyds Bank, where the target was pension benefits and of Jenkins v Kingsgate where the comparison was between a female part-time worker doing the same job.

My last example of the expansion of the law via creative lawyering concerns the free movement of goods, the Dutch lawyer, Mr. de Savornin Lohman, a

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18. *Id.* at 376.
19. *See id.* at 376-77.
20. *See* Case 24/86, Blaizot v. Univ. of Liège, 1988 E.C.R. 379.
21. *Id.* at 381.
22. *Id.*
23. *Id.* at 408.
24. Case 263/86, 1988 E.C.R. 5365, para. 13.
25. *See id.*; *Blaizot*, 1988 E.C.R. 379.

practitioner of the old school, and his client Centrafarm, a pharmaceutical wholesaler whose reputation was more modest. Trademark disputes before national courts usually involve such issues as allegations of confusing similarity between marks affixed to competing goods or assertions that marks have lapsed.

Prior to the Centrafarm revolution, a trademark holder was permitted to challenge the sale of goods bearing its mark, even if the holder or an affiliate of the holder had legitimately affixed the mark in another country. Thus, a trademark holder was sometimes able to prevent unwelcome imports of genuine goods from another country. Market forces would gradually lead to some similarity of pricing for most products subject to cross-border trading. Tennis balls, Scotch whisky, jeans, and electronic consumer goods were sold through too many channels for trademark infringement actions to block their importation.

By contrast, pharmaceuticals are sold at prices effectively set by the health care authorities, which also pay for them via the public health systems. Those prices vary greatly even between contiguous Member States. Because pharmaceuticals were distributed within a legally closed system by a few licensed wholesalers, the use of intellectual property rights could be an effective mechanism to prevent such trade. Correspondingly, cross-border trade would not change the pricing preferences of Member States.

A corporate group wished to use national trademarks and patents to block the unwelcome importation and sale of genuine goods from one Member State to another. How to separate the right to challenge spurious goods from genuine but commercially unwelcome imports? The Court of Justice held that the rules on free movement precluded the right to prevent cross-border trade of genuine trademarked products that had been marketed elsewhere in the common market by a member of the local rightholder's group. In a common market committed to

the elimination of national economic frontiers, a manufacturer could not be allowed to use trademarks to prevent free trade in genuine goods among Member States by licensed wholesalers such as Centrafarm. Mr. de Savornin Lohman's client became a legal celebrity and more cases followed.

One of my particular interests when at the bar was procedure and due process in competition cases. David naturally was very active in that field, and ICI's epic series of cases made new law and confirmed his reputation in the rapidly expanding field of competition law.

So David was not unique in finding a legal vine and tending it well so that it grew. But his vines made a whole vineyard of Grand Cru stature.

Concluding remarks

I come to an end. David Vaughan's career was focused on the novel, obscure, potent, promising field of European law. He owed much to the opportunity offered professionally by the new economic quasi-constitutional legal principles set forth in the Treaty of Rome. Those who started their careers then were lucky. Each judgment was a choice novelty, to be carefully analysed.

His career was centred on the European adventure. He helped create great swathes of new doctrine. Others here tonight shared in the exciting expansion. He was sometimes on the winning side, sometimes not. His practice flourished as did those in his slipstream. He saw opportunity; he encouraged others; he helped achieve great things. Of course there was a political component as well as technical legal ones. But this Bar thrived in it.

It would be comfortable to stop here with a rousing toast to a splendid, fun, larger than life, engaging figure. But I can't refrain from commenting on the times we live in. David died before Brexit reached its current depths. It pains me to quote with approval the following sentences from a British public figure:

> '"When a community is going through some period of stress … they are historically far more likely to turn on scapegoats in their midst. Anxiety is transferred to some readily identifiable group: Jews, foreigners, homosexuals, gypsies ... they become a catch-all explanation for everything that has gone wrong in a society. Your kids can't get a house? It's the immigrants. Can't get a job? It's the immigrants. Can't see a doctor in A&E? It's the immigrants ... People are only willing to project their anger on to a particular group, and some politicians, alas, are only too willing to assist.'

Who wrote that? Boris Johnson MP, until recently Foreign Secretary.

Archbishop Justin Welby spoke of:

> "…cracks in the thin crust of politeness and tolerance of our society, through which, since the referendum, we have seen an outwelling of poison and hatred that I cannot remember in this country for very many years… It is inequality that thins out the crust of our society and raises the levels of anger, resentment and bitterness. The tools for tackling inequality are as readily available as ever. They are the obvious ones of education, public health – we should add today mental health – and housing."

I sometimes fear that England has lost, for the moment at least, the welcome and the tolerance for which it was famous and to which strangers were accustomed. Over four million people outside their country of citizenship are in limbo. A

moving book entitled "In Limbo" has just been published recording the pains and fears of ordinary people confronted by the uncertainties of becoming unstable, unwelcome, alien, legally vulnerable, a condition in which some 4 million people today find themselves. The challenge of being an alien is real, even in a democratic non authoritarian state. The Windrush episode should make us, the privileged, blush. Scepticism about foreigners is worst for the poor, the inarticulate, the minority, the unconfident. Universities, restaurants, the Inns of Court, technology companies, hospitals, hotels, fruit farmers want to recruit the best and the brightest. Yet our EU27 visitors have been leaving due to verbal abuse in the street and prescriptive detailed regulation which comes close to hostility.

I suggest that we not lose sight of the principle that the public authority must treat the unrepresented weak with decency and fairness. Separately, let us remember the principle of the rule of law, and the role of the court. Lord Neuberger referred to where we are last month in Edinburgh thus:

> "In the woeful litany of ignorance which have bedevilled the public debate about the UK's membership of the EU, no topic has been the subject of more misconception and prejudice than the Court of Justice, the CJEU. The general objection to the CJEU, namely that it represents an interference with the UK's sovereignty, does no more than restate the objection to the UK being a member of the EU: it is inherent in, and fundamental to, the whole concept of the EU that it will have rules which all members must obey; and if there are such rules, there has to be a supranational body which definitively interprets those rules to ensure consistency of application across all member states."

It is a lovely idea to celebrate a great advocate and to do so in a building which has served to deliver fun and learning to lawyers for nearly 500 years. But I think that this gathering, honouring David and his contribution to EU law, cannot not note the barely imaginable threat which now confronts that law and the infrastructures of our daily lives which they support.

So while remembering David Vaughan CBE QC, legal titan and creative wizard, let us also say add a word that he would endorse. We should know that geography compels cooperation; and that Brexit is not as easy as resigning from the golf club. We should have learned from history that badly drafted legislation and unrealistic treaties might not survive crises or practical problems. Beating the enemy should not be the goal. So let us calm down, breathe deeply, refrain from mocking or cheap accusations of bad faith, reproach zealots, and encourage sensible discourse. And hope for a rational outcome. I think David Vaughan would cheer for that proposition.