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## A Legal Lens: Brexit, Access, and Equity in the United Kingdom and the United States

Kerry B. Melear  
*University of Mississippi*

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**Kerry Brian Melear**  
Professor of Higher Education  
Leadership & Counselor Education  
*The University of Mississippi*

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As I concluded teaching Comparative Higher Education in London in July 2016 and began preparations to return to Oxford (MS), I reflected on the unique and dramatic events that my American students and I enjoyed the unprecedented opportunity to observe firsthand.

We bore witness to the historic referendum ushering the "Brexit" (British Exit) from the European Union (EU), the resignation of a Prime Minister, and the fascinating political machinations inherent in selecting a new one. Theresa May has assumed the mantle of Prime Minister and has formed a government at the request of the Queen. Ms. May is the first female Prime Minister since Margaret Thatcher, another historic milestone.

London reeled as a result of the Brexit, as did the entire UK, and uncertainty abounds regarding the future outside of the EU. For example, a fundamental legal question remains debated concerning how Article 50 of the Lisbon Treaty will be initiated to effect the UK's withdrawal from the EU: in this constitutional monarchy, must Parliament first pass a measure invoking Article 50, which requires a negotiated withdrawal, or does the Prime Minister possess the authority to move forward? Regardless of the legal posture adopted, it is going to happen, apparently by 2019 according to *The Times* (Chorley, 2016).

The similarities and differences between our countries have resonated with me as of late, particularly with regard to issues related to education. What will the Brexit mean for the function of education across all sectors in the UK? Many professionals and scholars are rightly concerned because, as yet, the future is murky.

Brows have already furrowed in the UK higher education sector about the deleterious effects of leaving the EU framework in the contexts of pensions, research, collaborations with EU institutions and colleagues, administrator and faculty recruitment, and a host of other issues. Access to education and equity are not least among these issues, in my view, which leads me to consider our own US efforts to improve on those scores---and how easily our efforts can be confounded by influences we may not anticipate.

When college tuition in the UK was increased to £9,000 per annum (approximately \$12,000) a few years ago, which is another controversy in its own right, this led to the drafting of access agreements between universities and the government. These agreements, in a quick summary, directed that certain revenue streams would flow toward increasing applications from low socio-economic status and under-represented students, increasing support for those students who were admitted, and buttressing efforts toward retention and completion (McGettigan, 2013). These laudable initiatives required millions of pounds and serious commitment.

Brexit, on the other hand, may have a different, unintended, and largely unconsidered effect on access and equity to education. To illustrate, according to the *Times Higher Education* (the UK equivalent of *The Chronicle of Higher Education*), non-UK European Union students, who currently pay the same fees as UK students, would eventually face international student tuition rates and ineligibility for the government loans and subsidies that they currently enjoy (Havergal, 2016). This will likely lead to a considerable decrease in post-secondary enrollments, which is material in a funding system based significantly on headcount figures.

There is also concern in the UK higher education community that this could lead to the closure of some master's programs, as access to them becomes financially impractical (Havergal, 2016). And what of undergraduate education? What implications might this have for the training of important professions, such as teaching? Likewise, UK students would face the same financial conundrum while studying in the EU. Similar concerns exist with regard to professional faculty and staff (Elmes, 2016). Lack of free movement will result in quality and qualified faculty and administrators from EU nations, and their children, eschewing the UK because of the prohibitive costs of living in a non-EU Great Britain.

Thus, the UK potentially stands to suffer in the education context because of the Brexit, not only as a result of significant unexpected difficulties related to research or collaboration, but also because of the loss of qualified students, faculty, and administrators who bring unique texture to UK education and skills that support the economy. This is a costly restriction on access to education for a commonwealth that has pledged to support access in other ways.

Access, equity, and adequacy of education: school finance litigation in the United States has hinged on these tenets for decades as courts seek to shape the contours of a free and appropriate public school education. In higher education, the United States Supreme Court recently upheld the use of affirmative action in admissions in *Fisher v. University of Texas* (2016), underscoring that access as a concept reaches to law and policy in the United States. Colleges and universities in the US expend significant resources to support access to our campuses and see students through to completion. Schools across the country battle to do the same in the face of budget restrictions and evolving federal and state regulations related to K-12 education.

Because we always have more to do, what can we learn from the Brexit? While the US does not face such a scenario, we are not without our public policy concerns, many of which reach the courts. To me, one major facet rings true: public policy decisions, massive and sweeping, statewide, or local, should be carefully considered and vetted, particularly with regard to tendrils that may reach into the future to unforeseen ends. The referendum in the UK to leave the European Union was roundly opposed by the education community and came as something of a surprise to those in governmental power, resulting in the resignation of a Prime Minister. In my view, public policy should not come as a surprise, but perhaps that is wishful thinking on my part.

Questions concerning the potential effects of the Brexit will persist for some time, including those with regard to the effect on access to education in the UK. The Brexit morass provides the US education community an opportunity to ask thoughtful questions and reflect on the importance of judicious policy-making as we press forward with initiatives designed to support our students, staff, administrators, and faculty. The historic Brexit also reminds us that we must be mindful of the challenges faced by other countries as we continue to evolve into a more globalized society.

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**Kerry Brian Melear** is a Professor of Higher Education in the Department of Leadership and Counselor Education at The University of Mississippi. **Dr. Melear** can be contacted at [kbm@olemiss.edu](mailto:kbm@olemiss.edu).