

## GUEST EDITORIAL

### **A personal view from Britain: Disunity in the Union**

On 2 August 1993, Queen Elizabeth II added her approval to the instrument ratifying the Maastricht Treaty. Ironically, she did so on the morning after an emergency Council of Finance Ministers recognized the virtual breakdown of the ERM, thus reducing to vanishing point the prospect of economic and monetary union (EMU), at least in this century. This is not a happy time for Europe. In the United Kingdom there is a mood of acute disenchantment with the European Community. British attitudes to the future of the Community, especially “the European Union”, are affected, I suggest, by three factors: history, geography and temperament.

Historically, England, the major component of the United Kingdom, has existed as a unified realm for a millenium. Its “Common Law” was being fashioned by as early as the 12th century, whereas France had to await the Code Napoléon to unify its laws. The union of Scotland with England (and Wales) will be three hundred years old in March 2007. The British have a tremendous pride in their long history as a people. One consequence is the feeling that we are being asked to give up much more than most of our European partners. Belgium and Luxembourg were 19th century creations. The Netherlands were under Spanish suzerainty until 1648. Greece did not cast off its Turkish yoke until 1830. Germany had to await the iron hand of Bismarck to be welded into a nation. Italy needed Cavour, Garibaldi and Mazzini. Only in France, I believe, is there a comparable sense of “*la patrie*”.

Geographically, we and the Irish are the only Member States which are islands. The Channel Tunnel (soon to be opened) will not, I feel, make us think any differently about our physical separation from the

Continent. It was only the barrier of the sea that saved us from invasion and defeat in 1940. The Schengen Agreement for open borders within the Community makes little difference for other Member States: one can always take a field path to cross a land frontier, if sufficiently determined. But the British reject Schengen as ending our ability to prevent illegal immigrants or terrorists, except at the unacceptable price of identity cards and spot-checks on the streets; nor could we stem the flow of prohibited goods – drugs, pornography or potentially rabid pets. Conscious also of inhabiting an island, we have tended, and still tend, to look outward across the seas to continents beyond Europe – to the Americas, Africa, India and Australia, where many strong links remain, reinforced often by the common language of English.

More important than history or geography as a barrier to political integration is the British temperament. Essentially, we are pragmatic people; suspicious of vague long-term objectives, wary of generalizations and abstract concepts; we prefer to proceed step by step, consolidating each advance before moving to the next. The progress from the Common Market under the EEC Treaty to the Single Internal Market under the Single European Act was no problem for us. But the Maastricht Treaty is different and causes alarm, even with the modifications and opt-outs negotiated by John Major at the Maastricht Summit. Its proper title (“the Treaty on European Union”) is almost never used in Britain because it would give the game away: the battle in our Parliament was always reported as concerning the ratification of “Maastricht”.

Many who have supported the development of the Community in the past (and I am one) have misgivings about replacing “Community” by “Union”. In Britain the term “Community” has only in recent years become popular usage: previously one referred usually to “the Common Market”. Union implies a federal structure of some kind. But the last few years have witnessed the fragility of federal systems: the USSR vanished with extraordinary speed; Czechoslovakia is now two separate states; Yugoslavia is a continuing nightmare; Belgium seems fated to split into two autonomous regions for the Walloons and the Flemings, with Brussels as a kind of Washington D.C. or Canberra: I was rebuked recently for speaking French by a Flemish waitress at Bruges (sorry!

Brugge). Across the Atlantic, the "confederation" of Canada may well break up to accommodate the aspirations of the people of Quebec. The history of our times gives dire warnings of the dangers of thrusting into a federation peoples who have not given their whole-hearted support to the "Union". But the French could only manage "un petit Oui" to the European Union, the Danes said "No" in their first referendum, and the Germans had to await a judgment of their Constitutional Court before they could ratify. And had there been a referendum in the United Kingdom, the voters would, I believe, have rejected Maastricht. Why is this?

The Preamble to the Treaty of Rome envisaged "an ever closer union" and the Maastricht Preamble reiterates this phrase. Such union, if it means a single federal State, is seen as a less obviously desirable objective after our experience of two decades within the Community. There are things which we do not like about our continental neighbours, as there is much assuredly which they dislike about us. For example, we do not like the Dutch laxity towards drugs. Danish pornography (unlike their bacon) is not to our taste: a Danish commercial station which was beaming its "Red Hot" programme into Britain has happily been closed down. We are shocked at the anarchy which periodically descends upon the French: lorry-drivers block the "autoroutes" over a new system of penalty points for driving offences, or farmers burn loads of British or Irish lamb with the seeming acquiescence of the watching police, fishermen prevent British trawlers from unloading their catch. The French also appear paranoid about "*la menace anglo-saxonne*", whether this be the threat of London/New York lawyers establishing offices in Paris, the GATT negotiations led by the United States, or the destruction of the ERM by a conspiracy of "speculators" in London and New York. We see Italy seemingly powerless to crush the Mafia, and Italian political life deeply tainted with corruption. One reads reports of renascent anti-semitism and xenophobia in Germany, as it wrestles with the problems of unification.

And there is Bosnia. I am ashamed to belong to the European Community with its record of division and indecision in the face of the crimes against humanity depicted nightly on our television screens. Ethnic cleansing, a euphemism for genocide, is happening at the heart of

our continent, and the Community seems powerless to prevent it.

Then the "Brussels bureaucracy" with the provocative Jacques Delors at its head is a constant target of criticism. A much admired satire on our television, "The Gravy Train", reinforced the exaggerated stereotype so many have of fat cats with over-large salaries and expense accounts living the life of Reilly as Community civil servants. On our very doorstep, the extravagances of Jacques Attali in refurbishing the London headquarters for the European Bank for Reconstruction and Development drew severe strictures – and cost him his job. But the public were also critical of the revelation of the wheeling and dealing endemic, it seems, to Community decision-making: "London can have the site of the Bank if Paris can nominate its Director"; a Frenchman will succeed Attali, we learn.

The British opt-out from the Social Chapter in the Maastricht Treaty has been criticized.<sup>1</sup> Only time will tell whether the Eleven who agreed to the Chapter will find themselves priced out of world markets for their goods, by seeking to maintain a very high (and therefore very expensive) level of social legislation. *The Times* of London reported recently how some German manufacturers are preferring to send their products to be made up across the frontier in the Czech Republic where labour costs are much lower. European workers have no God-given right to better social legislation than their fellow workers in Pacific-rim countries.

Yet, I supported our ratification of Maastricht, even though the timetable for a single currency has been proved (as John Major argued) to be wildly optimistic. But the Maastricht text does spell out the limits of Community competence in two directions. First, the two important areas of (1) foreign policy and defence and (2) justice and home affairs are expressly designated as matters for intergovernmental cooperation and not the province of Community decision-making, nor adjudication by the Court of Justice. Secondly, the principle of subsidiarity is articulated for the first time. How far this proclamation of "States' Rights" will extend must depend, ultimately, on what interpretation the Court of Justice is prepared to give to it. One may reasonably wonder whether

1. See Editorial Comment "Are European values being hoovered away?", 30 *CML Rev.*, 445–448.

that Court, which hitherto has been the natural ally of the Commission in expanding Community competence, whenever interpretation allows, at the expense of the Member States, will be able to adjust to the new doctrine and to the sea-change, I suggest, in how the Community is now viewed.

Maastricht strengthens the powers of the Court to perform its vital role of upholding the rule of law in the Community. Its judicial control upon the conduct of the Member States and the other Community institutions helps redress the democratic deficit which even the directly elected European Parliament is unable to make good.

What then is the vision of Europe which we British have? William Rees-Mogg wrote in *The Times* of 3 August 1993:

“The sovereignty of Europe does not lie in Brussels, but in the people of Europe; the sovereignty of Germany lies in the German people, of France in the French, of Britain in the British. For some purposes these people wish to co-operate, for other purposes they wish to remain independent. Perhaps their children will want a single state; at present, they do not. It is for the people to decide, and they are unlikely ever to want to build a Europe that is a non-elective bureaucratic empire on the failed Maastricht model”.

I would agree with what is said about sovereignty, but not with his dismissal of the Maastricht model as a failure. Maastricht is now assured of ratification. The Treaty neither adds to nor subtracts from the size of the Community bureaucracy, except by its creation of one new permanent institution, the European Central Bank. More important is its safeguarding of the *acquis communautaire* – the immense achievements in economic, legal and political integration over the past four decades under the leadership, initially, of such European statesmen as Adenauer, Monnet, Schuman and Spaak (where are their likes today?).

Nevertheless, history may show that Maastricht represents the high-water mark of the federalizing tide in Western Europe which has been so strong a feature of the second half of the twentieth century. The European Community, however, will endure into the next millenium and whatever doubts and reservations are commonly held about it (some of

which I have enumerated above) the alternative of a new balkanization of Western Europe is too grim a prospect to contemplate: the Maas-tricht model is surely preferable to that of Yugoslavia. And the good ship "Community", however motley or even mutinous the crew, however stormy the seas, is the only vessel we have to carry us forward together.

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