



Policy Study No 133

# Britain and the Community:

**The right way forward**

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CENTRE FOR POLICY STUDIES

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## Introduction

Twenty years have passed since Britain committed itself to the Treaty of Rome and thereby became a member of what was at the time still formally designated the European Economic Community and known more familiarly as the Common Market. In the intervening period the relationship between Britain and the Community has nearly always been uneasy, often enough marked by bouts of irritable disagreement and argument. These tensions persist and, as the argument about ratification of the Maastricht treaty indicates, show few signs of fading away. The uncomfortable fact is that even after two decades of involvement in the Community there is not much evidence to suggest that the British people have in the majority become fully reconciled to Community membership and all of its consequences.

This state of affairs does not, however, mean that there is a strong impulse to reject the Community and all its works, or that there is any widespread appreciation of what would be involved in leaving it. Most people in Britain are generally responsive to arguments of national self-interest of the kind commonly summed up in the assertion that British industry and financial services could not hope to remain profitable and capable of competing on a world-wide basis if this country were to be outside the Community. In other words, whilst remaining quick to react to any disadvantages seen to flow from Community membership, they are happy to accept whatever economic benefits it brings. In their eyes the Community is chiefly a means of increasing economic and social welfare all round, and it remains hard to discern in the population at large many signs of something like an inner commitment to Community membership, a deep-seated shift of sympathies and sentiments in favour of trying to become as like our continental neighbours as possible. In particular, there is nothing to show that most people would be ready to adopt many of the political habits and governmental practices of their Community partners. Of course, at what is often called the élite level of society keener support for the Community is generally expressed, some of it no doubt reflecting professional activity and



experience, but some of it also expressing genuinely cosmopolitan sympathies and firmly held beliefs about the political options open to Britain. Many are influenced too by the widely held view that the Community has for a long time now contributed decisively to a degree of political stability in Western Europe never known before. Yet even at this level of more active concern with Community affairs doubts and reservations remain, and nowhere are they more obvious than within the Conservative party. All this reinforces the conclusion that compared with its continental neighbours Britain continues to be lukewarm and suspicious in its attitudes towards the Community. The British are evidently irritated by its growing interference in the regulation of their domestic affairs, often regard its procedures and methods as alien to their own political and legal traditions, and above all tend to hope that the Community is and will remain for the most part a strictly limited economic enterprise. On that basis its incursions can perhaps be kept at bay. Of a widespread desire to go off down the path of 'ever closer union', a 'united Europe' or 'European Union' there is hardly a sign.

These tensions between Britain and the Community have deep roots, and it may be that they will turn out one day to be so serious as to require substantial modification or even termination of its membership.<sup>1</sup> However, the aim of this study is not to argue a case for withdrawal from the Community. Such a policy is at the present time quite unrealistic, and would be unlikely to have much popular support either. Instead its purpose is to explore the underlying reasons for the difficulties experienced by Britain in adapting to Community membership and in giving whole-hearted support to the continuing development of the Community. The analysis to be offered will point to the conclusion that there are inherent obstacles, grounded in our history, and in the different history of our European partners and of the Community itself, to fulfilment of the aspiration 'to be at the heart of Europe'. Almost certainly this is not Britain's destiny, at any rate in relation to the Community as presently understood by most of its members. Furthermore, it is necessary to remember that there is a complex pattern of economic and political interests woven into the fabric of the Community which inevitably stands in the way of British efforts to exercise a decisive influence in it. This rather bleak conclusion leaves the country facing uncomfortable policy options: have we no alternative but to

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soldier on, recognising that one day the marriage may yet break down, so rendering divorce inescapable? Or should we stay in, put a brave face on it, and do our best to nudge the Community in directions we regard as realistic and desirable? And if we do that, what prospects does Britain have of winning friends and supporters in such an endeavour?

# 1

## What we originally signed up for

There is no doubt that the treaty of accession to the European Communities was sold to both Parliament and people as a strictly limited undertaking.<sup>2</sup> Britain was said to be joining an essentially commercial association, a group of states which had formed a common market, that is to say a customs union providing for internal free trade and protected by a single external tariff. This association was committed to market principles, including removal of all barriers to competition and free movement of persons, goods and capital. Certainly many of those closely involved in seeking membership were aware that it might have serious political implications, in particular those arising from the fact that the Community was founded on acceptance of some measure of common policy and law-making, and possessed for some purposes its own legislative, executive and judicial institutions. Nevertheless, it was possible at the time to gloss over those political implications and to argue that they were by no means as serious or as immediate in their effects as some opponents of Community membership asserted. It was argued that the loss of sovereignty involved in participation in the supranational institutions of the Community would be minimal or largely symbolic, and that anyway it was a price well worth paying for the prospective economic benefits of membership. In those days, what might be called the 'top table' argument was less prominent than it is now: there was less anxiety then about being left out in the cold. In the international arena and despite the fragile state of the British economy in the early 1970s, it was still taken as beyond question that Britain would carry political weight inside the Community. So the marriage was celebrated and the risks of non-consummation played down. The overwhelming public perception, endorsed in a reassuring way by Governments too, was that Britain was joining a 'common market', and certainly not an emergent European economic and political union.

As is well known, the relationship was then difficult right from the start. There was plenty of hostility towards Community member-



ship within the Labour party which returned to office in 1974 committed to re-negotiation of the terms of entry. Mainly in order to circumvent internal party discord, the then prime minister, Harold Wilson, decided to put the outcome of the somewhat specious 're-negotiation' conducted during 1974-75 to a popular vote which took place in 1975. This resulted in a decisive vote in favour of what was by then the status quo, i.e. continued membership.<sup>3</sup> Nevertheless, the first two years of Community membership had not been an auspicious beginning. They were followed by years of rapidly increasing economic weakness in Britain, with inflation on the verge of slipping out of control for a short time in 1976. The arrival of the first Thatcher Government in May 1979 ushered in a radical phase of economic stabilisation which did not, initially at least, make Britain any stronger as a player in world markets. But the Government's whole approach to the reintroduction of market-oriented policies did make it strongly suspicious of the protectionist elements present in the Community, whilst its determination to cut public expenditure at home fuelled the demand for a reduction in what were held to be Britain's excessive contributions to the Community's budget ('our money' as it was so often called). This led to acrimonious arguments from which Mrs Thatcher finally secured in 1984 a revised financial settlement more favourable to Britain. To this day Britain continues to enjoy a 'rebate' on its financial contributions to the Community, a special arrangement not popular with several member states.

In Mrs Thatcher's understanding of the Community the 'common market' view of the character of the association was uppermost and, indeed, there is some evidence that this was what she and many colleagues thought they had accepted in 1972. It was a deal about trade and commerce, and in its day-to-day operations we (and presumably other Community members as well) were fully entitled to go for the best bargain that could be secured. It must be assumed that this was still Mrs Thatcher's view of the matter in the negotiations culminating in 1986 in the Single European Act, an agreement to establish as from 1 January 1993 a single market. But whatever may have been the British Government's expectations at the time, it soon became clear that the move towards a genuine single market required a radical extension of Community powers, notably those exercised by the Commission in Brussels, and very large steps by

member states towards harmonisation and standardisation of a wide range of conditions and powers incidental to the creation of a single, unified market.<sup>4</sup> It has to be assumed (and conclusive evidence on this point is scarce) that the British Government still believed that these new commitments represented no more than yet another stage in the long process of economic integration, another step forward in the pursuit of what was essentially a commercial undertaking.<sup>5</sup> By 1990, however, it was becoming more and more difficult to sustain this belief. No politician expressed alarm at the prospect of a qualitative shift in the direction of Community policy and commitments more vividly than Mrs Thatcher, who already in September 1988 in her Bruges speech had presented a vision of a Europe of freely cooperating nation states. But meanwhile another clock was also ticking away.

As far back as 1979 Germany and France, supported by several other member states, had begun to establish a European Monetary System (EMS) embodying an exchange rate mechanism (ERM) designed to hold their exchange rates stable within pre-determined bands. There was pressure during the 1980s for Britain to join the ERM too, and some Ministers, for example Nigel Lawson, then Chancellor of the Exchequer and Sir Geoffrey Howe, then Foreign Secretary, came to favour such a move both for the sake of exchange rate stability in Europe and the downward pressure on inflation which it was expected to exert. But ERM membership was long resisted by Mrs Thatcher who remained critical of the whole idea of fixed exchange rates and was increasingly worried by the implications of entry for the freedom of manoeuvre in economic policy-making likely to remain available to the British Government. Eventually her opposition was overcome and, despite the obvious risks after the recession hit us in 1989, we did join the ERM in 1990. Within less than two years the experiment collapsed ignominiously when, in September 1992, Britain was forced out of the ERM following a sharp fall in the value of the pound against the mark. This débâcle, in many respects a high water-mark in Britain's troubled relationship with the Community, came at a particularly difficult time for the British Government which was under heavy criticism for allegedly failing to do anything about the economic recession. Yet though departure from the ERM was a political blow to the Government, it also provided more scope for manoeuvre in



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coping with the effects of an intensifying recession by relaxing some of our Community commitments.

Another severe challenge was, however, already on the way. Some months previously, in February 1992, the Government had put its signature on the Maastricht treaty, a far-reaching collection of amendments to and extensions of the earlier treaties establishing the Community. The impetus to embark on the process of treaty revision came chiefly from Jacques Delors, President of the Commission in Brussels, and the French and German Governments, all of whom saw in the transition to the single market both a need for further extensions of Community competences and an opportunity to press on towards a more ambitious stage of European political integration. The lengthy negotiation of the Maastricht accords, culminating in a Community summit meeting at the end of 1991, did, however, cause much pain and trouble in Britain, not least within the Conservative party and for the Government it was supporting. In order to meet the still lively hostility to ever-stronger political commitments within the Community several derogations from the treaty were secured for Britain, notably in respect of opt-out clauses in relation to participation in a full monetary union and in the implementation of the 1989 Social Charter, an agreement on the part of all members of the Community except Britain to extend and harmonise a wide range of social provisions relating chiefly to employment. But turbulence in world financial markets, continuing and deepening recession, and the growing evidence that public opinion in other Community member states was also becoming more suspicious of 'ever closer union' as planned in the Maastricht agreements, combined to fuel a new and particularly intense phase of argument about the nature of and prospects for our relationship with the Community. This deprived Mr Major of most of the political benefits he had no doubt hoped to gain from the concessions negotiated at Maastricht. Ratification of the treaty was at the end of 1992 still some months off, threatened with continued delaying tactics by Conservative rebels opposed to its implications and hostile to the Government's persistent efforts to sell it as just another benign piece of Community incrementalism. Moreover, it became clear that the British Government was ready to make final ratification dependent on a favourable outcome to a second Danish referendum on the Maastricht treaty. It was to improve the

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prospects of securing Danish popular approval by the inclusion of a variety of further opt-out undertakings that Mr Major dedicated so much effort before and at the December 1992 Community summit in Edinburgh.

Notwithstanding the Government's tactical success at the end of 1992 in having apparently steered the Maastricht boat off the rocks, Britain's relationship with the Community remains no less awkward and uncertain than it was before. At the end of nearly 20 years of membership we seem in some respects to be more or less back with arguments remarkably similar to those which raged at the beginning. Is the Community just a useful and, therefore, acceptable economic and commercial association designed to maximise the prosperity of its members? Or has it become far more than that, a European state in embryo, the groundwork of irrevocable political commitments which must one day result in our absorption within that 'ever closer union' enshrined long ago in the Treaty of Rome? Judging by most recent official comments, for example on the opportunities offered by the single market after 1 January 1993, it is the market answer that the majority of politicians in Britain from both major parties still prefer to give. But a stage in the evolution of the Community has now been reached at which it seems ever more unlikely that that answer will carry conviction either with the home audience or elsewhere in the Community. Increasingly it appears out of touch with what is happening in the Community and what is now enshrined in solemn treaty commitments.

Following this summary of some of the main landmarks in Britain's uneasy relationship with the Community, it is necessary to stand back from recent and current arguments in order to consider in greater depth why there has been so much difficulty in adapting to Community constraints. After all, if the Community is indeed regarded as chiefly an economic and trading association, then adaptation ought not to present insuperable problems. Member states can be expected to bargain toughly for their own interests, but at the end of the day compromises will usually be reached. But Britain's relationship with the Community had been marked by tensions of a genuinely political kind which go beyond disagreements about what kind of support for hill farmers can be traded against what level of fish quotas. They encompass unease and sometimes outright disapproval of how the Community operates,

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the principles on which its institutions are based, and the aims (increasingly numerous and so grandly stated) to which it is supposedly dedicated.<sup>6</sup> To lay bare the reasons for this unease we have to dig into the origins and the history of the Community. It is essential to identify the political objectives which have motivated its development and to explore the character of its institutions and the ways in which they differ from the institutional structures and forms of law evolved in the course of British political development.



## 2

### **The Political Mission of the Community: Franco-German reconciliation**

The Community is in a profound sense a French construction. It was invented by a Frenchman, Jean Monnet, and its institutional structures and methods are predominantly French. When in 1950 the proposal for the Coal and Steel Community was launched the principal aim of its advocates was to protect France and its immediate neighbours against the risks of the unilateral re-birth of a powerful and potentially independent German coal and steel industry. It was to be a way of tying German heavy industry (still seen as crucial to any military revival) to that of France, the Benelux countries and Italy, and thus of 'internationalising' in a new and original way one important element in the reconstruction of the German economy. But there was a further crucial dimension to this initiative. Politically the decision taken by Robert Schumann and Konrad Adenauer was seen by both as a vital first step towards the achievement of an enduring Franco-German reconciliation. For France it offered a prospect of security, for the new West German state it paved the way towards early and whole-hearted re-admission to the European family of nations. Fatefully, Britain refused to contemplate joining the new Coal and Steel Community, chiefly because it was not clear what it was being asked to sign up for, and anyway the Labour Government at that time was quite sure that Britain did not need to subject its basic industries to the kind of constraints proposed by its continental neighbours. Furthermore, the British Government was given such short notice of the plan that it could be forgiven for concluding that Paris probably did not care all that much about British participation.

The ambitious proposal launched soon afterwards to establish a European Defence Community came to nothing after its rejection by the French National Assembly in 1954. Ironically, it was then the British Government which took the lead in helping to secure the admission of the Federal Republic to NATO and the linking of these arrangements with Western European Union, the main purely

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European defence consultative body. But the set-back to a defence Community served to concentrate the minds of those dedicated to the advancement of Franco-German reconciliation on a more extensive programme of closer economic integration in Western Europe. Negotiations began at Messina in 1955 (with the British Government sending only an official observer). The outcome was the Treaty of Rome, signed in 1957, which launched Western Europe on what was to prove to be the far-reaching process of tying together the economies of its member states within a single free-trade area to be known officially as the European Economic Community and more informally as the Common Market. For a short time it appeared that the new French Government under General de Gaulle which came to power in 1958 dedicated to a programme of national reconstruction may have had serious reservations about the direction of development implicit in the Rome Treaty. But de Gaulle was a great realist, a man who thought in long historical cycles and endowed with a powerful sense of the destiny of his own country. He gradually overcame much of his aversion to the Community, and began to see that it could become a vehicle for the consolidation and strengthening of French influence in Europe. Additionally, he had the vision to recognise the political importance of Franco-German reconciliation and the benefits which this might confer on France in both the economic and political spheres. So the heritage left by de Gaulle included a reinforced French commitment to the European Economic Community (from which he twice excluded Britain, by then ready to join),<sup>7</sup> and to the pursuit of a Franco-German special relationship in Europe. Almost accidentally, the treaty of friendship signed in 1963 by de Gaulle and Adenauer evolved into the cornerstone of Franco-German reconciliation and collaboration.<sup>8</sup> It became the basis for regular and intimate consultations between the governments of the two countries which have for many years now effectively determined the pace of Community development and the choice of policy options within it.

The lesson of over 30 years of regular Franco-German collaboration in the development of the Community is that the governments of both countries have come to see themselves as indissolubly linked in its evolution towards an 'ever-closer union'. Whilst the institutional shape of this remains undefined, there can be little



doubt that it is intended to be every bit as much a political union as an association of states forming a single market. For France this represents a new and up-to-date edition of a traditional theme in French foreign policy: the maintenance of a leading role for France in continental Europe. For Germany, and more decisively after reunification in 1990 than before, the commitment to the Community and the goal of European union through the special relationship with France provides an indispensable guarantee against any revival of the mistakes of the past. For Germany is to a far greater extent than most non-Germans can easily imagine haunted by fear of the past and the desire to keep it under lock and key. Thus, the policies pursued so steadily since the original rapprochement between Schumann and Adenauer still appear to offer the best prospect of a constructive future for both their countries.

What any realistic appreciation of the motives of French and German approaches to the Community suggests is that there is a degree of constancy in their respective policy commitments which has been quite absent from the British perception of the Community. For France, and in particular for its influential ruling élites in politics, public administration and business, the idea of continuing to strengthen the Community, to press on towards economic convergence and monetary union, and to envisage a common foreign policy which one day will have its defence component, has come to express a dominant consensus. Such a position is a faithful reflection of the received French view of Europe in the world and of France's prospects of playing a key role in that emerging European political entity. And the consensus remains firm despite growing signs that in the French population at large there is substantial scepticism towards such policies.<sup>9</sup> The German view of the future development of the Community is not much different, though Germany does have other pressing concerns, notably the process of integrating the new Eastern provinces into the domestic German economy, and the fate of everything that was once part of the Soviet empire. After all, it is Germany that has a common frontier with that unstable part of the world. But precisely because the Germans are so reserved about their own past, they remain ready to accept a substantial measure of French political guidance, even when this seems to go against well-defined German interests. The most dramatic recent example of this is the willingness of the German

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Government to accept the scheme for European monetary union contained in the Maastricht treaty. For post-war Germany one of the most precious achievements of all has been a stable currency, the D-Mark, and the most respected institution in the country has been the Bundesbank, the guardian of monetary stability. Yet the German Government is now ready to see the mark and the Bundesbank subsumed within a Community construction which, notwithstanding whatever the treaty provides for, may well be incapable of preserving the value of the projected new European currency as successfully as the Bundesbank has done in relation to the D-Mark.<sup>10</sup> Undoubtedly the present scheme for European monetary union expresses German views of how it should be done, both in relation to the institutional structures intended to guarantee the independence of the proposed European central bank and the conditions to be met by member states entering into European monetary union. But the political inspiration driving the scheme forward has been predominantly French, and it is plainly France that hopes to be the principal beneficiary of the convergence implied by the transition to a common currency.

French success in establishing a decisive voice in the shaping of the Community through the special relationship with Germany presents British Governments with a peculiarly intractable problem. In those moments when the British Government wishes to advertise its European commitment, the reaction of Bonn and Paris tends to be, 'And about time!', though usually expressed more tactfully than that, at any rate by Germany. But when Britain is in dispute with some of its partners in the Community or with the Commission it generally finds that there is little chance of gaining support either from France or Germany. As a result it is often isolated, pushed into the now familiar position of one against 11 (or most of the other 11). In short, the special relationship between France and Germany means that the cards are very often stacked against British initiatives and preferences in Community policy-making simply because there is an underlying assumption that progress always depends ultimately on Franco-German agreement. And this is often made painfully clear by the regular conclaves in which French and German leaders join before proceeding to difficult negotiations inside the Community. As a *tertium quid* Britain is more often than not just a source of irritation. It is then

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hard to escape the conclusion that whilst Britain has so far failed to find a new 'mission' in its involvement in the Community, the ties established between France and Germany are now so strong that all those states which choose to remain in the Community have to accept the fact of Franco-German leadership, with most of the political drive coming from France. This means that in reality there is already something like a two-speed Community: on one track are those states willing and able to proceed on the basis of the kind of timetable preferred by the Franco-German duumvirate, and on the other those who either cannot so far keep up with that or do not want to accept it anyway. Britain is clearly within the second category of the second group.



### 3

## The Vision of 'ever-closer union'

For some of the early European idealists the aspiration was for something like a federal state, a growing together of the peoples of Europe under common institutions. The 'Common Market' represented for such people something almost like a diversion or false scent. However, there were also many more realistic protagonists of European unification who argued precisely the opposite. In their view it was necessary and desirable first to make progress towards a genuine common market, and then the goal of ever-closer union would be within reach as a consequence of economic integration.<sup>11</sup> With hindsight it seems that the realists were in essentials right. The dynamics of economic integration have over the years had many political 'spill-over' effects for the members of the Community. Eventually economic integration led on to the single market which took effect on 1 January 1993, and that in turn has motivated the proposals in the Maastricht treaty for further ambitious developments in both the economic sphere and in political cooperation. On the one hand it provides for the establishment of European monetary union and a European central bank by 1999 at the latest, as well as for considerable extensions of the scope for Community policy-making in many sectors ancillary to economic integration. On the other it sets up the new parallel framework of European Union with a variety of potentially crucial political functions, more specifically in foreign policy, defence, home and justice matters. Assuming that the treaty does eventually come into force, the main question will not be how far its provisions represent a major step towards closer union – in principle they do – but simply how far the Community can stick to the timetable set out for monetary union and how far its members can and will apply effectively the provisions in the treaty pointing towards a common foreign policy and an enlarged area of common policies in many spheres not previously within the Community's remit.

The British Government has been most anxious to present all this as gradual evolutionary growth and to argue that developments

under the European Union heading are likely to remain modest and slow in coming to fruition. But there should be no mistake about the extent to which in many parts of the Community Maastricht is perceived as the green light for further substantial progress towards fulfilment of the goal of 'closer union'. No matter what Chancellor Kohl may have said about his rejection of a European 'super-state' threatening national and regional identities, he has also repeatedly made no bones about his conviction that the Maastricht accords represent a decisive and essential step forward on the road towards a 'united Europe'.<sup>12</sup> This view has been echoed by several other Community leaders. Yet such a perception of the treaty bears hardly any relationship to the interpretation of it regularly put out by the British Government. Here it has been presented as essentially a limited, pragmatic document tending to reinforce the powers of national governments, even in Mr Major's words as a means of enabling us to 'carry on steering the Community away from federalism.'<sup>13</sup> Yet this is largely an illusion, in part as the result of a little noticed shift in the way the Community moves forward. This deserves some comment.

Until recently it was widely assumed that the continued advance of political integration within the Community must depend on institutional progress and development. So the protagonists of the European cause have usually been keen to strengthen the institutions, for example by conferring more powers on the European Parliament, by diminishing the role of the Council, or by reinforcing the Commission's accountability to the Parliament. But a change of approach has now occurred. Many supporters of closer political union are now putting the main emphasis first on the proclamation and pursuit of common policies and objectives, and second on seeking to increase as much as is practicable the financial resources available for redistributive policies to be pursued by the Commission. The Maastricht treaty reflects this change in obvious ways. It contains only modest amounts of institutional engineering, and much of what there is seems to be rather unpromising like the proposed Committee of Regions and Localities or the European Ombudsman. But what does occupy much space in the treaty is the affirmation of new policy objectives and the designation of new sectors of policy as appropriate for Community action or for inter-governmental action by the proposed 'European Union'. There is



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also a new 'cohesion fund' to help transfer resources to the poorer member states. This shift of emphasis towards new policy goals, nearly all of them expressed in vague and multi-faceted terminology, certainly allows for more latitude still in the interpretation of 'ever-closer union'. It becomes a union without a defined shape, dedicated to a wide spectrum of desirable end conditions. Yet despite the potential for ambiguity and for back-sliding inherent in the approach adopted in the treaty, much that it contains does constitute a distinct plus for the advocates of 'closer union'. The door is opened to new ventures and developments, the Commission retains in all essential respects its key role as the engine of policy-formulation in the Community, and running throughout the treaty is the theme of policy harmonisation, the steady adaptation of national peculiarities to common standards and methods. Moreover, even in the pursuit of European Union objectives support from the Commission and its staffs can be sought.

For Britain a whole-hearted commitment to 'ever-closer union' in this form remains hard to envisage. Whatever may be the degree of sympathy in the population at large towards the Community, whatever may be the faith of industry and commerce in the necessity of our involvement in it, and whatever may be the intensity of the belief amongst politicians and senior officials that there are no realistic alternatives to Community membership, there can at the present time be no doubt about one simple fact: the vast majority of people in Britain do not yet identify with a vision of 'ever-closer union' inside the Community, and do not see their future political destiny in those terms, whatever they might mean. Their images of the world have been shaped chiefly by their own national history and traditions; their political loyalties, even if expressed often enough with some reserve and a touch of disillusionment, remain directed towards Britain; and there can be no doubt that they still attach great value to independent self-government and would, in some circumstances, be ready to resist alien rule.

This may well touch on the most profound point of difference between Britain and its continental neighbours. Of course our neighbours too care in varying degrees about the retention of their national identity and culture. At one end of the scale we find the French who are highly sensitive on these matters, and in particular on the protection of their language. At the other end is Germany,

where many people are hesitant about anything sounding like a re-affirmation of national identity and prefer to reformulate the notion within some wider, universalist framework. But notwithstanding these substantial differences it is widely believed at the present time that national identity and culture can somehow or other be preserved without too much difficulty within the Community, no matter how relentless is the shift *de facto* towards law and policy-making by Community institutions. Acceptance of this point of view is made easy by the relative indifference of large parts of the population in the member states of the Community (excepting Denmark and perhaps, in moments of historical recollection, Ireland) towards genuine self-government as an essential component of national identity. Such a judgement does not call into question the fact that all Community states have in one form or another democratic institutions, and that on the whole these function with a tolerable degree of effectiveness in most of them (though Italy seems to be an exception, and question-marks can be placed over one or two other member states). But to have democratic institutions is not the same as having a strong attachment to self-government. For self-government is a commitment which has both a territorial and a popular dimension: it presupposes a people which wants to be self-governing and which is at home in a particular territory. There are grounds for believing that in something like this respect Britain remains strongly attached to self-government, more so than most or even all of its Community partners, with the exception of Denmark. And this is basically why it finds itself so often at odds with them. For the concern with self-government means that a British Government has constantly to think about how people at home will react to proposals and decisions which appear to be external to them and imposed upon them. What the Community does or hopes to do repeatedly raises day by day the question of self-government: who is taking decisions on our behalf and are they entitled to do so? For Britain this remains a cardinal question, indeed ultimately it is the only real political question presented by our membership of the Community. It is to be suspected that for many of our Community partners this question has been left behind, whilst for some it was perhaps never a really difficult question anyway.

In short, the driving political force behind the successful evolu-

tion of the European Community has been the French commitment to it as the principal framework within which to pursue Franco-German reconciliation and at the same time as a means of maintaining to the maximum extent possible a strong position for France in continental Europe. The pursuit of these objectives has been facilitated by the willingness of successive German Governments to go along with them, provided they did not impinge too negatively on the Federal Republic's defence relationship with the USA (a relationship rendered less imperative since the disappearance of the Soviet threat) and on the capacity of the German economy to sustain a rising standard of living at home by continuing to perform effectively in world markets. This political thrust in the Community has gained legitimacy and secured support from other member states because it has been regularly harnessed to the long-term aim of achieving 'ever closer union', an objective which remains capable of different interpretations, but which certainly has come to imply some form of European political unification firmly based on Franco-German collaboration and unity of purpose. Inevitably this has sustained something like a closed inner circle in Community policy-making from which Britain as a late-comer has generally been excluded. This problem of finding itself in a situation which has often come close to political isolation has been compounded by an institutional environment which is profoundly different from that familiar in Britain. It is this aspect of the matter, perhaps the most intractable of all in its bearing on the British adaptation to the Community and its ways, that will now be examined.



## **Institutions and Laws: Conflicting traditions**

The institutional structures and administrative methods of the Community are predominantly French in design and character. They follow the Roman civil law tradition as transmitted to modern Europe by the French state both as it evolved before the revolution of 1789 and as it was transformed under the inspiration of Napoleon.<sup>14</sup> This means that the Community and its operations are embodied in legal categories: it expresses the belief that the state as evolved in Europe is a structure of legal norms intended to contain political power by defining who may do what in the pursuit of such objectives as are prescribed by legally binding rules or affirmed in political commitments. In this European state, to which notions of parliamentary and public accountability have not been central, no clear line has generally been drawn between the spheres of politics and administration. Indeed, it is denied that such a separation can be made and the tradition prefers to see the state, embodied in its office-holders of whatever status, as a unity. The principal conception of control within this tradition is also essentially legalist, that is to say the propriety of governmental action will be guaranteed ultimately by appeal to the law and judicial rulings, though it should be noted that as the sphere of public administrative activity widens and becomes heavily dependent on economic and technical factors, so the efficacy of legalistic supervision is more open to question. But even where control through courts does apply, the judge is likely to be of a special kind, that is to say someone experienced in the administration of the state and familiar with the rules according to which it is conducted.

People in Britain for understandable reasons generally have very little knowledge of this continental European public law tradition, the main elements of which are to be found in varying combinations throughout the continent. Certainly they are vaguely aware of a long history of hostility towards it,<sup>15</sup> but they have no clear grasp of what it has meant in the shape of the comprehensive public regula-

tion of many spheres of activity left unregulated in Britain, and of reliance by the organs of administration on formal, legally enforceable procedures. Nor have they any awareness of the ubiquity of an education in law on the continent, not so much to produce lawyers for private practice as people deemed qualified for the service of the state.

Consider but a few examples, selected more or less at random. Citizens in Britain when asked even by an official body to identify themselves may get away with showing a driving licence or providing the signature of somebody from a 'respectable' profession; not so on the continent where official identity documents will usually be required. In Britain universities are, despite increasing financial and managerial encroachments in recent years, autonomous in the selection of students, the courses and qualifications they offer, the appointment of their staff and so on; not so in most continental countries where such matters are often regulated by formal conditions and subject to varying degrees of state approval or intervention. In the public services of this country there is great diversity in the terms and conditions of employment, many features of which do not differ in essentials from those found in the private sector; in contrast public service on the continent is as a rule regulated by law, and officials enjoy a degree of special legal protection of their privileges unknown in Britain. Should a British citizen require a passport the procedures for obtaining one are simple in the requirements they impose and applications are handled expeditiously by the Passport Agency: in several member states of the Community just the opposite is the case – there are complicated requirements to fulfil and the procedures are so cumbersome that in Italy, for example, the resourceful or well-connected applicant often resorts to informal pressures to secure reasonably prompt responses. Even in the field of private employment there are major differences, as a comparison of advertisements for professional jobs in say Britain and Germany will reveal: here flexibility in relation to requirements, including formal qualifications, there a preference for specifying exactly what the state-recognised qualifications for the jobs are.<sup>16</sup>

What such examples suggest is that regulation by formal rules nearly always takes precedence. The citizen is viewed as 'l'administré', to use a familiar French expression which would cause a riot if



regularly invoked in Britain; and the official's job is in the first place to ensure that the citizen complies with the formal rules in all his dealings with public authorities. When people in Britain criticise the Community for being 'bureaucratic', they are in effect criticising it for conforming to something like the model just outlined. It is a rule-bound system where political discretion is certainly enjoyed at the top by those in charge (and often with precious little public accountability too), but can rarely be exercised intelligently in the provision of services directly to the citizen. Inevitably this system entails bureaucracy in the negative and pathological sense: this is the normal condition of most manifestations of the continental European public law tradition and the kind of state structure it sustains.<sup>17</sup> It is by no means surprising that the Community itself, and especially its executive wing in the shape of the Commission and its supporting services, exhibit to a substantial degree the same features.

It is bound to remain very difficult for the British to adapt to methods and institutions of this kind. There are two underlying reasons for this which are rooted in the British approach to the conduct of government, even though at first sight they appear to point in different directions. One is the firm preference for allowing a broad discretion to those responsible for the conduct of public affairs, the other is a strongly positivist legal tradition which sets great store by certainty and precision.

One of the most influential maxims in British legal and administrative experience has been 'treat every case on its merits'. This expresses recognition of the fact that life and its problems are infinitely diverse, and that any form of government which is genuinely responsible must be capable of responding to individual needs and problems. There is no point in always seeking uniformity and in interpreting equality of treatment over-rigidly: there has to be scope for doing what is reasonable in the circumstances and what, precisely for that reason, has the best chance of securing the consent of the governed at a particular time. This approach has resulted in the conferment by statute of wide discretions on ministers, justified ultimately by their political accountability to Parliament. But equally it has encouraged a view of administration as essentially a practical discretionary activity. Whilst generally it is carried out within a statutory framework, and may indeed be checked and

confined by the results of appeals to the courts, public administration continues to be seen more as the delivery of services to users than as the application or enforcement of rules. The administrator is not regarded in the first instance as an agent of the state, a *fonctionnaire* or a *Beamter*: instead he is seen far more often as a provider of services to individuals, as a problem-solver, and an adviser to ministers. Above all he (or she) is the servant of the public, regularly reminded of a relatively humble status in relation both to his political masters and to 'les administrés' themselves.

Against this background it is not surprising that the British have had little time for 'the state', regarded usually as a grand and dangerous abstraction, and no sympathy at all for that typical European hybrid, the politician-bureaucrat, so well exemplified by M. Delors. Similarly, it is no accident that it is in Britain that it has proved easiest to pioneer reforms in the public services designed to improve efficiency, to provide more effective and flexible management, and to increase responsiveness to the needs of the customers. Whilst it would be an exaggeration to claim that the reforms in many branches of public service initiated in the 1980s have everywhere had beneficial effects or come up fully to expectations, there can be no doubt that they have powerfully reinforced the idea of public services serving customers. The Government's current commitment to the Citizen's Charter points in the same direction. Yet on the continent much that has been done here would simply be out of the question: in many countries ingrained habits and the dead-weight of legal formalism still stand obstinately in the way of change.

Discretion and flexibility is one side of the coin. The other is legal certainty. In their interpretation of both statute law and the Common Law the British courts have been concerned to state as clearly as possible what the law actually is. The underlying perception of law is of a series of constraining prohibitions and enforceable claims. Thus the very idea of a rule of law and of individual freedom from unnecessary or unjustifiable constraint is seen to call for certainty and precision in stating what the law is. This view finds expression in the extraordinary detail and specificity of the modern British statute book (combined, let it be admitted, with remarkable vagueness often enough in the conferment of discretions on ministers to make schemes, to draw up regulations, or to develop policies) as well as in the manner in which the courts interpret law.



More often than not the judges will interpret provisions narrowly and exclusively by reference to the case in hand. They will avoid generalised conclusions, they prefer to steer clear of enunciating broad principles, and they are cautious about drawing on the political motives and values lying behind so much contemporary legislation for fear that in this way they might usurp a discretion properly vested in executive agents.

This bias of the British legal system towards precise definition of what is permissible and what is not reflects far more than traditions of thought and philosophical preferences. It embodies too the practical experience of the legal profession and of citizens using the law in the active pursuit of their interests. The legal professions have always been independent and self-regulating, they serve their clients and certainly not 'the state'. And it is from them that the judiciary is drawn: Britain has nothing like the professional judicial services of continental Europe staffed by judges who are essentially public officials in the service of the state. There is, therefore, an institutional foundation in society at large and in the legal profession in particular for the British understanding of law in relation to the activities of government and of its interpretation in the interests of citizens.<sup>18</sup> It is as a consequence by no means surprising that for anybody with the barest acquaintance with British legislation and judicial decisions, much of continental law (Community or national) hardly appears to be law at all. Rather it has the form of abstract declarations of what is deemed desirable and what may be done, and often enough with no reference at all to who or what institution may act. No wonder the Maastricht treaty is a nightmare for a British lawyer: he is bound to find it hard to discern by what rules of interpretation many of the conditions in it could be given a reasonably firm definition, and the scope of their application and their legal effects be rendered moderately sure and predictable.<sup>19</sup>

It is the character and terms of executive action on behalf of public authorities which have been picked out here to illustrate the differences existing between British methods of government and those to be found generally in the Community. But it would, of course, have been possible to mention other elements in the Community's institutional structure which contrast just as sharply with their functional equivalents in Britain. The European Parliament is



a typically continental European representative body in its internal organisation and procedures. It lacks a well-developed critical and debating function, and in the usual continental manner is mainly a vehicle for the transmission of varied committee pressures to the Commission or Council of Ministers. In any event it is also gravely handicapped by the necessity of trying to engage in 'debate' in nine different official languages, surely a quite implausible effort. The Commission, the principal organ of policy formulation and of executive implementation in the Community, is plainly a top-heavy hybrid institution. At the top level its 17 appointed members behave as politicians and would-be ministers, and are constantly in competition with each other to find new things to do to justify their well-paid positions. Below them is a highly segmented bureaucratic organisation whose main routine functions are administration of the common agricultural policy (CAP) and taking care of the great burden of translation work made necessary by nine official languages. This bureaucracy, amounting now to about 13,000 permanent staff and a further 5,000 or so on a non-statutory basis, lacks central direction and coordination and has few effective common services. Though the Commission is staffed by a European civil service recruited by open competition and committed to serve the Community without fear or favour,<sup>20</sup> in practice many of its officials, and especially the French, keep one eye on particular national interests. Nor does the European Court of Justice conform at all closely to British ideas of how an appellate court of this kind should work. The court, which is now backed up by a court of first instance, is often concerned with deciding whether to endorse claims made in favour of Community competences, and by the standards of the British courts system it is a highly political body. Its procedures once again are predominantly French in origin, there is little scope for legal argument before it in the manner customary in the British courts, and its approach to the interpretation of European law has sometimes been alarmingly imprecise. Nevertheless, in this instance there are signs of a positive British impact on the Court's procedures and approach to interpretation through the contribution made to its work by successive British members of it.

However, it is hardly necessary to examine all the Community institutions in detail in order to sustain the case made in relation to the Community's administrative methods and understanding of law.

Whatever virtues the institutional system may have – and certainly it does have a number of positive merits as an ingenious method of holding the member states together in the shaping of common policies – there can be no doubt that it is in many respects alien to the habits and assumptions on which political and administrative arrangements have evolved in Britain. On these grounds it can reasonably be suggested that Britain has a different idea of what constitutes good government to that generally prevailing in the Community. This is not equivalent to asserting that Britain has a *better* idea of good government than its neighbours: that is a quite different issue. It is simply the affirmation that significant differences of judgement and opinion do exist in relation to what are acceptable standards in the conduct of public business, in the management of public services, and in the discharge of political responsibility for them.

The prospects of changing the state of affairs just outlined in ways that would make it easier for Britain to collaborate whole-heartedly in the Community are not encouraging. Britain did not join until 1973 and by that time the system was already well-established. As a result there was not much scope for exerting a persuasive influence on the structuring principles of the Community. Moreover, the subsequent accession of further new members, three of them from the Mediterranean area, worked against the prospects for an effective British contribution to the reform and improvement of Community institutions. Even though it is widely recognised that British administrative standards are high and that in principle the Community has much to learn from them as well as from British political skills, Britain remains in a minority of one. With the exception of Ireland all the member states draw in varying degrees from a common continental European experience of state-building and law-making. In such a constellation an economically weakened United Kingdom has little chance of exerting that powerful influence as a model of good government which it enjoyed so often in the past. But the fact that Britain's scope for making a decisive impact on the Community's structure and methods of operation is so limited does not make reconciliation to this uncongenial environment any easier. Despite persistent grumbling and bouts of self-criticism, public confidence in our own way of conducting public affairs remains reasonably high: this circumstance alone keeps alive



the prospect of regular friction with the Community whenever its procedures and demands touch a raw nerve at home.

There is much that is inescapable in the minority position in which Britain finds itself. Yet this has been glossed over often enough by politicians anxious to persuade the public that all will be well in the end. Following the Maastricht agreement a particularly strong effort has been made to deny that the treaty points towards a more unified Community with a wider range of powers and stronger central guidance. The treaty has been presented as a blow against centralisation and a slap in the face for the over-ambitious Commission. Above all there has been an outburst of enthusiasm for subsidiarity, a vague and mysterious concept enshrined in the treaty, which British politicians seem to regard as a multi-purpose vaccine, an antidote both to federalism and to centralisation. But in raising the banner of subsidiarity its protagonists seem to forget that it is a term which raises more problems than it solves. Basically it expresses no more than a preference for decentralisation of decisions wherever possible. What it fails to do is to offer effective criteria for deciding what functions can best be discharged by what level of authority, and who should resolve such matters. Clearly what is subsidiary in Spain is bound to differ from what is subsidiary in Luxembourg or Holland: yet the principle itself throws no light at all on the answers to such questions.<sup>21</sup>

Indeed, there are good reasons for concluding that the arguments about subsidiarity can have little bearing on the future evolution of the Community. What will matter is whether the move towards 'ever-closer union' is intended gradually to transform the Community into a genuine European state. If this is so intended and the majority of the member states are indeed ready to pursue such an objective, then past experience as well as present circumstances suggest that such a European state would be roughly on the French model. True, it might have within it elements of German constitutional design, especially in the shape of federal structures. But essentially it would be a state in the civil law tradition, embodied in a structure of uniform legal conditions and dedicated in principle to their equal and standard application. It would be likely to have an administrative structure strongly marked by French methods, whilst the superstructure of judicial interpretation might well evolve in a manner bringing it closer to German constitutional adjudication. In



such a state politics and top level administration would be fused together, with popular election being often enough just a means of conferring legitimacy on officials making the transition from an appointed position to one which is formally designated as 'political'.

The present British Government, like most of its predecessors, has been very reluctant to face up to any such disagreeable prospect. It persists in asserting that whole-hearted participation in the development of the Community is its watchword. Such a stance is understandable, but it seems to underestimate the impetus towards much closer political union that has already been built up. Once that fact is fully recognised the need to re-think British policy becomes apparent. For either we continue as now, disguising from ourselves what is really happening and thus provoking misunderstanding and recrimination, or we try to get a clear picture of what genuine alternatives to ultimate political union might be pursued. Today the Community is often compared with a man on a bicycle: to go forward he must pedal, and if he stops pedalling he falls off. This implies that there are only two options – forward on the Maastricht road with all its imponderables and heady promises, or paralysis followed by disaster. But despite the hold which the idea of 'ever-closer union' has gained in the minds of many of those in positions of influence and responsibility within the Community, such an apocalyptic view of the alternatives is unconvincing. There may well be another option or possibility, a genuinely different vision of how the Community can and should develop. In fact it is not necessary to look far for such a vision. It is already present in earlier stages of the Community's evolution: it is the idea of an association of states cooperating for the benefit of their peoples in the establishment and strengthening of a single common market. It is something much more like a Commonwealth of Europe than a European state. The next section considers what are the chances of moving to such a commitment, one which would be far more congenial to the British Government and even to a large and perhaps growing body of opinion across the Community.

## 5

### **A Free Market and an Open Future: Options for Britain**

British policy-making in and towards the European Community is subject to a wide range of constraints: in economic and industrial policy, in many sectors of social policy, in agriculture, in transport and regional policy, in some areas of environmental regulation, and in many other fields which have at least some bearing on the development of the Community as a single market. To an increasing extent political cooperation on an inter-governmental basis is being developed in other policy areas too in ways that limit the discretion of national governments. But, as argued in the preceding sections of this paper, despite the growing 'Europeanisation' of national affairs there remain deep-seated differences in the British approach to the terms on which government operates and political life is conducted. These differences between Britain and its continental neighbours are rooted in past political experience, in a different legal system, and in the continuing influence of political institutions and practices different from those generally found in the rest of the Community. It is these differences of perception and understanding which chiefly account for the fact that Britain has never been able to subscribe easily and enthusiastically to the vision of a united Europe. When asked to do so, the first reaction has always been (and remains so) to ask what this means, what is involved in accepting it, and to what end state it will finally lead. Indeed, the British have in general never been very keen on 'the vision thing'.

Regardless of its future fate the Maastricht treaty has served to sharpen perceptions of these underlying problems in the British relationship with the Community. But equally important is the fact that it has also aroused doubts on the continent too. Precisely because it contains so many grandiose and vaguely stated commitments, accompanied somewhat paradoxically by a highly specific and unrealistic timetable for the attainment of full monetary union, the treaty has prompted questions about the feasibility and even the desirability of the onward march towards European political unification which were



previously nearly always left unspoken. In addition there is the challenge presented to Western Europe by the dissolution of the Soviet Union and the efforts now being made throughout central and eastern Europe to reconstruct bankrupt economies on something like market principles. Not surprisingly this points to the possibility of eventually enlarging the Community by the admission of at least some of the countries on its eastern borders, not to mention a number of countries in Western Europe itself which have recently presented applications for membership. And over-shadowing everything else are the practical problems and anxieties associated with an economic recession now having serious effects throughout the Community.

Despite the new uncertainties they introduce these developments have helped to create a more favourable climate for a reformulation of British policy towards the Community. It would be a mistake just to drift along, trying as best we can in the years to come to dilute or neutralise the more aggressively mounted efforts to extend or deepen Community powers and policy-making, but essentially making the best of a bad job. Equally, at the other end of the scale of options it is impracticable to think in terms of leaving the Community, even though the possibility of having to do so by reason of political incompatibilities can never be wholly excluded. It is most unlikely too that the Maastricht treaty will fail to clear the hurdle of ratification, which means that at the present time new policies have to be formulated on the assumption that it goes ahead in one form or another. In a situation marked by so many imponderables it is vital to recognise that there is room now for initiatives and an opportunity for Britain to express vigorously a view of the Community which is both positive and realistic, and which can potentially appeal to many people throughout the Community. We should be prepared to say openly that there is nothing preordained about the future course of European development, as if the Almighty had expressly blessed the *acquis communautaire* <sup>22</sup> and told us that it points towards a European federal state. The future is as open for the Community as for other human institutions. There are different and competing visions of where it should be going. If there are serious doubts in Britain about the desirability and feasibility of ever attaining some ill-defined 'political union', it is up to us and our Government to put forward an alternative and to press the case for it. This is the challenge that has to be taken up.



## A FREE MARKET AND AN OPEN FUTURE

To be viable and effective policy has to be built on realities. Of what can we be reasonably certain within and across the Community? First, most people everywhere still see the main justification for the Community in the economic benefits it brings. It is an association designed for mutual economic advantage through the dismantling of barriers within it to market competition and the free movement of goods, persons and capital. For the majority throughout the Community all this still comes a long way ahead of action to further the achievement of political union. Second, most citizens in the member states of the Community still want to preserve their particular national identities and cultures. They do not yearn for the great melting-pot as so many of the immigrants from Europe into the United States did during the last century. This is not to deny that national differences have in some cases, for example in the border regions between France and Germany, been much attenuated in comparison with what they once were. It is merely to recognise that despite coming together in all sorts of ways, most people in the Community still see themselves as French or Spanish, British or Dutch, they retain sharply defined and formidable language differences, they are strongly influenced by the myths and traditions of distinctive national histories, and their political loyalties are owed primarily to officeholders in national political institutions. Whatever other effects it might have, eventual enlargement of the Community through the admission of new members seems certain to strengthen further these two basic preferences: it is an association for common economic benefit whose members nevertheless wish to survive as distinctive nations.

These realities of the situation right across the Community underline the case for the British Government to base its policy on a revived commitment to what is best designated a 'Common Market' approach to the Community: it is an association of freely cooperating states joined in a single market for the benefit of all their citizens. The pursuit of a 'Common Market' approach to the Community will call for sustained pressure and persuasion at several levels. In the most general way it requires the British Government to maintain both within the Council of Ministers and in its bilateral relations with the Commission in Brussels a firm and consistent preference for market solutions and methods over those which involve regulation and state intervention in the economy. This means, amongst

other things, that we need to press constantly not just for reform of the Common Agricultural Policy, but for its eventual replacement by methods of agricultural support less prone to rig the market in favour of producer minorities and less harmful to the interests of developing countries desperate to increase their share of world trade. It has to be accepted that this is certainly not a popular cause with the entrenched agricultural interests of many Community members. But there can be no question about the economic arguments in favour of a radical change in the CAP, and equally, no doubt about the moral and political case for such a move. If a member state wishes to give special protection to its farmers or to particular groups in the agricultural sector, then it should do this within Community-determined limits at the expense of its own taxpayers. More generally, there has to be a sustained effort to persuade opinion in the Community – and especially in Germany where support for market principles has traditionally been strong – that the onus of proof in favour of economic policies involving regulated rather than market solutions is on the protagonists of such an approach. Surely, in the wake of the debacle in the former Soviet Union and elsewhere of the biggest experiment in history in the suspension of markets, this ought not to be an impossible task?

At a level nearer to specific measures in the economic sphere it is vital to hammer home the lesson that a single competitive market does not require the equalisation or standardisation of everything. Indeed, taken to extremes such an approach destroys competition and thus frustrates the very purposes of a European-wide market economy. Fortunately, this is something that the British Government seems to recognise very clearly. In a large and expanding single market it is reasonable to demand the removal of artificial barriers to trade and free movement of goods. If one country levies an exceptionally high rate of excise duty on wine and spirits, for example, or if it another sets permitted noise levels for lawnmowers so low that they have to be virtually inaudible, then such policies are indefensible. But often enough the way to get rid of them is not by the making of regulations or directives in Brussels: that may well make the problem worse. A more promising approach is to seek judicial determinations in the development and application of the principles of fair competition. In other words, it is decisions to outlaw the distortion of trade that Britain should be pressing



for rather than new regulations to impose this or that common standard. What seems to be required is a more extensive monopolies and restricted practices jurisdiction operating in relation to the whole Community, capable of developing over time something like a common law for free trade and competition. Moreover, it has to be remembered that in a free market what the customer needs and has a right to is accurate information. If this condition is met, quite a lot of harmonisation becomes redundant: for example, subject to regulations prohibiting harmful additives, there is no conclusive reason for standardising the lists of permissible food additives. Provided the facts are made available to the customers, they should be allowed to decide freely what they will purchase.

A much larger question in the arena of market policies relates to what is now quite often seen as the inevitability of a single currency. Does a single market necessitate or impose at some stage a single currency? Most economists (and that includes many German financial experts)<sup>23</sup> would argue that it does not, that the decision to go for a single currency expresses support for particular political objectives rather than the economic logic of a single market. Obviously what cannot be ruled out is the possibility that at some time in the future the economic conditions and social characteristics of all parts of the Community will have converged so much that there is just no point in not having a common currency and a single central bank. For if that stage of more or less total convergence were to be reached, the separate and nominally independent national currencies would already *de facto* be behaving like a single currency.<sup>24</sup> But in reality we are still a long way short of that state of affairs. At the present stage in the evolution of the European economies separate currencies and their fluctuating exchange rates are indicators of different levels of economic and social development and of varying degrees of success in pursuing sound monetary policies. The early replacement of national currencies by a single European currency must, therefore, entail either enormous and deliberate transfers of resources from the wealthy to the poorer parts of the Community, or acceptance throughout the Community of disparities in economic performance which most likely would be exacerbated by the shift to a single currency in a unified market. Either way the prospects for conflict and ill-will are daunting.

Yet the argument about the inevitability of a single currency may



in effect have been resolved already, initially by the opt-out clause in the Maastricht accords allowing Britain to decide later whether or not it will participate in monetary union, then by the suspension of both British and Italian participation in the ERM, and most recently by the opt-out declaration relating to monetary union negotiated for Denmark. The difficulties within the ERM have testified to the strains inherent in trying to maintain more or less fixed exchange rates in the open world financial markets of today. It has now become more than doubtful whether any currency can resist a sustained withdrawal of market confidence. Equally, it is hard to see why any member of the Community should be ready indefinitely to accept for its domestic economy the inappropriate policy requirements (e.g. high interest rates) of another country which has different needs and pressures to cope with. Of course, it can be argued that under a single currency regime such difficulties would disappear. That may well be true, but they do so only at a very heavy price for the weaker parties forced to adopt the policies preferred by the stronger.

So there are many considerations pointing to the conclusion that there is nothing inevitable about moving on from the single market introduced on 1 January 1993 to an economic union involving a single currency and everything else that that might entail. It is perfectly practicable to maintain the 'common market' solution and there is nothing inherently unstable about it. Indeed, as far as the encouragement of free market methods and policies goes, there are many advantages in putting the Community on hold at that level of development. Within such a framework it is more likely that a flexible and internally competitive economy can be maintained than in the more regulated environment which would almost certainly stem from efforts to force the pace of monetary and economic integration. And it is the retention of competitiveness in world markets rather than heady visions of European industrial giants that is likely to sustain European firms in the face of their American, Japanese and other East Asian rivals.

What is being proposed is that British policy towards the Community should in the years to come be based on a sustained reaffirmation of 'common market' principles as the best foundation for its further development. It may be late in the day to reaffirm such a policy, and it might well be argued that the chances of gaining

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support for it in other parts of the Community are slender in the face of the pressures that now exist in favour of pushing on towards 'ever closer union'. But the difficulties and challenges that currently face the Community are such that there is now a far better prospect of finding a larger and more receptive audience for a return to an earlier view of its objectives than is often imagined. For in the past year or so it has become apparent that the commitment to far-reaching schemes of political unification is confined to quite narrow élite groups in most of the member states. It is not something which enjoys widespread popular support right across the Community. Basically the policy envisaged here comes down to urging economic and political realism on the Community and its members. Such an approach can and should be expressed positively as part of a coherent view of what is in the interests of the whole Community. Far too often the British Government has talked about the Community in terms suggesting a narrow self-interest, unredeemed by any well-thought out conception of what the Community is and what benefits it should bring to its peoples. This has played into the hands of some of our partners, for example President Mitterrand with his remarkable skill in clothing French national interests in the borrowed plumage of European political union, or the German Chancellor with his frequent flights into the rhetoric of integration as a substitute for resolving internal political difficulties hampering the acceptance by Germany of wider responsibilities in the international field. If the British Government is to gain the initiative, then it has to convince its partners that the 'common market' approach holds out most promise both for recovery from the present recession and for maintaining the economic gains of the past. And such a policy can be pressed as much in the interest of the Community as a whole as in that of Britain alone. Furthermore, it is one of the great advantages of this approach that it does not and cannot foreclose on the future. It does not rule out forever something nearer to the grand schemes of economic and social convergence envisaged in the Maastricht treaty, or at least read into that agreement by its more enthusiastic advocates. If the evolution of the single market proceeds on genuine free market principles, and as a result eventually makes further steps towards total integration natural and straightforward, it may then be possible to accept that outcome with far less contention and anxiety than are currently aroused by the Maastricht proposals themselves.



## BRITAIN AND THE COMMUNITY

So much for the policies relating to the development of the Community as an economic association which Britain ought to pursue. The other prong of Community policy should be the recognition and safeguarding of national identities and of the distinctive cultural traditions supporting them. This does not mean giving encouragement to self-centred national interests, nor allowing individual national governments to veto policies which a majority of member states are ready to pursue. But it does mean looking critically and sceptically at the claims advanced for Community action in substitution for the discharge of responsibilities by national governments acting individually or severally. In the sectors already fully within the competence of the Community's institutions progress should be pursued through the procedures already well established and familiar. It is, however, also necessary to place more effective limits on the activities of the Commission than has been done in recent years. We need to take a more critical view of what is incidental to the pursuit of the economic objectives of the Community, even to the extent of making it clear that the British Government and Parliament are simply not prepared to go along with extensions of Community powers on the basis of by and large interpretations of vaguely stated conditions. In particular it is important to insist that when the Community does act in spheres ancillary to its main purposes, this should be done by measures leaving executive responsibility with the member states: in other words, guideline directives and recommendations are to be preferred to regulations which apply immediately as law.<sup>25</sup>

In the area of political cooperation which has been grafted on to the Community's institutions and is to some extent to be widened under the terms of the Maastricht treaty it is advisable to proceed with caution. So far such cooperation has in the field of foreign relations all too often been a sure way to impotence, as has been demonstrated most dramatically in the case of the conflicts in former Yugoslavia. Far from strengthening the Community, it was almost certainly weakened by the effort to have a united position on the events in Yugoslavia as that country began to fall apart. So far the Community has been unsuccessful in preventing the continuation and intensification of the conflict, in restraining the excesses of Serbian nationalism, and even in making effective the blockade imposed by the United Nations. Nor has it so far been able to



overcome the veto imposed by one of its members, Greece, on the recognition of Macedonia under that name. This criticism of a particular attempt to establish and maintain a common foreign policy line does not, however, imply a general rejection of the possibilities associated with inter-governmental political cooperation as encouraged by the Community in recent years. What it is intended to suggest is that cooperation is only likely to be effective and worthwhile when it expresses the willingness of those governments involved to follow up words with deeds. Moreover, political cooperation need not involve all member states all the time, nor must it rest always on unanimous consent. Whilst respecting the interests and attitudes of all its members, it is time that the Community took a more realistic view of what its smaller members can and will do outside the borders of the Community.

A policy which takes a firm stand on the maintenance of the rights and responsibilities of national governments as well as of national identities is likely to encounter at least two large objections. First, it will be argued that this approach opens the door again to nationalism and all the dangers that can bring. Second, it will be contended that a system of close political cooperation between sovereign states is inherently unstable: it is always exposed to the threat of dissolution. There have been, and unfortunately still are, some circumstances in which these objections have force. But that possibility does not mean that they should be accepted as conclusive. Nationalism expresses a perversion and exaggeration of national identity: it is intolerant of difference and diversity, potentially it denies our common humanity. But the real antidote to nationalism is not the pursuit of a cosmopolitanism without historical foundations in actual social experience, nor the attempt to legislate differences out of existence. Instead there has to be a determination to ensure that one's own political community remains open and tolerant, and that national identity is cultivated with respect for the fact that there is a plurality of such identities, often even within a single society. Whilst British politicians do sometimes fall into what sounds perilously close to a narrow nationalism, the record of British society is very different. There has generally been a high level of tolerance of diversity within the United Kingdom, extending in recent years to the reasonably successful absorption of immigrant groups from profoundly different cultures and traditions.

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As to the other objection, certainly a voluntary association of states like any other kind of voluntary association might one day fall apart. But the likelihood of that happening in Western Europe is small. Largely as a result of the development and consolidation of the Community there is already in Europe a remarkably dense structure of economic, social and political inter-connection. There has too been a long experience, stretching back over forty years and longer, of interdependent relationships in defence and in many aspects of external affairs, in all of which the United States too has been deeply involved. None of this can simply be reversed or repealed. The habits and expectations of cooperation are firmly in place. Yet equally it is important to remain sensitive to the difficulties and risks of trying to force the pace and range of common policy-making beyond what most of the peoples of the Community are really ready to accept, and what most national administrations are capable of carrying through. To attempt to establish a comprehensive common foreign policy at the present time is to run the risk of inaction and confusion as the reaction to the conflicts in former Yugoslavia has shown. In contrast, insofar as some effective measures have been taken in the course of that crisis, they have mainly followed on from the decisions of individual European states and expressed their willingness to respond positively to the crisis. This experience thus tends to reinforce the case for the major European powers acting singly or jointly on the traditional basis of international collaboration. This has to be done as far as is possible in concert with the United States and, where appropriate, with full regard to the conclusions of the Security Council of the United Nations. The position is not substantially different in a number of other fields of cooperation brought within the ambit of the Maastricht treaty, for example immigration and some aspects of law enforcement. Agreement on common principles and definitions (what constitutes political persecution, for example) may well be practicable. But it is visionary to suppose that a common European policy on the entry of immigrants for whatever reasons can in the near future be determined and effectively applied. Similarly in the response to crime it is clear that many forms of police cooperation are desirable and need to be further developed. But the primary executive responsibility must remain for the foreseeable future with national governments.



## A FREE MARKET AND AN OPEN FUTURE

The reality of today in the geographical area covered by the European Community is that habits of cooperation and interchange have been developed in all sectors of life, and that there is a degree of movement between societies and of exchange of experience inconceivable half a century ago. All this means that there is really little foundation for the fears expressed by some Community leaders that Europe must come together quickly as some kind of state if it is to escape the threat of once again falling apart. This is a spectre often evoked to sustain faith in the inevitability of political union. But in fact the unification of Europe has in a broad sense already made enormous progress, and this process is almost certain to continue. This is what some of the Euro-sceptics fail to see. But similarly the Euro-enthusiasts also fail to see that this continuing process should not be equated with a deliberate effort to engineer us all as quickly as possible into a new political construction, nor does its continuance depend upon emotive commitments to the 'European cause'. For the foreseeable future Europe can consolidate itself further only as 'l'Europe des patries', to borrow de Gaulle's famous phrase. A similar approach animated Mrs Thatcher's Bruges speech in 1988, with its affirmation of faith in the nation state as the only viable and acceptable basis at the present time for political allegiance. British policies towards the preservation of national identities within the Community should be founded on explicit recognition of this.

There are signs that the British Government has made a start with the shaping of a more coherent strategy towards the problems of the European construction than it has had during the past couple of years, though its public expression of this is often muffled and qualified by short-term tactical concerns. Despite the fact that the Edinburgh summit meeting at the end of 1992 was accompanied by the usual display of horse-trading and clothed its conclusions in language of familiar ambiguity and vagueness, there was evidence of a move towards a more realistic and pragmatic view of the road ahead. If this is confirmed in the future it will open the way for more British initiatives to steer the Community towards a greater readiness to accept market solutions to the economic problems within it, and to rely on inter-governmental cooperation in policy sectors outside the Community's present competences. It is in these directions that there are the best prospects both of strengthening the



Community as a genuine common market, and of persuading its member governments to share a practical responsibility for action in matters they recognise to be of common interest and concern.

There is no reason why a British approach to European policy based on such preferences and principles as have been outlined should be seen as negative or unconstructive. The positive qualities of national communities organised for the most part in the shape of the historic European states have to be harnessed as far as is practicable within the common market framework to serve the interests of the whole of Europe. This is a policy of realism, but to succeed it must be pursued with some idealism too. If Britain is to have any chance of making an enduring impact with policies animated by commitments of this nature, then they must be accompanied by a real effort to show that we do belong to Europe and care about it going in the direction we recommend. This calls for a readiness to encourage within Britain itself a much more positive attitude than generally prevails towards gaining a wider knowledge of the varied customs, languages and cultures of the European mainland. More young people should have the chance to work on the continent, have part of their education there, learn one or more European language, and generally become familiar with habits of life and thought different from those with which they have grown up. The same goes, of course, for British business and industry which need to be more willing to adapt quickly to continental European opportunities, expectations and standards than they sometimes are. It is vital to get away from the predominantly negative and self-interested emphasis in public statements about British policy, and to demonstrate that we can combine pragmatism with something like enthusiasm for our own vision of how the Community should evolve. In particular we need to regain confidence in explaining and recommending some of our own ways of using institutions, providing administrative services and making law. We have no monopoly of wisdom on such matters, but our history does suggest an unusual capacity for inventive adaptation in the search for freedom under the law. Provided we can develop and advocate such policies with sympathy and understanding for our Community partners, there is still a real chance of gaining more support for them than we have usually had in the past.

## NOTES AND REFERENCES

1. Neither the Treaty of Rome (1957) nor subsequent amendments and additions to it, including the Maastricht treaty (1992), make provision for a member state to leave the European Community. But *de facto* this could not be prevented, and there are too many precedents for the granting of special conditions and exemptions to particular members.
2. Evidence for this view is amply provided by the debates on accession in 1971 and 1972, e.g. Mr G Rippon, Chancellor of the Duchy of Lancaster, when introducing the European Communities Bill, Hansard Vol. 831, col.270. Similar emphasis on the purely commercial scope of the EEC is to be found in the 1967 White Paper (Cmnd 3301) on the Constitutional and Legal Implications of U.K. Membership of the European Economic Communities.
3. The referendum on continuance of European Community membership was held on 5 June 1975 and resulted in a two to one vote in favour of continued membership: 17.3 million 'Yes' votes, 8.4 million 'No' votes, with a 64% turnout overall.
4. This conclusion was quickly reached by Lord Cockfield, appointed to the Commission by Mrs Thatcher and Vice President from 1985–88. He became a committed advocate of the single market, taking the lead in Brussels in defining what legislative steps were needed to prepare for its inception. The Prime Minister's regard for him soon cooled.
5. This view of the matter finds expression quite clearly in the speech of Sir Geoffrey Howe, then Foreign Secretary, opening the second reading debate on the European Communities (Amendment) Bill in 1986. Most of his case for the Single European Act deals with the economic benefits which it was expected to bring, and with the fact that most of its provisions merely confirmed existing practice. Closing the debate Mrs. Lynda Chalker, Minister of State at the Foreign Office, said of the various items in the Bill that, "They are being combined in a useful piece of legislation". (Hansard, Vol. 96, c388, 23 April 1986). One can only remark: "classic Foreign Office understatement".
6. It is interesting to note that the Treaty of Rome (1957) is relatively restrained in the proclamation of large aims and principles: it does read in the main like the guidelines for a common market. In contrast, the Treaty on European Union 1992 (Cm 1934) proclaims at the outset (Title 1, Article B) very sweeping objectives, and this approach surfaces again repeatedly in the text.
7. President de Gaulle's first veto fell in January 1963, the second in November 1967. It is worth recalling that de Gaulle's main objections were always that a) Britain was not yet ready to join the Community, and b) Britain wished to modify and dilute the Treaty of Rome in such a way as to deprive it of its serious political content. Perhaps he was right.

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8. The Franco-German Treaty of Cooperation was signed in January 1963, simultaneously with de Gaulle's rejection of the first British application to join the EEC. When ratified in Bonn a preamble was added by the Bundestag to protect *inter alia* German commitments in NATO and the close relationships between the Federal Republic and the USA. Initially the treaty disappointed de Gaulle's expectations and this prompted sarcastic remarks from him.
9. French reservations about the aims set out in the Maastricht treaty were clearly expressed in the result of the referendum held in September 1992 when the treaty received only the barest majority support required for its approval. The vote was also, however, in some degree simply a vote against the Government of the day.
10. Only when the Maastricht accords became imminent did a relatively wide-ranging and critical debate on the proposed European monetary system begin to occur in Germany. But comment then became increasingly critical, e.g. Hans D. Barbier, *Ein schlechter Vertrag des guten Willens*, in the *Frankfurter Allgemeine Zeitung*, 30 November 1992.
11. Typical of the 'functionalist' writing which postulated a fairly automatic process of increasing integration ('*l'engrenage*') was L.N. Lindberg, *The Political Dynamics of European Integration*, 1963; also E.B. Haas, *Beyond the nation-state: functionalism and international organization*, 1964.
12. Dr Kohl has made many statements calling for European union. He tends to favour the term 'vereintes Europa', united Europe, but this implies a much closer political association than is envisaged by the British Government.
13. Mr John Major in a New Year Message to the Conservative Party, cited in *The Times*, 1 January 1993. Herr Martin Bangemann, the senior German Commissioner in Brussels disagreed. He was soon after reported as asserting that 'There is no alternative to a federal state', that 'European unification must, therefore, be seen through to a successful conclusion' and that 'Those who have other conceptions of the future of Europe should consider whether they really want to belong to this Community.' (*The Times*, 13 February 1993.)
14. The modern European state does, of course, also owe much to developments in countries other than France, though the influence of French ideas and practices in the wake of the Napoleonic conquests was especially strong. For further discussion, see K. Dyson, *The State Tradition in Western Europe*, 1980.
15. In his famous essay *The English Constitution*, 1867, Walter Bagehot refers critically to that rule of functionaries found on the continent which in his view was quite unacceptable in Britain, especially in Chapter VI, *Changes of Ministry*.
16. The bulky pages of professional job vacancies accompanying the *Frankfurter Allgemeine Zeitung* on Saturdays illustrate very clearly the great concern



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- shown by German employers for securing staff with the right formal qualifications to satisfy specialised requirements.
17. The Italian bureaucracy has become a by-word as a particularly bad example of the continental bureaucratic syndrome. Lest the criticism of continental European bureaucratic pathology appears unjust, let me add that British administrative agencies are also capable of applying procedures which are cumbersome, rigid and pedantic. They generally do this when political oversight is weak and in pursuance of an exaggerated idea of legal certainty. The disease is there, but so are the means of curing it.
  18. It is worth noting that the United States also possesses a powerful and independent legal profession: a genuine 'separation of powers' seems to require such support in society.
  19. Some support for the argument that the Maastricht treaty contains provisions virtually impossible to interpret is to be found in 'A formula for failure', an article by Lord Mackenzie-Stuart, President of the European Court of Justice 1984-88, in *The Times*, 11 December 1992.
  20. Recruitment procedures for administrative staff to serve the European Commission and other Community institutions are ponderous and uncertain by British standards, and even when offered the prospect of appointment, candidates have to solicit contacts in the Commission in order to secure a position.
  21. There is much confusion in Britain (and especially at Government level so it seems) about the relationships between subsidiarity and federalism. Anyone who is serious about subsidiarity and wishes to get beyond the verbiage to the substance of decentralisation will recognise that this points to some kind of federal constitution, i.e. one which distributes powers between two or more levels of government. But federal solutions remain anathema to most British politicians, and are often opposed by ardent Europeanists on the grounds that they would weaken the powers of the central Community institutions to take initiatives!
  22. The *acquis communautaire* means the gains already made by the Community. It is a term so mystical that the English language version of the Maastricht treaty gives up and in Title I, Articles B and C retains the French expression. What is worrying about the concept is that in litigation before the European Court, it might well be used to trump any claim under the doctrine of subsidiarity that a function should be pushed downwards.
  23. *op.cit.*, footnote 10 for example.
  24. In contrast, the Maastricht treaty plainly envisages a 'forced' monetary convergence by virtue of the timetable set out and the conditions which have to be fulfilled as the member states move towards monetary union.
  25. Directives can in some degree be regarded as guidelines, but unfortunately national standards of compliance with them vary widely. The character of British public law is such that Britain tends to comply most punctiliously.

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