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Policy Study No 108

Drift to Union

wiser ways to a wider Community

Oliver Letwin

CENTRE FOR POLICY STUDIES

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Introduction

What is the European Community trying to become? A common market, within which goods and services are freely traded? Or a federal European Union with a central government in Brussels?

For many years, the opponents of Britain's entry into the Common Market argued that union was indeed on the cards and that Britain would, in effect, be forced into a federal state. This was strenuously denied by those who advocated entry, and has since been repeatedly denied. The White Paper recommending Britain's entry into the EC, issued in July 1971, stated that:–

> the Community is no federation (Cmnd 4715, p.8)

and that:–

> there is no question of eroding any national sovereignty *(ibid.)*.

These clear statements were in line with the speech made by Mr Heath to the House of Commons on 25 February 1970, in which he said that:–

> There will not be a blueprint for a federal Europe . . . What is more, those members of the Community who want a federal system, but who know the views of Her Majesty's Government and the Opposition Parties here are prepared to forego their federal desires so that Britain should be a member . . . I believe this to be of great importance *(Hansard*, Fifth Series, Vol 796, col.1221).

In the debate on the principle of entry in 1971, the Foreign Secretary, Sir Alec Douglas-Home (now Lord Home of Hirsel) and the chief British negotiator, Mr (now Lord) Rippon were categorical in their statements that Britain could not be forced into federalism. This was, Sir Alec said, because:–

> great countries with the history of the European nations cannot be dragooned or coerced into a pattern

of political association which one or other of them does not like (*Hansard*, Fifth Series, Vol 823, Col 1311).

If there was any remaining doubt whether the then Government believed that Britain might become part of a federal state in which the will of the British Parliament would be subordinated to a central government in Brussels, this was allayed in the long debates in the European Communities Bill during 1972, when Sir Geoffrey Howe, at that time Solicitor-General, asked:–

> What is the position concerning the ultimate supremacy of Parliament? (*Hansard*, Fifth Series, Vol 840, Col 627).

and answered his own question:–

> the position is that the ultimate supremacy of Parliament will not be affected *(ibid.)*.

Nor were these claims in any way abated following the acceptance of the Single European Act of 1986. Indeed, at that time the rejection of any idea of the EC becoming a federal union was, if anything, even more explicit. Sir Geoffrey Howe, by then Foreign Secretary, began the debate on the Single European Act by telling the House unequivocally:–

> we are not talking about the declaration or proclamation of a United States of Europe (*Hansard*, Sixth Series, Vol 96, Col 325),

and, at the end of the debate, another Foreign Office Minister, Mrs Chalker, restated the point with equal force:–

> what the Single European Act will not do – and I think it is worth emphasising this – is that it will not lead to a federal union (*Hansard*, Sixth Series, Vol 96, Col 388).

These statements, made in official government publications and in the House of Commons by Ministers representing Her Majesty's Government are presumably meant to be taken at face value. And the meaning of the statements, taken at face value, is absolutely clear. They amount to a consistent set of declarations that:–

(i) Britain cannot be 'dragooned or coerced' into a federal union as a result of its EC membership;

(ii) the 'ultimate supremacy' of Parliament is unaffected by Britain's membership; and

(iii) the EC was 'no federation' when we entered it, and will not become a 'federal union' even now that the Single European Act has been accepted.

Why dwell on these assertions? First, because they were believed by many – including the present author – to be accurate at the time they were made. And second because it is now clear that they together represent one of the most extraordinary chapters of misunderstanding ever encountered in British history.

The truth – as this pamphlet illustrates – is that the EC is quickly becoming what its founders and most powerful advocates have always wanted it to be: a federal European Union. Those of us in Britain (and elsewhere) who did not understand this have only our own ignorance and the misinformed statements of our leaders to blame.

The most immediately important question, however, is not how it has come about that so many of us (and so many of our leaders) misunderstood what was happening, but rather what we should do now. We have to decide whether the drift towards union should be allowed to continue – and to this there is no obviously right or logically deducible answer, because nationhood is a matter of judgement rather than of logic. It is no easy matter to guess whether our lives, and the lives of our descendants, will on the whole be better if lived as citizens of a United Kingdom governed by British laws or as citizens of a European union governed by European laws.

The fact that this is a difficult judgement to make has sometimes been taken to imply that it should be reserved for enquiry by 'experts' instead of being discussed by ordinary people. One does not have to be a rabid democrat to find such pretensions to expertise objectionable. If Britain is to become a State of a European Union, the British people have a right to debate the matter openly. The purpose of this pamphlet is to contribute to such open debate by considering the evidence that

the EC is moving towards union, and the response that it is appropriate for Britain to make.

2
The Treaties

The Draft Treaty of European Union.

The first piece of evidence that the EC is moving towards union is one of the least known facts of modern British history: namely, that on 14 February 1984 the European Parliament adopted, by 231 votes to 31 with 43 abstentions, a *Draft Treaty of European Union*. This *Draft Treaty* is a remarkable document. It proposes that:–

- 'the law of the Union' should be 'directly applicable in the Member States', and 'should take precedence over national law' (DTEU, Article 42);
- the citizens of Member States should become '. . . citizens of the Union . . . enjoy the rights granted to them by the legal system of the Union and be subject to its laws' (DTEU, Article 3);
- the Union should legislate in relation to 'companies', 'taxation', 'the coordination of economic policies within the Union', 'monetary and credit policies', 'full monetary union', 'sectoral policies . . . in particular: agricultural and fisheries, transport, telecommunication, research and development, industry, energy' (DTEU, Articles (2), 49,50,51,52,53);
- the law of the Union should be established by a set of procedures dividing power fairly evenly between the European Parliament and the Council of the Union, and providing for the complete abolition of the national veto within ten years (DTEU, Articles 23,38);
- the Union should have the power to tax and raise loans (DTEU, Article 71);
- the Union should conduct a foreign policy, and should be represented by the Commission and its embassies *vis-a-vis* non-EC states. (DTEU, Articles 63,64,65,69); and
- the Treaty should become effective once ratified by

two-thirds of the Member States of the EC, regardless of the attitudes of the remaining one-third of Member States (DTEU, Article 82).

Following its adoption by the European Parliament, the *Draft Treaty* – which clearly provided for the creation of a European Federal Union – was approved in principle by the Belgian House of Representatives, the German Bundestag and the Italian Parliament. But the speed with which the EC was moving towards Union did not please all Member States; the British Government, in particular, strongly objected. In consequence, before many people in Britain had even heard of it and before it had been signed by any Member State, the *Draft Treaty* was replaced by the Single European Act, put together as a compromise in an intergovernmental conference.

Any idea that this was other than a temporary solution was firmly dispelled by Altiero Spinelli, the President of the European Parliament and prime architect of the *Draft Treaty*, who – in a splendidly forthright phrase reminiscent of the poet Horace – described the Single Act as a 'ridiculous mouse'. (Spinelli, 1988 p.54)

The ECSC and EEC Treaties.

The *Draft Treaty*, though never itself accepted, is significant because it is a strikingly open declaration of ideas which have in fact been present in a less obvious form for many years. From the start, the EC has been aiming at something far greater than mere economic cooperation. Inspired by the determination of Churchill, Schuman, Monnet and others to end the ancient conflicts between European States, the authors of the founding documents of the EC have always reminded their readers that the ultimate intention is full political union. This is evident even in the first of all the treaties – which, on 18 April 1951, established the European Coal and Steel Community.

True, the Treaty suggests that the *scope* of the Community's action is strictly economic, restricted to prices, production and trade. But the institutions – a 'High Authority' (precursor of the Commission), a 'Common Assembly' (precursor of the European Parliament), a Council of Ministers and a Court of Justice – have all the appearance of a political and constitutional apparatus.

Moreover, the Treaty Recitals make clear that the economic arrangements are intended as a basis of political union, stating boldly that the signatories intend 'to create, by establishing an economic community, the basis for a broader and deeper community among peoples long divided by bloody conflicts; and to lay the foundations for institutions which will give direction to a future henceforward shared.'

In the *Treaty of Rome*, which in 1957 established the European Economic Community, the same pattern is evident. At one level, the aim is clearly restricted to economic gain: 'the Community shall have as its task, by establishing a common market and progressively approximating the economic policies of the Member States, to promote . . . a harmonious development of economic activities' (EEC, Art.2). But, at another level, the aim is clearly political union, entailing 'the approximation of the laws of the Member States' (EEC, Art.3), and the recitals again make clear that the signatories intend not merely to achieve certain economic effects, but also to 'lay the foundation of an ever closer union among the peoples of Europe' (EEC, Recitals).

Reading these treaties, one conclusion is inescapable. There is a contrast between the ultimate goal towards which they aim, and the means by which they seek to reach that goal. The Jerusalem which the authors hope to build is nothing less than a true union of European peoples, which will forever prevent another European war, and will make Europe a great power – fundamentally, a political and constitutional, and not merely an economic vision. The modest matter of mere economic cooperation is no more than a staging-post on the road towards federal union.

The Single European Act

The most important recent development has been the increasing effectiveness with which the promotion of one particular form of cooperation – free trade – has been used as a reason for urging political union. The Single European Act of 1986 is the textbook case. This 'Act' (which is really a treaty) has generally been described – and was presented to the British people as – a means of enabling the EC to make rapid progress towards the full liberalisation of trade and services meant to take place in 1992. In one sense, this description is perfectly accurate, since article

13 of the Act states explicitly that 'The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992', and goes on to say that 'the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured. . .' But, ostensibly with the aim of achieving rapid progress toward such a true free trade area, the Act also allows the removal of the national veto by providing that 'the Council, acting by a qualified majority [as opposed to unanimously] . . . shall determine the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned' (SEA, Art.14). In addition, under cover of this 'free trade' Act, a large number of measures wholly unassociated with free trade and clearly tending towards political union are included: an additional European Court is established (SEA, Art.4,11,26); a new system of legislation, giving more power to the European Parliament, is introduced (SEA, Art.6 and 7); there are hints about further monetary union (SEA, Art.20) and further development of the Europe-wide regional policy (SEA, Art.23); and there are a series of provisions to strengthen cooperation on foreign policy (SEA, Art.30). Nor is any of this done by oversight. Once again, the recitals make plain that the signatories are 'moved by the will . . . to transform relations as a whole among their states into a European Union'.

In short, even if the *Draft Treaty of European Union* (with its programme of full federation) lies dormant now, its spirit has been alive from the beginning, has been embodied in all of the major constitutional documents of the EC, and still flourishes.

3
The development of law and policy

The gradual move towards a federal European State is not merely a dream or intention embodied in lifeless treaties. It is, increasingly, a practical reality. Power is being transferred, slowly but surely, from London to Brussels by means of increasing federal control over laws, taxation, macro-economic policy, micro-economic policy and foreign policy. When one thinks about that list, there is not much left out.

The law

Few people in Britain are fully aware – or have ever been fully aware – of the fact that, since our own Parliament at Westminster passed the European Communities Act in 1972, we have been governed by a new legal system. The Act is quite unequivocal on this point, stating that:–

> All such rights, powers, liabilities, obligations and restrictions . . . as in accordance with the Treaties are without further enactment to be given legal effect . . . in the United Kingdom shall be recognised and available in law, and be enforced, allowed and followed accordingly . . . (ECA 2(1)).

The essential legal doctrine, here, is that of 'direct effect': laws passed by the European Community can apply directly in Britain and other Member States, without any further intervention by the Westminster Parliament. This doctrine has been applied 'to the point where' (in the words of a standard legal text book) 'as far as its legal system is concerned, the community possesses most of the characteristics of a federation.' (Hartley, 1988, p.47).

The development of the federal legal system has taken place in two ways: by legislation, and by judicial law-making. Both these processes deserve attention, since both vividly illustrate the underlying reasons why it has been so easy to transfer power from Member States to the federation without any widespread awareness on the part of the British public.

The legislative procedures of the Community must surely rank as among the most – if not, indeed, the most – complicated

in the world. Try as one may, it is difficult to retain all the intricacies of the system in one's head at the same time. In broad outline:–

- There are three basic law-making bodies: the Council, the Commission and the European Parliament. In general, the Commission (which is largely run by ex-politicians and staffed by full-time Eurocrats) proposes new laws; the directly elected European Parliament comments and refines; and the Council (which is composed of Ministers from Member States) makes final decisions. But this general pattern has been changing slowly over time, as the Parliament has gained power at the expense of the Council, and as the Commission has created more legislation itself under treaty provisions enabling it to do so, and with the support of the European Court. There are now large numbers of procedures for making law, which involve the tossing of draft legislation back and forth between one body and another, with different types of majority required under different circumstances.
- There are three basic forms of law which can be enacted by the Community under the Treaties: (i) Regulations (which automatically become law for everyone living in EC countries) (ii) Decisions (which automatically become law for particular bodies or persons) and (iii) Directives (which order Member States to make laws of their own in order to give effect to community policies). These three forms of law are in themselves fairly easily understood; but the distinction between them has been confused by the use of different terminology in different Treaties, muddle on the part of draftsmen or legislators, and reinterpretation by the European Court, to the point where it is often difficult to discern why a particular law has been placed in one class rather than another.

The complexity of the formal mechanics for law-making is, however, less important than the two main practical effects – which are that national parliaments retain little or no power over

EC law, and that the Ministers of the Member States are reduced largely to the status of rubber-stamps.

These two phenomena are in fact connected with one another. When national laws are made at Westminster, our Ministers have to consider seriously any proposals from their officials, decide whether they can defend those proposals politically, and then take them into the House of Commons and House of Lords for detailed and frequently hostile scrutiny, accompanied by intense interest from the press, TV and radio. This is a procedure which both gives Parliament real importance as a focus for national discussion and concentrates Ministers' minds.

By contrast, when a new law is to be made in the EC, it is usually presented to the Commission, where no Minister sits; it is considered by the European Parliament, where proceedings go almost unnoticed; it is invisibly discussed by various committees of bureaucrats known as 'permanent representatives', whose business is to reconcile 'national interests'; and it is finally adopted – often without further ado – by a Council composed of Ministers who have flown into Brussels just in time for the meeting and may have had insufficient time to grasp what the real effects of the measure will be. Often enough, the draft will never have been debated at Westminster. And even when debates do take place, they are brief and largely fruitless, since the House of Commons is not itself an official part of the European legislative procedure. And yet, these pieces of legislation, undebated by our Parliament, uncomprehended by our Ministers, are becoming English law every day.

Even more important than the official legislation of the EC is the increasing amount of law made by judges in the European Court of Justice. This Court (which is not to be confused with the European Court of Human Rights) is, unbeknown to most people in Britain, a supreme and unchallengeable court, whose decisions automatically become part of English law. Any doubt on this score is removed by the European Communities Act 1972, which states explicitly that:–

> For the purposes of all legal proceedings any question as to the meaning or effect of any of the Treaties . . .

> or . . . of any Community instrument, shall . . . if not referred to the European Court, be for determination as such in accordance with the principles . . . and . . . decisions of the European Court. (ECA, Section 3(1)).

The standard legal textbooks make the position even clearer, asserting not only that 'Community law must be applied in accordance with the principles laid down by, and in accordance with any relevant decision of, the European Court' but also that 'a ruling [of the European Court] would be binding on all courts in England, including the House of Lords' (Collins, 1984, p.165).

To most Englishmen, it may seem strange that English courts should have to follow the decisions and interpretations of a court sitting in Luxembourg. But this is by no means the oddest feature of the European Court. Much more bizarre is the tendency of the Court to *create* law. This is a point on which there is neither disagreement nor abashment. The Directorate-General for Research of the European Parliament proudly proclaims, in a recent official publication, that 'the Court of Justice has shown itself to be an important factor – some would even say it was a driving force – in European integration', and adds tantalisingly that 'one of the great merits of the Court has been its statement of the principle that the Community Treaties must not be interpreted rigidly but must be viewed in the light of the state of integration and of the objectives of the Treaties themselves' (PE 100.200, p.,EN 1/D). The full meaning of this admission is brought out, once again, in the legal textbooks:–

> the policies of the European Court . . . may be summed up in one phrase: the promotion of European integration . . . the Court will ignore the clear words of the Treaty in order to attain the policy objective . . . This is sometimes called 'the teleological method of interpretation', but it really goes beyond interpretation properly so-called: it is decision-making on the basis of judicial policy (Hartley, 1988, p.77).

Perhaps the most important instance of this tendency – and one which has had a profound impact upon the development of the EC toward federal union – is the ruling of the European Court in the case of Ms. Yvonne Van Duyn in 1974. Here, the Court decided that the constitutive Treaties of the EC

(supposedly no more than agreements between governments) and EC Directives (a form of law intended solely to instruct a national government to legislate in a certain way), can confer direct rights on individual EC citizens even if their own parliaments have not enacted legislation conforming with the intentions of the Treaties or Directives. In effect, by making this judgment (subsequently reinforced by similar judgments), the Court began to replace the notion of the Community acting through the governments of Member States by the conception of the Community as a legislative body ruling directly over individual citizens throughout Europe. The movement is subtle, but definite: from supranational body to federal jurisdiction.

In short, the European Court is completing the work that the Treaties and our own European Communities Act began: it is making a reality of the Community as a legal Union.

Taxation

Second only to the emergence of federal law, the most important feature of a federal union is the power of taxation. In most federations – the United States of America and Canada are both examples – the individual states or provinces of the Union retain powers of taxation of their own; but the central government also exercises power to tax, and gradually becomes the biggest money-spender. This same pattern of development is becoming visible in the EC.

The scale of the EC's budget is frequently described as small. It has been pointed out, for example, that the 1987 budget – of some £25bn – represented only some 3% of the total of all Member States' budgets (Heseltine 1989, p.38). This does not, however, show the whole picture. In the fledgling ECSC's first year of activity (1952), its budget was about £3m, compared with the EC's budget of £25bn in 1987; this represents a total rise between 1952 and 1987 of some 830,000%, or a compound rise in nominal terms (at a constant 1987 ECU/sterling exchange rate) of some 30% a year. Even allowing for inflation and a doubling of members, that represents a staggering rate of growth. Moreover, although the rate of growth has declined as the absolute size of the budget has increased, there is little sign, if any, that the trend has been seriously contained: between the

1987 budget and the 1989 preliminary budget, the EC's spending total grew from 36bn ecu to 47bn ecu – or a growth of some 37% in two years. Today, the EC's budget is larger than those of Ireland, Luxembourg, Portugal or Spain, and is roughly the same as that of Denmark; by the end of the first decade of the next century (at current rates of growth) it is likely to be bigger than all but those of Germany, France and (possibly) Britain.

Even more important than the growing size of the EC budget is the shifting nature of EC taxation. In the early years between 1958 and 1970, Member States did not allow the Community to garner funds directly from taxpayers, except in relation to steel and coal levies; money for all other purposes was derived from contributions made by the Member States themselves. This arrangement naturally gave national governments the whip hand. The Decisions of 21 April 1970 and 7 May 1985 changed all that: the Community is now funded by what are called 'own resources' – viz. taxpayers' money collected via a 1.4% VAT imposed throughout the EC, a series of customs duties on imports to the EC, and agricultural levies. As the EC itself proudly proclaims, the result of the Decisions is that:–

> In 1989 . . . the Community will have a budget based on an amount of available own resources sufficient to finance all its policies (*Budget 1989*, p.13).

Moreover, the political significance of this shift in budgetary power from Member States to the Community has not been lost on the European Parliament, whose official publication states that:–

> Dependence on the Member States, which were required to make financial contributions . . . implied a decision-making process giving a preponderant role to the Council, which comprises one delegate from each government . . . The introduction in 1965 of the Customs Union and the Common Agricultural Policy . . . has resulted in own resources . . . which . . . have been the starting-point of significant developments which have given the Communities such a strong identity that it is now necessary for Europe's citizens to participate in decisions on political options (PE 100.200, EN III/C).

Any doubt about the intention of the European Parliament to use its new-found budgetary powers as a means of advancing towards fully fledged federal union is dispelled by the bold admission in the same official publication that:–

> It may be said that the European Parliament has made very good use of the prerogatives available to it under the Treaties. Despite the economic crisis and reluctance on the part of some Member States to sanction spending under the Community budget, the European Parliament did not flinch on two occasions from the procedure for total rejection of the budget in order to force the Commission to strengthen common policies (*ibid.*, EN III/C).

Nor is increasing budgetary power the only fiscal symptom of an emerging federal government. EC borrowing and lending have also increased. Although still small by comparison with the national debts of the larger Member States, the indebtedness of the various Communities and Community-agencies (ECSC, EIB, EURATOM and EEC) is now to be counted in billions of pounds and shows every sign of continuing healthy growth. As the funds borrowed are made available in the form of grants to specific projects and sectors, there will inevitably be a larger and larger clientele of individuals and corporations directly beholden to the Community. They will constitute a natural pressure group of the same sort that has been so effective in promoting the power of central governments at the expense of state and provincial governments in North America.

Macro-economic policy

For a true federal union to emerge, supremacy of law and increasing financial power at the centre are not, of course sufficient. A third crucial element in turning the central institutions of the Community into the central government of a union is the wresting of macro-economic control away from Member States. That this, too, was already well under way in 1986 was made clear by M. Delors, when he said in his Jean Monnet lecture that:–

> a European currency . . . will not become a reality

> tomorrow or the day after; but it is part of the European dream . . . When the wheels of success are turning they must not be stopped for a single moment (Delors, 1986, p.25).

Less than three years later, one can observe the surprisingly rapid progress of discussion on the creation of a European Monetary Union under the control of a European Community Central Bank modelled on the German Bundesbank. The single currency that M. Delors did not in 1986 expect to 'become reality tomorrow or the day after' now looks more like a practical reality than the 'dream' he then imagined it to be. Despite the reluctance expressed by Britain, Greece and the Bundesbank, it seems altogether likely that we shall shortly see the creation of a Community Central Bank – which could be expected to lead rapidly towards full monetary union, the end of separate currencies, and a common monetary policy for the Community.

At this stage, control over the setting of interest rates, exchange policy and credit policy would necessarily move to Brussels, since the Community Central Bank could not sensibly be responsible for maintaining the value of a common currency without having such levers at its disposal. Any efforts by the governments of Member States to run their own macro-economic policies would threaten to debase the currency and destabilise the European economy.

This development, towards a common European currency and the centralisation of monetary policy control in Brussels, is a most interesting example of the general pattern observable in all aspects of the EC's slide to federal union. The first step is the mere 'common sense' observation that pan-European trade would be facilitated by some new development – in this case a single currency. The next step is the unarguably correct proposition that the new development entails another advance towards union – in this case that a single currency requires a single central bank. And, with beautiful inevitability, the third step is the conclusion that Brussels must take new powers – in this case establishing control of the money supply.

Micro-economic policy

If power over macro-economic matters such as interest rates, exchange policy and credit policy is moving slowly towards Brussels, power over micro-economic policy has all but arrived there already. This became evident – if it had not already been obvious – in the middle of 1988, when M. Delors and Lord Young had their well-publicised difference of opinion about whether the EC would, within 10 years, be responsible for 80% (as M. Delors believed) or only 50% (as Lord Young asserted) of all micro-economic legislation in Europe (cf. Heseltine 1989, p.18). Whichever number one puts upon it, the trend is absolutely clear: through the mechanisms of 1992 and with the ever present aid of the European Court, the EC is gaining direct control over a wider and wider range of economic activity. An indication of this range is given by the list of economic activities which the Commission White Paper set out in 1985 as needing to be controlled by Brussels in pursuit of the completion of the internal market. This includes:–

- duties on fuel for use in transport
- cross-border transport
- economic statistics
- sales-related taxes
- livestock and other agriculture
- health and safety at work
- food
- drugs
- rights of asylum and refugee status
- visa policies for non-EC residents
- extradition policies
- tests and standards for professions
- environmental standards
- speed limits
- standards for automobiles
- biotechnology-based products
- chemical products
- construction standards
- textile production
- public procurement
- telecommunications, energy and water industries
- financial services
- air transport

- information technology
- movement of capital
- company law
- copyright law
- taxation of corporations and securities

As is by now well known, the Commission's 1985 proposals were rapidly and effectively translated into a bewildering number of new Regulations and Directives. And with the issue of each such Regulation or Directive, comes inevitably a further increase in the role of the Commission (whose duty it is to see that the law is enforced) as well as of the European Court, whose activities are bound to multiply as the range of ostensible conflicts between 'outmoded' national legislation and Community law increases.

Once again, the logic of the slide towards federalism is compellingly simple. The Commission's view is that a unified market requires compatible standards in every department of economic activity. Member States cannot be expected to impose such standards of their own free will. Therefore, the establishment of the unified market demands an extension of centralised legislation from Brussels. Or, to put the same point in another and more accurate way, the increase of centralised micro-economic powers in Brussels can be justified by the pursuit of the unified market.

Foreign policy

An EC that has supreme jurisdiction in law, a growing central budget, control over macro-economic policy and increasing domination of micro-economic policy, could be said virtually to constitute a federal union. But there is more – the EC is also developing a unified foreign policy. This may be far less advanced than the other elements of the union, but it has begun.

The bold proposal of the *Draft Treaty of European Union* was that Europe should conduct an explicit foreign policy, to 'ensure that the international policy guidelines of the Member States are consistent' (DTEU, Art, 67 (2)) and to 'coordinate the position of the Member States during the negotiation of international agreements and within the framework of international organisations' (DTEU,Art. 67 (3)). Following the general pattern

of the relationship between the two documents, the Single European Act modified and moderated this proposal, substituting the statement that 'the High Contracting Parties, being members of the European Communities, shall endeavour jointly to formulate and implement a European foreign policy . . . to inform and consult each other on any foreign policy matters of general interest so as to ensure . . . the convergence of their positions and the implementation of joint action . . . (and) . . . to avoid any action or position which impairs their effectiveness as a cohesive force in international relations' (SEA, Art. 30). It will no doubt be believed by many sceptical readers that the insertion of this language in the Single Act 'does not mean anything'. Such scepticism is, however, profoundly misplaced: first, because the Treaties of the Communities do not consist of words carelessly thrown down on the page, but rather represent the agreed and considered positions of the Foreign Offices of the Member States; second, because the doctrine of direct effect of the Treaties has now been so surely established by the European Court that it is only a matter of time before some citizen who feels that his interests have been impaired by a failure to cooperate in foreign policy brings and wins a case before the Court, enforcing such cooperation; and finally because the formal words of the Treaties are accompanied by a vast, informal apparatus of daily foreign policy coordination now carried on by the officials of the 12 Foreign Offices through the Committee of Permanent Representatives, European political cooperation and the European Council. We do not yet have a single foreign policy; but we are most assuredly acquiring one.

A far-sighted statement

It is important to understand that these claims about the onset of federalism are no longer an issue in debate between supporters and opponents of European uion: honest writers on both sides now agree to the same facts. Indeed, in his recent book, making a most powerful and well argued case for uion, Michael Heseltine is at pains to say that what he so aptly describes as 'creeping federalism' is not only desirable but is also happening. It is perhaps an indication of the intellectual vitality and honest politics to be found in today's Conservative Party that a leading

Conservative supporter of European union rather than a member of the Opposition has given us this clear acknowledgement of the direction in which Europe is moving – a direction quite different from the 'willing cooperation between sovereign states' desired by the Prime Minister in her now famous speech at Bruges:–

> There is no escaping the fact that a fledgling federalism is emerging, however the dictionary definition of this emotive word may be stretched to pretend otherwise. Many may not like it but it cannot be wished away (Heseltine, 1989, p.19).

4
Arguments for union considered

The fundamental nature of the change

Some of the advocates of European union appear to imagine that one of its hallmarks will be decentralisation of power. 'The institutions of Europe', goes the argument, 'are still in the making; we can be part of that making and ensure that real power in the federation remains in Paris, Bonn, Madrid, Rome and London rather than being centralised in Brussels'. This represents as naive a view, as glaring a misunderstanding of the future, as the repeated assertions of our leaders in the 1970s and 1980s that Britain's membership of the EC would not mean a move towards federal union.

Once a nascent, central federal European government exists – as it does now – it will inevitably seek (that is to say, the combined forces of the Commission, the Parliament and the Court of Justice will inevitably seek) to centralise power as a means of holding the federal state together. This tendency to centralise does not arise from malign or irrational motives: on the contrary, it is the only rational course for a federalist to take, since the continued power of member-governments always threatens to result in divisions between those governments and hence the dissolution of the union. Only when power has been sufficiently centralised can the federal government ensure that the eccentricities and particular interests of the member-governments are overridden by the greater interests of the union as a whole. This proposition (which is, in truth, no more than a matter of common sense) has been a fundamental tenet of federalist theory for centuries. It is well illustrated in the classic exposition of such theory, *The Federalist Papers* of James Madison, Alexander Hamilton and John Jay, which had so great an influence in leading Americans to accept the centralisation of power in the United States. Drawing on the examples of history, Madison writes – with startlingly vivid analogy to the present condition of the EC:–

> Among the confederacies of antiquity the most considerable was that of the Grecian republics . . .

> the members retained the character of independent and sovereign states and had equal votes in the federal council . . . In theory and on paper, this apparatus of powers seems amply sufficient for all general purposes . . . Very different, nonetheless, was the experiment from the theory. The powers . . . were administered by deputies appointed wholly by the cities . . . Hence the weakness, the disorders, and finally the destruction of the confederacy . . . Such were the consequences of the fallacious principles on which this interesting establishment was founded. Had Greece . . . been united by a stricter confederation . . . she would never have worn the chains of Macedon; and might have proved a barrier to the vast projects of Rome *(Federalist Papers,* p.161).

Replace 'Greece' by 'the EC', 'the chains of Macedon' by 'the influence of the USA', and 'the vast projects of Rome' by 'the ambitions of the USSR', and you have the very arguments that will be used – should rationally be used – by the federalists in the EC to argue for increased central government power and decreased influence for the Member States.

What will be the practical effects of these arguments for centralisation? As the EC moves towards union over the next couple of decades, most of the familiar landmarks of British politics will gradually disappear. The Parliament at Westminster – which, for five hundred years has been the centre of political attention in Britain – will become, like the provincial legislative assemblies in Canada, an important but secondary item. Our national 'general elections' will in consequence begin to fade, with their place taken by the European elections as the main focus for long-term public debate. Our national government, whilst remaining a significant body, will be less in the news, and far less significant in the world at large, than the leaders of the Union. Our Home Office, Treasury, Department of Education, Department of Health and Department of Social Security will probably remain as centres of real power, though with some of their functions (immigration, macro-economic policy, research funding, public health standards and pensions policy) removed to Brussels; our Foreign Office, Ministry of

Agriculture, Department of Trade and Industry, and Ministry of Defence will become nugatory or disappear entirely; in their place, two departments may well gain prominence, the Law Officers' Department (dealing with an ever-increasing round of legal issues between Member States), and a new Union Department, perhaps created out of the old Foreign Office, which will be responsible for guiding our relationships with the other state governments and the government of the Union. As is already happening in other European countries, our national flag will begin to appear alongside the Union Flag of twelve golden stars set on blue. We will gradually become accustomed to being regarded by people outside Europe as 'Europeans', rather than as 'British' – as people living in Saskatchewan or British Columbia find themselves (often to their slight annoyance) described by foreigners as 'Canadians'.

These are great changes, not mere adjustments. Even if they happen so slowly as to be almost imperceptible in the occurrence, they will – once they have occurred – leave a Britain of a new kind: still democratic, still free, and still liberal, but retaining these qualities only through being one part of a large, liberal, free democracy, with political attention focussed firmly upon the whole, the Union, rather than upon our little island.

The policy vacuum

How should we respond to such a prospect ? That is no easy matter: when we are asked to make a judgement about our whole political future, we cannot feel confident that whatever judgement we make will prove to have been correct. There, is however, one point that is clear, and on which we can all agree: nothing whatsoever is to be gained by indecision and delaying tactics. We must either welcome federalism as the direction of the future, and seek to create workable federal institutions – a true and democratically accountable government of the union – or else adopt an open and plausible non-federalist policy for Britain. At present, neither of these alternatives has been placed before the British public for the simple reason that no politician or political party has yet adequately formulated either policy.

Those in Britain who favour union have perhaps the advantage at present, since they have in Michael Heseltine's

work the beginning of an exposition of a sustainable, openly federalist policy with the suggestion of a senate, that could be drawn from national parliaments, as a first step towards proper federal institutions. But even this is only the beginning. The issue of executive and legislative power needs to be resolved: the present unstable relations between Council, Commission and Parliament and, in consequence, the effectively untrammelled power of the bureaucrats, needs somehow to be transformed either into a system in which powers are clearly separated (with a directly elected or state-delegated union government acting as an executive and a separate chamber of deputies and senate acting as legislature) or into a Westminster-style system in which a union government is formed out of, and is accountable to, the European Parliament. None of this has yet been worked out by the advocates of union.

Those who oppose union are in a far worse condition. Most are so painfully ignorant even of the basic Community texts, so unaware of the stage of development already reached, that they have not even an inkling of the need for a policy. And even those, like the Prime Minister, who have grasped what is happening, and have sensed the need for a policy alternative to federalism, have not put forward any plausible plan.

The result of this policy vacuum is that the future political development of Britain is not actually being determined by elected politicians. It is being decided – for the first (and one must hope, the last) time in history – behind closed doors by the officials of the Foreign Office: a body of men and women of great intellectual and personal distinction, in whose fitness, however, for the purpose of making fundamental constitutional decisions neither major political party nor the British electorate at large nor those acquainted with the history of our foreign relations over the last hundred years, can have confidence.

The arguments for union

The first step in filling the policy vacuum is to resolve the fundamental issue of judgement: do we or do we not want to become a Member State of a Federal European Union?

The arguments for union fall broadly into three categories:–

> *The argument from inevitability:* 'the EC is going to become a union; we are members of the EC; therefore, like it or not, we are going to become part of the union; so we had better get down to making the best possible job of it, rather than sitting around worrying about whether it ought to happen'.
>
> *The argument from national unity:* 'in the 1970s, we chose as a nation, through votes in Parliament and in a referendum, to join the EC and to remain in it; this constituted a commitment not only to accept anything done until then by the EC but also to play a part in its development towards union – the *Treaty of Rome* itself called for 'an ever closer union'; it would therefore be morally wrong, and would lead to deep division in the country as a whole as well as the Tory Party in particular, if a splinter group were now come out against union'.
>
> *The argument from geopolitics:* 'in the new world, there are going to be three great economic powers (the US, Japan and the EC) and five great political powers (the US, USSR, China, Japan and the EC); if we are not part of one of these blocs, we will be powerless; being powerless is damaging to our economy and self-respect; therefore we should seek to play a leading role in the union, rather than childishly exclude ourselves from it'.

These three arguments all tend to the same conclusion – but they have distinct personalities. Indeed, they can be associated with three great figures of British history: namely, Canute, Burke and Churchill, who argued respectively against attempts to prevent the inevitable, in praise of national unity and in favour of a European power bloc. Despite these grand associations, however, each of the arguments is flawed.

The argument from inevitability

The argument from inevitability has in its favour two major points: it is almost certainly true – as the first part of this

pamphlet seeks to show – that the EC is heading towards union; and it is certainly true that we are members of the EC. It is the next step in the argument that must be viewed with extreme scepticism: why does it follow that we, as members of the EC, will necessarily become part of the union towards which the Community as a whole is heading? Are there no other possibilities? Is there not some way in which we could continue to reap the advantages (and bear the obligations) presently associated with membership, without becoming fully fledged members of the union? These are questions that need positive answers – one of which is given in the next chapter of this pamphlet; but it is clear at least that other options can be imagined: the issue is not – cannot rationally be – whether we have any alternative to union membership, but rather whether we have any attractive alternative. The argument from inevitability is therefore a painful sham: it seeks to disguise what is actually a preference for union behind the mask of fate.

The argument from national unity

The argument from national unity is equally fraudulent, since – although the first step is true (in the 1970s, we did decide to join the EC and to remain in it), the second step is radically false: the British people did not then, and for the most part do not even now, recognise that joining the EC constituted making a commitment to play a part in the development of a federal union; indeed, it is to the everlasting discredit of the British political system and British journalism that – in marked contrast to Mr Heseltine's present arguments – there was not at that time any clear admission that federation or union were even on the cards. The third step of the argument is therefore fallacious: it would not be morally wrong to argue now against union, since such a commitment was never knowingly made; and if 'deep division' were to be the result of making such an argument that is no more than should be expected in a free democracy in which different opinions ought to be aired by different persons in a rational and orderly debate. Neither Britain nor for that matter the Tory Party, is so weak as to be unable to withstand such debate.

The argument from geopolitics

We come, then, ineluctably to the one really serious argument for union: the argument that Britain cannot ever again be great, except as part of some greater whole. This is, indeed, the argument that Mr Heseltine so forcefully makes: and there is far too much truth in it for it to be lightly dismissed. In particular, it is surely true that, as a trading nation, we are more likely to prosper as part of a major economic bloc. Whether we like it or not, participation in a European free trade area, a European economic bloc, almost certainly will continue to be to our advantage. With roughly half our exports and half our imports now going to and coming from other EC countries, we would be taking huge economic risks if we were now to exclude ourselves from the common market afforded by the EC. No doubt, our position would be better yet if we could ensure a progressive removal of the customs fortifications presently in place around 'fortress Europe', so that genuine free trade becomes a worldwide phenomenon. But in the meanwhile, where there are fortifications, it is more comfortable to be inside them.

The serious issue is whether we *also* need to be part of a federal political union. The requirement to go beyond trading arrangements and to form such a political union supposedly arises from the fact that Britain is not now a super-power, and will not be one as long as we remain a single nation; whereas a European union would be (or at any rate could be) a super-power. This has, at first sounding, the ring of truth: in some way, albeit intangible and difficult to identify precisely, it is probably advantageous (and is certainly more in line with our historical pretensions) for Britain to understand herself as a significant player on the world's stage. Empire, when we had it, was grand: to be part of a second, modern, empire might be similarly grand. But there is a rub. Last time round, the Empire was ours. We were not part of it; we ran it. This time, we will not run it; we will merely be part of it. Decisions – the decisions of our union – will not be made at Westminster; they will be made in Brussels. Instead of ruling a large part of the world, we will be supplicants at a court several hundred miles away. In the end, it comes to this: do we rate independence above belonging to a great power, or belonging to a great power above independence?

Political union as a sine qua non of common market membership

That fundamental question – independence versus shared power – has not been addressed in British political discussion. And this is because the supporters of union do not regard it as a realistic question: they believe that, regardless of whether political independence is more valuable or less valuable than shared power, the truth is that we will not be allowed to enjoy the undoubted benefits of membership of a European economic bloc without being part of the coming union. Moreover, they have good grounds for this supposition – since no one has spelled out a policy which would give us the remotest chance of achieving such a double-act. Those of us who do value independence above shared power must recognise that, unless a policy of that kind – a policy for continued, stable, full, common market membership without participation in political union – can be formulated and quickly made effective, then we shall have to accept the move towards union.

5

A new programme for Europe: wide community and narrow union

The need for a positive policy alternative

The most important single step towards the formulation of a non-federalist policy is the recognition that many of the present Member States of the EC will wish to form a federal union. The ratification of the *Draft Treaty of European Union* by the German Bundestag, the Belgian House of Representatives and the Italian Parliament, and the present strong moves towards monetary union are evidence enough of that fact. Any attempt to redirect the entire flow of events and to prevent the emergence of a fully fledged union will simply be regarded as endless, reactionary, unconstructive foot-dragging.

We must therefore look, instead, to the possibility of a positive alternative policy: the creation of a wider community – a greater European economic bloc, incorporating not only those countries that wish to form part of the union, but also those that do not and indeed those with whom the Members of the union would not wish to be in so close an association. The Community might, in other words, seek to include – as well as the present members of the EC – the remaining Scandinavian countries (Norway, Sweden and Finland), the Alpine countries (Switzerland and Austria), and Turkey – as well as those (if any) of the present Eastern bloc countries that move firmly towards capitalism and democracy. The rules of such a wider community would, of course, need to be debated in detail not only by existing Member States of the EC but also by potential new entrants. But the fundamental characterisation might be:–

1. A complete free trade zone with no customs barriers, or barriers to the free movement of goods, services and persons (subject to appropriate security checks) based on the 1992 legislation.
2. A ban on the national subsidisation of industry and trade, also based on 1992.
3. A court of arbitration to resolve disputes concerning

freedom of trade and subsidy, on the lines of the arbitrator established by the Canadian/US free trade deal.

4. A forum, similar to the present European Council (but not to the Council of Ministers) at which matters of mutual concern would be discussed and resolved. In particular, the forum would be responsible for adjusting the tariffs and other barriers set against trade with countries lying outside the community.

5. Provision for Member States of the wider community not to be subject to the Commission, the Parliament, the Council of Ministers, the European Court, a common currency, a Community Central Bank, the CAP, centralised regional policy, or any other federal apparatus.

6. Provision for those Members of the wider community wishing to enter into a union based on the present quasi-federal institutions of the EC to do so, provided that the activities of the union did not contravene the Community's free trade rules.

7. Provision for the further development of the rules of the wider community – if any were required over time – to be by unanimously agreed treaties amongst the governments of the Member States. (In other words, the veto would be formalised as a feature of the Community's constitution.)

Would a wider community work?

It will no doubt be said that a wider community of the form proposed is no more than a pleasant pipe-dream, a mere repetition of EFTA which has never become a truly integrated free trade area. But why should this be believed? The truth is that there is absolutely no logical or practical connection between, on the one side, the quasi-federal institutions, the CAP, and the regional policies and on the other side the free trade rules established by the 1992 package. Indeed, as has recently been noted by academic commentators, the 1992 rules (being heavily based on the principle of mutual recognition of standards

between Member States rather than on harmonisation) are in any case more EFTA-like than CAP-like in spirit (cf. Price, 1989). The difference between 1992 and EFTA is that the rules of 1992 are so complete that – if applied on a wider front throughout Europe – they, unlike the weak and undeveloped rules of EFTA, would create immediately by far the largest and most rigorously conceived free trading zone in the world, with no need for major, centrally-imposed change over many years to come. As a result, the institutionalisation of the national veto after 1992 would cause little or no impediment to the full exploitation of the opportunities provided by free trade within the wider community.

Nor is there any reason to suppose that relations between the narrow Union and the wider Community would be difficult. On the contrary, the genesis of the wider Community as an extension of 1992 to a larger group of countries – and its consequently common heritage with the Union – would provide the basis for an extraordinary degree of mutual understanding, as well as a bedrock of shared history of the kind that EFTA lacks. Indeed, it is perfectly conceivable that some Member States within the wider Community might subsequently join the narrower Union, or that Member States of the Union might choose to remove themselves from that closer association whilst remaining members of the Community. In short, a great degree of latitude and flexibility would be provided – removing many of the grounds for dispute and the sense of constraint felt by some Member States in the present EC.

Is membership of a wider community preferable to union for Britain?

If such a wider community were established, and a narrower union formed within it, to which should Britain wish to belong? The answer must depend upon one's response to that fundamental question: is independence more or less valuable than shared power? Is it better to be a self-determining, but fairly small power with free access to a massive economic zone, or a constituent part of a far more powerful union? Do we really care whether Westminster and the traditions associated with it remain the centre of our political life, or would we be content

to trade these away for a part-share in a great centre of power at Brussels?

To these questions, there are no indisputable answers. There are only preferences and judgements based on necessarily slender evidence. For some of us, the preference is to remain independent, for others to be part of a grander whole. At least, if both wider Community and narrower union were available as alternatives for Britain, the British people could make a choice between two realistic and economically feasible alternatives, instead of being presented, as in the 1970s, with the false dichotomy, 'in' or 'out'. If the choice of the British people between those alternatives, each fairly and honestly presented, were for union, then we should all be duty bound to join with gusto in the work of making that union democratic and effective; if the choice were for membership only of the wider Community it would equally be the duty of British federalists to accept the decision with grace. Either course would be immeasurably preferable to the present, half- conscious and half-willing slide towards a union all too often presented as the inevitable consequence of an earlier national decision and as an essential prerequisite of our economic prosperity.

It is high time for a positive policy alternative to union. The creation of a wider European Community constitutes such a positive alternative. Who could better promote it than the present British Government?

References

A. Treaties, Acts of Parliament etc.

DTEU
Draft Treaty of European Union, 1984

ECSC
Treaty establishing the European Coal and Steel Community, 1951

EEC
Treaty establishing the European Economic Community, (The Treaty of Rome), 1957

EAEC
Treaty establishing the European Atomic Energy Community, 1957

SEA
Single European Act, 1986

ECA
European Communities Act, 1972

Budget 1989
Preliminary Draft General Budget of the European Communities for the Financial Year 1989, (com(88) 290 final – EN)

WP 1985
White Paper from the Commission to the European Council, completing the Internal Market, June 1985

B. Other works

Collins 1984
L. Collins, *European Community Law in the United Kingdom*, London, 1984

Delors 1986
The Single Act and Europe: A Moment of Truth, Ninth Jean Monnet Lecture, Jacques Delors (Florence, 21 November 1986) published by the Office for Official Publications of the European Communities

Federalist Papers
The Federalist Papers, James Madison, Alexander Hamilton and John Jay, Penguin edn. London, 1987

Hartley 1988
T C Hartley, *The Foundations of European Community Law*, Oxford, 1988

Heseltine 1989
M Heseltine, *The Challenge of Europe: Can Britain Win?* London, 1989

PE 100.200
Directorate General for Research, European Parliament, Fact Sheets on the European Parliament and the activities of the European Community (publication PE100.200, Luxembourg, 1987)

Price 1989
Victoria Curzon Price, 'Three models of European Integration' in *Competing Visions for 1992* (Institute for Economic Affairs, London, 1989)

Spinelli 1988
A. Spinelli, *Battling for the Union*, published by the Office for Official Publications of the European Communities, 1988

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