

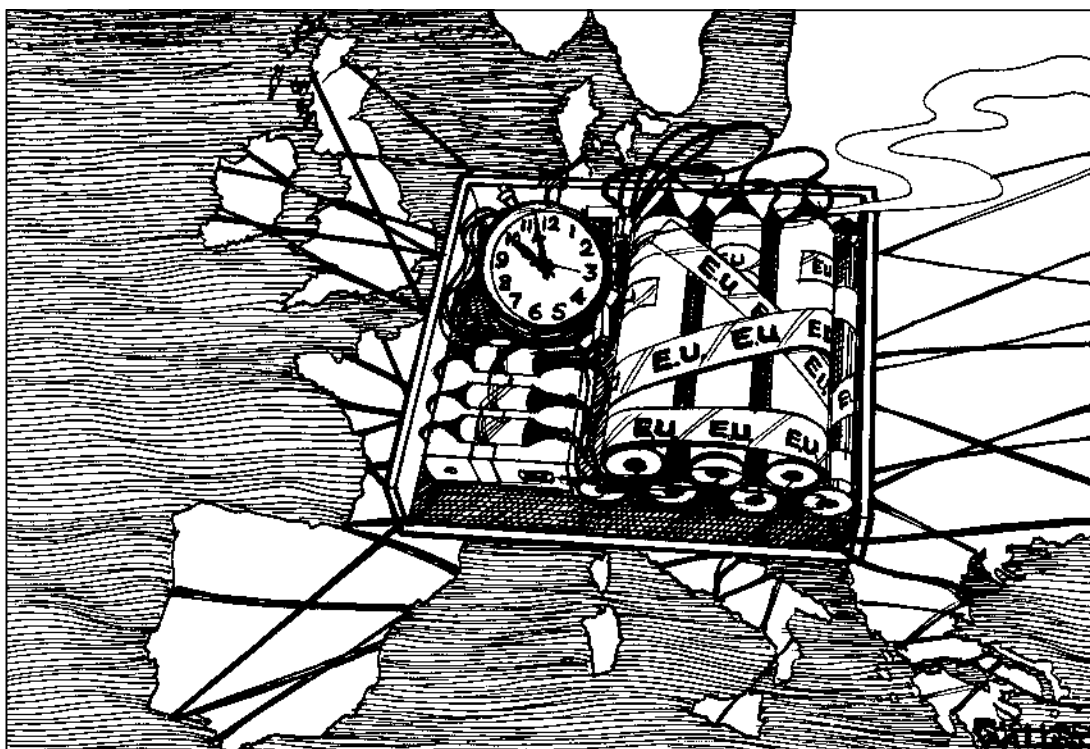
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THE JOURNAL OF THE EUROPEAN FOUNDATION



BILL CASH, MP

**THE EUROPEAN CONSTITUTION
– A POLITICAL TIMEBOMB**

&

**SIR OLIVER WRIGHT, GCMG, GCVO, DSC
MICHAEL FOGG • COLLEEN COGLAN
SARA RAINWATER • GREG BROEGE
DR LEE ROTHERHAM**

THE EUROPEAN FOUNDATION
www.europeanfoundation.org

62 BROMPTON ROAD, LONDON SW3 1BW
CHAIRMAN: WILLIAM CASH, MP

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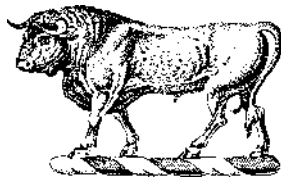
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Telephone: 020 7590 9901 Facsimile: 020 7590 9975

E-mail: euro.foundation@e-f.org.uk

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Plus ça Change... at the heart of the UK and the heart of Europe

COME YESTERDAY, GONE TODAY – by my own choice. From the backbenches, I trust and hope that the new leadership will be successful, and on the basis of the unity on European policy that has been established over the last two years. There is a clear need for a public commitment on the fundamental question of a rejection of the Constitution in principle and a full-blown commitment to seek a referendum before ratification, and if this is not conceded, to commit to one afterwards. The issues and the principles remain the same, and there has never been a more important moment in the European debate. I wish Michael Howard every success, in the national interest. As Disraeli, that great Prime Minister said; “*The Tory party is a national party or it is nothing.*” Another great Prime Minister, William Pitt, stated during the Napoleonic wars; “*England has saved herself by her exertions and will, I trust, save Europe by her example.*” I remember saying to Margaret Thatcher once that our task was more difficult than Churchill’s; “*He was faced with bombs and aircraft – we are faced with pieces of paper.*” It was never truer than now. We must turn all our firepower on this Government, as well as on the architects of this European Constitution.

Since the European Foundation published my pamphlet *The European Constitution – A Political Time-Bomb* on 8th October, at a Foundation fringe meeting at the Party Conference with Michael Ancram, Stephen Dorrell and myself, which showed the unity of the Conservative Party, I have taken the debate further. In my last few days on the front bench, I continued to develop a series of Parliamentary questions, which I have been pressing for two years. I have not received proper answers to these questions because they are unanswerable. For example, I asked the Foreign Secretary how often the UK had asserted national law against its obligations under the European Treaties. The Minister for Europe, Denis McShane, said in reply;

“*The Jurisprudence of the European Court of Justice since the case of Costa v ENEL (case 6/64) has clearly established the principle that no provision of national law may be invoked to override Community law.*”

In other words, he gives precedence to the jurisprudence of the European Court. Furthermore, on 5th November, he said that it was indeed within Parliament’s power to legislate contrary to the UK’s treaty obligations;

“*The result of so doing, however, would be to put the UK in breach of its treaty obligations.*”

The implication is that the Government already regards the primacy of European law as internalised by the UK. It is, in fact, a case law doctrine of the European Court of Justice, recognised by national courts for most purposes, but would be internalised by the UK if the current draft Article I-10 of the European Constitution became UK law, as explained in my pamphlet. In an example of the worst kind of casuistry and circular argument, they are seeking to adopt the European Constitution on the false

basis that its most fundamental provision is already in effect.

The reality is that for the Government to ratify this treaty would be an abuse of the prerogative worthy of the Seventeenth Century. For Labour MPs then to vote to implement the treaty into UK domestic law without a referendum authorised by Parliament and properly conducted would be *ultra vires* the democratic authority vested in Parliament by the electorate since at least the Reform Act of 1867. The Conservative Party must remain united and fight this with all the tools at its disposal. We must continue with the plan I devised for a nationwide petition, collected on a constituency basis, to force the Government into a referendum before this Constitution is ratified, and (in case rejection is not achieved) also to commit to one after ratification.

For some time, the Franco–German axis has been worrying to existing and future EU Member States. There are obvious dangers in political and economic, as well as geographical, dependence on such an integrationist hard core. Well-sourced talk in the British press and copious detail in *le Monde* on 13th November now confirms that there is a plan for the alliance to be institutionalised in a form of union between the two countries. This plan demonstrates the structural fault-line in arguments in favour of “*variable geometry*” and “*flexibility*”, existing notions that allow France and Germany to engage in a process towards closer political union, which will create tensions and increase costs within a greater Union.

This situation becomes even more untenable with the collapse of the pillar structure. Variable geometry is like a clock with disconnected parts, as I said in a debate in 1997. Difficulties already exhibited by the growth and stability pact: low growth and high unemployment in the eurozone will worsen as the economic effects filter down to the economy on the ground. Instability will grow, and the remote and bureaucratic system, without the safety valve of effective and accountable national Parliaments, will produce chaotic political consequences of the kind that we would have fervently hoped had gone for good.

Retaining a commitment to fighting for a referendum now is crucial, but we must go further than that. The Conservative Party must not just campaign for a referendum, but for a referendum and a ‘No’ vote. If we are against the Constitution in principle, as I said at the Party Conference, it is essential that we know what we will put forward as a positive alternative – hence my pamphlet’s reiteration of the two spheres model for the EU. *The Economist*, on 3rd July this year, indicated that this could be worth (before the campaign even got going) 8 per cent of the vote in a general election.

The movement towards a European Constitution as it has developed since the Maastricht Treaty is a new turning point in United Kingdom politics and in the UK’s relationship with our European neighbours. It is not a tidying up exercise; it would change our daily lives. It will undermine our democracy and damage the national interest. Tony Blair’s majority does not justify bypassing the electorate on such a crucial issue. Were he to do so, the remaining bond of trust between the Government and the governed would be broken into fragments.

Bill Cash, November 2003

The Franco-German Dual Hegemony in Europe and the Marginalisation of Britain

by Sir Oliver Wright, GCMG, GCVO, DSC

A FUNNY THING HAPPENED at the EU summit in Brussels on 16/17 October – a funny peculiar, that is. According to a brief report in the *Financial Times* headed “*The German reform*,” the German Chancellor had to leave early to attend to parliamentary business in Berlin. Nothing peculiar about that: heads of government leave summits all the time on a variety of pretexts. What was peculiar was that Schröder did not do what they normally do, which is to leave their foreign ministers in charge of their delegations. No; what he did, according to the pink ‘un, was to swear in President Chirac as his deputy “to represent German interests”.

That is very peculiar indeed. And very significant indeed. And maybe very sinister indeed. It raises to a higher level and symbolises for all to see what has been developing for a long time now, the dual hegemony of France and Germany in European affairs.

Every schoolboy knows that the post-war reconciliation between France and Germany is one of the better deeds in a naughty world. What Macaulay’s schoolboy may not know is that, with Jean Claude Monnet as godfather, that reconciliation has been institutionalised, since the establishment of the European Coal and Steel Community between the Six in 1952, removing from national control the then sinews of war, coal and steel. Monnet followed with a proposal for a European Defence Community (EDC), to merge the defence interests of the Six. It failed in 1954, when France refused at the last fence: ratification by the French Assembly. Britain declined to participate in either, having not at that stage lost its national self-confidence that was to follow Suez. But Eden sought to pick up the pieces by proposing a treaty of West European Union (WEU), pledging to station four divisions in perpetuity on the continent. The contrast between the integrating ambitions of the continent and the British preference for co-operation was apparent half a century ago.

Undeterred, Monnet switched to the economic route to integration. The European Economic Community (EEC) was being negotiated at Messina in 1956 when Anglo-French joint fiasco of Suez

took place. Britain, confident that the EEC would fail as the EDC had done, sent only a middle-ranking official as observer. After Suez, Britain and France went their separate ways; Britain to restore the primacy of the trans-Atlantic relationship, in which it was successful, and France to turn its back on the United States and concentrate its attention on Europe, in which it was likewise successful. France’s fear of Germany and Germany’s burden of guilt meant that in the EEC France would lead and Germany pay.

The pattern set then continues to the present day. France and Germany have worked together ever more intensively in integrating mode, while Britain, ready to co-operate but reluctant to integrate, has both been marginalised and marginalised itself. The seminal events were de Gaulle’s veto of Britain’s entry into the Common Market on 14 January 1963 and the signature eight days later in Paris of the Treaty of Friendship and Co-operation by de Gaulle and Adenauer. The meeting amounted to a joint ratification of the French veto. It institutionalised the sidelining of Britain in Europe.

It is worth recalling the precise words by which de Gaulle publicly justified his veto. They are clear, uncompromising and, re-read 40 years on, confirm both the continuity of French policy and the futility and unwisdom of any British attempt to place Britain ‘at the heart of Europe’. The General said:

“Sentiments cannot be put forward in opposition to the real factors of the problem... England is an island, maritime, and linked through its trade, markets and food supplies to very diverse and often distant countries... In short, the nature and structure and economic context of England differ profoundly from those of the other states of the continent...”

Touché. The General recognised our true position and interests better than we did ourselves. And we have paid most grievously for it. He then went on to describe what he wanted and how it was incompatible with what we wanted. He continued:

“The entry first of Great Britain and then of the other states will completely change the

series of adjustments, agreements, compensations and regulations already established between the Six... The cohesion of its members would not hold for long and in the end there would appear a colossal Atlantic Community under American dependence and leadership, which would soon swallow up the European Community. That is not at all what France wanted to do and what France is doing, which is strictly a European construction.”

Clear, one would think. It is all there, the concept of European integration under French hegemony, the robust anti-Americanism, the rejection of any terms on which Britain could comfortably participate in the enterprise. It is still there even though the hegemony is now a dual one. Twenty years later when Leon Brittan, then European trade commissioner, suggested an agreement between the EU and the North Atlantic Free Trade Area (NAFTA), the French stifled it at birth, Germany did not object and nothing has been heard of it since.

What de Gaulle and Adenauer started, Giscard and Schmidt, with the Exchange Rate Mechanism, Mitterand and Kohl, holding hands in a war cemetery after Maastricht, have continued, and Chirac and Schröder, with Chirac sworn in as Schröder’s deputy, have completed. Along the way, successive British prime ministers have suffered the tortures of the damned. In Europe, what France and Germany agree on happens; what they don’t agree on doesn’t. With two exceptions, all British prime ministers have found it difficult if not impossible to reconcile British instincts and interests with continental ambitions. The exceptions are Heath and Blair.

Heath’s solution was to capitulate. His instructions to his negotiators, now officially published with the expiry of the 30-year rule, were to “swallow the lot and swallow it now.”†

What Blair’s solution will be, time will tell. The omens are not propitious. The Giscard Convention on the Future of Europe was clearly driven by the two hegemonies. The notion of subsidiarity, Blair’s trophy from Laeken, has gone out of the window. Blair’s negotiator, Peter Hain, tagged along behind, claiming that it was all only a “tidying up

exercise". The talent for misrepresentation of New Labour knows no bounds.

We now enter the season of negotiation for a new treaty to give effect to the Giscard constitution. The controlling force is once again the two hegemons. Blair has waffled on about red lines. But he seems already to have discarded two of the most important of them, foreign affairs and defence, to the dismay of Washington and the downgrading of NATO. Will the hegemons allow him to keep one red line which he can bring back to Britain and declare a triumph for British negotiating skills? Will he follow

Heath's example and capitulate? Or will he follow the honourable example of his Labour predecessor, Harold Wilson, and hold a referendum to obtain "*the full-hearted consent of the British people*"? The serious money is on capitulation.

Blair may be a man with no reverse gear, but he has got to be reversed on this one. That is why the work of the European Foundation, under Bill Cash, has taken on a new dimension and urgency. It has already succeeded in uniting a riven Conservative Party behind a demand for a referendum. The Party must now rouse the country. The

country is waiting to be roused. Otherwise we shall, in the words of Frank Field, "*close the books on Great Britain*." That must not happen.

† *Britain's entry into the European Community*, Whitehall History Publishing, 2000

Sir Oliver Wright was Ambassador to the Federal Republic of Germany (1977-82) and to the United States (1982-86) and is a member of the Advisory Board of the European Foundation.

Dual Citizenship within the EU

by Michael Fogg

THE DRAFT CONSTITUTION, which has been drawn up by the Convention on the Future of Europe, currently being discussed at the ongoing Inter-Governmental Conference in Rome, will take a massive step towards the creation of a United States of Europe. Although the UK Government in particular has taken pains to stress that the Constitution is little more than a "*tidying-up*" of previous treaties, there are a number of proposed measures that cannot be explained, other than in the context of increased federalism.

One of the major foundations of this increasingly federal Europe is the proposal that all those living in EU countries will hold dual citizenship, both of their nation-state and of Europe. The hope is that this in turn will enable more people to see themselves as European, presumably in the same way that George W. Bush views himself as Texan and American, and Rhodri Morgan views himself as Welsh and British.

There are undoubted differences to these two examples and that of an individual being, for example, British and European. However, there are elements of similarity between both examples, and the form of dual citizenship that is envisaged for the EU. Importantly, we can learn a number of lessons from these similarities, which can give us an insight into the probable success or failure of the EU's dual citizenship project.

Federalism in America is built on common history and a homogenous culture. Neither of these factors are present within the European Union, which has 11 working languages, and a diverse number of histories, cultures and identities. Certain countries, notably Germany, have a modern

history of federal political and economic organisation, whereas Britain in particular is fiercely opposed to this concept. It will be difficult, though perhaps not impossible, for the EU to create an identity that allows both pro- and anti-Federalists to identify with.

Further political and economic integration, most obviously demonstrated in the introduction and development of QMV, and the creation of the European Single Currency, are the strongest building blocks for the commonality necessary for individuals to see themselves as European. The Constitution that is proposed will also provide a legal identity for the whole of the EU, scrapping the current three pillar EU. This is of vital importance to the goal of Europeanisation of individuals, as it provides the EU with the power to sign international treaties as a specific legal entity.

The position that Wales finds itself within the UK, as a specific cultural nation within a larger multicultural country, holds a number of parallels with the way in which a member state fits into the EU framework under the proposed Constitution. A number of smaller cultural units make up a larger whole, where there is an overarching institutional framework for taking policy decisions. Whilst this works, there is a necessary degree of sacrifice which means that each policy decision is in the interests of some areas more than others. In Wales, for example, the historical argument is that the decisions taken by Westminster are weighted inequitably towards the South East of England. This echoes the British criticism that the EU tends to favour the Franco-German 'axis', the institution favouring the regions geographically proximate to itself.

The tensions that exist within the UK relating to Wales are historically grounded. Wales has spent a vast majority of the last seven centuries annexed to England, and has had to struggle to maintain a specific culture through periods of active and passive measures, for example, to remove the Welsh language. However even with a declining number of Welsh speakers, a growing percentage of individuals see themselves as Welsh rather than British. The concept of dual nationality within the EU would possibly be better founded upon a series of inclusive policies that allow individuals to feel that they benefit from membership of the EU, as opposed to co-opting a second nationality on to a person's passport. History has taught us that this policy would meet with at best limited success, and at worst outright hostility to the umbrella institution.

Within both the USA and the UK, there is a specific currency, with control of that currency held within a single national bank. This is another key difference between those socio-political areas that are able to cultivate an identity of their own, rather than relying on the disparate identities of the individual members of that institution. Whilst there are member states that have their own currency, there will always be a tangible difference between one member state and another. Psychologically, for Britain, the pound in your pocket is a specific reminder that we are not European.

There is little chance, in the short term at least, of a majority of 'European' citizens uniting under an EU banner, proudly singing the European National Anthem and feeling that distinctive tingling feeling of belonging, pride and unity with those

around them. The EU is not about national pride, but supranational and inter-governmental co-operation. It is the latest international attempt at an institution to ensure peaceful coexistence between nation states. The Constitution of this institution should therefore, if it is truly needed, concern different issues to that of a nation state, for what real methods of enforcement of that Constitution does the EU have. Whereas the Constitution of the USA is a codified version of the social compact that each citizen implicitly agrees to by living within the States, the Constitution of the EU is more about codifying agreements between those national governments themselves.

So do individuals need to feel European? There is no common culture and no common language. Although there is free movement of all factors of production, and an increasing harmonisation of economic factors as far as this is possible, the essence of what makes a country is not present within the EU: dual nationality would be in name only. Its introduction is no tangible improvement on the current system of free movement of persons within the European Economic Area, and so can only be for political purposes. At this point it is worth exploring the idea that nationalism as a concept is a purely theoretical one, drawing similarities between a group of geographically proximate people in order to effect social control and engender loyalty between individuals. The EU could therefore be seen, should it ratify this draft Constitution in Rome next year, to be trying to create a "One State, one Nation, one People" as was the case in the USA some two hundred years ago.

The US Constitution was based upon a series of checks and balances ensuring that none of the component parts of the US

system of governance could get too much unchecked power. The way in which the EU is structured currently provides for a number of checks and balances, and there is a trend towards increasing powers for the European Parliament under the rationale of increasing direct participation. This in turn should provide the individual citizen with a more direct way of accessing the European policy-making process. However a majority of decisions, and certainly the key decisions over the future of Europe, are still made by the elected representatives of the member states on behalf of their electorate and with no direct recourse to them. This would be justifiable if the decisions concerned did not cede policy-making authority, or power over certain areas of importance, to a supranational body. Where the powers placed in the hands of the national parliament are being handed over to an alternative institution, there is a powerful case for this requiring legitimisation by public referendum.

In Britain, the power that has historically been held by the Houses of Parliament has been spread more widely. The Scottish Parliament, Welsh Assembly and Stourmont have all received devolved power for secondary (and in Scotland's case some limited primary) legislation. In addition to this, the EU has made steps to re-brand itself a Europe of the Regions, notably through widespread investment in the European Regional Development Funds and European Structural Funds programs. This, along with a robust approach to championing the concept of 'subsidiarity' has been the foundation for an ongoing regionalisation of the eurozone.

Finally, then, we must ask whether the reason for the dual-citizenship project is not to support some greater purpose. There is

certainly an overtly federal overtone to the draft Constitution produced by the convention headed by Valerie Giscard d'Estaing. This includes the development of a legal identity for the EU, as a whole rather than just for the EC, which includes the ability of the EU to sign international treaties on behalf of its member states. There is also a scrapping of the pillar system, which upholds the CFSP and JHA pillars as the preserve of intergovernmentalism. Seen on its own, these steps seem to be federalist in nature and look to be attempting to evolve power for some foreign and domestic policies to the EU. The ongoing existence of Eurocorps is seen in itself by some as a marker of EU ambitions in security policy in particular. Viewed in conjunction with the increasingly regional emphasis which the EU is cultivating, there is a trend of disempowerment of national governments in favour of regional assemblies supported by a European institution anxious to strengthen and consolidate its position. The Italians in particular seek to place great importance on the signing of this next Treaty in Rome, symbolically the birthplace of the EEC and Euratom in 1957. If, in 2004, the draft Constitution is agreed by the member states, then Rome will become the birthplace of the next phase of European Union development. It will not be, as it is commonly expected to be, a United States and more a United Regions of Europe.

Michael Fogg is a research student in European Policy at Cardiff University. He is also Director of Insight Cymru Public Affairs, a Cardiff based Lobbying & Research organisation.

... news in brief

Spain and France disagree on Constitution

At the 14th Franco-Spanish summit held in Carcassonne on 6th November, the French President and the Spanish Prime Minister found that they disagree completely about the proposed European Constitution. The French are opposed to any undoing of the draft text, while the Spanish reject the draft's current proposal to change the votes which each country will have in the Council of Ministers. The two countries were therefore completely unable to come to any agreement on the matter, and were reduced to expressing hope that they will find a solution in the future.

Both Spain and Poland are refusing to abandon the voting arrangements which were agreed on at Nice, and which were incorporated in the Nice treaty. (Attentive followers of such matters will recall that it is the Nice Treaty, and not the new European Constitution,

which was supposed to prepare the EU for enlargement.) In that treaty, Poland and Spain have 27 votes in the Council of Ministers, as against 29 for the four big countries (France, Germany, Italy, the United Kingdom). The Convention proposes to change this by giving more power, relatively speaking, to the larger countries. Two ideas are now being put about to find a way out of this impasse: either the percentage of votes needed to pass an EU law will be raised from the proposed 60% to 66% of the EU's population – which would give Spain and Poland the same blocking power as they have in Nice – or the proposal to reduce the Commission to 15 commissars would be dropped. Yet in Jacques Chirac's entourage, it has been said recently that the President does not think that the principle of "one country, one commissar" "corresponds to the European spirit." So the negotiations are blocked, even though Paris still claims that it thinks that agreement can be reached on the Constitution by the end of the year. [Le Monde, 6th November 2003]

FACTS

by Colleen Coghlan

1 Europe considering quotas for immigrants

Italy's Premier, Silvio Berlusconi, has called on the EU to improve and toughen EU-wide cooperation in combating illegal immigration. In wake of recent deaths of Africans attempting to enter Italy, the Premier urged the European Parliament on 22 October, to re-evaluate a plan to "prevent such disasters from ever happening again." European leaders met earlier this month to discuss a proposal that would set a Europe-wide quota for illegal immigration from Asian and African countries. The plan was pushed by the Italians, who believe that by offering legal immigration quotas, the efforts of deportation will ease. Italy's Interior Minister, Giuseppe Pisanu stressed the need for quotas arguing, "the key of a European policy on immigration lies in the adoption of a quota system for entry in the EU countries." The plan would allow each EU state to decide on a national level how many people to admit from certain countries with the EU Commission acting as a co-coordinator. Currently, all EU member countries hold a veto on immigration policy. However, under the new constitution, immigration would be decided by majority voting meaning certain states could be forced to accept the quotas even if they opposed them.

euobserver.com, 23 October 2003

2 EU Pact costing London £300 million a year

European Union finance ministers voted on 7 October to inflict arduous burdens on London city brokerage houses and investment firms. Chief Secretary to the Treasury, Paul Boateng, stated this new Investment Services Directive would drive over £300 million of business every year from London to New York. Originally the Directive intended to progress the European Union's financial markets by removing various rules and methods from all the countries, establishing a common rule to ensure all were set on the same 'playing field' and thereby removing financial borders in attempt to create a single European capital market. With these common rules, the Directive will allow investment firms to operate throughout the EU and it will also allow banks to compete with stock exchanges in share trading. The deal faced opposition from many countries, including the UK. The Investment Services Directive is a major part of the Financial Services Action Plan – the EU's plan to establish a single financial services market by 2005.

The Daily Telegraph, 8 October 2003

3 Danes to vote on Constitution and euro in 2004

Denmark has decided to hold a 'super referendum' in 2004 that will allow citizens the chance to vote on both the euro and the European Constitution. If the Danes were to vote 'Yes' to the euro, they could see a change in currency as early as 2006. While voting on the Constitution the Danish will also vote on the Danish opt-outs that were negotiated at Maastricht. These opt-outs include issues of defense, police, the euro, legal cooperation and EU citizenship. While polls show that 60% are in favour of joining the euro, in 2000 the single currency was defeated by 53-47 per cent. As for speculation that the recent Swedish 'No' vote may be a strong influence, Danish Prime Minister Anders

Fogh Rasmussen stated, "when someday we are to take a decision on the question, I think the Danes will make their own decision regardless of what has happened in Sweden."

euobserver.com, 24 September 2003

4 EU Museum

Plans for a European Union Museum to open in Brussels in 2006 were announced on 15 October. The museum will cost €22.5 million and is to be financed by the Belgian government, European Union and private sector. It is predicted that the new museum will attract 300,000 visitors a year after five years in operation and 450,000 after ten years. Based on these figures, it is planned that the museum will spread to 6,000 square meters. The idea sprung from the fact that the European Parliament currently sees 2,000 visitors daily but does not provide tourists with any other attractions. Plans include a global café that will feature food from all 25 future EU countries and exhibitions of European art and artifacts.

euobserver.com, 16 October 2003

5 Poland to require visas for Eastern visitors

As Poland plans to become a new member state next year, a new visa system has been unveiled. It will apply to the former Soviet Republics of Russia, Belarus, and Ukraine. Poland, like Ireland and the UK, will not join the Schengen agreement which abolishes passport control in 13 of the current EU member states, until 2007 at the earliest but will require these visas from these three countries. For Russian entry into Poland, citizens must have enough financial means for the duration of their stay. Russia will require a valid invitation that must be endorsed at a Russian police station for entry for Polish citizens. Similar rules apply to Belarus but for the Ukraine, an agreement made in June set the path for free, accessible, and continuing entry visa for travel to Poland. There is currently no visa requirement for Poles entering Ukraine, which will remain under the new system.

euobserver.com, 29 September 2003

6 German Economic Confidence falls for first time in 2003

The strong euro is affecting German economic confidence. A key measure of German economic confidence has fallen for the first time in 10 months. Ralph Solveen of Commerzbank said that: "The stronger euro has made people question their level of confidence about the upswing." The indicator has remained bullish throughout this year despite worsening underlying economic data.

FT.com 14 October 2003

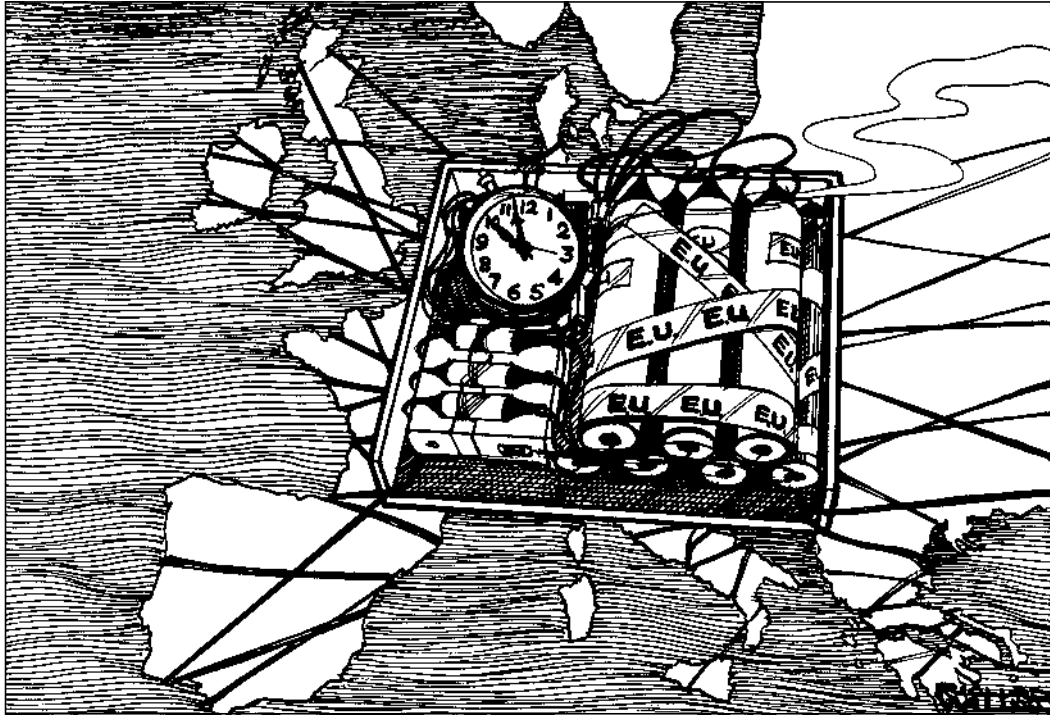
7 Bring back €1 notes to combat inflation

One of the causes of higher prices in the eurozone is that some countries are not used to high value coins, for example Greece and Italy. This has led to consumers in these countries spending the coins too easily – leading to greater inflation. This has caused the European Finance Ministers to ask the European Central Bank to consider issuing one and two euro notes to help combat rising prices in the eurozone.

euobserver.com 8 October 2003

The European Constitution – A Political Timebomb

by Bill Cash, MP



IN THIS MONTH'S EDITION of *The European Journal*, we are publishing a special edition of Bill Cash's pamphlet *The European Constitution: A Political Time Bomb*, which was published in its original form at the European Foundation's fringe meeting at the Conservative Party Conference in Blackpool on 8th October.

Publication was timed to coincide with the launch of the Conservative Party's campaign for a referendum on the European Constitution, which is outlined in the pamphlet.

Speaking at the European Foundation fringe meeting with Bill Cash were Michael Ancram, the Shadow Foreign Secretary, and Stephen Dorrell, the former Minister for Health. The speeches received passionate support from the floor, followed by an intense period of questioning.

The venue was overflowing, with members of the audience constantly jostling to make way for more people. Both television

and newspaper journalists were also there in some number.

The pamphlet represents the culmination of Bill Cash's and the European Foundation's work on the European Constitution. It is designed as a definitive guide to the legal, constitutional, political and practical dangers that the draft Constitution presented by the Convention on the Future of Europe poses to the UK and its people. It also sets out to explain why the government is in support of it – and against holding a referendum – in spite of these dangers. It further seeks to explode the myth that there can be only one kind of European Union, and that every nation in Europe must either take it or leave it.

In short, the pamphlet sets out what the UK's present relationship with the EU is, how it would change under the draft European Constitution and how it, and the EU as a whole, might be improved by negotiation on a different, and more realistic, basis.

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Summary

- The European Constitution is a project of the EU elite, which will fundamentally change Britain's relationship with the European Union, contrary to what the Prime Minister and Foreign Secretary say.
- It is a Constitution with a big 'C' – a basis for making laws – not like the constitution of a golf club, as suggested by Jack Straw. The EU already makes over 60% of the laws of the UK – under the Constitution, this would increase.
- Putting the primacy of EU law into the Constitution is not mere “tidying up” – it destroys the sovereignty of Parliament.
- The Government's “red lines” on the Constitution are very weak – and are already being surrendered.
- The Government has done a U-turn on the European Charter of Fundamental Rights, a list of mainly socialist policies that is set to become enshrined in the Constitution.
- The Government wants to hand over asylum policy in the Constitution – even though its demand for fundamental changes to the common policy proposals has been ignored.
- Changes to our criminal law in the Constitution are to be accepted, even though they take away rights from British citizens and have been branded “unacceptable”.
- The Constitution will give EU institutions powers over British foreign policy.
- The Constitution will set up a European defence capability separate from, and rivalling, NATO.
- New Labour is in favour of the Constitution because it is a way of remodelling Britain in its own image without asking the British people. It is the most important thing on the Government's agenda – as the Prime Minister has said, more important than Iraq.
- The Government's constitutional reforms have been rushed in without consultation to make way for the European Constitution.
- The Government's aim is to pass Parliamentary powers up to the EU and to take away powers from our independent institutions.
- At the moment, the limits of EU institutions' powers are determined by the highest courts of respective Member States. Under the Constitution, the European Court of Justice would have the last word.
- The alternative to the Constitution is not isolation and oblivion – it is greater prosperity, more harmonious co-operation and more freedom for the peoples of Europe.

THE EUROPEAN CONSTITUTION – A POLITICAL TIMEBOMB

Returning Power to Britain, Westminster and You

by Bill Cash, MP

A Political Time-Bomb

IN HIS SPEECH to the 2003 Labour Party Conference, Tony Blair lit the fuse of a political time-bomb. He said *“our aim must be an historic realignment of the political forces shaping our country and the wider world.”*

He made no reference to the European Constitution. We know, however, that he regards it as more important than Iraq, which he mentioned several times because of the troubles it has brought him.

He also promised *“the biggest policy consultation ever to have taken place in this country,”* but he refuses to consult the British people in a referendum on the Constitution when the Constitution itself is at the centre of the realignment.

The Constitution was a victory for supporters of European integration on the tired, old model of the corporatist superstate. The Convention which drafted it was an elite gathering, chaired by one of the architects of economic and monetary union, but pretended to be an exercise in democratically accountable reform. Its result was a draft ‘constitutional treaty’ which proposed deepening political and economic integration, behind a mask of institutional change said to be necessary for enlargement (although enlargement was supposed to have been facilitated already by the Nice Treaty).

Contrary to assertions by the Prime Minister and the Foreign Secretary, the European Constitution would

fundamentally change the nature of the relationship between the EU and its Member States, including the United Kingdom (as shown later in this pamphlet). It is a blueprint for the nations of Europe to be subsumed and absorbed by the European Union – something the British electorate has never wanted.

A new approach for Europe?

The Laaken Declaration of December 2001 told the Convention to come up with a new approach for Europe:

“a clear, open, effective, democratically controlled Community approach ... an approach that provides concrete results in terms of more jobs, better quality of life, less crime, decent education and better health care.”

This is what the peoples of Europe cried out for and, as the Swedish ‘No’ to the euro demonstrated, still want. Instead, they have been given more of the same – the powers of national parliaments and governments sucked into the citadel of the unelected; and exhausted, failed, socialist policies being set in stone for future generations.

The Laaken Declaration did not expressly authorise the Constitution, but it is now on its way to Parliament, and will do grave damage to us in our daily lives (see Appendix – Impact on Daily Lives).

What is a Constitution?

A constitution can be one of two things: a constitution with a small 'c' is a document that lays down the powers of an organisation, within the framework of existing law (like the constitution of a golf club). A Constitution with a capital 'C' is "a document having a special legal sanctity which sets out the framework and the principal functions of the organs of government ... and declares the principles by which those organs must operate."¹ The most essential question about the draft European Constitution, therefore, is whether it is a constitution with a small 'c' or a big 'C'.

Club rules?

The Foreign Secretary, Jack Straw, has compared the draft European Constitution to the constitution of a golf club. Yet even if it was just a "tidying up exercise", it would be far more than that, since the treaties of the EC and the EU have already created a new legal order, virtually supreme over the laws of Member States. Contrary to what Straw said in a Commons debate on 16th September, EU law is far more than just another branch of international law.

The long yarn of the law

When the European Communities were founded, most international lawyers took it for granted that the law of the Communities would simply be a new branch of international law. But the European Court of Justice, set up to adjudicate on the operation of the Communities, disagreed. In 1963, in the case of *Van Gend en Loos*, it said:

"... the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights".

A year later, in the case of *Costa v ENEL*, it said:

"By contrast with ordinary international treaties, the EEC Treaty has created its own legal system which, on the entry into force of the Treaty, became an integral part of the legal system of the Member States and which their courts are bound to apply."

The governments that signed the Treaty never said that they had intended to establish "a new legal order", but the principle was generally accepted, with the result that new as well as existing UK statutes could be rendered ineffective by European law (as with the Merchant Shipping Act of 1988).

A national court bites back

The primacy of European law was never fully accepted, however. The best example of the limits of the principle came in a legal challenge to Germany's ratification of the Maastricht Treaty. According to German ideas, a federation can determine the extent of its own powers without the consent of its component states. This capacity is called 'Kompetenz-Kompetenz'. In its judgement on Maastricht, the German Constitutional Court said that neither the Community as a whole, nor any of its institutions, had *Kompetenz-Kompetenz*: the capacity to determine alone the extent of its own powers. It went on to say that, under certain circumstances, judgements of the European Court of Justice would not be considered legally binding in Germany. This meant that the EU/EC was not a federation and that European law was not absolutely supreme in the eyes of the German court. Or, put more simply, European law is only supreme in Germany when German law says so. (This issue is examined in the UK context below.)

Onward to the European Constitution

Unhappy with the implications of the Maastricht decision in Germany, and similar decisions in other countries that have followed it, European federalists have been calling for a European Constitution for the last ten years. The draft European Constitution that the Government is negotiating states the supremacy of European law as a founding principle – and the British government agrees that that is just what it should be. If it is adopted, it will mean that the constitutional courts of the European Union's Member States no longer decide when European law is supreme, since the governments of the Member States will have agreed as a matter of principle that it should be. *Kompetenz-Kompetenz* will belong to the European Court of Justice, whose judgements will always be legally binding all over the EU. Put simply, European law will always be regarded by the European Court of Justice, the institutions of the EU and European federalists as supreme throughout the European Union because the European Court of Justice says so.

Conclusion

This is a Constitution with a very big 'C'.

*England, bound in with the triumphant sea,
... is now bound in with shame,
With inky blots; and rotten parchment bonds:
That England, that was wont to conquer others,
Hath made a shameful conquest of itself.*
William Shakespeare

What About the Government's "Red Lines"?

They are already being surrendered. At first, the Government tried to convince people that Britain was "winning the arguments" over the Constitution. When the public remained unconvinced, Tony Blair started talking about "red lines" which would cover economic policy, tax, foreign policy, defence and other areas of vital national interest. These were to be set out in a government White Paper. This White Paper was published in September. It contains just two promises: that the UK's opt-out on the Schengen Agreement on border controls will be retained, and that Britain will not give up its seat on the UN Security Council. As for the rest, it spins the Constitution as a good thing for Britain, and makes vague statements about the Government's "negotiating stance" for the Intergovernmental Conference (which started on 4th October).

Unlike the White Paper of 1967 on entry into the Common Market, in which the Lord Chancellor dealt fully with legal and constitutional implications, this flimsy White Paper wrongly asserts that there is no fundamental change under the Constitution between the EU and the Member States. It is on the basis of this false assertion that the Government refuses to hold a referendum on the Constitution – yet it is in principle (although not in practice) prepared to hold one on the euro, which is at the centre of gravity of the Constitution itself.

Having a beano

The Government has already given in on most of its objections to the Constitution. Out of over 200 amendments tabled by the Government, only 11 have been accepted. Less than three years ago, when the Government agreed the European Charter of Fundamental Rights, Keith Vaz, then Minister for Europe, said that the Charter was just a political statement, and that it would be "no more legally binding than the Beano or the Sun". The Government was still saying that during the Convention, but now it says it will make a final decision on the Charter "only in the light of the overall picture..." – in other words, it is poised to agree to it becoming enshrined as Part II of the Constitution, as it is in the draft. The Charter is an instrument for expanding socialist principles such as the right to strike, which has never been the law of the UK, even under the most extreme socialist government.

Seeking asylum?

Likewise, one of the Government's most important draft amendments to the Constitution was on asylum. In explaining it, UK Parliamentary representative Peter Hain said:

"This is a fundamentally important amendment. [The articles as currently drafted] do not cover at all the absolutely vital external dimension to asylum. The European Union will only

succeed in creating a common policy on asylum if it is prepared to act in relation to countries and regions of origin and transit. Second, the Tampere conclusions [from a previous EU policy brainstorming session] nowhere said that the second stage of work on a common system should consist of converting the minimum standards under negotiation as part of the first stage into common rules. The Treaty should therefore not contain a catalogue of measures to be taken, but should establish a more general legal base..."

These objections have been ignored. The Government was clearly unhappy with the common asylum policy in the Constitution, but is letting the matter go because it is so eager to get asylum, which it has handled so incompetently, off its hands.

This is totally irresponsible. The Government is now preparing to adopt an approach that it fundamentally objects to. What's more, it is giving away control of a policy area that the public considers highly important. As a result, this aspect of the Constitution threatens the good relations that ethnic minority groups have enjoyed in Britain.

It's criminal

Another surrender has been on criminal law. During the Convention, British and Irish representatives complained that the special nature of the British Isles' common law legal systems was being ignored by representatives from other countries. Examining the proposals on criminal law in the draft Constitution, the House of Commons European Scrutiny Committee (chaired by a Labour MP) concluded that they were "unacceptable" and should not be agreed to by the British government.

The Government, however, was too heavily involved in creating the proposals to accept this criticism. Its big idea was "mutual recognition" of decisions by courts in the EU, a principle which accepts that all judgements, from anywhere in the EU, are equally valid. Several recent cases have demonstrated that in some EU member states, the accused do not have access to proper advice and may be prevented from conducting an effective defence. The Government is ignoring these kinds of risks to British citizens. It says in the White Paper that the Government will obtain "minimum standards at EU level" in the Constitution, but these are minimum standards of protection for British citizens accused of crimes – in other words, there will be fewer rights for the accused than they now have under our criminal justice system.

We have already had some strong indications of this with the European Arrest Warrant and the troubles of the Greek plane-spotters.

Defending the indefensible

The most shocking government sell-out so far has been on defence. Tony Blair has repeated his commitment to NATO many times, and insists that he sees the UK as a bridge between Europe and America. Yet over the weekend of 20th-21st September, he gave in to plans for an autonomous defence capability for the EU – effectively a European army, under separate command from NATO. He had already agreed to a European arms procurement agency – a body designed to grow into the role of formulating a single European defence policy

and designing a common European defence system. (It has even been suggested that any government of an EU member state that buys weapons from the USA should be fined for doing so). The Government has also dropped its objection to the Constitution giving the European Court of Justice powers to ‘monitor’ member states, to ensure that they;

“actively and unreservedly support the Union’s common foreign and security policy in a spirit of loyalty and mutual solidarity... Member States shall ensure that their national policies conform to the positions of the Union.”

Why would Tony Blair do this?

During the Convention on the Future of Europe, which drafted the Constitution, Peter Hain (now Leader of the House of Commons) tabled over 200 amendments to the draft – a mere 11 of these have now been accepted. As another Convention member, David Heathcoat-Amory MP, observed at the time, the Government was doing nothing like enough to protect British national interests.

Amendments “fiddly” says Liddle

One reaction to Hain’s suggestions came from Roger Liddle, Tony Blair’s senior policy advisor on Europe. In a letter to members of the Cabinet, he wondered why the Government had asked for all these *“fiddly amendments suggesting we have fundamental differences with these proposals, when we have not.”* In Liddle’s view, the existing proposals *“give us most of what we want.”*

The reason is that the Government needed to be seen to be doing something to stand up for British interests. Most of the amendments were indeed just nitpicking, or involved taking out phrases like *“on a federal basis”*, which the Government was afraid might give the game away. Nothing substantial was adopted from them. Why then is the Government so keen on the draft European Constitution, and why is it so strongly opposed to letting the people have their say?

Unpicking the tapestry

The answer is at the heart of what ‘New Labour’ is all about. The Labour Party has learned that it cannot re-invent Britain by nationalising British industry, abolishing grammar schools and taxing the rich until the pips squeak. ‘New Britain’ can only be realised by tearing apart the fabric of the British state – its constitution. This is the task of the new Department for Constitutional Affairs – tearing up our constitution and downgrading our Parliament.

Parliament needs to be reformed and strengthened, not downgraded and undermined. When Tony Blair speaks of *“an historic realignment”*, what he really means is that our Parliament at Westminster, for generations the heart of global freedom and democracy, is to be made irrelevant.

It’s no coincidence that the Government this year jumped into reform of the judicial system without consultation, continued setting up regional assemblies that no one EU wants and started the second phase of reform of the House of Lords on a basis opposed by members of all political parties: There will now be no Lord Chancellor to represent the informed and independent views of our judges, and the Prime Minister has reneged on the Parliamentary agreement on the House of Lords. It is already the case that nobody sits in the House of Lords by virtue of birth – what this further reform does is reduce the numbers of those who would support a referendum amendment to the Constitutional Bill.

The British constitution is being redesigned within the framework of a greater European Constitution. That is why these changes are being made without consultation – because the Government already knows what it wants to do: give away Parliamentary powers to the EU and take away power from our independent institutions.

As Peter Mandelson says on his website, New Labour wants: *“the long-term transformation of Britain into a modern ... social democratic European country”*. Or as Tony Blair put it in his Warsaw speech of 30th May, what he is after is: *“... the prize of being part of ... a powerful political union”*.

Peter Hain has said that Tony Blair told the Cabinet that the Constitution was even more important than Iraq, and that it would determine the UK’s relationship with the EU for generations. Even in Prime Minister’s Questions he admitted that: *“the outcome of the Constitution ... is fundamental”*.

However, at the centre of the Government’s argument against a referendum is the assertion that the European Constitution will make no fundamental change to the relationship between the EU and its Member States, including the UK. This is simply wrong. In particular, it is wrong because the Constitution would create a new political and constitutional order, adjudicated on by the European Court of Justice (as explained in the legal analysis below). Why would they want a Constitution, if not to achieve fundamental change? Everyone else in Europe, from Prodi to Giscard d’Estaing, knows and states that this is what it is all about.

Got the vote?

The full implications of this simultaneous continentalisation and turning back the clock towards a decaying social model are something the British electorate would never vote for. But the European Constitution gives New Labour the chance to impose them without asking the people. It has been presented as a mere “tidying-up exercise”, essential to maintaining “British influence”, and will be forced through the House of Commons on a three-line whip. The Lords had suggested that they might introduce an amendment for a referendum on it, but now that they are being ‘reformed’, some of the most independent-minded peers will be replaced with yet more of Tony’s cronies. It is clear from Lord Falconer’s speech to the House of Lords that only a limited number of life peerages will be distributed to those peers who are on their way out.

Tony Blair says that if the Government were to hold a referendum on the European Constitution, it would win, so

holding one would be a waste of time. He knows that this is not true. He could be honest and try to convince people that more European integration on the old, redundant model of the corporatist state was a good idea; but he has not been able to convince them on the euro, and now that he has lost public trust, he would be sure to lose.

Destiny’s child?

Blair has said that joining the euro is Britain’s “*manifold destiny*” – in other words, it is obvious to him that it is inevitable. And once the European Constitution was adopted, the euro might seem inevitable to the British people, too. Of course, in a democracy, nothing is inevitable unless people vote for it, but the European Constitution was not in the Labour manifesto at the last election, and the Government does not want to give the people a referendum on it. That is the kind of democracy we live in under New Labour.

We can still govern ourselves - provided we use our political will

There has been much disinformation about the legal and constitutional position of the UK Parliament in relation to the European Union. Whilst there has been a great shift away from self-government, this can be retrieved if it is done responsibly, clearly, and unambiguously, and with political will. The first step is to vote against the Bill. Opposing the adoption of the European Constitution, as Iain Duncan Smith said in his Prague speech in July, is “*a matter of principle*”. The next step is to get a referendum amendment to the European Constitutional Bill – which must be wide enough in its Long Title to accommodate such an amendment. After that, we must get a ‘No’ vote in the referendum, to open the way for the re-modelling of the EU as a community of sovereign democracies.

Since there is in practice no longer a Lord Chancellor who can give objective, legal analysis, here are some of the legal and constitutional questions – and answers:

- 1 Can the UK Parliament:
 - (a) amend or repeal existing enactments (Acts and statutory instruments) derived from EU law and subsequent to the European Communities Act 1972:
 - (i) as respects UK law?
 - (ii) as respects Community law?
 - (b) legislate otherwise inconsistently with Community law?

In *Macarthys Ltd v Smith*,² Lord Denning said:

“If the time should come when our Parliament deliberately passes an Act with the intention of repudiating the Treaty or any provision in it or of intentionally acting inconsistently with it and

says so in express terms then ... it would be the duty of our courts to follow the statute of our Parliament.”

There has not been a single subsequent statement by a British court to suggest that Parliament could not legislate contrary to Community law if it expressed itself in clear and unambiguous terms. As Lord Justice Laws said recently in the “Metric Martyrs” case:

“...there is nothing in the [European Communities Act] which allows the [European Court], or any other institutions of the EU, to touch or qualify the conditions of Parliament’s legislative supremacy in the United Kingdom... That being so, the legislative and judicial institutions of the EU cannot intrude upon those conditions.”³

Ratification of the European Constitution would amount to such an abdication that judges might, in future, seek to take a very different view.

- 2 If so,
 - (a) how do we proceed?
 - (b) with what effect
 - (i) in UK law?
 - (ii) in Community law?

The UK Parliament would have to legislate in a way expressly contrary to the offending instrument, i.e. by express repeal (so as to remove the assumption employed by the House of Lords in *Factortame (No. 2)*⁴ that Parliament would not mean to legislate contrary to Community law).

In the event of this occurring, it is likely that the UK courts would regard the law as changed by an Act of Parliament, and act accordingly. The European Court of Justice would look to

the effect of the legislation. If it abrogated a Regulation or defeated the purpose of a Directive, then it would be regarded as being without effect in Community law. Under our constitution at present, therefore, the issue is one of political will, woven into the making of our laws by our Parliament.

3 Can the UK Parliament amend or repeal the Human Rights Act 1998 and the European Convention on Human Rights?

Yes. The Human Rights Act could be repealed by statute, whereas the Convention itself⁵ could be abrogated by prerogative. Alternatively, the 1966 Declaration made to the Secretary General of the Council of Europe, recognising the competence of the European Commission of Human Rights to receive individual petitions and recognising as compulsory the jurisdiction of the Strasbourg Court,⁶ could be reversed by making a (subsequent) counter-declaration, leaving the Convention with the status of ordinary international law in the UK. The Act does not even need to be amended for Parliament to legislate inconsistently with it as things stand. Parliament may override the Convention provided it does so in clear and unambiguous terms.⁷

4 Can the UK, via prerogative or via legislation in the UK Parliament, abrogate EC/EU treaties not yet implemented into UK law or treaties entered into by the EC/EU; and is the Foreign Secretary correct in saying that treaties have primacy over national laws?⁸

As a residual power of the Crown, the prerogative cannot be used to frustrate an Act of Parliament. Consequently, the abrogation of EC/EU treaties not yet implemented into UK law and of treaties entered into by the EC/EU would require an express derogation from the European Communities Act 1972 s2(1), enacted by Parliament.

No, the Foreign Secretary is not correct – and it was an astonishing thing for him to say. Indeed, “*if the terms of [subsequent domestic] legislation are clear and unambiguous, they must be given effect to whether or not they carry out Her Majesty’s treaty obligations, for the sovereign power of the Queen in Parliament extends to breaking treaties...*”⁹ (When the Foreign Secretary made his remark, Richard Shepherd, MP, and I pointed out that there would be no point in passing statutes to implement Community obligations if his statement was correct – his remarks take us back to the Seventeenth Century!)

5 Who is the final court for questions 1 to 4 and how are its judgements enforced?

The final court for matters concerning the powers of Parliament is the Judicial Committee of the House Lords (the ‘Law Lords’).

Under the Rules of the Supreme Court, Order 32, rule 10, Orders of the House of Lords on appeal from the Supreme Court (the collective name currently given to the higher courts beneath the Law Lords) are enforced by making them Orders of the Supreme Court, whereupon they are governed by the Civil Procedure Rules, in the same way as the judgements from the Supreme Court.

6 What amendments would be needed to the European Constitutional Bill to reaffirm the sovereignty and supremacy of the UK Parliament?

It would be possible to reaffirm the sovereignty of the UK Parliament by amending the Bill along the following lines:

(a) *Notwithstanding anything in this Act or in the European Communities Act 1972, or any Act amending that Act, European Community/Union treaties, laws and obligations shall be binding upon the courts of the United Kingdom only and insofar as provided by enactment, including any future enactment, of the UK Parliament.”*

(b) *“This Act shall not affect the application of the Rule of Recognition (lex posterior derogat legi posteriori), such being a fundamental principle of the Constitution of the United Kingdom, in the courts of the United Kingdom.”*

7 Would this have legal effect as respects European law or only UK law?

The amendments to the European Constitutional Bill proposed above would have the effect of creating a jurisdictional conflict, as the UK Courts would be expressly reminded to recognise a different supreme authority from the European Court of Justice. The UK courts would thus be obliged to disapply provisions of European law which conflicted with subsequent UK statutes that were drafted in terms which clearly and unambiguously created such a conflict. This situation would preserve the sovereignty of the UK Parliament as it now stands.

8 Would the incorporation of the EU Constitution into UK law by Act of Parliament create a superior constitutional order to the UK Parliament and would that Act be adjudicated ultimately by a Supreme Court of Europe?

The essence of the European Constitution is its political resolution of the “*Decisive Question*”¹⁰ of who is to determine the limits of European Court of Justice jurisdiction. This question has been open since the Maastricht Decision of the German Federal Constitutional Court in 1993,¹¹ (since echoed by the Italian and Danish constitutional courts¹²) in which that court asserted that it, not the European Court of Justice, had judicial *Kompetenz-Kompetenz* (see *What is a Constitution?* above).

The European Constitution is designed as an *ex post facto*

seal by Member States on the constitutionalism of the European project. Its codification of the principle of the supremacy of Union law would answer the Decisive Question as follows: “*the limits of the jurisdiction of the European Court of Justice are defined by the European Court of Justice.*” The European Court of Justice would then effectively be a Supreme Court of Europe – and a law unto itself. Together with legal personality for the Union, this would turn the Union from a creature of the Member States into their master. As stated at the beginning of this pamphlet, this would fundamentally alter the relationship between the EU and its member states, contrary to the assertions of the Prime Minister and the Foreign Secretary, and the White Paper on the European Constitution.

Once the European Court of Justice has *Kompetenz-Kompetenz*, it will be able to arbitrate on any conflicts it thinks exist between the Member States’ constitutions and European law. The European Constitution Act would fall within the jurisdiction claimed by the European Court of Justice. The UK Government’s amendments to the existing draft do not insist that the Member States will retain ultimate sovereignty – hence the need for amendments to the European Constitutional Bill (see 6. above) to preserve the sovereignty of the UK and its Parliament.

(It may be noted that the Government, despite its attempts to smear the Conservative Party as seeking withdrawal from the EU, has itself connived at a withdrawal provision within the Constitution itself, and has thereby tried to close the door on future bilateral negotiations.)

9 What else could be done to safeguard the UK and its Parliament?

Parliament could reject the European Constitutional Bill. The Bill, and any amendments to it, should be subjected to a free vote. If the Bill itself is not rejected, a referendum amendment

could be inserted into it. Such an amendment would stipulate the wording of the question and lay down the procedures to be followed in a referendum.

Any new Treaty amendments can be tabled and, of course, vetoed under present EU arrangements. But to say that because Treaty amendments can be vetoed this somehow makes negotiations impossible is to ignore political will. Harold Wilson renegotiated the Treaties and Margaret Thatcher obtained the rebate. Negotiation does not mean withdrawal.

A referendum amendment could be inserted into the European Constitutional Bill, and could lay down the nature and procedures of the referendum.

Notes

- 1 A.W. Bradley and K.D. Ewing, *Constitutional and Administrative Law*, 2003
- 2 [1979] 3 All ER 325 at 329
- 3 *Thoburn v Sunderland City Council* [2002] EWHC 195 ADMIN
- 4 *R v Secretary of State for Transport, ex parte Factortame (No.2)* [1991] 1 AC 603
- 5 (brought into force by Command Paper 8969 of 1953)
- 6 Command Paper 2894 of 1966
- 7 See Lord Hoffman in *R v Secretary of State for the Home Department, ex parte Simms & O’Brien* [1999] 3 WLR 328
- 8 Hansard, 16th September 2003, Column 794. Mr. Straw invoked the case of *Shah & Islam* in support of this statement, although in that case, the Judicial Committee of the House of Lords had regard to the UN Convention Relating to the Status of Refugees, 1951 only because it was incorporated into UK law by Act of Parliament. In the leading case of *Simms v O’Brien*, Lord Hoffman made clear that the UK Parliament can legislate against EU law, provided it clearly states its intention to do so.
- 9 per Diplock LJ in *Salomon v Commissioners of Customs and Excise* [1967] 2 QB 116
- 10 See Theodor Schilling, “The Autonomy of the Community Legal Order – An Analysis of Possible Foundations,” *Harvard International Law Journal* 37 (1996), 389
- 11 German Constitutional Court, Judgement of 12th October 1993, 89 BVerfGE 155; English translation in ILM 33 (1994), 388
- 12 See Devuyt “The European Union at the Crossroads”, 2003

There is an Alternative to the Way Things are Going

The Government has been telling people that they must be either in or out of Europe – being in is a blessing; being out is a curse. But Britain, Denmark and Sweden have not suffered from remaining outside the euro – they have benefited, whilst Norway and Switzerland have enjoyed the benefits of the Single Market without being members of the EU.

The end of the beginning or the beginning of the end?

The expansion of the European Union, taking in former communist states, is an opportunity for a fresh start. It is planned that the European Constitution should replace all the existing treaties of the EU, for the first time in the history of the

European project. This is not the moment to set in stone redundant policies from the Cold War, but for reflection and reappraisal in the light of the new, free Europe – a New Europe of democracies, as Iain Duncan Smith stated in his Prague speech in July, – and to revise the unwanted directives and regulations from the old system.

As I set out in my European Foundation pamphlet *Associated, not Absorbed*, in 2000, this can be achieved by the European Union having two different spheres: Sphere 1 for European trade and association, and Sphere 2 for integrated European government. Sphere 1 would be based on a narrow set of rules created and applied through the Member States’ governments. Members of Sphere 1 would only be subject to

those parts of European law (or the *'acquis communautaire'*) compatible with trade and environment policy, as agreed by the members' governments, and would give up their voting rights on all other business. They would also be free to conclude trade agreements (for example with the North American Free Trade Association) in the absence of action by the European Union as a whole.

This model would get rid of the political pressures and ill-feeling that surrounds the existing unitary system with 'enhanced co-operation' and opt-outs, and would give individual member states greater autonomy within the framework of the European Union. It would also stop the proliferation of regulatory agencies like the corruption-riddled Eurostat, which are unaccountable, undemocratic and out of control.

Treaties may be subjected to renegotiation – indeed, all the European treaties, except the founding Treaty of Rome have been renegotiations of previous treaties. This Constitution, however, is intended not to be renegotiable. It has a so-called 'flexibility clause' (a serious misnomer, but then the European Commission has said that economic and monetary union, an irrevocable step accompanied by the strait-jacket of the 'growth and stability' pact, is *"the best form of flexibility yet devised"*!) This 'flexibility clause' enables the EU to take more powers without negotiations. It replaces the existing Article 308, but extends its application from the operation of a single market to everything in the Constitution.

As Tony Blair says, the Constitution is intended to determine Britain's relationship with the EU *"for generations"*. It will be here to stay.

Nothing could be more fundamental.

All shall have prizes

If it became a member of Sphere 1, Britain would get back all its powers in the field of European government, and reclaim its powers over significant areas of policy like agriculture, fisheries and foreign aid, as well as other matters to be negotiated. We could finally set about a real process of deregulation, as well as enjoying greater possibilities for free trade, whilst we would pay far less into the EU budget. And all this would come on top of the continuing benefits of a reformed Single Market.

If the new Member States joined Sphere 1, they would not risk being overwhelmed by laws and regulations, and would be able to continue building dynamic, enterprise-based economies, as they have done since the fall of the Soviet Union. At the moment, they are being bullied into accepting the draft European Constitution by the big countries: France and Germany (the engine of old-style integration), Italy (which wants the Constitution to become a new 'Treaty of Rome' under its presidency of the EU) and, shamefully, Britain, whose Prime Minister will do anything that makes him feel like the hand of history is upon his shoulder.

The countries of the eurozone, meanwhile, could be members of Sphere 2, where they, and any other Member State that wished to in the future, could continue to integrate without being held back by reluctant partners.

You are free, therefore choose

It is likely that Sphere 1 would be more attractive to the British people, and to the peoples of many existing and new Member States, than the draft European Constitution that is now on the negotiating table. This should, however, not be taken for granted. To test popular approval for it in the UK, there should be a national referendum, followed by a free vote on all stages of the bill in both Houses of Parliament. Sphere 1 might in future change shape, or receive extra powers from its Member States, but this would be the result of a democratic process in each Member State – not the ambitions of remote bureaucrats. Also, any powers that were given away should be capable of being returned.

A 'No' to the European Constitution is not a 'No' to Europe. The present treaties are clear that they can only be changed with the agreement of all the Member States – there is no prospect of Britain being 'expelled' for vetoing the Constitution. To do so would not be to retreat to the margins, as Blair suggests, but to lead from the front.

It is a fundamental principle of the British Constitution that Parliament cannot bind future Parliaments. For Tony Blair to bind Parliament within a self-defining European Constitution, adjudicated by a Supreme Court of Europe, without even consulting the British people who would have to live with the consequences, would be unconstitutional – and unforgivable.

Europe and the Conservative Party

Conservatives' scepticism about the European project emerged in the late 1980s as a response to Jacques Santer's demands for *"European government"*. It grew as the full implications of European integration, in terms of judicial activism, over-regulation and lack of democracy (not to mention corruption and fraud) became clear.

United we stand

Now that we have the draft European Constitution, the full implications of the European project, as originally conceived, have been made clear. Iain Duncan Smith's Prague Speech of 10th July encompassed this, and set out the Conservative vision for a New Europe of Democracies.

At this year's European Foundation meeting at the Party conference, which took place on the 10th anniversary of the meeting at which the European Foundation was established, at the same Ruskin Hotel in Blackpool, Michael Ancram, Stephen Dorrell and I demonstrated for the first time since 1990 that the Conservative Party stands united on the European issue. We can now go forward on the basis of our positive, shared vision, drawing back voters who previously voted for UKIP and those who did not vote for us because of the European issue either way. Furthermore, voter turnout having dropped disastrously to 59% at the last general election, there is now a great opportunity to reverse this by giving back to people a belief that

politics, politicians and government, particularly on the European issue, can be trusted.

There is no doubt about the relevance and impact of the European issue and the Constitution on people's daily lives – the problem is that it has not been fully and graphically explained. The issue has generally been ducked. In particular, many Labour voters would vote with us if they knew about the impact on health, education, pensions and their traditional concerns. The same applies to the elderly. Blair's betrayal of the British people, by refusing to give them a referendum, proves that he will not trust them. We trust the people, and we must restore their trust in us.

A Referendum on the European Constitution

Ireland, Denmark, Portugal, the Netherlands, Finland, Spain and the Czech Republic have all announced that they plan to hold a referendum on the European Constitution. Other EU Member States are likely to follow suit. The French Prime Minister, Jean-Pierre Raffarin, has said "*a true European cannot not want a referendum.*" There is a movement in Germany to amend the German Constitution to allow a referendum to be held. The European Parliament has declared itself in favour of a referendum. According to polls, the British public is overwhelmingly in favour of a referendum.

We must have a referendum so that the UK becomes properly informed on the issue and has a chance to vote down this Constitution – and go on to lead in the construction of a New Europe of democracies.

The referendum would have to be conducted in the right way, probably with both sides' arguments arbitrated by the Electoral Commission and with proper controls to prevent the use of government and EU propaganda money. There must be no

devious slant to the question asked. The rules on advertising must not be bent and the referendum question should be put to the people and voted on in Parliament in a free vote.

A referendum on the European Constitution would be the right place to start the process of de-centralisation – where people want it. The electorate is fed up with the top-down politics that tells them what they are getting and says they are not being sensible if they disagree. People want to have a voice on the issues that are important to them, and they want it to be heard. The Government's invitation for people to have their say online is a parody of the consultative process and an insult to British democracy. As Stephen Dorrell said in the Commons on 16th September:

"Surely if we are to continue to develop Britain's role as an active member of the European Union we need to re-engage the public in the form of European Union that we want to create."

The way to do this, as he rightly says, is in a referendum.

The Conservative Campaign

The Conservative campaign is about putting maximum pressure on the Government to hold a referendum on the European Constitution, through a nationwide campaign in the constituencies, particularly in Labour marginal seats.

Why?

In as little as nine months, it will be too late – the European Constitutional Bill will be driven by a programme motion and a three-line whip unless, as the Conservatives demand, there is a free vote.

As a future government, the Conservatives must lead the arguments and policies against adoption of the Constitution.

This is right for the party, right for the country and right in principle. People must be made aware of the dangers the European Constitution poses to them in their daily lives.

As regards a referendum amendment in the House of Lords, Tony Blair is reneging on a Parliamentary agreement on the hereditaries – they will not all be given life peerages and this will decimate support for a referendum amendment. The Liberal Democrats will almost certainly want the Constitution (and the euro) more than they want a referendum – for all their protestations to the contrary.

Tony Blair is already in trouble – if the political will against the Constitution is mobilised, his arrogance towards the British

people will make him even more unpopular and distrusted. Everything he said at the Labour Party Conference about public services and government spending on health, education, transport and pensions will be constrained by his agreement to European economic management under the Constitution. This will gravely affect the daily lives of every man, woman and child in the country, as the misnamed “*growth and stability pact*” and the euro already have in France and Germany. Indeed, the only escape route he will have is to raise taxes – and note that the Constitution’s financial provisions say also that the Union will provide itself with the means necessary to achieve its objectives. “*Means*” is a euphemism for tax.

Blair says he has no fear of Britain losing the ability to hold its own – this defies belief when he is surrendering so many powers in principle, and many more under qualified majority voting. (As the French Foreign Minister, Dominique de Villepin, admitted in the Dimpleby Lecture on 19th October, the European Constitution is designed give *Europe* the ability to hold its own – against the United States.) Blair also promised the greatest consultation exercise in British history, yet he refuses to consult the people on the thing that affects them most of all – their future government. The truth, as Michael Ancram remarked in the Commons on 16th September, is that;

“The Government’s ruling out of a referendum on the ... Constitution displays a ... hectoring disregard for the deeply held views of the British people.”

How?

The campaign will not be expensive, but it will take effort. The Conservatives will show the effects of the European Constitution on the daily lives of voters and on the national interest as a whole. We will show why on this, as on everything else, Tony Blair cannot be trusted, but will claim victory even as he is selling Britain down the river.

There will be public petitions to Parliament, calling for a referendum, constituency by constituency. These will be presented by Conservative MPs, but other MPs’ constituents and the media will insist that Labour and Liberal Democrat MPs present the petitions handed to them as well. The whole process will be accompanied by local press releases, flowing in a steady stream before the Constitutional Bill is set in stone. Apart from the Prime Minister’s continuing refusal to hold a referendum on the Constitution, there is no reason why the Bill should not be introduced with a referendum built into it. Much depends therefore on the pressure exerted, in particular on the marginal seats, as the MPs see their majorities dwarfed by the number of signatures on the petition in their constituency.

There will also be local, regional and national public meetings and open debates with local and national politicians, businessmen and celebrities, engaging the public and media, and constantly generating interest in this great issue for our nation.

Conclusion

This pamphlet has set out many of the problems that face us under the European Constitution and provides many of the answers. There is much work to be done, but the ultimate test will be that of the political will of the British people. This Constitution affects every person in the country, and in Europe. It cannot be otherwise when over 60 per cent of our laws are already made by the EU, whilst the system of majority voting is about to be expanded through the field of European government.

There is no nook or cranny in our system of government which will remain unaffected by this Constitution. It is an outrageous falsehood to suggest that it will not fundamentally change Britain’s relationship with the EU, or indeed our Constitution, our Parliament, and the

way we are governed in our daily lives.

The arguments in this pamphlet do not necessitate withdrawal from the EU. Indeed it is the Government which has connived at the express facility to withdraw which, with its agreement, forms part of the Constitution. The real issue is how to make the EU and its Member States more democratic. As Iain Duncan Smith spelled out in his Prague speech in July, we need “*a New Europe of democracies*”. This means preserving the UK as a nation-state. The European Constitution has gone in completely the wrong direction and we reject it as a matter of principle.

The time has come for a massive campaign for a referendum, and once that referendum has been obtained, to save our nation with a resounding ‘No’ vote.

Appendix

The Constitution says:

Article 1(1) “Reflecting the will of the citizens and States of Europe to build a common future, this Constitution establishes the European Union...”

Article 2 “The Union is founded on ... respect for ... democracy...”

Article 3(1) “The Union’s aim is to promote peace, its values and the well-being of its peoples.”

Article 3(3) “The Union shall work for the sustainable development of Europe based on balanced growth [and] a social market economy...”

Article 9(3) “Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the intended action cannot be achieved by Member States ... but can rather ... be better achieved at Union level.”

Article 10 “1. The Constitution, and law adopted by the Union’s Institutions ... shall have primacy over the law of the Member States. 2. Member States shall take all appropriate measures ... to ensure fulfilment of the obligations flowing from the Constitution or resulting from the Union Institutions’ acts.”

Article 11(3) “The Union shall have competence to ... coordinate the economic and employment policies of the Member States.”

Article 11(4) “The Union shall have competence to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.”

Article 12(1) “The Union shall have exclusive competence ... in the following areas: ... common commercial policy, customs union, the conservation of marine biological resources under the common fisheries policy.”

Article 12(2) “The Union shall have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union, is necessary to enable it to exercise its internal competence, or affects an internal Union act.”

Article 13(2) “Shared competence applies in the following principal areas: internal market, area of freedom, security and justice, agriculture ... transport ... energy, social policy ... economic, social and territorial cohesion, environment, consumer protection, common safety concerns in public health...”

Its impact on you:

No referendum equals no will of citizens – you are ignored.

Undemocratic – EU more remote.

Consider Iraq. Member States have different values. Since 1945, peace has come from NATO, not the EU.

A “social market economy” equals low growth and high unemployment.

The EU calls the tune and subsidiarity has never worked.

The Union will be Master. General election manifestos and freedom and choice of voters will be overridden.

French and German unemployment and low growth come from economic and employment coordination. Blair cannot meet challenges on health, education, pensions, transport and public services – stability and growth pact a dead letter.

Foreign policy and defence govern our relations with the world and NATO – all undermined. NATO guarantees our independence – the European Constitution would end it.

Control over commercial policy, customs union and fisheries policy will be locked into the Union.

Together with legal personality, the Union would take away most treaty making powers, and foreign policy undermined.

In the internal market, justice and home affairs, agriculture, transport, energy, social policy, environment policy, consumer protection etc. etc., national governments would only be able to act where the EU decided not to. Energy policy, including guaranteeing “security of energy supplies” to the EU would be a new power. Vast range of activity handed over.

The Constitution says:

Article 16(2) “The areas for supporting, coordinating or complimentary action shall be, at European level: industry ... health, education, vocational training, youth and sport, culture, civil protection.”

Article 17(1) “If action by the Union should prove necessary ... to attain one of the objectives set by the Constitution, and the Constitution has not provided the necessary powers, the Council of Ministers ... shall take the appropriate measures.”

Article 31(1) “The European Parliament, the Council of Ministers and the Commission shall be assisted by a Committee of the Regions and an Economic and Social Committee, exercising advisory functions.”

Article 43(1) “... Enhanced cooperation shall aim to further the objectives of the Union ... and reinforce its integration process. Such cooperation shall be open to all Member States ... at any time”

Article 46(2) “The Union Institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.”

Article 52 “1. All items of Union revenue and expenditure shall be included in estimates drawn up for each financial year and shall be shown in the budget... 2. The revenue and expenditure shown in the budget shall be in balance.”

Article 53(1) “The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.”

Article II-11(1) “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”

Article II-12(2) “Political parties at Union level contribute to expressing the political will of the citizens of the Union.”

Article II-18 “The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention...”

Article II-23 “... The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.”

Article II-28 “Workers and employers, or their respective organisations ... have the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.”

Article III-171(1) “... European laws ... shall establish measures to: (a) establish rules and procedures to ensure the recognition throughout the Union of all forms of judgements...”

Its impact on you:

The EU would interfere by directing policy over British industry, health, education, sport and culture and civil protection (terrorist measures).

EU will do whatever it wants to achieve its aims, with common action.

The Committee of the Regions, with regional assemblies, will undermine your local government in counties, towns and parishes. The Economic and Social Committee will undermine national trade unions.

Inner core will drive other Member States to deeper integration in red line areas including defence, tax etc.

The Union will primarily listen to multinational trade associations, at the expense of small business.

The EU budget has not been signed off for many years. “A massive enterprise of looting” from it. Much spending is not on the balance sheet.

This will lead to European tax by the back door.

The right is not absolute – must be balanced by duties and responsibilities. European Court will decide where the balance lies.

European political parties moving to state funding – marginalizing national political parties.

Common asylum policy goes beyond Geneva Convention, leading to a huge increase in asylum applications – the British government would be powerless.

This underwrites political correctness in employment.

The right to strike would reverse British labour reforms that have made us competitive. This right never accepted before by any Labour government. The Charter of Fundamental Rights would also forcibly restrict working hours.

This would prevent any judgement from the courts or authorities of another EU Member State from being challenged in the UK courts – with grave consequences for individuals, business and our legal system.

The Constitution says:

Article III-172(1) “European framework laws may establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with cross-border dimensions...”

Article III-175(1) “In order to combat serious crime having a cross-border dimension, as well as crimes affecting the interests of the Union, a European Law ... may establish a European Public Prosecutor’s Office.”

Article III-194(1) “... the European Council shall identify the strategic interests and objectives of the Union.”

Article III-195 “1. ... the Union shall define and implement a common foreign and security policy... 2. The Member States shall support the common foreign and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity... They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations. The Council of Ministers and the Union Minister for Foreign Affairs shall ensure that these principles are complied with.”

Article III-206(2) “... Member States which are also members of the United Nations Security Council will ... defend the positions and the interests of the Union... When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the Union Minister for Foreign Affairs be asked to present the Union’s position.”

Article III-212(1) “The European Armaments, Research and Military Capabilities Agency ... shall have as its task to: (a) contribute to identifying the Member States’ military capability objectives and evaluating observance of the capability commitments given by the Member States; (b) promote harmonisation of operational needs and adoption of effective, compatible procurement methods;”

The Protocol on the Role of National Parliaments in the European Union states that it aims to “encourage greater involvement of national Parliaments in the activities of the European Union and to enhance their ability to express their views on legislative proposals...”

The Constitution will make Qualified Majority Voting the general rule in EU legislation.

All agreements between EU Member States that are not in the Constitution will have to be renegotiated.

Repeal of existing treaties and re-application of laws.

Its impact on you:

The EU will define certain criminal offences – and set minimum sentences for those found guilty of them, overriding our criminal laws and sentencing policies.

Proposals for a European Public Prosecutor have been condemned by the House of Commons Scrutiny Committee as threatening an ‘engine of oppression’.

This puts the national interest at risk where we disagree with EU.

This obligation of loyalty as defined and implemented would subordinate our national interest in matters of foreign policy and defence.

Despite denials by the government, Britain would be on the UN Security Council primarily to represent the EU.

This bureaucratic gobbledegook means that an EU weapons institute would decide the shape of our armed forces and tailor them to a European army.

In practice, the national Parliaments, including Westminster, will be made second-class. Nothing will enable them to veto proposals where there is Qualified Majority Voting.

Over 60% of new legislation in Britain comes from the EU. The veto has been largely abolished, which is very damaging to our influence and to business.

The British rebate, negotiated by Margaret Thatcher so that the UK didn’t pay so much into the EU, will be lost. The British taxpayer will be paying more and getting less.

New constitutional wording will create confusion. Unless we assert our Parliamentary supremacy and negotiate accordingly, we would not change laws such as the European Arrest Warrant, the Working Time Directive and a host of other laws which are harmful and restrictive to individuals and businesses.

Bill Cash combines the encyclopaedic knowledge of the scholar with the politician's insight into the art of the possible. What he writes about the European Constitution and what we should do about it need to be taken very seriously indeed.

Sir Oliver Wright

Bill Cash's pamphlet goes to the heart of the legal issue of the European Constitution. He is the first person to do so. He analyses the question of the distribution of powers between the European nations. He does so by reference to democracy, which belongs to the nations, but also – and this is new – by reference to the power to decide where power lies. This is given to the ECJ, which will be the Supreme Court, which interprets the new Constitution. Under this Constitution, as he points out, it will be the European court and not future general elections which will decide how far Britain remains a self-governing nation. That is probably even more important than the terms of the draft Constitution itself, since the Court will always be able to re-interpret the Constitution in a federal direction.

William Rees-Mogg

The most basic question of politics is, 'who governs'? Bill Cash's pamphlet shows that the European Constitution asserts a new constitutional doctrine which, if accepted, would overturn the sovereignty of Parliament. At present, there is no doubt that Parliament can pass laws to overturn the EC treaties and prevent their application in British law. This will change under the European Constitution which claims that it alone, 'shall have primacy over the law of the Member States'. We must choose by which doctrine we wish to be governed. This pamphlet shows that the choice cannot be ducked and shows up as a tawdry deceit the Government's claim that the European Constitution is just a 'tidying up exercise'.

David Heathcoat-Amory

I have read your "European Constitution – a Political Time-bomb" from cover to cover and all I can say is that it is the most excellent summary and an important contribution to the whole question of the European Constitution. We really do live in the most dangerous times and so few people appear to realise it – it is quite frightening.

Sir Michael Cobham, CBE

... a few days ago the shadow Attorney-General published his pamphlet about Conservative policy on Europe. He says that he wants Britain to retire to a trade association agreement with the rest of the European Union – that being what he calls sphere 1; European countries which are not full members of the European Union.

Rt Hon. Tony Blair, MP (PMQs, 29 October 2003)

The Maastricht Rebellion and the Origins of the European Foundation

Continuing from last month's article, Sara Rainwater further delves into the work of the Foundation. Her contribution in this month's edition focuses on the think-tank's efficacy.

TO USE A STANDARD DEFINITION, success is defined as the 'achievement of something desired, planned or attempted'; by this definition, the European Foundation has been successful. Yet just as many other terms retain ambiguities, so does the word success. It is from here that the evaluation of the European Foundation's efficacy becomes more complex. Thus, it is necessary to divide analysis of success into several areas and then individually assess the Foundation's effectiveness in each.

Eurorealism

It is important to identify and understand the origins of the terminology used to describe the participants of the European debate, and it is here where the European Foundation sees its first success. Leading up to Maastricht, and during the rebellion itself, the word 'Euro-sceptic' became the general term used to describe those vocalising and organising their opposition to the Government. It became an overarching expression, one that encompassed everyone from the hard-core to the moderate, both in and out of the Conservative Party. It gathered a rather negative connotation, especially considering the trouble that backbenchers and their satellite organisations had caused during the Maastricht ratification process. Post-1993, Europe had clearly become the most divisive issue for Conservatives. Euro-sceptics had become, in many pro-Europeans' eyes, synonymous with fanatics or right-wingers who advocated full withdrawal from the EU. In other words, any version of Euro-scepticism equated to *Europhobia*, which benefited the pro-European campaigners who were able on many occasions to use Euro-scepticism and its negative image to their advantage.

In actuality, however, the divisions within the opposition camp itself were still clearly drawn immediately after Maastricht's ratification. Groups such as the Campaign for an Independent Britain, who explicitly call for the withdrawal of the UK from the EU, were formed during or shortly after Maastricht. However, there were more

moderate organisations to emerge such as Conservatives Against a Federal Europe and the Democracy Movement, which like the European Foundation, rally around the idea of reform and renegotiation. Yet still there were those groups formed around a particular issue, e.g. the pound and a single currency such as Business for Sterling and Euro-Know. British Euro-scepticism clearly did not, and still does not, equal Euro-phobia. Instead it retains a multi-faceted quality with many degrees of intensity. For those arguing for renegotiation and reform, the word used to describe them up to the mid-1990s was proving inadequate.

British Euro-scepticism clearly did not, and still does not, equal Euro-phobia

Even the Europhiles were becoming concerned over labelling after Maastricht. In his book *This Blessed Plot*, Hugo Young notes 'philia could sound even more dangerous than phobia'. The Europhiles did not want the stigma of a label, either. A new term became highly sought after for both sides of the debate. It was found in *Eurorealism*. The new buzz-phrase was up for grabs in the mid-1990s, and Bill Cash and the likes adopted it for themselves, feeling it much more adequately described their activities within the opposition camp. Eurorealism was to become the way forward for many old Euro-sceptics.

While the differences between Euro-scepticism and Eurorealism may seem subtle to many, in actuality the two terms have significant distinguishing factors. *Scepticism* connotes measures of uncertainty and doubt about a particular issue or event. Cash and other rebels were indeed sceptic of European integration, in general, and the Maastricht Treaty, in particular; but they did not think integration was a

completely lost cause. *Realism* is an inclination toward truth or pragmatism. Thus as defined by Cash, Eurorealists "look at what is really going on with integration and say, 'It is not that we do not have doubts, but that we want to make it work.'" The Eurorealists feel that in its current form, integration will not work for Britain, but do not rule out the possibility of it working altogether.

But has *Eurorealism* become a believable term? In his research on opposition groups in the UK and France, Simon Usherwood remarks, "Despite this, the media has been slow to adapt to this, preferring to use the more widely understood term [*Euro-scepticism*], even if anti-EU groups do not feel it is entirely accurate." The European Foundation cites itself as 'Britain's leading Eurorealist think-tank', but many still refer to the Foundation and its supporters as Euro-sceptics. The media have tended to favour the latter term, which brings to mind a much harsher image than does calling them Eurorealists. For instance, following the promotion of Cash and other Eurorealists to the shadow cabinet, Cash was called 'fiercely Euro-sceptic' by *The Guardian* and it was claimed that the Foundation had 'flirted with British withdrawal from the EU'. Indeed the Foundation's views on Europe are far from Tony Blair's vision of integration, but it has as an organisation never considered itself anything but reformist nor has it advocated full withdrawal from the Union.

The Foundation has firmly planted its Eurorealist perspective at the heart of Tory policy making

Over the past decade, the European Foundation has taken up the charge of meeting the definition of Eurorealism. It has been efficient in getting its opinion out,

providing what one academic called “*meat and substance*” in *European Journal* articles. It has become a major non-governmental participant in the debate on Europe, and has forced the other side to ‘hone their arguments’ in rebuttal. By informing Conservative politicians, many of who are directly linked to the organisation, of the potential downfalls to European integration, the Foundation has firmly planted its Eurorealist perspective at the heart of Tory policy making.

Associated, Not Absorbed

The Foundation has given meaning to the term Eurorealism through an analytical approach to the issues involved and the Editor of *The European Journal*, Annunziata Rees-Mogg, argues that it is through the Eurorealists, not the Eurosceptics, that positive solutions to the integration experiment can be found. This brings us to a second area of success for the think-tank.

Unlike many other opposition groups, which have “*often been accused of offering no constructive alternative to a single European state*,” the Foundation has constructed their own model of integration in *Associated, Not Absorbed*. In the pamphlet published in 2000, Cash outlines the Foundation’s alternative to the single European state. The Associated European Area (AEA) is presented as a rebuttal to the often proposed model of an ‘inner core’ of states on a ‘fast-track’. While the ‘inner core’ model is becoming less of a viable option with the draft Constitution and the next round of enlargement about to conclude, Cash’s model is in theory workable if and when the Eurorealists win their argument to renegotiate British membership in the EU.

In the AEA, Member States would be allowed to choose not between two tracks, but two different spheres: one comprising an inner core of states who have chosen to proceed toward more complete integration, both politically and economically; and a second sphere comprising both current Member and other European states who have opted to integrate primarily on a trade basis alone. Opponents of such a model may argue that this could act as a guise for withdrawal from the Union. However, the Foundation rebukes this notion, arguing instead that it would represent an inter-governmental structure whereby AEA states could withdraw from specific aspects of the *acquis communautaire* and keep only those voting rights on the core sections of the *acquis* to which they still subscribe. The

pamphlet proposes that this would not “*create an unwieldy arrangement prone to collapse*,” but instead create something similar to “*the many examples of complex legal-institutional arrangements that function successfully*.”

The pamphlet goes on to suggest that for the Association to be accommodated, two amendments must be proposed: one allowing AEA states to be subject only to those elements of the *acquis* compatible with the AEA’s “*ambit of trade and environmental policy managed through intergovernmental channels*”; and another providing for the “*right of the Associated European Area freely to conclude trade agreements in the absence of action by the European Union as a whole*.” It goes on to state that for the AEA to be legitimate, the project would be subject to referenda in all signatory countries.

The AEA model represents an attempt by the Foundation to present alternatives to integration, a significant aspect of being in opposition regardless of the issue, and other Conservative Eurorealists have since picked up on the idea. Moreover *The Economist* gives Cash credit for his model in a recent edition, going on to state, “*It seems plain that these senior Tories want fundamental renegotiation of Britain’s relationship with the EU and the withdrawal from all its core activities other than the single European market*.”

Similarly, Iain Duncan Smith’s Prague speech was a culmination of three main beliefs the Foundation currently advocates in relation to the EU. This in itself is a success. But the Prague speech also lends the Foundation another success. It clearly called for the sweeping away of “*Old Europe ... obsessed with building a United States of Europe ... ruled by unaccountable and supranational institutions*.” The Conservative Party called Duncan Smith’s vision for Europe “*built around a partnership of sovereign states trading freely and co-operating on matters of common interest*.” The ‘New Europe’ proposed in the Prague speech does not straightforwardly call for an Associated European Area, but the images it projects resemble the Foundation’s model. Duncan Smith could not have gone as far as giving a concrete model for integration; the implications of such may have been too much for the party to risk.

Analysis of Mission Statement

The above illustrations are examples of some of the Foundation’s most notable suc-

cesses. But if one recalls the mission statement outlined in last month’s segment of this study, valuation of success must thus also be partly based on the fulfilment of its original aims and objectives. Although not a total failure, this certainly paints a less optimistic portrait. Analysis of the mission statement works best when divided into two sections. Long-term goals will be discussed first, with analysis of the shorter-term goals to follow.

For the purposes of this analysis, three of the Foundation’s objectives will be classified as long-term: 1) to further European commerce and democracy; 2) to resist the coming into being of a European federal or unitary state; and 3) to monitor EC developments and the evolution of public opinion. These are described as long-term as they denote either a) the basis of the Foundation’s Eurorealist argument or b) the type of work the Foundation undertakes. The Foundation voices its opinions on the first two objectives in *The European Journal* and the numerous pamphlets and working papers it publishes. The third aim is part of the on-going analysis undertaken by the Foundation. These three, to some extent, can be deemed a success insofar as it has publicised these issues within Britain, further substantiating the arguments against the deepening of European integration.

However, the other four objectives in the mission statement can be classified as short-term goals. While using the phrase ‘short-term’, it is important to keep in mind that these objectives have implications for the long-term development of the Union, but are all issues that are currently up for debate in Britain, or will be at the next IGC when the Constitution is negotiated. The short-term objectives are as follows: 1) the widening and enlargement of the Community to include all applicant nations but only if they do not have to adopt the *acquis communautaire* in the process; 2) to campaign against Britain adopting the Euro; 3) to argue against the creation of a European army; and 4) to renegotiate the Amsterdam and Maastricht Treaties.

At the 1993 Copenhagen European Council, the Foundation saw the first of these objectives fail, as it was agreed that applicant states would be required to adopt the *acquis* in its entirety. The Copenhagen Criteria states that all candidate countries must have achieved “*the ability to take on the obligations of membership [acquis communautaire] including adherence to the aims of political, economic and monetary union*.”

(Source: *EU Enlargement - A Historic Opportunity* European Commission website). The Foundation agrees that enlargement is beneficial to economic integration, as it creates a broader marketplace. However, the Foundation also believes that new members should be able to retain some of their individual competitive advantages such as lower corporate taxation and labour market flexibility.

Regarding opposition to the Euro, following the Maastricht debates John Major guaranteed a referendum on the Euro. In the 1997 general election campaign, Tony Blair's manifesto promised the same commitment, at least partly in response to Major's initiative. Public opinion has not shifted towards supporting the Euro in the intervening decade. According to ICM polling, 27% were in favour of joining the Euro, with 59% against, in October 1992, less than a year after the conclusion of the Maastricht Treaty negotiations and the same month the Great College Street Group was founded. In August 2003, public opinion is virtually the same, with 25% in favour and 59% against. The apparent lack of change in public opinion is nevertheless significant when one considers the amount of active campaigning conducted by both the European Union and the Labour Government in favour of British accession to the single currency. Therefore, the Foundation's campaign against the adoption of the Euro can, when combined with other political influences, be deemed a success. Yet as it is still government policy to join the Euro at the first opportune moment, the ultimate success or failure of this objective cannot be judged at this time.

The Foundation argues against the creation of a European army because this would infringe upon Britain's national security interests and create potential difficulties in maintaining the trans-Atlantic security partnership, currently centred on the North Atlantic Treaty Organisation. Whilst there are vague mentions of a united force in the current draft of the Constitution, until this is finalised and ratified, this objective also cannot be judged as a success or failure. However, the fact that it is the British Government that has taken a leading role in promoting the advantages of a single European military capability, as evidenced by the 1998 St Malo initiative, suggests that the current situation represents a defeat for the Foundation.

Although the current draft Constitution

is in itself a renegotiation of the Amsterdam and Maastricht treaties, it is not of a sort the Foundation had visualised. It marks a shift towards European government to which the Foundation is opposed. Whilst the Constitution has not been finalised, it may represent a failure for the Foundation. The Foundation has seen many of its Eurorealist ideas pushed through to the forefront of the Conservative Party, but it will face a daunting uphill battle when the next IGC commences. The Foundation's mission statement has recently been updated to include new objectives on preventing the ratification of the European Constitution and other aims which keep in pace with new European developments.

Conclusion

In the end, the efficacy of the Foundation can be seen as having wins and losses. But it can undoubtedly be stated that over the past decade, the European Foundation has managed to establish itself as the leading Eurorealist think-tank. Unlike other similar organisations, the Foundation's reformist philosophy has made it particularly influential with the upper echelons of the current Conservative Party leadership. This in turn has contributed to the Foundation's overall visibility in the European debate. In the process, it has also added depth to the definition of Eurorealism. Being in a position of opposition is never an easy job, but the Foundation has overcome many obstacles, most importantly the internal divisions within the Conservative Party. Tory tradition on European integration is long established, but has experienced varied levels of dedication. The Thatcher years witnessed a period of commitment to integration; however this was imbued with scepticism and reluctance. The Major years, on the other hand, saw a massive turn towards Europe and the most pro-European Conservative leadership of the past thirty years. The Maastricht Treaty ratification process was a watershed for the Conservative Party, bringing with it factionalism that was to become one of the major reasons for its electoral decline. Author David Sanders notes that it was not Europe *per se* that caused the Tories to lose the 1997 election, indeed "*Europe had simply not interested enough voters to make it a serious rallying issue.*" More importantly, it was weak leadership that had, what Sanders calls, "*permitted sleaze and disunity over Europe to flourish*" that caused the party to fall from grace. This caused irreparable

damage to the party, particularly concerning public opinion. With the ushering in of New Labour in 1997, the Conservative Party has been forced to re-group in recent years and re-think its policy on Europe. While there are still many wary of Eurorealism within the party, the Conservatives can now, for the most part, be called a Eurorealist party.

The Foundation, through its publications and infiltration within the Shadow Cabinet via its Advisory Board, has notably impacted this current Tory policy on integration. The think-tank has been more successful in certain areas than others, but on the whole, its activity as an opposition group can be seen as effective and successful. But why can the Foundation's work be viewed in this light? This can be attributed to one of the Foundation's strongest character traits: consistency. In every interview conducted for this study, the term *consistency* was used to describe the work of the Foundation, which has argued for renegotiation and reform, not withdrawal.

The term 'consistency' was used to describe the work of the Foundation

With the next Intergovernmental Conference set to take place in less than a year's time, the Foundation is gearing up for the next battle that will inevitably take place over the European Constitution. If the Maastricht Rebellion is any indication as to the level of ferocity that can be achieved, then the Eurorealists are sure to commence another major battle over Europe. As with the Great College Street Group, opposition groups will again become centres of activity, and the Foundation is sure to continue its ardent work for the cause.

Sara Rainwater recently gained her European Studies MSc at the London School of Economics. Her dissertation was entitled 'Divisions within: The Maastricht Rebellion and the Creation of the European Foundation'.

COPENHAGEN

by Greg Broege

THE ORIGINS OF COPENHAGEN begin in a trading centre that was built on small, low-lying islets surrounded by salt marshes. The town flourished by trading herring and by operating the crossings to Scandia. In the 1100s Havn, as the town was then known, gained increased importance when the Catholic Church built cathedrals in Roskilde and Lund. Havn was perfectly located for traffic and trading as it was midway between the two cathedrals. These modest beginnings foreshadowed the future of Copenhagen, which relies heavily on maritime trade.

In 1160 Havn came to be known as København' (Merchants' Town) when Absalon, Bishop of Roskilde, becomes its lord and master. Under Absalon the first foundations of the city were built in 1167 when he erected a bastion to protect the city. After the building of the bastion the city began to grow, as many churches and abbeys were built. Also, the city's herring industry grew enormously as København' became a substantial provider of salt fish to Catholic Europe.

Copenhagen's position on the most important sea approach to the Baltic and Hanseatic League gave it great wealth, but also brought great misfortune. The town was continually attacked by North German traders of the Hanseatic League and by Danish Kings. Finally King Erik of Pomerania succeeded in capturing Copenhagen and made it the capital of Denmark.

In 1596 Christian IV, one of Denmark's most famous kings, came to power. King Christian IV decided that the city should be an economic, military, cultural and religious centre for the whole of the Nordic region. He set up trading companies and also built numerous factories, so that the region could avoid importing. He also built Copenhagen's canal network and developed Christianshavn – an island across the inner harbour – as a focus for trade and shipping in the city. King Christian IV also built many impressive buildings during his reign. Existing monuments of the monarch's grand building schemes include the Børsen (Stock Exchange), the Rundetårn (Round Tower) and the Palace of Rosenborg.

Copenhagen suffered greatly in the years after the reign of King Christian IV. Frederick III declared war on Sweden but lost the war which caused Copenhagen to



*Christmas in Tivoli Gardens © Tivoli
Images c/o Wonderful Copenhagen*

lose its spot as the leading city of Scandinavia. In the following years, the plague and many devastating fires ravaged the city. In 1728 three-quarters of the old medieval city burned down.

Despite all of these horrific events, Denmark flourished economically and became a naval power. But, as in the past, Denmark's prosperous economy caused great harm to its capital city. The English viewed the neutral Danish navy as a threat in the Napoleonic Wars. The English attacked the city in the Battle of Copenhagen in 1801 and again in 1807 when Copenhagen was subject to the first terrorist bombing against a civilian population.

After the war with the English, Copenhagen suffered economically but experienced its heyday in art and culture. In the streets and alleys of Copenhagen one could encounter the likes of the fairytale writer Hans Christian Andersen, the philosopher Søren Kierkegaard, the ballet master August Bournonville, the painter C.W. Eckersberg, the natural scientist H.C. Ørsted and the sculptor Bertel Thorvaldsen. Also during this period citizens forced the king to accept a free constitution. This bloodless revolution led to two important developments: the building of Tivoli pleasure garden and the end of the enclosure of the city behind fortifications. The latter resulted in the city sprawling outwards at an incredible rate. The new areas added were modelled on Paris with



The Little Mermaid © Morten Jerichau

wide boulevards and residential properties inspired by French architecture.

Copenhagen enjoyed many enhancements during the next few decades. Modern, subsidised housing was built in outlying areas, together with parks and sporting amenities. Public health was enhanced by improved light and air. In the 1920s and 1930s entertainment and amusements flourished, but at the same time the economic crisis of the 1930s put a damper on the city with unemployment reaching alarming levels. Then came World War II. Nazi Germany occupied Copenhagen from 1940 to 1945. There were some isolated bombings, but compared to other cities Copenhagen emerged from the war relatively unscathed.

After the War Copenhagen adopted the 'Finger Plan'. This plan called for commerce and housing to be positioned along radical roads and railways while retaining large patches of parks and greenery in the centre of the city. This radical urban planning is evident today because while modern Copenhagen is the largest city in Scandinavia, it is also possibly the greenest capital in Europe. Maybe this is why people always return from it singing, *Wonderful Wonderful Copenhagen*.

Greg Broege is a student at Florida State University and a research assistant at the European Foundation.

GETTING THERE

Easy Jet Reservations on 0870 600 00 06 or at www.easyjet.com

London Stansted to Copenhagen (£50)

British Airways Reservations on 0870 850 9 850 or at www.ba.com

London Heathrow to Copenhagen (£120)

ACCOMODATION

Hotel Danmark ***

Vester Voldgade 89

Tel: (33) 114 806 Fax: (33) 143 630

Right by Tivoli Gardens, Copenhagen's main shopping district, Strøget, and only 10 kilometres northwest of the airport, Hotel Danmark has been recently refurbished and offers great service.

Double: Dkk690 per night.

Kong Frederick ****

Vester Voldgade 25 Tel: (33) 125 902

Fax: (33) 935 901

This unique hotel is located on the site of a 14th-century pub and until recently it served that very purpose. These days Kong Frederick is something of a local secret – a very comfortable, atmospheric place to stay in the city centre. Each of the highly individual rooms looks different, although the same English country-house feel remains throughout.

Double: Dkk1640.

Hotel d'Angleterre *****

Kongens Nytorv 34

Tel: (33) 120 095 Fax: (33) 121 118

The d'Angleterre is regarded as the city's finest hotel, offering a world of traditional elegance and an atmosphere from a bygone era combined with modern comfort. Royalty, presidents, actors and pop stars often stay at this five-star hotel, which is centrally located.

Double: Dkk2470 per night

Double suite: Dkk4870 per night

SIGHTS

Tivoli

Vesterbrogade 3 Tel: (33) 151 001 or 012 for the ticket center Fax: (33) 750 381 www.tivoli.dk

Tivoli is a bizarre mixture of the natural and the artificial. Designed by Georg Carstensen in the 1840s as a pleasure ground for the masses, Tivoli boasts two theatres, an open-air stage and a museum in addition to the rides. The

Tivoli Boys Guard parade through the gardens at 1730 and 1930 on weekends and public holidays, with a full orchestra, stagecoach and horses. There are numerous concerts and special events held here from April to September, as well as a Christmas market in December. Admission is Dkk40 (Mon-Thurs) and Dkk55 (Fri-Sun).

Rosenborg Castle

Øster Voldgade 4A

Tel: (33) 153 286 Fax: (33) 152 046

www.kulturnet.dk/homes/rosenb
Built between 1606 and 1634, Rosenborg Castle was the chief residence of Christian IV and the main royal palace until the end of the last century. This palace displays the Crown jewels and other royal treasures dating from the 16th to the 19th centuries. The gardens (Kongens Have) surrounding the palace were laid out in 1606 and are one of the most attractive spaces in the city. Admission is Dkk60 with concessions available.

Passes

The *Copenhagen Card Plus* allows free admission to over 70 museums and other attractions in the metropolitan area, unlimited travel in the entire Metropolitan region, to and from the airport included, as well as other discounts in the rest of Denmark. The card costs Dkk395 and is valid for 72 hours. The *Copenhagen Card Plus* is available for purchase at travel agencies, tourist information offices, hotels and railway stations.

EATING

Vørnededamsvej in Vesterbro, known informally and affectionately as 'food street', has long contained the city's best known concentration of food and drink shops, including butchers', fishmongers', wine and spirit stores and delicatessens.

Gastronomique

Fredericksbergs Runddel 1 Tel: (38) 348 436 This restaurant serves modern Danish cuisine. Specialities include foie gras, grilled turbot and glazed Norway lobster. A normal dinner will cost about Dkk560 and a bottle of wine will cost an extra Dkk320.

Cap Horn

Nyhavn 21 Tel: (33) 128 504 By day, this is the perfect place for a smørrebrød

sandwich and it is also a good place for a relaxed business dinner by the water. The excellent range of desserts at dinner is another plus point, as is the cozy atmosphere of this former jazz club. The price range is about Dkk300 for dinner and Dkk150 for wine.

GOING OUT

Copenhagen Jazz House (Old City)

10, Niels Hemmingsensgade

Tel.: (33) 152 600 For jazz lovers, the world famous Copenhagen Jazz House offers international quality performers in an intoxicating, intimate atmosphere. One can either sit and relax or get up in dance in this great place just off Strøget.

Vega

Enghavevej 40 Tel: (33) 25 70 11

The Vega complex, housed in a magnificent 1950s trade union building, is one of the most popular night life venues in the city, and with the opening of a new super-cool Vega Lounge that popularity looks set to continue. Vega Lounge plays soulful music and has waitress service, an extensive drinks menu and a relaxed vibe all wrapped up in decor described as '1950s with a 2001 make-over'.

SHOPPING

The main international chains and designer boutiques are located around Strøget, interspersed with cafés and restaurants. Intriguing second-hand and antique shops are thick on the ground in the Sankt Hans Torv area, while flea markets abound at Israel Plads and Gammel Strand every Saturday.

Magasin du Nord

Kongens Nytorv 13, 1095 København K

Tel: (33) 114 433 Magasin is bound by tradition, and you can be certain to get qualified and personal assistance in the various departments.

Danish Silver

Bredgade 22, st.tv.1260 København

Tel: (33) 115 252

Danish Silver Specializes in the sales of Georg Jensen silver. The store is located in the antique district of Copenhagen and is individually owned and operated. Their location combined with expertise enables them to offer first class Danish silver at reasonable prices.

CHUNNEL VISION

The Price of Fealty

by Dr Lee Rotherham

THE NATURE OF LOYALTY has never been uniform. Across different cultures and eras it has been bought, sold, inherited, loaned, earned, stolen, restored and faked. Sometimes it has been conditional. The Mediaeval Aragonese Cortes was a case in point. On the accession of a new monarch, the assembled nobles would declare,

"We, who are as good as you, swear to you, who are no better than us, to be your true and faithful subjects, so long as you protect our privileges and customs. But if not, not."

Even this degree of conditionality seems to have vanished in certain quarters of the Conservative Party. The chain of command has buckled. But where does this leave the Eurosceptic cause?

Iain Duncan Smith was elected leader on the basis of three strengths – the premise, the promise and the promises. The premise is well-known. The background lies in the Maastricht Revolt, that trying time that pitted character against power, and belief against ambition. Some passed the test. Others learned from their resilience. In other words, the man had 'track'.

For the promise, we have to cast our minds back to the leadership campaign of 2001, where he clearly stood out as a vigorous defender of the national interest. This aspect proved a key draw in attracting supporters to the team on Lord North Street. IDS did what it said on the package. This even proved to be an asset in attracting backing from beyond the traditional right. Policies could be produced that addressed the concerns of centrists, without the author needing constantly to prove his credentials. Key reforms could be pushed, to break frozen preconceptions among many in the public, propagandised into bashing the Party (the sad result of years and years of prerecorded Labour badmouthing, and media drives on serial scandal). Real advances in public perception came through a key ability to change the agenda, aggressively, without carrying the baggage of the neo-reformers. Or to quote Mr Spock's 'ancient Vulcan proverb': *"Only Nixon could go to China"*.

Fisheries was a pivot. Duncan Smith put a praetorian in there in the shape of John

Hayes, who in turn has demonstrated a determination to take *"all necessary steps"* to restore this ecological and social pillage back to national control, where it might yet be salvaged. True, his predecessors were strong advocates of such an approach, but IDS crucially boosted the portfolio to Shadow Cabinet rank, allowing the destiny of our fishermen to be taken direct to the highest level. If only William Hague had done likewise with Patrick Nicholls ... but that was before the Government's own DEFRA reshuffle, and so it fell to Hayes to make up for lost time in an industry on the knife-edge.

Then there was EMU. The new policy became one of aggression; not simply winning the argument by default by closing down the prospect of a referendum, but indeed to push the vote. This has its dangers, not least over who phrases the question and funds the two sides, but it certainly demonstrated a chunk of gunfighter grit. And as for the Constitution; a counter-offensive. After the blue-sky thinking during the Giscard months by David Heathcoat-Amory, left to his own devices on the front line, the armoury was at long last unlocked and the weapons handed out.

The questions for the eurosceptic pondering the merits of the new leader kick in here. What are the Party's long-term plans now? It is one thing to see the *technical* opposition at work, tearing apart some lunatic Directive, but what are the *strategic* objectives on Europe?

How far down the line do we go? It is truly pointless, indeed counter-productive, to start planning this afternoon for what happens after the wretched Constitution is ratified and enmeshed in our government. But is the new Party leadership ready to declare fully that it has clear and fundamental points for the IGC, that way surpass the fuzzy faint red lines banded about by Jack Straw's feeble counsellors? There is a serious tool on the table and the rarest of opportunities to use it, to gain what we want from our European association. Indeed, it will possibly be the last opportunity of all. Faint hearts ne'er won fair damsel. We need to overtly spell out our demands, and bluntly explain that we shall veto anything less. Either we go to the wire, or we shall dangle from it.

The second issue is that of our partnerships within the new European concert. What use saving Britain by our exertions if European eurosceptics fall, shorn of our support? We need urgently to break the Christian Democratic monopoly. Conserv-

atism and Christian Democracy are different beasts, born in separate stables and roaming different, though neighbouring, pastures. While sometimes they may wander alongside each other, over Europe's future form they are wholly antipathetic.

We need to ride the Prague Declaration to the stars. Prague was, like Fontainbleu, an important advance. But it was only a precursor. As a military man, IDS no doubt knew that precursors trigger explosions, but they don't do the job on their own. The clock has long been quietly ticking, and if it fails to trigger very, very soon, there will be a fatal loss of credibility with our Continental partners.

These concerns, while they urgently need to be addressed, were not enough grounds for the leadership drive-by shooting last week. How much more so when we consider the nature of some of these assassins?

True, and it is a fundamental point, some are principled and seek debate on key policy decisions, turning on fundamental issues of basic political foundations. Who does the Party represent? What is it for? What are the limits of its role in running people's lives? And where, of course, does the future destiny of our country lie? But there was also a small clique of ambitious pre-PPC cadets behind a more Medici plot. For them, this was little more than a power grab – as lieutenants of a fallen god. No cause; no objection other than the throne. Just old-fashioned ambition. All other policies, including Europe, may be ditched on the way.

There is a place and a time for ambition, but it involves bettering the lot of the country and the ordinary people within it. Shakespeare we can leave to the stage.

By a show of resolve on key policy issues now, the new Conservative leadership can seize the support of the tabloids, and rally its activists; it can demonstrate that it holds key principles, winning powerful friends overseas; it can help restore faith amongst natural Conservatives who had abandoned them at the polls and lingered at home or lent their vote to a false-fit party; it can seize the political agenda; and in driving the Government onto the defensive in an annum mirabilis of continental referenda, it can shatter the unity of a flawed Labour Government.

The season belongs to the eurosceptics. The banner has dipped, but the line will hold firm. Steady the Guards!

Dr Lee Rotherham was an advisor on the Convention.

THE EUROPEAN FOUNDATION

The *Great College Street Group* was formed in October 1992 in order to oppose the Maastricht Treaty. The group, consisting of academics, businessmen, lawyers and economists, provided comprehensive briefs in the campaign to win the arguments in Parliament and in the country. The European Foundation was created after the

Maastricht debates. Its task has been to mount a vigorous and constructive campaign in the United Kingdom and throughout Europe for the reform of the EC as a community of independent sovereign states. The Foundation continues to establish links with other like-minded institutes across Europe.

Objectives

The objectives of the Foundation, set out in its constitution, are as follows:

- to provide a forum for the development of ideas and policies for the furtherance of commerce and democracy in Europe;
- to increase co-operation between independent sovereign states in the European Community and the promotion of the widening and enlargement of that Community to include all applicant European nations;
- to resist by all lawful democratic means all and any moves tending towards the coming into being of a European federal or unitary state and for the furtherance and/or maintenance of such end;

Activities

The Foundation pursues its objectives by:

- organising meetings and conferences in the UK and in mainland Europe;
- publishing newsletters, periodicals and other material and participating in radio and television broadcasts;
- producing policy papers and briefs;
- monitoring EC developments and the evolution of public opinion and its impact on the political process in the main EC countries;
- liaison with like-minded organisations in other EC and EC applicant countries and elsewhere;
- liaison with trade associations and other professional bodies affected by EC action and policy.

The Foundation

The Foundation addresses itself to the general public and to politicians, journalists, academics, students, economists, lawyers, businessmen, trade associations and the City.

It concerns itself with the following main topics:

- industrial and commercial policy;
- economic and monetary matters;
- foreign policy;
- security and defence;
- environmental issues;
- the Common Agricultural Policy;
- the reform of Community institutions;
- the developing world.

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