

Submission to the Commission to Strengthen Parliament

European Foundation Working Paper 9

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My object is not to enter with you at large into the proceedings and powers of the house of commons [*sic*]: but I think it essential to remind you that its functions, far from being confined within certain legislative limits invariably fixed, really extend to affairs of all kinds, to all concerns, where its interference may be of utility; from the questions of peace or war, to the maintenance of a road between neighbouring places; from the rights of the crown, and the management of the civil list, to the disbursements of a country parish. In fact, if some lawyers assert, that the house of commons represents exclusively, as its name indicates, the commons by whom it is elected; others, on the contrary, and they are persons whose opinions have most weight, maintain, that it is the virtual representative of the interests of the state at large, those of the crown, and those of the peerage, as well as those of the people. "The parliament moderateth the king's prerogative, and nothing grows to abuse, but this house has power to treat it." Such was the constitutional doctrine, that was laid down as a principle so early as the reign of Henry III, and has now taken root in the minds of all men. [A. De Staël-Holstein, *Letters on England* (London, 1830), pp.204-205.]

(i) Introduction

We have come a long way since Staël-Holstein penned his account of the House of Commons. At the turn of the millennium, our Westminster system is not only under threat, but is in important respects already undermined. The question now is who governs us and how?

The pre-eminent quality of our democracy has been the accountability of the Government to Parliament. This system, though imperfect, is based upon important principles: voters choose freely, in a secret ballot, their representatives who in Parliament have the authority to ask questions, debate issues, and cross-examine Ministers and others before Select Committees. This system is protected by the Speaker and laid down by tradition, convention, and in Standing Orders. This system is, though, being comprehensively undermined by a number of factors, including the following ten:

- (ii) the creation of European government;
- (iii) (iii) the over-whipping of MPs;
- (iv) (iv) incomplete / biased press coverage;

- (v) habitual leaking;
- (vi) obfuscation by ministers;
- (vii) (vii) the threatened introduction of a form of proportional representation;
- (viii) (viii) the routine use of the guillotine procedure;
- (ix) (ix) the reduction of Prime Minister's Questions from twice to once per week;
- (x) (x) a botched process of House of Lords reform; and
- (xi) (xi) devolution.

(ii) (ii) *The European Union*

'The fault, dear Brutus, lies not in our stars but in ourselves that we are underlings.'

The foremost development which has eroded and, left unchecked, will continue to erode our democratic system is the encroachment of the European Union. This paper does not argue for withdrawal from the Union, but rather for the renegotiation of the Treaties which bind the United Kingdom to it.

From its beginnings as a single market in coal and steel, the competencies of the European Union have, under the Treaties of Maastricht and Amsterdam, been developed beyond commercial and political co-operation into the arena of European government. This development has involved an enhanced role for the European Court of Justice which, with its judicial activism, has helped to establish and extend the functions of European government. The ever-finer distinction between intergovernmental pillars and outright European government already masks an autochthonous governmental system.

Unchecked, the acceleration of European integration will indeed become, in the word of the Treaty of Maastricht, 'irreversible'. Other than withdrawal (an option which, whilst popular, I do not support), renegotiation is the only alternative to acquiescence in the face of the development of this federal system. Whilst all treaties are, in fact, renegotiations of extant ones, the present trend has been in only one direction: toward European government.

It is axiomatic that amendments to the Treaties can be presented to an Intergovernmental Conference. The matter is thus one of intention, persuasion, and above all will on the part of the party advocating change. Whilst there are serious difficulties posed by the doctrine of the *acquis communautaire* and by Section 2 of the European Communities Act 1972, refusal even to attempt renegotiation is the counsel of despair.

To those who argue renegotiation would fail, I say that we will not know until and unless we try. It is certainly unlikely that, as some have claimed, our European partners would rather see the UK withdraw from the Union than agree to renegotiation. Our European partners have much need of Britain as a country that is a net importer of their goods and services. Indeed, EU states export approximately £170bn per annum to the UK, a volume of trade that

they could not forego without great cost. Even supposing our EU partners wished to forgo the benefits of (relatively) free trade with Britain, putting up trade barriers would infringe not only the rules of the World Trade Organisation, but also those of the EU itself.

The price of not engaging in renegotiation is being paid, day-by-day, at the expense of our own democracy. The EU itself is systemically undemocratic and, under the existing Treaties, was intended to be so. The stated aim of Jean Monnet, the chief architect of European integration, was to create government by technocrat in a continent where politicians had failed so badly. Monnet, like the drafters of the Maastricht and Amsterdam treaties, presumably gave little thought to the fact that genuine democracy (that is, government by the people rather than by their officials) was the solution to, rather than the cause of Europe's ills.

The situation created by the extension of Qualified Majority Voting (particularly into the arena of European government) and the abandonment of the veto presents a particularly grave threat to our democracy. The White Paper of 1971 made clear that the UK would not give up her veto because to do so would not only undermine our vital national interests but would also, in the words of the Paper, 'imperil the very fabric of the Community'. This view remain valid. If Member States are to coexist harmoniously, they must retain (and, given the Amsterdam and Maastricht treaties, in some cases repatriate) ultimate control over matters effecting vitally their national interests. The reaffirmation and retention of the veto, irrespective of enlargement, must therefore be an integral part of the process of renegotiation.

Much of Europe Union business is now, in light of the recommendations of Lord Highbury *et al*, to be decided by various forms of Qualified Majority Voting (QMV). Speaking to the European Parliament on the 1st of December 1999, Romano Prodi said that

[a]s long as the veto exists, the EU will be like a soldier trying to march with a ball and chain around one leg. The unanimity requirement means either complete paralysis or reducing everything to the lowest common denominator. It is simply a non-starter in today's world.

Tony Blair, meanwhile, has abandoned the UK's veto in no less than fifteen areas. The Government's Europe Minister, Keith Vaz, admitted under questioning by the European Scrutiny Committee, of which I am a member, that the Government is prepared to abandon the veto in the further areas of:

- • appointments to the European Court of Justice (ECJ);
- • the rules and procedures of the ECJ;
- • transport issues;
- • languages policy; and
- • appointments to the seats of institutions.

Yet, once Parliament has decided to accept European competence in matters subject to QMV, it—and, by extension, the British people—forgoes ultimate

power over policy in those areas. It follows that Parliament must be quite sure of the matters it wishes to have decided by QMV.

Recommendation: Free votes must be used to decide whether a particular competence is to be placed beyond the efficacy of Parliament (and therefore of the British people) by way of Qualified Majority Voting at the European level.

It is unacceptable to avoid the issue of renegotiation and to settle, as the Conservative Party has done, for a policy that accepts the Maastricht and Amsterdam treaties as well as the next Inter-Governmental Conferences' amendments to them. The objections of the British people to so many extant aspects of the EU, expressed in poll after poll, including the 1999 British Social Attitudes Survey, cannot possibly find expression in a policy that challenges only future legislation.

In addition to renegotiation, there is another means of slowing the flood of European legislation: resistance to proposals in the draft / *avant projet* stage—proposals still in the hands of working groups of civil servants, including our own. It is essential that under Standing Orders Parliament be advised of what is in the *avant projet* stage so that it may act before proposed legislation is so advanced as to be beyond scrutiny. Now that the UK has a national parliamentary office in Brussels (UKREP) reporting under agreed procedures to Parliament's European Scrutiny Committee, the mechanism exists to establish this type of legislative early warning system; all we must do is use it

Where UK civil servants know what is going on in Europe (formerly in right of the Crown but now increasingly in right of European Government), it follows that Parliament has a right, on behalf of the electorate who are governed by the laws made, to the same knowledge so that it might take accountable action on the basis of it. Where information on proposals in the *avant projet* stage is obtained as it must be by the national parliamentary office in Brussels and/or by working groups of UK civil servants, I propose that the following parliamentary procedure should apply.

Recommendation: If 150 MPs table an Early Day Motion objecting to a EU proposal the matter must, by Standing Orders, be referred to an early debate on the Floor of the House on a free vote. Attempts to whip such a motion would be in contempt of the House. If the vote went against the proposal, the Government would be obliged to veto the proposal in the Council of Ministers. (This change would need to be the subject of renegotiation of the Treaties where QMV applies.)

Under the current, deficient arrangement there are many examples, as exposed by the House of Commons Scrutiny Committee, of directives and

other proposals being withheld from that Committee until it is too late for it to impose adequate scrutiny and/or for it to insist upon proper debate. Frequent too are the refusals of the Leader of the House to accept the Scrutiny Committee's recommendation (one could say, insistence) that a given matter be debated on the Floor of the House, rather than in one of the European Standing Committees. This practice is intolerable if Parliament is to function effectively, and must be revised by Standing Orders.

The House of Lords' Select Committee on European Communities also has an important role to play. Indeed, there are solid grounds for joint Lords-Commons meetings, particularly in the context of House of Lords Reform, in order to achieve co-ordinated, bicameral scrutiny of prospective European legislation. It is also important that, as for the Public Accounts Committee, a member of the official Opposition hold the Chairmanship of the European Scrutiny Committee of both Houses, as was the case from 1972 to 1997. This provision would help to ensure that the executive faces greater scrutiny on European Union affairs.

If the 'No' vote succeeds in a referendum on the euro, the British people will have served notice that the UK will no longer follow all of the projects associated with and necessitated by Economic and Monetary Union—be it tax harmonisation, tracking the Maastricht criteria on public expenditure, or (whilst it may now be too late) selling off the Bank of England's gold reserves. To dissociate the UK from all of the myriad projects reliant upon and linked to EMU, whichever party is in power will have to renegotiate the treaties of Amsterdam and Maastricht from which these projects derive. Given its pledge to 'save the pound', however, the Conservative Party especially must prepare for renegotiation. Its preparation should not, for the reasons given, be limited to resisting only new legislation.

(iii) (iii) Whipping

Relations between the executive and legislature in the UK are not those of two, lumbering institutions. Largely because they are fused, relations between these branches of government are in fact, as Anthony King points out, mediated heavily (almost exclusively) by relations within and between political parties. Party relations are, in their turn, mediated by the whip system.

Reform of the whip system is of vital importance to any package of measures designed to improve Parliament's ability autonomously to scrutinise the executive. In particular, it is upon the whip system that we must concentrate if we are to allow MPs, on occasion at least, to look beyond party politics and toward the national interest where, as a whole, they judge those considerations to be mutually exclusive.

The need to revive a more Burkean, representative role for MPs should, however, stop short of manifesto pledges which, if the Westminster system is to operate effectively, must be honoured (see 'vii'). Nonetheless, the procedures of modern parliamentary politics must come to accommodate the fact that, since the 1960s, traditional 'unidimensional' ('left-right') politics has been augmented by what Ronald Inglehart termed 'post-material values'. The

values Inghart's term describes are those that transcend party—such as Europe, the environment, animal rights, women's rights, abortion, and sexuality. Given their multiplicity, we can expect people's stances on these issues to be varied, crosscutting broad party platforms and incapable of being reconciled into a simple left-right spectrum.

If parties in Parliament are to represent this new environment, it follows that they must relax their whipping systems and not seek always to force Members into one of only a handful of monolithic party blocs (witness Shaun Woodward's dilemma over the Conservative Party's Section 28 banning the promotion of homosexuality in schools). For this purpose we must increase the number of free votes, cut the use of the guillotine procedure (see 'viii'), and make whipping in certain circumstances a contempt of Parliament (see 'ii').

Apart from European matters (dealt with above), there are other occasions on which such reforms are needed. A bill deriving expressly from a manifesto pledge has, of course, the right to be endorsed on principle on its second reading. In the committee stage, however, all bills should be subject to free votes. Further, the number of clauses for debate should, by agreement within the committee, be significantly reduced so as to save time for the most important ones (at present, important clauses are, often deliberately, bogged down in trivia). During the report stage, the Government could then come forward with its own amendments in competition with amendments from the relevant committee(s)—much like the situation between the President and Congress of the United States.

(iv) Press coverage.

A second factor damaging our Westminster system is the inadequate and often biased media coverage it receives. Radio Four has moved its coverage of Parliament to long wave—though there has been a renaissance of parliamentary coverage in the broadsheet newspapers. Committee sessions remain very rarely reported, however. In my own work upon the European Scrutiny Committee, I have even heard a minister state that, because of a lack of television coverage, he could get away with an imprecise reply to a direct question.

Biased reporting is also a serious problem, and I offer just one example. In recent correspondence with the BBC, the Corporation equated being against the Single Currency with being 'anti-European'. When I questioned them over their reporting of European affairs, the response of the BBC Editorial and Investigation Team was that it always sought to allocate proportionate airtime to 'anti-Europeans'—and these are the people who are meant to assess and remedy bias. This case is symptomatic of the shallow and (often as a consequence) biased media coverage that does so much to damage UK politics and reduce it to the burlesque.

(v) Leaking

Leaking abrogates the right of Parliament to be informed of measures first and detracts from what Pakenham termed the 'educational' function of the body.

Even budgets, with all their market sensitivity, have in the past been leaked and under the Labour Government the practice has reached new heights, as evidenced by the leaking of so sensitive a document as the Report of the Lawrence Enquiry.

Recommendation: Afford the Speaker full powers to track leaks to their source, perhaps equipping the Speaker's office with an in-house investigation team.

(vi) (vi) *Obfuscation by ministers*

It is now commonplace for ministers to refuse to disclose information by employing one or more of the following excuses:

- (a) (a) that the information requested would be too costly and/or time consuming to collate; and
- (b) (b) that the information requested takes the form of advice to ministers and thus does not have to be disclosed.

Recommendation #a: Excuse 'a' should be accompanied by supporting evidence, deposited with both the Clerks of the Table Office and the questioning Member, demonstrating that the information requested is, as the Minister claims, too costly and/or time consuming to collate.

Recommendation #b: Excuse 'b' should be restricted only to advice pertaining to national security and/or to market-sensitive information. This restriction requires that the Freedom of Information Bill (1999) be amended.

(vii) *Proportional Representation*

For the Westminster system to function effectively a party must issue a manifesto for which it campaigns in a general election—the terms of which it must honour in government. Governments are in this way responsible for the measures they introduce, and it is for this reason that I would not extend my call for more free voting to legislation arising directly and expressly from manifesto pledges.

(a) *Fragmented accountability*

With a tendency to produce coalition government, strongly proportional electoral systems such as the Single Transferable Vote fragment the accountability central to the Westminster model. Parties in governing coalitions may, as in the French Fourth Republic, blame one another for their failures in government, leaving the electorate confused as to which party they must remove in order to remedy a given problem and/or to punish a given mistake.

(b) *Brokerage*

Coalition government suffers from the added and well-known defect that smaller parties possess greatly inflated influence where they are able to make or break a particular coalition—much like the situation of the Free Democratic Party during much of Germany's post-war history

(c) *Government formation*

The formation of governments under strongly proportional electoral arrangements is largely beyond the electorate's control. For, whilst voters determine the relative electoral strength of parties, they do not determine the form of the governing coalition that those parties create. Following the first election under a form of proportional representation in New Zealand, the elected parties took more than three weeks to form a government. For that reason, amongst others, New Zealand—like Italy, Japan, and others—is dismantling its proportional system and returning to the plurality method.

(d) *Jenkins*

The Report of the Jenkins Commission defended coalition government principally on the ground that the economic and social achievements of post-war Germany seemed not to have suffered because of it. Yet whether or not Germany, like many states, is been able to function effectively with coalition government does not speak to the questions of

- (1) (1) whether Germany may have functioned more effectively with single-party government;
- (2) (2) whether multi-party government may be more appropriate for Germany than the UK given Germany's origins as a Grand Duchy, its defeat in world wars One and Two, and/or other such historical peculiarities; and, most importantly,
- (3) (3) whether the negative effects of coalition government (i.e. regarding accountability, party brokerage, and government formation) outweigh its perceived benefits.

(d) *The Alternative Vote*

A much favoured 'compromise' form of electoral system, the Alternative Vote System (AVS), should be avoided if one's intention is to improve proportionality. Simulations of the past three UK general elections indicate that AVS would produce a no more proportional, and on occasion less proportional, conversion of votes to seats than the present plurality method. The party list system, meanwhile, increases the power of the party machine at the expense of the individual elector.

Conclusion: Defects 'a', 'b', and 'c' of coalition government represent a greater 'democratic deficit' than the plurality system's inexact conversion of votes to seats. The defects of coalition government render the executive more opaque and therefore harder

for the legislature to scrutinise and to hold accountable.

(viii) Guillotine

The now near-routine use of the guillotine stifles debate, with obvious consequences for the deliberative capacity of Parliament and thus also for the quality and legitimacy of legislation.

Recommendation: Require a 'high' threshold of MPs on a free vote to enact a guillotine.

(ix) Prime Minister's Questions

The reduction of PMQs from two quarter-hour slots to one half-hour slot was not neutral but negative in its effect upon Parliament's ability to scrutinise the executive. Held on two separate occasions, one may put to the Prime Minister questions pertaining to two distinct time periods between which the issues of the day may change.

Recommendation: Reinstate biweekly PMQs.

In addition, the asking of five questions by the Leader of the Opposition cuts too deeply into the time available to backbenchers.

(x) Devolution

Devolution presents a grave threat to both the unity of our Kingdom and to the operation of our Westminster system—not least those of co-ordination / dual legitimacy. My own efforts to ameliorate these effects included my amendment seeking to solve the 'West Lothian question' inherent in the Scotland and Wales Bill. The Conservative Opposition, however, refused to accept this amendment, just as they refused to endorse a referendum for the whole of the United Kingdom—refusals I found just as inexplicable as the imposition of a three line whip in favour of proportional representation for Europe, Scotland, and Wales.

Another dismal feature of our opposition is that when the opportunity arose, given our numerical advantage in the House of Lords, to oppose the Amsterdam Treaty, we did not fully exploit it. Having myself laid down 100 amendments to the Treaty (none of which the opposition would accept, despite my offer to remove my name from them), only one amendment came back from the House of Lords—an amendment on fishing that was almost certainly *ultra vires*. In short, we did not seriously oppose Amsterdam at all.

(xi) House of Lords Reform

Conducted in the present (botched) manner, House of Lords reform presents just as severe a threat to our Westminster system as does devolution. My preferred model for an upper chamber is for 2/3rds of its members to be elected and 1/3rd appointed. To avoid too great an overlap (and therefore competition with) the second chamber, I further propose that the body be barred from considering matters of public expenditure and taxation. The chamber should, though, have a special role in constitutional matters, Europe,

and law reform. The system of election should, for reasons stated, be the plurality method, but on a regional basis and on a different cycle to the Commons—so as, again, to prevent overlap.

(xii) Conclusion

This analysis is not an exhaustive account of the threats facing our Westminster democracy: House of Lords reform and devolution, to name but two developments, present many more than I have been able here to deal with. Yet, overlaying all of our concerns should be the issue of Europe: that is, who is to govern the UK and how.

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