



Can self-government survive?

Britain and the European Union

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CHAPTER 1

INTRODUCTION

THE EUROPEAN UNION MAY WELL be approaching a decisive stage in its development later this year. Or again, it may not be. As always in the affairs of the EU, it is hard to discern where it is going, who is generating decisive impulses, who is putting on the brakes, what kind of bargains on this matter or that may be feasible and so on. So prophecy remains a hazardous business.

Nevertheless, certain objective circumstances suggest that the current Inter-Governmental Conference which is intended to reach conclusions on treaty revisions before the end of 2000 may take some far-reaching decisions; and that the effects of these will push the EU decisively towards seeing itself more like an emergent state and less like an association of sovereign nation states co-operating for mutual advantage. For example, a reduction in the veto rights of member states and a realignment of qualified majority voting rules is held by many to be required both to facilitate decisions in the EU as it now exists and to accommodate a wider membership after prospective enlargement.

There is also a clear need, ahead of any enlargement, to reconsider the membership, structure and size of the European Commission. Additionally there are strong pressures for the proclamation of a new code of human rights which some see as the first step towards the achievement of a genuine constitution for the EU. And on top of that, there is pressure for a further development of social policies which would be binding across the board. Finally in the eyes of the present members of the Economic and Monetary Union there is an urgent need to devise more

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effective methods of formulating and carrying out common economic policies to back up the monetary union they have joined and, if possible, to consolidate and strengthen the common currency launched at the beginning of 1999.

Progress on any or all of these matters would constitute a watershed and would offer proof that the European Union was at last irrevocably launched on the road to effective statehood. For this reason alone there is ample justification for looking again at the peculiar challenges that the evolution of the EU presents to a nation like Britain which remains for the most part doubtful about the onward march to 'ever closer union.'¹ This is what this paper proposes to do.

A short history lesson

Ever since Britain committed itself in 1972 to membership of the European Economic Community – known more familiarly at that time as the Common Market – its relationship with the Community (or to be more exact, the 'Communities') has been an uneasy one. Sometimes it seemed that Britain was concerned only with getting out of the Community what it regarded as its due, most famously when Mrs Thatcher argued vehemently for, and eventually secured, a rebate on our budgetary payments.

But there have also been times when Britain has given strong support to important policy developments, notably in putting through the measures called for to complete the single market provided for by the Single European Act in 1986. Even when the relationship with the European Communities was at its most tense and difficult, for example during the run-up to the Maastricht treaty in 1992 and in the course of its subsequent passage through Parliament, politicians continued to talk optimistically of 'Britain's

¹ The preamble to the Treaty of Rome 1957 setting up the European Economic Community opens by referring to 'an ever closer union among the European peoples'. Article 2 then refers to 'closer relations between its Member States'. It is an interesting question of conceivable judicial interpretation which condition should take precedence .

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place in Europe' and of their desire to see Britain taking a lead in the development of the European project. With the arrival of the Blair Government, the desire to be 'at the heart of Europe' became even more explicit. Mr Blair professed his determination to show that by adopting a more conciliatory approach to policy issues in the EU than his predecessors had done – an approach which *inter alia* resulted in adherence to the Social Chapter agreed at Maastricht and from which Britain had secured an opt-out – it would be possible to assume a comfortable position on the bridge of the good ship European Union. Britain would, it was hoped, have a hand on the policy tiller.

Yet despite Mr Blair's well-publicised efforts to persuade his European partners to take over his 'modernising' agenda, he has continued to have awkward moments with them. He remains worried about loss of powers over taxation and appears to be resolutely non-committal about joining the Economic and Monetary Union. This makes it hard to discern many convincing signs of Britain gravitating to the centre of the policy initiatives which, so it is widely asserted, must be taken and decided before the end of the current year.

In reality, reluctance to rush ahead and caution remain the hallmarks of the British approach to the great adventure of building in Europe 'an ever closer union'. Politicians of various parties continue to assert that we must get closer to the heart of Europe, yet it remains an inescapable fact that such demands continue to be at odds with the evidence of what happens day by day. There is no sign that Britain is comfortably at the centre of policy making in the EU: it continues to be either a brake or a dissenter most of the time, and a reluctant partner nearly always. One of the aims of this essay is to review some of the underlying reasons why this has been so.²

² Some of the ground covered in this present paper was admirably and lucidly surveyed by Crispin Blunt MP in his pamphlet *Britain's Place in the World – Time to Decide*, published by the Centre for Policy Studies in 1998. His emphasis was, however, more on the broader foreign policy aspects of Britain's position in the EU than on the structural reasons for the difficulties inherent in membership.

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A glance to the future

While it remains important in respect of nearly all political problems to have some grasp of the past circumstances and experiences in which they are rooted, we are bound also to be concerned with the future and the question of whether there are likely to be serious opportunities for changing the situation and prospects. In relation to the future evolution of the European Union and Britain's place within it, this means considering whether it is realistic to believe that the EU can be changed or is likely to change of its own accord on any terms likely to be acceptable to a majority of voters in Britain. Francis Maude, the Shadow Foreign Secretary, put the choice very explicitly in a letter to the press in which he wrote:

It is now high time for the Commission to discard the old dogmas of ever closer integration and centralisation. Instead it should adapt to the realities of globalisation... by proposing a more outward-looking, flexible and free-enterprise future for Europe.³

These remarks highlight a fundamental policy issue facing not only the present Government, but also any alternative Government in the future: if a majority of member states of the EU continue to insist, as they have done since at least 1990, on pressing on ever further down the road of 'ever closer union', and are ready to accept the greater degree of political and economic integration entailed by such steps, what is to be done about it? Indeed, can anything at all be done about it?

It is highly likely that the majority of the British people will continue to oppose moving ever further down the road sign-posted 'ever closer union'. They can see that whatever might be the ultimate character of 'ever closer union', it is bound to entail a continuing loss of their rights of self-government. Moreover, there is some evidence for the belief that they would not wish to follow this path, even though it may be claimed that the economic

³ Letter to *The Daily Telegraph*, 27 May 2000.

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benefits of so doing are overwhelming. If these conditions hold good, then two further questions have to be faced up to. One is whether there is any realistic prospect of persuading our partners in the EU – or at least a significant number of them – that there are reasonable and viable alternatives to the inexorable pursuit of ‘ever closer union’. And if the answer to this question looks like being in the negative, then it becomes necessary to ask whether it would be more honest towards the British people to consider how we might modify in perhaps fundamental ways our position and obligations within the EU with the minimum of damage both to ourselves and other member states.

No questions please

Any effort to think critically about the future shape of the EU and Britain’s relationships within it runs the risk of being regarded as simply another exercise in euro-scepticism. This happens in part because so much discussion of the whole subject both in Britain and on the continent has become dominated both by ideological commitments (‘no turning back now’) and by the dictates of political expediency (‘never admit that we made a mistake’). Indeed in many parts of the continent of Europe it has become virtually impossible to raise serious practical questions about the methods, aims and limits of the integration process. To do so is seen as calling into question the validity of the whole enterprise. While it is acceptable to indulge in colourful rhetoric offering visions for the future, there is very little space for asking critical questions about specific changes that might be made to improve the functioning of EU institutions and the effectiveness of its policy implementation.

The deep fear of any plain-speaking about the condition of the EU and where it might be going found vivid expression in the recent contretemps between France and Germany over the speech by the German Foreign Minister, Joschka Fischer. He offered the world his thoughts as a private individual about the desirability of the EU evolving into a federation of some sort or another. When the former French Interior Minister, Jean-Pierre Chevènement,

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voiced his doubts about such a federal vision, he was indelicate enough to suggest that perhaps the German desire to confer the benefits of their kind of federation on the rest of Europe reflected several aspects of their earlier history, including a deep mistrust of the national state inherited from the Nazi epoch. Shocked voices of protest were heard in both countries.

Yet what this French politician was saying is fairly familiar to anyone who has studied post-war German foreign policy in general and European policy in particular, and thought carefully about its underlying motivations. Nevertheless, such critical comments had to be firmly disavowed and their author (who happens to be very well-informed about German history and culture) persuaded to offer a semi-retraction. After all, nothing must be allowed to disturb the harmony of the two Governments which like to see themselves as the twin motor of European integration and the privileged source of policy initiatives to take it further forward.

There can be no question that this climate of conformity and artificial optimism makes the task of constructive criticism exceedingly difficult.

Most of the problems and arguments to be discussed in what follows are political rather than economic. In Britain, sensible and rational consideration of the EU, what it is, and where it is going, has long been hampered by a failure to recognise that the politics and economics of membership are indissolubly tied together. To take the most obvious current example of this, the decision whether or not to join the euro zone is inextricably political and economic. The two aspects of the issue cannot be separated, which is why the Chancellor of the Exchequer's claim that adopting the euro would have no constitutional implications is either hopelessly naïve or dishonest. However, it is not surprising that many people would like to persuade themselves that such a separation can be made. Many of those in Britain who endorse the EU in a broad sense defend their position by arguing that future economic survival depends almost exclusively on continued membership: they see the EU as a 'zone of prosperity' to which we must belong.

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The advocates of this view then tend to push the political side of the equation under the carpet or into a distant future.

In contrast, those who dislike the EU chiefly on political grounds (and these political grounds can be diverse) tend to discount its possible economic benefits. Some critics also do not want to recognise that the national interest demands that Britain should maintain good relations with the EU even if by some means or other major changes were to be made in the terms on which the EU is constituted, or on which Britain works within it. Indeed, even the most radical policy option of all – a decision to try to negotiate an orderly withdrawal from the EU – would still call for a determined effort to retain as many of the economic benefits of membership as possible. So in whatever direction we look in the future, the economics and politics of the terms of membership must be seen as indissolubly linked.

There are few dedicated euro-sceptics in Britain in the sense of people who are actively hostile to our continental neighbours. Equally, there are very few euro-faithful who are so dedicated to the cause of European union that they do not care about its political character and are ready to follow wherever the Pied Piper leads. But what we can be sure about is that there are many in Britain who want to co-operate as fruitfully as possible with the EU and its member states, to safeguard British prospects of economic prosperity, and yet to retain their traditional rights of self-government to the maximum practicable extent. If a serious consideration of the available evidence suggests that it may not be possible to satisfy all these requirements to a similar degree, then decisions will, some day, have to be made. These decisions will involve the judgement of political values as well as of material advantages. That day seems to be getting closer. And such a decision might make it clear that British interests call for a radical reappraisal of the shape and purposes of the European Union.

CHAPTER 2

THE HISTORICAL HERITAGE

IT IS WELL KNOWN THAT BRITAIN moved reluctantly towards membership of what was then the Common Market or European Economic Community. After two abortive attempts to enter the Community, Edward Heath's Government finally signed up to accession in 1972. After passage of the necessary legislation through Parliament, Britain took up membership at the beginning of 1973.⁴ After a somewhat specious show of renegotiating some aspects of the terms of accession by the Wilson Government, approval to Britain remaining in the Community was given in a referendum held in 1975. All this happened at a time when the perception in the country of relative economic decline was strong and there was a widespread hope that in some way or other membership would stimulate economic growth. The political aspects of accession to the Treaty of Rome were for the most part played down. Indeed, several assurances were given by Mr Heath's Government that membership would involve no serious derogation from the sovereignty of the British Parliament. In short, it was essentially a common market that we were joining.

A divergence of economic policy

Ironically, the economic revival which a few years later got under way in Britain owed little or nothing to membership of the EEC. Far more important was the return to market economics and the

⁴ The enabling legislation was contained in the European Communities Act 1972. Whilst in constitutional theory at least, repeal of this act would end Britain's membership of the Communities, in reality withdrawal would be a much more complicated matter than that.

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liberalisation of the British internal economy pioneered by Margaret Thatcher after she took office in 1979. Inevitably this tended to open up ever-widening differences between the approach to economic policy favoured in Britain and that preferred by most member states of the EEC (and to a considerable extent by the European Commission also).

In the early years of British membership, these differences had not been so significant. Then, there was a widespread commitment in most European states to the notion that the state should play a major role in 'managing the economy'. Indeed, in some respects, roles were gradually reversed: until the arrival of the Social Democrat/Free Democrat coalition in 1969, West Germany stood for a much more market-orientated line in economic policy than both Britain and the other members of the EEC. But during the 1980s, the radical nature of the Thatcher Government's policies in relation to the role of government in the economy, together with the great success of the privatisation programme, meant that large differences of approach were established.

The willingness of the British Government to give its support to the 1986 agreements converting the Common Market into a Single Market rested on a serious misunderstanding. Most of the other member states in the European Community and the then President of the Commission, Jacques Delors, hoped to secure something far more ambitious. Without doubt, the British were thinking almost entirely in terms of a single market freed from internal barriers to trade of all kinds. Others, including M. Delors, saw the single market as the basis for further achievements on the road to closer integration. Indeed, hardly was the ink dry on the agreements establishing the single market when preparations began to be made for a much more ambitious plan, the introduction of a common currency.⁵ After all, there was some

⁵ This passage foreshortens considerably the emergence of a commitment to a common currency. The scheme has forerunners in the early 1970s and in the setting up of a rudimentary European Monetary System in 1978. The gestation period for major EU policy changes is nearly always extremely long.

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plausibility in the argument that this would be a logical and compelling step to take in the completion of the single market.

Thus, the economic remit of what was once the Common Market has steadily widened as the single market began to be implemented. It soon became apparent that the notion of a single market lent itself to very wide interpretation and so could be used to open the door to more or less unlimited harmonisation. Thus, for example, the 1992 Single Market Programme embraced areas like veterinary controls, food and drugs standards, aspects of the travel industry and many others. Indeed, there is virtually no limit to what can be treated as ancillary to the achievement of a single market and, therefore, subject to Community regulation.

A widening remit

Then, just as the common market became a single market with a concomitant increase in Community powers and competences, so the European Union superseded the European Communities as a result of the Maastricht treaty signed by the member states in 1992.⁶ It was, of course, this treaty which set the seal on the commitment to establish by the beginning of 1999 a common currency, a development from which Britain (and others) secured an opt-out. But the Maastricht treaty was by no means concerned only with a major step forward in the process of economic integration. In addition to providing for the highly symbolic introduction of EU citizenship, it contained numerous conditions which have since functioned as markers in the integrationist effort. The range of policy areas within which the EU would be able to intervene has widened significantly. Social affairs, including at a later stage employment policy, was one such area; justice and home affairs were signalled as other areas within which there was potential for EU co-operation and harmonisation. And it has become clear that the political ambitions of the EU were to

⁶ Strictly speaking the European Communities still survive alongside the EU, so that for some purposes Community action is required, for others EU action.

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be strengthened to embrace at least some aspects of foreign and defence policy. The movement towards allowing the EU to develop an active role in defence and foreign policy was confirmed and given further impetus by the Amsterdam treaty of 1997. As is so often the case in EU negotiations, this was held to be little more than the tidying-up of loose ends left unresolved and unagreed at the preceding Maastricht negotiations.

By these and many other steps, a Community which had started off almost exclusively focused on economic objectives became an overtly political association. It has been empowered to supplant the discretion of democratically elected national governments in a complex, loosely-defined and potentially unlimited range of affairs. All these developments have been justified by its supporters on the continent on the grounds that they represent decisive progress towards the goal enshrined in the Treaty of Rome of 'an ever closer union of peoples'.

Meanwhile, the scope for its members to reach their own decisions even in areas strictly speaking outside EU competence has narrowed steadily. In foreign affairs, for example, even the larger member states of the EU display more and more hesitation about taking up any stance at all on numerous issues. No doubt this is because they fear that they might get out of line with their partners or pre-empt some initiative that might be taken formally in an EU framework. Meanwhile, preparations are being made for further treaty revisions and additional protocols or declarations which would accelerate the movement towards political consolidation of the Union. Regardless of the outcome of the Inter-Governmental Conference, it is already impossible to overlook the fact that the crucial questions facing all member states are primarily political: they bear directly on the continued survival of the nation state and its capacity to provide opportunities for its citizens to engage in the practices of self-government.

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The view from Britain

In Britain, a degree of tension between the economic and political objectives of the European project has always existed. In earlier years, and perhaps even down to about 1990, it was usual in Britain to treat the commitment to political union as largely theoretical, something for a distant future. This is no longer plausible. Large strides have been made during the past decade or so, and especially since the Maastricht treaty, to bring to the forefront of attention within the EU the all-embracing political character it has assumed. It has acquired functions which take it far beyond even a generous interpretation of what is germane to the effective operation of a single market. At the same time, the claim that it has become at least a quasi-state is heard far more frequently.

British Governments have nearly always been reluctant to acknowledge these profound political issues openly (although, especially towards the end of her time in office, Margaret Thatcher was an exception to this).⁷ This reticence on the part of most politicians of all parties can no doubt be attributed chiefly to the fact that they know more or less instinctively that a majority of the British people remain deeply suspicious of European union as a political project and opposed to the loss of their rights of self-government by a stealthy process of erosion. So Labour and Conservative Governments have always tended to focus on the economic benefits of membership and to play down political issues – especially if they concern the values of self-government and democratic politics.

Ever since 1973 the relationship has been difficult because of the underlying tension between a British desire to confine the EEC/EU to economic affairs and a continental European desire of fluctuating intensity to transcend economics and push ahead with harmonised social policies and full political union. But broadly

⁷ Mrs Thatcher's speech at Bruges in 1988 was her most notable effort to present her vision of a Community focused on economic functions and firmly based on the co-operation of independent nation states.

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speaking, in the endless bargaining that constitutes the routine of keeping the European Union show on the road, it is the Europeanists who have got their way. That has meant that Britain, along with some other hesitant member states, has had to accept large slices of the 'ever closer union' agenda. Yet there has never been any act of 'whole-hearted consent' to all this by the British electorate, many of whom feel that they are being led by the nose and subjected to what is seen by them as a form of 'alien rule'.

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THE DIFFICULTIES OF THE RELATIONSHIP with the EU cannot, however, be explained solely by reference to what has happened over the past 25 years. It is not just the transition from a primarily economic project to an attempt to weld a large part of Europe into some kind of political union, nor frequent disagreements about particular policies and how best to pursue them, which account for a strained and uncomfortable relationship. The problems lie much deeper in differences in attitudes and in the approach to social and political co-operation. It should be obvious – though many politicians and commentators nowadays apparently do not find it so – that Britain has had a radically different history from that of our continental neighbours. As a result, a significantly different view of political community and institutions evolved.

Divergent concepts of the “State”

In this context it is crucial that Britain has had no notion of the state in the European sense. Rather, it evolved and has retained a different view of law and of the judicial function from that which has generally prevailed on the continent. Its approach to institutions is also substantially different.

The concept of the state, often presented as “the State”, has played a large – and some would say inflated – part in the continental European theory and practice of government since the 18th century.⁸ For the French, the concept has been primarily legal

⁸ For a thorough historical examination of this subject see K. Dyson, *The State Tradition in Western Europe*, Martin Robertson, Oxford 1980.

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and political, with the emphasis on the state as a coherent and autonomous structure of powers expressive in some mysterious way of the general will of the people. This view of the matter can at one extreme degenerate into legal formalism, at another into a species of political mysticism of the kind expressed by General de Gaulle. Nevertheless, this account of the state has the virtue of being comprehensible and on the whole workable. Its influence has been greatest in the Latin societies of Europe, though none of them has applied it with the sophistication of the French.

The German view of the state also sees it as a legal unity, a coherent structure of legal norms, held together and developed since 1949 by judicial interpretation of the highest norms – that is, those in the constitution. But there has been another element in the state as understood in the German political tradition. This is perhaps best defined as the state as a sense of moral unity and a commitment to the realisation of the values on which it claims to be founded. This was in some degree the heritage of German philosophical idealism, particularly as formulated by Hegel in the early 19th century (i.e. well before the formation of a German nation state). The fact that ideas of this sort were later harnessed to the cause of German nationalism and then perverted in disastrous ways by the Nazi regime served to discredit them.

Yet in a curious way they have experienced a respectable revival under the aegis of the constitution of modern Germany. For one of the consequences of the success of the Basic Law of 1949 has been to put enormous emphasis on the moral values implicit and explicit in it, especially those which were expressed in its opening catalogue of basic human rights. These rights are not only justiciable before the Federal Constitutional Court whose decisions now fill upwards of one hundred volumes. They are also declared to be beyond substantive amendment, though new rights can be added to the list.

The sanctity of basic rights has in turn encouraged the notion that the constitution represents a ‘commitment’ (usually referred to in German as an *Auftrag*) which all should help to fulfil. Particularly on the part of the numerous cohort of public lawyers

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in Germany, it has also encouraged a return to the regular use of the language of the state in place of the far more concrete terminology of government and politics, functions and institutions. This German view of the state is largely shared by Austria, and has had some modest influence in both Spain and Italy, again chiefly amongst lawyers and intellectuals.

There are many reasons why this continental preoccupation with the state has never been congenial in Britain. Paradoxically at first sight, one of the main reasons has been that England achieved political unity and became, therefore, a 'strong state' much earlier than any society on the continent. As a result, the focus in political argument was on established and strong institutions – the Crown, Parliament and the courts of law. The outcome of the political conflicts of the 17th century barred the way to any version of absolute monarchy and made it second nature to talk about government and politics in functional and institutional terms.

More important still was the fact that the foundation of the British view of an acceptable political order is inherently individualistic and utilitarian. A society is not a unity, but consists of numerous individuals each with their own interests and preferences. The purpose of government is to serve the needs of individuals who should be free to do whatever is not prohibited by law. And this objective can only be achieved so long as government – and that has meant specific officeholders who hold office as a trust rather than some entity called 'the state' – is subject to the consent of the governed. It follows that the highest political value is the right of self-government.

This has meant the right to elect representatives to whom the agents of executive government must be accountable. Such in both theory and practice have been the basic essentials of the dominant British view of self-government. The theory was formulated with clarity and subtlety in the writings of the classical English and Scottish political theorists. Its practice was consolidated over a long period in the methods and procedures of parliamentary institutions and in the interplay of competitive party politics.

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The practical implications of different concepts of statehood

The issue of the political values in Britain has been put abstractly. Of course, in the day-to-day conduct of public affairs those involved do not as a rule have such considerations in the forefront of their minds. Nevertheless, it is such deeply-rooted values, growing out of shared social and political experience, which shape the way in which many problems are perceived and tackled. And, if at this deeper level of values, there are real differences between the countries engaged in a discussion or debate, then what is likely to follow is either a dialogue of the deaf or what may often be an acrimonious relationship unsatisfactory to both sides. For better or worse, this has frequently been true of Britain's experience within the EU.

It is worth illustrating this by indicating some examples from Britain's relations with the EU. Let us first consider the issue of taxation. Britain objects to surrendering parliamentary control of taxation and, therefore, to granting any tax-raising powers to the EU whilst many member states do not appear to be worried by such a prospect.⁹ Why the difference? Britain gained responsible government through Parliament's assertion of its rights over taxation, an example later echoed in the demand of the American colonies for no taxation without representation. Thus parliamentary control of taxation has been a crucial part of self-definition and hostility to abandoning any part of it is not merely a bleat about loss of sovereignty. In contrast parliamentary authority over taxation is not such a key component of constitutional conditions within the EU countries. Indeed, in many of them, it is, insofar as it exists, a fairly recent experience.

It follows that proposals to widen the EU's taxing authority, or to diminish the veto rights of member states, are bound to encounter British opposition. Because of this, they immediately present a challenge for British politicians: they have to ask whether the people will put up with it.

⁹ Not surprisingly the area of taxation is extraordinarily complex and harmonisation has made only limited progress. But the discretion of member states to vary or impose taxes is already limited in various ways by EU measures.

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A second area in which the differing view of the state affects relations with the EU is environmental regulation. Sometimes the UK is perfectly content to go along with proposals for EU directives. But in many aspects of environmental and consumer protection it would prefer to proceed by persuasion, example, or the setting of standards, an approach followed for long enough in other spheres like working conditions and (at any rate until recently) educational standards. But the European preference for dealing with virtually any problem is to set about establishing formal legal rules. This nearly always means rigidity, at any rate if taken seriously. Thus, Britain runs the risk of too many inappropriate and inflexible sets of regulations spawned by the EU tendency to proceed by formal legally-binding instruments. Sadly, this possibility is sometimes then made worse by British legal traditions which encourage a high degree of precision and detail in domestic legislation and are carried over to the drafting of provisions to implement EU directives. (The looseness of much continental statutory draftsmanship allows in contrast much scope for mitigating what might appear to be over-enthusiasm for formal regulations.)

Another example would be the European preoccupation with formal statements of rights, illustrated by the current convention of representatives of the member states of the EU on the drafting of a European Charter of Fundamental Rights. If the truth were known, the British Government would almost certainly prefer to see this scheme fade away.¹⁰ But we have to go through the motions of taking part and almost certainly will have to accept at the end of the day a declaration of human rights in which we have little faith and which adds next to nothing to the numerous commitments which Britain has undertaken since the end of the second world war. While adding little, it will spawn yet more costly litigation – litigation that is likely to benefit human rights lawyers more than plaintiffs –

¹⁰ This has been denied by Government ministers who have presented the proposed Charter of Fundamental Rights as no more than an effort to give a higher profile to existing rights. For such a view see a letter from Keith Vaz, a Foreign Office minister, in *The Daily Telegraph*, 3 June 2000.

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and will mean yet more legislative intrusion into our private lives. Rights guaranteed can translate into freedoms curtailed.

Examples like this show that in its approach to the EU as a whole and to the handling of particular policy issues and proposals arising from the work of its institutions, the UK is very often likely to find itself in a minority of one. This often happens because Britain thinks differently about both the whole project and how to tackle particular issues of policy. Britain's historically difficult relationship with the EU is thus not a matter of day-to-day politics or personality: its roots lie far deeper than that. Even though British officials who regularly deal with the EU in one manifestation or another are generally able to adapt to many features of what we may call 'the Brussels way of doing things', there are few grounds for thinking that the British approach as it emanates from London will change significantly in the future.

Of course, some other members states do in varying degrees sympathise with the British approach, for example Ireland (when not inhibited by the feeling that it ought not to do so), the Netherlands, Denmark, Sweden, and occasionally Spain. But these sympathies are generally shifting and uncertain. So far, they have not provided a basis for establishing a strong block of opinion in the EU which might favour a looser, more flexible Union and a greater reliance on methods of informal co-operation in place of binding legal commitments.¹¹

Similarly, at any rate in the years before 1997, British Governments have been hesitant about pressing their views on the future development of the EU as in any sense an alternative to the familiar Franco-German calls for ever closer integration. The Blair Government claimed in contrast that it was giving a lead to its partners in the EU, but it is already clear that such a claim lacks substance and carries little weight with most member states.

¹¹ It should be added that successive British Governments do not appear to have put much effort into the construction of alliances within the EU.

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The Franco-German axis

Alongside these problems, there remains an enduring tension about what should be the objectives of policy in the EU. Basically two states have shaped the evolution of the Community – France and Germany. The former has been far more decisive than the latter. French Governments have pursued over many years and with remarkable consistency a policy of using the French position in Europe to maintain a claim to a large role in the world. There was a time, notably from 1958 to 1969, during the presidency of de Gaulle, when this meant a strong and often aggressive emphasis on national sovereignty.

Gradually this gave way to a more subtle approach. France became willing to accept an increasing degree of economic and political integration on the assumption that the loss of freedom of action would be more than compensated for both by the economic benefits of enlarging the European market, and by the greater political influence it might be able to exert in and through the EU. In particular this has meant that leverage was gained over German policy in many spheres. On the German side of the relationship, this bargain – if it can be called such – has remained generally acceptable because Germany is a peculiarly inhibited state when it comes to defining or asserting national interests. Indeed, ideologically, contemporary Germany rejects notions of national interest. In this attitude lies the principal explanation both of its unswerving commitment to the cause of European unification and of its willingness so often to accept the French lead. Only in the later years of Chancellor Kohl's long period in office, and after the reunification of Germany did he begin in a public way to show that his own policy preferences were often decisive.¹²

In broad terms, so long as the EU was continuing to serve the interests of German industry exporting to EU markets and thereby the prosperity of the German people, the political élites in

¹² This was particularly clear in the case of the slow march towards monetary union, a goal to which Chancellor Kohl was totally committed.

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Germany have been content to let France take the lead. Since this duopoly has for so long represented the unwritten condition of the EU's movement forward and survival, this has meant that on the British side a feeling of resentful exclusion is bound to persist. On the Franco-German side, on the other hand, there is something like self-righteous resignation in the face of what are generally seen as British efforts to hold up the project.

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CHAPTER 4

ENGINEERED IMPOTENCE: THE PENALTIES OF EVER CLOSER UNION

IT IS OFTEN CLAIMED THAT the aim of ever closer political union is to enable Europe (or at least that part of it which makes up the EU) 'to speak with one voice' or 'to punch its weight' in the world at large. Such claims have had some force for several years now in international economic negotiations where the EU is required to pursue a single policy on behalf of its members. But even in the sphere of multilateral trade relations, international finance, and the management of world financial organisations the EU is not always successful in sticking to a consistent policy or in concealing internal rifts amongst members.

In the foreign and security policy sectors, the difficulties involved in reaching a common point of view and in acting effectively are far greater. Comparable problems exist in relation to what the French now sometimes call the 'economic government' required for the members of the euro zone – for example agreement on parameters for matters like government borrowing levels, targets for the proportion of GDP to be claimed by taxation or general principles for facilitating deregulation in the economy. While it may be feasible to set up targets in the area of economic policy, it is much more difficult for all of the member states to achieve such targets and to stick to them in the face of manifold domestic pressures pulling in different directions.

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Difficulties of joint decision making

It is worth paying some attention to the real difficulties of common policy-making in the EU, difficulties which also afflict many other international organisations less closely tied together than the EU. First, it is nearly always difficult to reach any kind of agreement on a policy position. The process of edging towards such an outcome usually lasts a long time and that too implies costs and delay in doing anything. Often enough the only acceptable possibility is something near to the lowest common denominator of agreement. But this is very likely to be an unsatisfactory compromise.

Second, there is the need to pay some attention at least to the claims of the smaller member states who, quite understandably, want to have their say even though they may contribute little in material and practical terms to whatever common policies emerge.

Third, there is the problem of the rivalries and egoisms of the larger member states, all of whom usually have substantial interests at stake. All seek to exploit their bargaining positions, though some do so with greater persistence and regularity than others.

Fourth, notwithstanding the difficulties of reaching agreement on common policies, there is always a powerful urge eventually to agree on something no matter how far it may fall short of dealing with the real problem on hand. This occurs largely because to fail to agree or to decide that nothing should be done is widely held to be contrary to the dynamic of the EU which has always to be moving forward if it is to survive. It is like the fear of someone riding a bicycle who is sure he will fall off if he stops pedalling. This situation of itself tends to confer on obstinate members something like a blackmailing power: they want a particular policy and can secure at least part of it because no significant group of members can be persuaded to say 'No'.

The field of foreign and security policy presents special difficulties. Here effective action may well require something in the nature of a 'unified command structure'. This simply does not exist in the EU and is unlikely soon to do so – and the

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appointment of officials with high sounding titles to give the appearance of acting on behalf of the EU will not of itself do anything to solve this problem. The military intervention in Kosovo in 1999 underlined the immense difficulty of conducting an air campaign through committees, and this was action by NATO, the pre-eminent Western military alliance, in which the USA played a decisive part. It is perfectly clear that the EU would have been quite incapable of such an intervention, and indeed its record in the aftermath of the peace-keeping operation in Kosovo has not been outstanding.

There is little chance that this situation will change even if current proposals, inspired mainly by France and endorsed by Britain, for establishing a rapid response peace-keeping force with its own command structure are fully accepted and carried through.

Finally, in the spheres just discussed, speed of response is often of the essence. Previous experience indicates that the EU is rarely capable of acting quickly, especially in relation to issues which affect the material and political interests of one or more member states, or involving anything in the nature of military risks. Only when a decision has the character of a more or less costless moral gesture does it appear that it can sometimes be taken quickly. This happened, for example, in the case of the imposition of diplomatic sanctions on Austria after certain member states of the EU, notably France and Belgium, objected early this year to the formation of a coalition which included the Austrian Freedom Party. But it may well be the case that a decision in this instance could be taken rapidly and with little thought about consequences because it was taken more or less informally at a party political gathering and then presented to the world as the spontaneous conclusion of 14 individual governments rather than as a formal decision of the EU.

The wider the remit of the EU becomes, and as it seeks to enter areas of political discretion which have been the preserve of sovereign national governments, the more inadequate will become its decision-making procedures. It is widely believed by staunch

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defenders of the EU that the underlying weakness of the decision-making process can be remedied by a certain amount of institutional adjustment. This is a constant refrain both from Brussels and from a number of member states concerned by the challenges to existing structures and procedures posed by the prospect of an enlarged membership. But the problem is inherent in the underlying structure of the EU and in the terms on which it has always operated.

The EU constitutes a continuing and unending bargaining process in which decisions can emerge only as a result of trade-offs amongst member states. It is difficult enough to reach sensible decisions in the core economic areas covered by EU treaties and agreements where the exchange of benefits and the trading of interests has usually been practicable. But the EU is now involved in many spheres – for example, social affairs and services, justice and legal systems, foreign and security policy, environmental services – where trade-offs of a material kind are much harder to achieve or are in reality possible only at the price of a sacrifice of deeply-held principles. Inevitably, therefore, movement forward has to be very slow and can occur generally only on the basis of what are often unsatisfactory or messy compromises.

The British perspective

For Britain, the purely political difficulties presented by this situation remain substantial. Policy-making in the EU is a process that cancels out the notion of political accountability. Given that decisions are virtually always the outcome of complex negotiations and bargaining which recall the elusiveness of dealings in a Middle Eastern bazaar, how can it be possible ever to blame a government or a minister for the deal he or she comes home with? If criticised, the answer can always be (and usually is): “don’t blame me, I got the best deal I could”. It is to guard against having to respond more and more often like this that so far British Governments and especially the British Parliament have resisted further surrender of the right of veto in the EU Council

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of Ministers. That so many other member states do not appear to be too worried by losing the right of veto reflects, *inter alia*, the far smaller part played by the notion of the political accountability of ministers within their political systems. Unless powerful interests are offended such as the Länder administrations in Germany or the farming community in France, governments simply do not as a rule have to justify what they commit themselves to in the EU to the same degree and with the same frequency as happens in Britain.¹³ Here indeed is the essential political dilemma for the EU: can it ever reconcile the search for 'ever closer union' with the requirements of responsible democratic self-government?

¹³ Apart from Britain only Denmark and the Netherlands have made serious efforts to allow their Parliaments to engage in the examination of EU proposals before they are finally approved.

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ENLARGING THE PROJECT: THE RISKS OF POLITICAL FANTASY

PERHAPS THE MOST IMPORTANT CONSEQUENCE of the collapse of the Soviet Union and the reunification of Germany has been the decision to work for enlargement of the EU eastwards.

There was perhaps a kind of fateful inevitability about this. The German Government under Helmut Kohl pressed for it, driven in part by the belief that only in this way could the nations on Germany's eastern borders be reassured that they would never again be exposed to any threat of German domination. But equally the dissolution of the Soviet Union removed the only real obstacle in the way of countries such as Poland or Hungary applying to join the EU: for them, as for others, membership of the EU appeared to offer the prospect of great economic benefits as well as security against both Germany and Russia. So there was hardly any chance that the existing members of the EU would make a cool political appraisal of the problems presented by early enlargement. Instead they signed up to the proposal with hardly a dissenting note to be heard.

Practicalities of enlargement

Nearly all the applicant states have a radically different recent history from the Western European member states. So it does not call for much insight into the practicalities of enlargement to recognise that this commitment constitutes an intimidating challenge. At the very least, all the difficulties about the terms on which the EU has to operate are bound to be compounded if and when enlargement on the scale presently envisaged is achieved.

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Of the dozen or so potential members only two are states of substantial size and population – Poland and Turkey. And the second of these only has a promise to consider opening negotiations at some unknown date in the future. All the rest are small states, some like Malta very small indeed. Most of them are far behind the bulk of the present membership of the EU in terms of income per head, and indeed of any other economic indicators one chooses to apply.

It follows that the admission of new members will be a slow business and may stretch over more than a decade. What is more, the negotiations already under way with seven of the applicants illustrate the character of the difficulties to be overcome. On the one hand, most of the applicants need a range of derogations from many of the current conditions of EU membership. These might in some cases have to continue for several years. But on the other hand, the present members are for the most part suspicious of such derogations. The Commission has so far bluntly insisted that new members will have to accept with the minimum delay what is familiarly known as the *acquis communautaire*, the existing body of EU law and policies. This stiff-necked approach has already cooled the ardour of some of the applicants who realise that there is little prospect of their adapting within a short period their economic structures and social and environmental protection legislation to meet EU requirements.

In addition to the economic difficulties inherent in accommodating new members, there are political, administrative and legal problems of a formidable kind to be overcome. Most of the applicants have only recently emerged from decades of communist domination and the chaos of its collapse. Inevitably, most applicants therefore face a huge problem of institutional adaptation. Their legal systems are in varying degrees incomplete and inadequate, their administrative structures often backward and under-developed, and their political direction in some cases shaky and uncertain.

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Problems for the EU

So much for the institutional deficiencies on the side of the applicants. There is also an institutional challenge of a formidable kind facing the EU. This can be summed up in the question: how can an organisation originally designed for six members continue to operate on its current basis if the present membership of 15 is to be expanded to 21 or 22, and later perhaps to 27 or 28?

The orthodox answer offered from within the EU is that there will have to be institutional reform. This would involve taking more decisions by simple or qualified majority vote, abandonment of the veto in all but exceptional circumstances, a revision of the weighting conditions for qualified majority voting in the Council of Ministers, and a Commission that is at least no larger than it is now.¹⁴ But radical changes in procedures and structures would seriously affect the interests of existing members, especially the larger states. For despite the determination of some of them to press on towards 'ever closer union', they are fully aware that they too have vital interests to protect within the EU. Therefore, they may call for the retention of something like a veto in the Council of Ministers or intergovernmental conferences. Yet the more hesitant present member states become about institutional reforms, the more difficult it becomes to meet the challenges presented by the need to accommodate new members within an organisation that was designed for different purposes in a different world.

The preparations now being slowly made for enlargement may well, by the end of the year, result in minimal institutional changes, leaving the supporters of enlargement to claim that nonetheless the process of negotiation can go ahead. But of course such hesitancy will simply guarantee that the functioning of an enlarged Union will be even more ponderous and difficult.

¹⁴ It will only be possible to prevent the Commission growing to an unwieldy size (and some would say that it has reached that condition already) if the larger member states are reduced to one Commissioner each. The smaller members may also be required to take turns in providing Commissioners. Such changes would have grave implications for the quality and internal dynamics of the Commission.

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An alternative

An alternative to reform of the institutional structure and methods of the present EU would be to undertake the far more radical step of considering how to turn the whole organisation into a much looser association. This would probably involve a far smaller central apparatus, a more restricted range of functions chiefly in the economic sphere to discharge, and far more reliance on political co-operation between member states in place of enforceable regulations and uniform policies for all.

In theory at least, such an outcome would have been welcome to every British Government since that headed by Edward Heath. But of course there is at the moment no realistic prospect of any such radical reappraisal of policy even being contemplated. Instead, as already mentioned, new members are expected to be willing and able to take on board the whole body of EU law and to join EMU straightaway. Nor is there evidence from either the European Council or the Commission of a genuine willingness to shed powers rather than extend them.

Heading into an impasse

With hindsight it is clear that it might well have been more rational never to have embarked on enlargement on the scale and at the tempo envisaged. But it is too late for the EU to turn back now without a loss of prestige, even though it remains possible that negotiations with at least some aspirant members may simply run into the sand and so provide a way out of the commitment. Fundamentally the enlargement project bears some resemblance to an attack of *folie de grandeur*. In political terms a Union extending from Lisbon to Riga and from Stockholm to Athens is an implausible prospect. It could not work on the current basis, yet adaptive reform of a sufficiently radical kind appears most unlikely.

Faced with these dilemmas there are, however, still those like the German Foreign Minister who apparently believe that a greatly enlarged and more heterogeneous EU should still be moving ahead to an 'ever closer union', transforming it into some kind of single state with a federal structure. It is a tribute to the

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honesty and common sense of the Polish Foreign Minister, Mr Geremek, that he lost little time in making it clear that such visions are totally unrealistic. After all, can anyone believe that states which have only recently regained their right to govern would sacrifice their new-found independence to a European federation, no matter how benign it may claim to be?

The component parts of even the present EU are so heterogeneous that those who aspire to see it evolve into a single political unit qualify their hope by accepting that Europe will have to remain in some so far unexplained way an association of nation states. If that is admitted, then how much stronger is the case for recognising that an enlarged EU demands a looser structure if there is to be any chance of achieving it.

Perhaps British policy makers have, during the last three years, cherished the hope that the process of enlargement would somehow loosen the structures of the EU. Sadly, the evidence suggests that this is an unrealistic hope, at any rate in the absence of any serious British initiative to argue that enlargement should be seen as an opportunity for a radical reappraisal of what the EU stands for and where it is headed.

With or without enlargement, however, the EU seems set to continue on its present course of the gradual and piecemeal transfer of legislative and regulatory powers to its central institutions, once again demonstrating that it is an organisation with very limited learning capacity and hardly any will to adapt to changing conditions in the world. This sort of outcome will leave the long-standing political problems facing Britain untouched. Indeed, an enlarged Union may sharpen these problems through the further dilution of the power of the larger member states to reject policies which they oppose.

CHAPTER 6

THE DYNAMICS OF THE EU AND THE LOGIC OF BUREAUCRACY

THE INSTITUTIONS OF EUROPEAN economic and political integration have, in their various forms – from the High Authority for Coal and Steel in 1950 down to the recently appointed High Representative for Foreign and Security Policy – grown by accretion. It has proved impossible over the years to stop this process or even to slow it down appreciably. There are many reasons why this is so.

Generalities versus precision

It is necessary to begin by recognising the inherently broad language of the treaties, starting from the initial commitment enshrined in the Treaty of Rome in 1957 to achieve an ‘ever closer union’ right down to the open-ended commitments in the Amsterdam treaty 40 years later to extend co-operation in the field of justice, to consolidate the foreign and security policy ‘pillar’, and to extend EU powers in several other fields already indicated earlier on. But it is unlikely that the looseness of the favoured terminology reflects as a rule some Machiavellian design on the part of those who draft such provisions. Far more important is the fact that it mirrors both the need for a lowest common denominator and the normal style of continental European public law-drafting. Those responsible would generally never think of seeking the precision and certainty sought by legislative draftsmen in Britain. After all they are for the most part people trained in continental public law-thinking and practice, in which a large element of generalisation and discretionary language is normal.

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Finalité

Next it has to be remembered that the founding treaties embody a lot of the continental European fondness for '*finalité*', a term very much in fashion at the present time. In relation to legal and political declarations, this means a language that points to ends, aims or objectives. This has allowed the protagonists of continuing integration, and especially during the past ten years or so, to press the case for an on-going commitment to the discovery and elaboration of new aims to which their efforts should be directed.

This approach functions rather like an open invitation to extend the competence of the EU by verbal extrapolation whenever possible. When, as in the Maastricht treaty, there is a provision requiring the Community to:

...contribute to the development of quality education by encouraging co-operation between Member States and, if necessary, by supporting and supplementing their action...

or for the Community to:

...contribute to the attainment of a high level of consumer protection, the door is opened to any number of new proposals.¹⁵

Some of these may ultimately lead to directives to be implemented by member states, others just to Commission programmes intended to encourage co-operative action under EU supervision (for example in relation to opportunities for the exchange of students between universities in the EU). This broad and speculative way of formulating obligations and policies remains uncongenial to the British since it tends to suggest that one is buying a ticket for a destination about which one knows next to nothing.

¹⁵ These two examples are taken from Title VIII and Title XI respectively of the Maastricht treaty, as published in the White Paper containing the treaty and presented to Parliament as Cm 1934, HMSO, May 1992.

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The absence of counterbalancing forces

A third factor is that in relation to the characteristic working methods of the EU just outlined, there is hardly anything in the shape of what we might call doctrinal or institutional counterweights. Some will argue that the doctrine of subsidiarity is precisely such a check on the inherently expansive tendencies of the EU. But this is an illusion.

First, there is no evidence that it has in fact during recent years limited the accretion of powers by the EU. Second, the doctrine cannot be relied on to protect the rights and powers of the member states and their institutions. It amounts to little more than a pious wish that those matters which can best be dealt with below the central (i.e. Brussels) level should be so dealt with. If, however, we ask who decides what is subsidiary, there is no satisfactory answer to that question. There is no constitutional definition of what subsidiary is. And it is the central organs themselves – that is, the Council of Ministers and the Commission – which determine what counts as subsidiary according to prevailing political interests and pressures.¹⁶

It was characteristic of the continental European mindset that when the German Foreign Minister offered the world his thoughts on what might be the ‘final shape’ of a future European federation – and in that context invoked the ideal of subsidiarity – he failed to offer a single example of how powers might be divided between the institutions of the nation states (which were to continue to exist) and the European central institutions. It is hard to resist the conclusion that all he had in mind was something remarkably like the German federal state in which the predominance of central (i.e. federal) law-making is overwhelming.

Politically it can be tempting to resort to sweeping generalities already in the treaties to interpret virtually any new proposal as a natural corollary of some broader pre-existing commitment (such as that great hold-all, the better functioning of the single market).

¹⁶ The Amsterdam treaty includes a protocol on subsidiarity, but this fails to provide any answers to the questions posed here.

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Nor does judicial interpretation offer much hope of a more restrained view of grand future objectives. The European Court of Justice has usually been only too willing to extract from the language of “final ends” grounds for taking a generous view of EU powers and their implications for the legal systems of member states. In short there is no coherent doctrinal or institutional counterweight within the EU operating in favour of what from an American perspective would be called a ‘states’ rights’ position. At best there are *ad hoc* rearguard actions on the part of members of the Council of Ministers.

The ambitions of existing institutions

A further point of great significance is that most of the institutions of the EU have in varying degrees an understandable interest in increasing their powers, undertaking new tasks and, if possible, securing additional resources.

The European Parliament likes to see itself as potentially the seat of democratic legitimacy in the Union. Thus it is not content with a symbolic status and wants to see the powers of co-decision that it recently acquired widened so that it begins to look more like a real legislative body. It aspires also (and cannot be blamed for this) to gain authority over the Commission, and in some degree to call it to account. So there is bound to be continuing pressure from the Parliament for measures which would enhance its role in the decision-making processes of the EU.

The influence of the European Court of Justice has steadily grown as decisions by it have accumulated. There can be no doubt that doctrinally the Court is committed to ensuring that in cases of conflict of laws, Community law prevails. This implies a continuing extension of Community jurisdiction. Against this background, some have argued that the judicialisation of public policy-making represents the shape of constitutionalism in the future both within individual European states and the EU as a whole.¹⁷

¹⁷ For a vigorous presentation of this view of the future constitutional development in Europe, see Alec Stone Sweet, *Governing with Judges: Constitutional Politics in Europe*, OUP 2000.

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The Commission – the institution that exemplifies more vividly than any other the mixture of bureaucratic methods and political bargaining on which the EU is founded – has inevitably always looked for opportunities to assume new responsibilities and to widen its remit. It is a task for which its strategic role as the body charged with safeguarding the treaties and formulating policies for their implementation renders it well-fitted.

It is, of course, true that the Commission is ultimately dependent on the Council of Ministers, since without their consent, most of its policy initiatives will founder. And the readiness of the Council to accept Commission proposals with or without modifications has varied a great deal over the years. Similarly, the influence of the Commission has varied substantially according to the strength and effectiveness of its members, and the capacity of its President to take a lead. Political patronage dominates the process of appointing commissioners, so that the chances of finding a President with real strength of purpose are usually slender. Thus as a rule the freedom of action of the Commission is likely to be severely limited for most of the time by the very complexity of the immensely wide range of interests and approaches that it has to accommodate.

Apart from the major institutions of the EU there are also others with more limited roles, like the Economic and Social Committee and the more recent Committee of the Regions which have a similar interest in widening their own scope for interventions. Even the Council of Ministers, nominally the place where national interests are embodied and safeguarded, is subject to the same dynamic of accretion of powers. It has its own substantial administrative back-up organisation under a Secretary-General. There is also the Committee of Permanent Representatives constituted by the ambassadors of the member states to the EU. In addition, there can be pressure from some member states for the EU to embark on some new project, there is the impact of the six monthly-rotating Presidency of the European Council on the hopes of those holding that position to make some kind of mark on EU policy, and there is

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the ever-present fear in virtually all rounds of negotiation of ending up with no agreement at all.

All these factors come together to ensure that though the Council often hesitates and delays, at the end of the day it is likely to co-operate with the Commission and the Parliament in extending the range of EU activity.

Overall, there can be no doubt that the institutions of the EU reveal the expansionist logic of bureaucracies. There is nothing particularly surprising about this conclusion: it is a common experience the world over. But what is special about the EU – and of crucial importance for Britain's relations with it – is that it has developed in a way which reduces greatly the possibility of any effective countervailing force to this expansionist logic. There is no discipline of market competition and the balance sheet affecting what the EU does and how, and there is no effective control by elected politicians afraid of losing popular support either at the European or the national levels. As a consequence the institutions of the EU inevitably display the familiar pathology of bureaucracy. That is to say, they tend to expand.

This may to some extent involve a claim to more resources such as staff, but equally attractive is the acquisition of further powers and influence. There does not appear to be any realistic prospect of changing this state of affairs significantly. The Commissioners tend to be politically-appointed and politically-motivated bureaucrats – the worst possible combination for those who seek a separation between administration and management on the one hand, and clear lines of political responsibility for policy on the other.¹⁸ The Council is also in practice politically irresponsible since it is only in highly exceptional circumstances that the delegation of a member state might fear that acquiescence in a decision of the Council will provoke the fall of a government. (This was, of course, basically the position of John Major during the negotiations for the Maastricht

¹⁸ For an analysis of this confusion of roles, see Tom King, *The European Commission: administration or government?*, Centre for Policy Studies, 1999.

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treaty and commitment to Economic and Monetary Union: the opt-outs he secured were essential to his political survival.) As for the European Parliament, for structural and political reasons it too is in a strict sense irresponsible: it has no government to sustain or remove and the electorate cannot call it to account.

It has often been argued that the initial institutional formula for the construction of the institutions of European integration – a policy proposing executive agency in the Commission, a policy and legislation deciding agency in the Council, a consultative and advisory body in the Parliament, and a Court to see that Community law is upheld – was an inspired solution to the challenge of making a start on economic integration and of carrying that process forward. For many years this was no doubt a fair judgement on what the founding fathers had set up. But the question now has to be faced whether this formula is any longer appropriate to the future of the EU.

The EU has gained and claims very extensive policy-making responsibilities, but it has no effective democratic legitimation for the exercise of such powers. Its *modus operandi* flies in the face of the principles of popular consent and responsible government. Its structure has acquired an almost Kafkaesque degree of complexity which renders it incomprehensible and impenetrable to virtually all the citizens of the EU. The system is, in short, plainly incompatible with notions of democratic self-government. It may well not be reformable without the creation of something like a European state with a responsible government and representative institutions. But even the protagonists of ‘ever closer union’ recognise that this is certainly not going to happen within the foreseeable future. In any event there are perfectly reasonable grounds for challenging both the desirability and the feasibility of such an outcome. This leaves a very large and worrying question: what is to be done? After one further piece of the critical jigsaw has been sketched out, we shall turn to this question.

CHAPTER 7

SOME IDEOLOGICAL DIMENSIONS OF THE EU

SOME MIGHT HOLD THAT as the EU is still primarily an association dedicated to economic growth and prosperity, it must be more or less indifferent to ideological commitments other than that of wealth maximisation through the market. Moreover, there can be little doubt that in the contemporary Western world, the ideological differences associated with particular political parties have been substantially eroded; nearly all parties have become highly pragmatic in outlook and tend to be reluctant to profess support in public life for sharply-defined principles which might limit their freedom of action.

Yet this view of ideology underestimates the extent to which there are attitudes and beliefs at work in both the EU and its member states which deserve the name of ideological preferences. They express values and aspirations that influence public perceptions of what politicians are or should be doing, and they similarly find expression in the behaviour of politicians and officeholders. The ideological preferences of the EU that can be detected are for the most part not congenial to most people in the UK, even though it is possible to rub along with them for much of the time without too much overt tension or trouble.

Tendencies to anti-Americanism

First, there is an undercurrent of anti-Americanism hardly ever encountered in Britain. This has become more overt in recent years. Such sentiments have been present in France ever since the end of the Second World War, reflecting in part the difficulty

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many people in France still have in acknowledging American economic and scientific achievements and the dominant influence of the USA. But there are signs that anti-Americanism has begun to gain sympathy elsewhere – notably in Germany where the collapse of Soviet communism has diminished the sense of reliance on the protective defence shield provided by American commitment to NATO. While this trend probably does not add up to much in terms of a firm foundation for policy decisions by a German government, it does encourage support in Germany (and at any rate in Blairite circles in Britain too) for the pretensions to an EU foreign and security policy. This, it is hoped, might one day counterbalance American predominance in the world. The French Government, needless to say, loses few opportunities to press the benefits of a European foreign policy and defence capability on its partners in the EU.

The profession of human rights

Second, there is another development which has the potential for providing a bit of ideological ballast, both in the European search for a political identity and in the shaping of a stance in foreign affairs. There have been increasing signs of the growing attractions of a loosely defined theory of universal human rights as the emergent core of the EU's self-image of itself both in relation to the world beyond its borders and to the standards expected of its own members. It is clear that there is little foundation for a common sense of national identity or patriotism in the EU as a whole, and neither is a basis for shared loyalties to be found in religious belief or in any deeply-held political ideology. Thus it is not surprising that a rather nebulous universalism in relation to human rights becomes something like a rallying cry for those who hope to differentiate the EU's special characteristics and role in the world. It is easy to point to the weaknesses of this line of thought, most obviously the fact that as the USA tends to profess support for a remarkably similar set of moral values, it is hard to see how in this regard the EU and the USA can be distinguished

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from each other. Nevertheless, this universalism is beginning to have effects on EU policies and on the reactions of member states to certain developments within the EU.

The most striking example of this was the EU reaction to the formation of the present coalition government in Austria. The diplomatic sanctions imposed (and only very recently suspended) were justified in part at least by the alleged threat to the protection of human rights in Austria following the entry of the Austrian Freedom Party, then led by Jörg Haider, into the coalition. It was asserted that this development called into question Austrian fidelity to the values for which the EU claimed to stand. Leaving on one side the rights and wrongs of this particular case, it is clear that the EU's actions imply a claim that the EU is entitled to override the consequences of free elections in a member state, and to do so on a purely precautionary basis rather than as a consequence of any actions by the member state in breach of its EU obligations.

Quite apart from the mystery of how the universalism of human rights doctrine is reconciled with a parallel EU commitment to the rule of law, this kind of claim is authoritarian in its thrust. It exposes a strange desire to stifle change and to ensure that existing party political constellations are preserved at all costs. Sadly, the universalism expressed in the profession of human rights as the highest good offers no firm promise of an open and tolerant EU. Instead it may point to a self-righteous 'fortress Europe' mentality.

The European social model

Third and quite closely linked with the preceding issues is the concept of the 'European social model' which many wish to see as a vital ingredient in the European ideological cocktail. This social model does not receive support everywhere in the EU: despite the Blair Government's shift towards accepting the Social Chapter and a range of protective social measures stemming from it, there is considerable opposition to the idea in Britain, and plenty of

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reservations in Scandinavia too. In many respects there is nothing original about this 'social model': it is little more than a new way of talking about what used to be called the welfare state in Britain. But in the search for distinguishing ideological positions, a European social model has emerged which is intended to contrast virtuously with hard-nosed American capitalism. This supposedly prevents governments from pursuing policies offering social support and protection to those in need, leaving people exposed to the rigours of market competition and unregulated employment conditions. This is, of course, a travesty of the situation in relation to social policy in the USA, but it is a refrain that continues to be repeated by many of the advocates of both the European social model and what in Britain has been called 'the third way'.

In general, the appeal to the social model serves to buttress particular privileged relationships rooted in the past. This is neatly illustrated, for example, by a reference in the proposed EU directive on race discrimination in employment recently approved by the British Government. Member states are obliged to:

...promote social dialogue between the social partners to address different forms of discrimination.

Such language vividly underlines the desire in so many parts of continental Europe to perpetuate the social and economic environment of the 1970s into the future.¹⁹

Overall there is little doubt that the principal impact of the social model lies in the high costs it generates: it bolsters extensive social welfare expenditures, especially in respect of state-funded pensions, the continued regulation of labour markets, and the imposition of detailed public regulation in many other fields of social protection. Inevitably this approach entails high levels of

¹⁹ The text of the directive is to be found in the material published by the House of Lords Select Committee on the European Union along with its report on EU Proposals to combat Discrimination, HL Paper 68, May 2000, p. 50.

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taxation and works on the whole against reliance on the market and the achievement of a flexible economy. It does nothing to sharpen individual responsibility for contributing to one's own social security and that of one's family.

Many of the above comments imply an undercurrent of hostility to the market economy and the social and moral conditions which underpin it. At first sight, there is something puzzling about this tendency. After all, the European Community was originally set up precisely in order to develop a 'common market' and to demonstrate the benefits of the free market. It cannot be denied, for example, that the EU remains in principle strongly committed to competition and to equal market conditions for all. But there is a growing squeamishness about using the language of market economics and competition. In its wake is a revival of the ingrained sympathy on the part of many continental European politicians and intellectuals for some form of *dirigisme*.

Yet even this preference is almost certainly the expression of something much simpler and more basic. Politicians and officials often dislike the market and to some extent even many features of contemporary information technology: for so many of them who were brought up in the traditions of the state, allowing markets to operate freely threatens a loss of control. It is this outlook which goes a long way towards explaining why the preference for solving problems by the drafting of binding regulations persists on the part of the EU institutions. The standard reaction to a problem in the economic sphere as in most others is to say: 'we must prepare regulations which can then be used to enforce behaviour in conformity with their terms.' Sometimes indeed this may be an appropriate course of action, but often it is not. There would be alternatives to regulation to harmonise standards and practices, most notably in the habits of co-operation and consultation which have been a favoured British method of achieving progress in the pursuit of policies involving public and private agencies. Instead it is thought to be far better to apply the force of the law to hold everything in place. Once again, this is a wide-ranging sphere in

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which a change of attitudes within the EU, and especially in those states where legal formalism remains very strong, can occur only slowly. In the meantime, the gap between British *laissez-faire* preferences and continental European reservations about the market and what it will do to and for people, remains wide.

CHAPTER 8

WHERE DO WE GO FROM HERE?

THIS ANALYSIS SUGGESTS that the difficulties in the British relationship with the EU stem principally from deep-seated disharmonies between the EU and its methods on the one hand, and Britain on the other. In the current jargon, Britain is simply not 'comfortable' in the EU. Moreover, given the nature of the difficulties, it should now be reasonably clear that after nearly 30 years of trying to become 'comfortable' in and with Europe, the situation is not going to change radically in the future.

The problems which generate this awkward and uncomfortable relationship are fundamentally political, not economic. That is what renders them so intractable.

The widespread reluctance to acknowledge what should be obvious is perhaps to some extent a consequence of the fact that joining the process of European integration was presented to the British people very much as an economic project. We were going into a common market, something like a large free trade area, offering the promise of faster growth and prosperity.²⁰ This was something that most people were prepared to welcome. Though

²⁰ Some people, including Sir Edward Heath, have tried to argue that at the time of entry into the Communities it was made clear to the British people that far more than a 'common market' was at stake. None of this is at all convincing, however. The term 'European Communities' meant little to most people and the ballot paper for the 1975 referendum referred explicitly to staying in the 'Common Market'. The same reference can even be found in the Explanatory Notes issued with the Political Parties, Elections and Referendums Bill after it was sent to the House of Lords in March 2000 (p 47, note on Clause 103).

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membership has had its costs, it has also without doubt brought economic benefits, though as always it remains hard to quantify these. Therefore it is difficult to present a reliable balance sheet.

The belief that membership of the EU is primarily a matter of economic self-interest and benefit continues to be in the forefront of public attention whenever arguments about the pros and cons of the EU take place. Yet the overall economic context has changed in recent years – and this in turn significantly affects the equation. The EU certainly provides a large single market for the exchange of goods and services. But we now live in an increasingly open and mobile world market in which transactions of all kinds have been globalised in range and effects. For historical reasons, Britain has always been oriented towards the wider world market outside Europe. This bias of interest and attention has grown more marked in recent years as economic recovery has proceeded, and as the shift from manufacturing to services, especially of a financial nature, has continued.

Despite British involvement in the EU, it is the links with the economy of the USA and opportunities in the American market which have grown relatively more important in recent years. A question mark therefore hangs over the argument that the future prosperity of Britain depends in some unique and special way on continued membership of the EU. There are, of course, advantages in the EU association, especially for trade in manufactured goods. But continuing in it on current terms is almost certainly not a matter of economic life and death. Instead it is a question of more or less, of balancing advantages of one kind off against disadvantages of another kind.

The persistent concentration on the EU as a mainly economic undertaking has made it difficult to ask whether the political costs of membership might not in fact outweigh the economic benefits derived from belonging to an organisation operating like the EU. To some extent, this difficulty stems from the character of contemporary democracy in Britain, and indeed in other countries too. Economic gains and losses can always be presented

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in simplified form – most people see them in terms of more jobs or less, rising or falling incomes, more goods in the shops at lower prices or less choice and variety, and so on. In contrast, there is something abstract and certainly unquantifiable about political gains and losses. It is simply not possible to put a price on the values of self-government: ultimately it is a matter of people deciding what their overriding values are and what sacrifices they might be ready to make in order to preserve them.

But the diagnosis of difficulties is not enough, and indeed by itself can easily turn out to be a somewhat sterile exercise. We have to ask the questions: what can be done? What are the options available for the future? These questions have to be set within both the short-term context and the longer time span of the evolution of the EU so far and the shape it seems likely to have in the future.

The immediate future

The immediate and present-day context is defined by the experience of the British Government in dealing with the EU and the negotiations scheduled for the second half of 2000 under the French presidency. These negotiations are intended to lead to a new treaty preparing for the adaptation of internal EU procedures to enlargement. Despite highly exaggerated claims made by the Blair Government for its success in changing Britain's standing within the EU, and despite a variety of British support for positions strongly supported by France and Germany, there is no reason to believe that a fundamental change in the British position has occurred. There have been few if any practical innovative proposals for dealing with the future development of the EU from this Government. Nor is there any sign that Britain is any more comfortably lodged inside the inner circle of EU policy-making than it was five or even ten years ago.

As so often in the past, Britain finds itself generally in the role of a restraining force, a brake on both the Commission and those partners who are anxious to endorse some fresh EU directive or

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initiative in one field or another. In relation to the institutional adaptations called for by enlargement, Britain has been cautiously reactive, with the British Government responding to proposals from others rather than putting forward its own ideas. The readiness of the French Government in particular to press ahead with grand schemes for majority voting and a sacrifice of influence by the larger member states should not, however, be exaggerated. Though still plainly determined to push the EU in a direction reflecting the French belief in the desirability of reducing American influence both in Europe and the world at large, statements by both the French Prime Minister and the President leave no room for doubt about French circumspection in the pursuit of something like an EU political identity. The commitment remains, but is one to be fulfilled gradually and with due regard to the traditional interests of France as the leading nation state in continental Europe.

Three options for Britain

The policy options available to Britain amount to three possibilities. The first is to continue more or less as at the present time. This means working inside the EU framework as best we can, contributing more or less positively to proposals against which we have no serious objections, but putting a brake on schemes thought damaging to British interests or generally unsatisfactory. This policy requires retention of a veto on major questions if it is to be credible.

The second option is to take the lead in demanding that the EU should seriously re-think its strategy for the future. This involves a direct challenge to the commitment to 'ever closer union'. In particular, an approach of this kind would seek to confine the EU to core economic functions associated with a single market whilst leaving participation by member states in most other spheres optional. This option is sometimes referred to as 'variable geometry', or 'flexibility'.

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The third and most drastic option is an orderly withdrawal from membership into a situation analogous to that now enjoyed by Norway and, following recent agreements, Switzerland. It is, of course, widely regarded as unacceptable to mention withdrawal even as a remote possibility. But the logic of that position must be acceptance of the inevitability and desirability of the loss of the rights of self-government to an 'ever closer union' which is bound in some form or another to assume the character of a state.

Option one: "business as usual"

The first option is essentially the policy of both the present and recent British Governments. It involves doing the best we can for British interests within the EU as it is and showing benevolence at least towards a process of continuing and widening integration. But this policy of continued co-operation in the EU venture is qualified by opposition to some of the consequences of closer integration.

Despite the expression of support 'in principle' for joining the common currency 'when the conditions are right', there is hardly any sign that Britain is closer to doing that than it was two, three or even five years ago. Meanwhile, the obstacles in the way of joining remain formidable and are, to a large degree, not even within the control or influence of either the Blair Government or any successor. There is too the additional uncertainty stemming from the promise of a referendum on any recommendation to join the euro zone.

It is, therefore, hardly surprising that many representatives of the states now in the euro zone show increasing impatience in the face of the British Government's touchiness about any efforts they may make to establish an 'economic government' for the euro zone. After all, no historical example can be found of a successful common currency which has not been backed up by coherent supportive policies on the part of the relevant government(s).

The weakness of the euro since its launch in January 1999 is in part due to the absence of such a context of congruent and

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effective economic policies applied by all the members of the monetary union. It is surely, therefore, somewhat perverse of the British Government to object to Euroland governments which are trying to put in place arrangements intended to make a success of this hazardous experiment.

On the broader issues raised by continuing EU membership, it is not yet clear that the alternative offered so far by the Conservative party leadership differs in essentials from the policy pursued by the present administration. The slogans describing it refer to 'in Europe, but not run by Europe' and 'a flexible Europe'. In particular, flexibility, it has been suggested, should leave member states free to decide whether or not they will apply EU directives and policies. This approach could amount to a shift to the second policy option detailed below. So far it remains uncertain whether this is so. Moreover, the call for greater flexibility may well be an unrealistic position to adopt.

For, if flexibility simply means something like a purely *à la carte* EU, then it is unlikely to be workable. Nor would it be acceptable to many or most member states. In short, the term calls for a degree of definition that it has not so far received. In general terms, flexibility must point to a policy of both defining and limiting the functions and role of the EU, and it would appear to entail acceptance of the prospect of a two-tier or two-speed Europe. After all, if a number of states seriously wish to join in establishing some kind of federal construction, why should they be prevented from doing that, provided they undertake to avoid discriminatory measures against those partners who prefer to remain outside such developments?

To keep on with present policies, even though they might be expressed rather differently by a Conservative Government, is the option most likely to be taken in practice. After all, everything else seems to be fraught with great risks and uncertainty. There is nothing politicians and their senior officials dislike more than that.

Yet to keep going on down this road will have two consequences, both of which are unattractive. In the first place, it

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guarantees that the uncomfortable and often tetchy relationship with the EU and many of our partners in it will continue. It will remain something like a running sore in British political life, consuming energies and abilities that could better be applied to many other problems of concern to the people of this country.

In the second place, however, it has to be recognised that the EU has already evolved to a situation in which the scope for effective democratic self-government in its member states is seriously limited. When the point of no return will be reached, no one can be sure. It could come very soon, but the more likely prospect is for a continued and inescapable erosion of the capacity of the political institutions of the member states to offer to their citizens either self-government or genuine democracy. For all member states the prospect is not that of a genuine democratically governed federation such as the USA exemplifies, but instead of becoming a province within a sprawling, slow-moving bureaucratically governed quasi-state.

If there is an historical parallel for such a phenomenon, then it might after all be the Holy Roman Empire: in his reactions to Joschka Fischer's dreams of a future federation of Europe, the former French Interior Minister may have been nearer the mark than his critics were willing to admit. Be that as it may, there can be no doubt that a political outcome of the kind just sketched out is not one that a majority of people in Britain would be ready to accept.

Option two: changing direction

The second option presents a straightforward challenge to our partners in the EU about the ultimate objectives of the course on which the organisation is set. It means the abandonment of the language of *finalité* and a reversion to a much more pragmatic and limited understanding of what the EU should be doing and how it should continue to develop. Another way of describing such a policy is to put it in terms of trying to find a resting place for the EU, a point at which its members no longer feel obliged to press on to conferment on the central institutions of ever wider powers

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and objectives. Certainty about what the EU can do and what it stays clear of entirely would be established.

It is not easy to provide a crisp and persuasive formula for the option now under discussion. Essentially it involves the pursuit of policies explicitly directed to achieving and maintaining something like an area of free trade and close economic co-operation. This is, of course, suspiciously close to the remit of the European Economic Community before it was superseded by the notion of a European Union. Perhaps it would be more honest to give up the search for a catching slogan with which to sell such a policy and to concentrate instead on setting out the implications it might have for existing policies, for the structure and operations of the EU, for the prospects of enlargement, and for acceptance in the EU of variations in obligations and commitments. A few examples might help to illustrate what is being suggested.

Competition policy should continue to be applied vigorously. But many of the harmonisation of standards measures applied so far could be modified or abandoned since they tend to diminish, rather than strengthen, competition and narrow the range of choice for consumers.

In relation to structure and methods of work inside the EU, it might well be desirable to press for a formal specification of some of the implications of subsidiarity – that is, in what sectors the Community may be expected to take initiatives and where it is specifically excluded by the rights of the member states to manage their own affairs. Similarly, it is possible to envisage the Commission being placed under a formal duty to provide a statement justifying any new proposals it makes by reference to the remit of the EU under the treaties. Such a duty might be subject too to a formal right on the part of member states to object to such proposals and to propose in the European Council that the measures envisaged should not be proceeded with.

As far as the admission of new members is concerned, there can be little doubt that a policy directed to limiting the wider social and political competences of the EU, and accepting a more

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variable pattern of obligations within it, would be welcome. Certainly it would render the entry of many of the applicants a more realistic prospect. The applicant states would have to accept that their entry would be subject to numerous and lengthy derogations. As a result, they could not expect to assume immediately on entry all the rights of existing members in the decision-making procedures of the Union.

Acceptance of variable conditions for membership and variable obligations on the part of member states is apparently what is envisaged in the call for flexibility contained in the recent Conservative draft manifesto, *Believing in Britain*. But such an approach does require a serious effort to specify the sectors to which flexibility might apply and under what conditions. This policy, if implemented, would inevitably for a time make the running of the EU more difficult. It would also call for a degree of tolerance of differences not always shown by many member states or by the Commission.

Yet it need not be dismissed as wholly impractical. For we should remember that there are societies in which diversity of conditions in the political and public law spheres are accepted with a fair degree of good will. The United Kingdom has itself for best part of three centuries been a 'variable geometry' union in which nothing like the uniformity of continental administrative states was ever contemplated. This tolerance of difference – some might say of oddity and quirkiness – continues and is fully reflected in the various measures of devolution recently put into operation. Spain accepts measures of devolution too. These do not require every regional government to assume exactly the same responsibilities and powers. Switzerland attaches great importance to the autonomy and individuality of its cantons, whilst a relatively uniform institutional structure in the American federal union nonetheless does not result in the complete standardisation of laws, policies or patterns of social life across the whole of the USA.

The fundamental problem with the notion of variable conditions – including provisions allowing some countries to bind

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themselves together in more sectors of public policy than others – lies surely in the continental European mindset. And that has undoubtedly expressed the French tradition's preference for uniformity, reinforced by the legal formalism which became so strong in post-war German public life. It is this outlook that finds great difficulty in adapting to the prospect of a world that is not only increasingly messy, but less easily controlled.

The chances of persuading members of the EU to accept a substantial change in direction – towards greater flexibility, less uniformity of regulation and a recognition that diversity is generally beneficial in a competitive market – are not good. Indeed, it would be argued by some member states that such an approach simply amounts to putting back the clock and that this is clearly impossible. If this proves to be the response, then it can only sharpen the choice facing any member state unhappy about the direction taken by the EU: either its citizens have to put up with gradually drifting into a bureaucratically organised semi-state which inevitably reduces their effective political rights; or they must withdraw from the association in order to regain their full rights of self-government.

This option offers no hope of making an impact unless Britain can mobilise and maintain support for such a line. Unfortunately it has been a persistent weakness of British tactics within the Community and the Union that it has never put enough effort into finding and maintaining allies and friends. It is so often assumed that France and Germany have only to lay down the guidelines for some stage of future development for others then to accept them. But there are member states with governments sympathetic to many of the British reservations about 'ever closer union'. Some are certainly ready to agree with British objections to specific policies and draft regulations. Denmark, Sweden and Finland come into this group; the Netherlands will often see the point of British scepticism about more action by the EU; and Spain is by no means always ready to accept what France or Germany propose. Enlargement would bring in new sympathisers simply because it

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would embrace countries which have recently regained their independence from Soviet dominance.²¹

Whatever the circumstances may be, there would be a far better chance of making progress with British policy initiatives if they were to secure and hold the support of a reasonable number of other member states. To find oneself continually in a minority of one is not a good basis for exerting influence on outcomes in an organisation like the EU.

Option three: withdrawal

The possibility of withdrawal is presented as one to be considered only if the EU and most of its members obdurately refuse to contemplate policies allowing for a looser Community for those members who would prefer that way forward. It would be the choice of last resort. Withdrawal is usually dismissed as a doomsday scenario, leading to catastrophe for the British economy. But there is no reason to assume that an orderly withdrawal negotiated with due regard to both British interests and those of the EU states would have such dire consequences. Indeed, the dire effects of withdrawal as they are sometimes painted by protagonists of British membership at all costs could only occur if it is assumed that the EU would refuse to negotiate something like an association agreement such as is enjoyed by Norway. Furthermore, it is assumed that the EU would seek to impose trade sanctions that are almost certainly illegal under international trade agreements. As for investment flows, there are interests on both sides. In any event, experience shows that inward investment from world capital markets nearly always goes where the prospects of profit are best.

Nevertheless, withdrawal would not be an easy option to take. It would upset many people in continental Europe and for a while would produce political turbulence, not least within the political, business and administrative élites in Britain. In particular,

²¹ However, it must not be forgotten that these new entrants (like some others in the past) will also be keen to gain maximum benefits from membership even if this involves agreeing to policies they do not like.

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withdrawal should not be seen as a 'little Englander' option and nor should it be confused with the xenophobic resentments so often expressed in the populist press in Britain. It makes sense only as a rational and considered response to the intractable difficulties of an unsatisfactory relationship.

In terms of practical politics, there is no doubt that a policy of seeking a complete renegotiation of Britain's association with the EU has to be treated as a position of last resort. Instead, some version of the second version is to be preferred. A serious attempt to develop a cluster of policies in support of this way forward – a looser and more 'economic' community, at any rate for those members who prefer that option – might just operate as healthy shock therapy inside the EU itself. It would compel all member states (some more than others) to think again about what kind of association they want the EU to be. It is at least possible that some would decide that the time has come to transform it by reverting to an association focused on a reasonably well-defined range of functions, to be performed by simpler and less pretentious institutions. The realisation of such a possibility would, of course, require those member states wishing to press ahead with the 'ever closer union' agenda to accept with tolerance an EU with variable geometry. It would certainly be necessary to envisage a two- or even three-tier Community allowing one group of states to go for closer political integration, another to stop short at a stage of well-developed economic integration, and perhaps yet another group remaining content with some form of association. Above all, it would have to be accepted that for many members 'political union' would simply not be on the agenda.

CHAPTER 9

PUTTING THE CHOICE TO THE PEOPLE

DESPITE THE DISMISSIVE CRITICISMS to which it has been exposed in recent years, only the nation state has so far provided a tolerably satisfactory and successful framework within which the requirements of democratic self-government can be met. And it is only the nation state that has so far been able to nurture the institutions of freedom and to act as a focus for the loyalty of its citizens. The fact that in the past some nation states have gone off the rails and that today many are still unstable and exposed to all kinds of internal strains should not, however, mislead us into concluding that we can or should try to dispense with them.

Notwithstanding their many failings, nation states have so far provided the only enduring framework within which democratic self-government has been possible. It is this simple fact of political experience that still justifies the retention of sovereignty by the nation state, even though there are so many forces at work in the contemporary world restricting and qualifying the exercise of that sovereignty in various ways. Indeed, a number of political leaders in various EU member states have recently affirmed their belief in the survival of nation states. Yet experience teaches us that those who drive the project along – and they are tiny and privileged minorities – do see *finalité* as supplanting nation states and replacing them with some kind of pan-European government.

The road to this goal no doubt stretches a long way ahead and nobody yet knows what this European government or state would be like – benign or malign. But there can be no doubt that the final state would not be a meaningful political democracy; nor can

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it be doubted that the rights and opportunities for self-government within the familiar and manageable units of the nation states of Europe would be steadily subverted and diminished. No matter how great might be the material economic benefits of such an evolution, the political price for them would be paid in the loss of democratic self-determination.

This is the political challenge that faces all members of the European Union, whether they recognise it or not. In the light of British political experience, it is one which cannot be swept under the carpet here. Any recommendation by the British Government to go into the euro zone will have to be put to the British people in accordance with the promise of a referendum on this issue. Already it has proved impossible to conceal the wide-ranging political consequences of such a step, and doubtless these would receive yet more attention in any referendum campaign.

No matter where they stand on Britain and Europe, the primary duty of politicians is to be honest about the consequences of what they recommend. If they believe that there is no turning back and that Britain should co-operate wholeheartedly with its EU partners in working towards full political and economic integration in Europe, then they should say so openly. They should acknowledge its consequences for the prospects of meaningful self-government. But if they see such an outcome as unacceptable, then similarly they have a duty to be frank about the difficulties and even the penalties of taking such a stand. It is only on such a basis that the seriousness of the matters at stake can be understood and decisions reached that may then be both legitimate and conclusive.

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