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# THE EUROPEAN JOURNAL

## The Journal of the European Foundation




**The End of the 'Bra Wars'...for now**
**Annunziata Rees-Mogg**

&

**Geoffrey Van Orden, mep • Bryan Smalley**
**Ross Cowling • Christie Davies**
**Robert Broadhurst • Norman Sanders**
**Roger Helmer, mep • Matthew Glanville**
**Matthew Attwood • Dr Lee Rotherham**

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Chairman: William Cash, MP

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# The European Journal

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SOLON

# Voting for Kenneth Clarke is a Snare and an Illusion



There are by no means enough of them, but one person at least knows what is going on. Kenneth Clarke. And he knows we know. He was right that for there to be a real contest it must be of principle, of ideas, of consistency and of political will. But things have suddenly changed over the past few weeks. The consistency and principle has gone in his bid for the leadership. What is now profoundly needed in the Conservative Party is principle before leadership. Country first, constituency second, Party third. In this column we concentrate on why backing Kenneth Clarke to win is, for the Conservative Party, a snare and an illusion. He is an engaging blokish heavyweight, but with one arm tied behind his back by his losing baggage. The electorate will not support him when they are informed and presented with the real issues.

First, the Snare. Just as his old chum and cheerleader, Michael Heseltine, said in his letter to his constituents when he challenged Margaret Thatcher, "*The issue is Europe.*" So it is now, but this time it is both the issue and the snare. Why?

The European Constitution may be dead in one sense, and in appearance, but it certainly has not gone away. It is brazen of Kenneth Clarke to say, as he did in *The Daily Telegraph* on 1 September that, *"Europe should no longer be a divisive issue within the Party."* Note he does not say, "*is* no longer" or that the stubbornness of those who were wrong was the cause of division. He goes on to say, "*The Constitution is dead.*" Note that he does not repudiate his support for the Constitution, nor does he address the issue of the existing Treaties, which are the present cause of the Euro-disaster area that has created low growth and high unemployment in Germany and France. Do not forget that he was one of only three Conservatives to vote for the Constitution in principle and against a Referendum. He then goes on to say, *"I can see no circumstances in which British membership of the euro will be an issue in this Parliament or the next."* Note that he does not repudiate his support for the euro in principle; the door would remain wide open under his leadership.

And it is not just the question of whether the Euro-establishment will bring in provisions of the Constitution through the back door – they will use the existing Treaties (which is the real problem) through the front door. And it was these very Treaties, particularly Maastricht, not to mention Amsterdam (both negotiated by Conservative Governments with Kenneth Clarke, Malcolm Rifkind and David Davis at the helm and on the watch), which created European Government. To give but one example, they gave up the veto (over a five year period) over our borders. Kenneth Clarke will point this out in a flash if he is challenged by the other contenders – which makes it hardly likely. So the principal case against the existing Treaties, aided and abetted by the *BBC* and the Clarkeite newspapers and despite their better judgement on Europe, will go by default. No wonder the European Reform Forum is holding hearings into the existing Treaties. There is no contest, on this basis, between Clarke and anyone else who carries adverse baggage with their voting record on European Bills and debates. It matters. It matters because of the lack of judgement, conviction and principle in the national interest – at the time when the pressure was on to undermine irrevocably the right of the British people to govern themselves and when many would have said it was their duty to resign.

Secondly, the Illusion. Houdini is reputedly the greatest of the illusionists but Kenneth Clarke will take the crown if he manages to persuade the Conservative MPs in the first place (and the Party members if they are given the right under the leadership rules as they are now – and should remain – to make the final decision) that he has fundamentally changed his views on Europe to accord with their own. Illusions are created in the minds of a gullible audience, sometimes out of a sense of induced, if false, anxiety or desperation. On EU matters Kenneth's record is very clear – he normally speaks his mind, but will the audience this time overlook his unrequited commitment to the existing Treaties, his total and continuing rejection of the proposals for associate status at the time of his *"discussions"* with Michael Howard before the latter's acclamation? Someone must publicly challenge him on this and many other issues before the illusion takes root as propaganda turned fact. On present form the *BBC* will not; nor even so far have the interviews in *The Telegraph*. Is this because he might be forced into a corner? Indeed, the illusion is compounded, even created, by the unreality of the circumstances of the present so-called leadership contest. It is no contest if they are not prepared to challenge their opponents on the fundamental issues and to publicly repudiate their own past failures of judgement.

Kenneth Clarke has a blokish charm but his assiduity, as we all know, did not run to his reading the Maastricht Treaty, which irrevocably gave away British Government for the first time for generations. As for his being a 'successful' Chancellor (as he boasts himself), any improvement in our economy when he held the post was despite and not because of his views on ERM and EMU. Indeed, he would get on famously with Gordon Brown on the European issue, which affects nearly everything that moves. Will he repeal any part of the *acquis* of the existing Treaties unilaterally? Moreover, Gordon Brown's *Red Book* is based on Kenneth Clarke's, and it was Clarke who promoted the absurd Stability and Growth Pact, which failed so ignominiously. Furthermore, Clarke would find a ready ally in the Lib Dems on Iraq and Europe. This is not Opposition. How could the Conservatives possibly win on this basis and merely because of blokishness?

And ask teachers and the medical profession what they thought of his time when he ran their affairs in the Cabinet? Is all this what the people of this country and Conservative voters want? Recent ICM polls say not. Indeed, in May this year, 54 per cent said that the European issue should have been central to the general election and, a few months earlier, 68 per cent of 18 to 24 year olds said they wanted to go back to the Common Market. (The European Foundation/ ICM polls, November 2004 and May 2005) A poll taken last month of Conservative Party members in the East of England (see page 4) speaks for itself.

So back to Houdini. But also to T.S. Eliot who said that, *"Human kind cannot bear very much in the way of reality."* Remember Clarke on the Britain in Europe platform with Blair, Brown, Kennedy and Heseltine? Winning? Winning for what and how? Where is the principle? Where is the patriotism and the purpose? Where is the difference from a Blairite European social democracy? Where is the difference from the European Liberal Democrats? Wake up England. Wake up Conservatives, before it is too late. The Conservative Party cannot afford to walk into a Clarkeite Hall of Mirrors.

Why is no one asking Kenneth Clarke the right questions? We have asked him to write an article for our October Conference edition, which he has declined to do. We publicly challenge him to reply to this column. The British people and the Conservative Party are entitled to the answers. Or will the heavyweight duck this challenge, as he did when he was advertised and scheduled to participate in a major one-to-one debate on Europe against Bill Cash for *Sky* at a recent Party Conference? Now, that would be a real contest.

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# Survey Proves that Europe is Still a Vital Issue for Conservatives

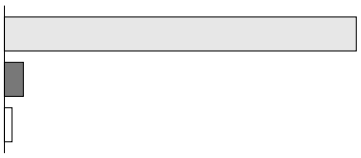
You may recall that a view was being put around in certain quarters that, because the European Constitution had been defeated, Europe was now off the agenda and was no longer an important issue. So Geoffrey Van Orden, MEP, decided to ask what the public thought. Before the summer break, Mr Van Orden made contact with all 56 Conservative Constituency Associations in the East of England in order to canvass the views of members on Europe. They had a great response. 656 replied to the survey and the results are below.

The message was overwhelmingly clear: you think Europe is still a primary issue; the Conservative Party remains strongly Eurosceptic and should continue to say so; you are not happy about Britain's present relationship with the EU and want to get back to something like the Common Market; and you want the Conservatives in the European Parliament to have a clearer identity, less entangled with the European Peoples Party.

Commenting on the results, Mr Van Orden said, "*The views expressed are reassuring to me both personally and politically. I think they are probably shared by the wider electorate. I also feel confident that the Party leadership will take note.*"

In the charts below, categories 'Strongly agree' and 'Agree' have been combined, as have 'Strongly disagree' and 'Disagree'.

**1** Even though the Constitution has been defeated, "Europe" and Britain's relationship with the EU is still an important political issue



93% Agree
5% Disagree
2% Neutral

**2** The Conservative Party should avoid talking about Europe and just concentrate on other issues



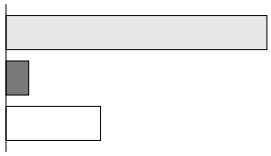
16% Agree
77% Disagree
7% Neutral

**3** Britain's relationship with the EU is about right



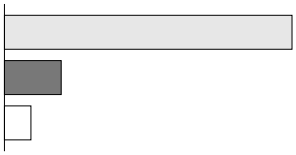
12% Agree
76% Disagree
12% Neutral

**4** The British Conservatives should distance themselves from the European People's Party (EPP) in the European Parliament and develop a more autonomous group of European Democrats (ED)



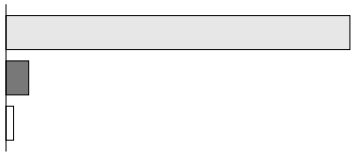
69% Agree
6% Disagree
25% Neutral

**5** The Conservative Party should maintain a strongly Eurosceptic position



78% Agree
15% Disagree
7% Neutral

**6** Britain should renegotiate the nature of our relationship with the EU in the direction of the Common Market that we thought we were joining in 1973



91% Agree
6% Disagree
3% Neutral

# The End of the 'Bra Wars' … for now

"When Peter Mandelson left Westminster politics to become an EU Commissioner almost a year ago, he could not have imagined that his name would become linked with 7.4 million bras," *says* The Times. *But thanks to the new European Union quota system that is just what has happened.* ***Annunziata Rees-Mogg*** *looks into the situation.*




## The Problem

What is Mandelson doing? No doubt all the retailers in the UK would love to know the answer. After years of outsourcing to Asia in order to keep prices low – which has been a big factor in enabling Gordon Brown to keep inflation down without high interest rates whilst he's gone on a blasé public spending spree – Mandy, in his wisdom, agreed quotas on Chinese imports of textiles. This was supposed to help the Italian, Spanish and – shock horror – French textile manufacturers. But it won't.

Not only are retailers about to enter the new autumn season, but also, according to the Confederation of British Business, the UK retail market has rarely been worse positioned to cope. The CBI's most recent Quarterly Distributive Trades Survey shows that confidence on the high street is at its lowest for seven years. And retail sales volumes fell to a 22-year low last month.

The shops whose imports have been waylaid at ports and warehouses around Europe – or even stranded on ships at sea – have not all thought *"ah, we can't import from cheap China, so we'll buy from those really expensive French."* However, those with operations big enough – and cash flows solid enough – have moved their operations (many Chinese factories are owned by the Western companies that stock their goods) to other cheap Asian countries. Topping the list are Vietnam, Burma, India and Sri Lanka. Whilst the likes of Tesco can afford to move their production to other countries, smaller scale operators are not in a position to let their stock go down the pan – they are relying on the stock they have already bought. *"Many retailers and importers, especially SMEs, will be facing a serious crisis unless the EU frees the containers,"* said international trade spokesman Ralph Kamphoener recently to eupolitix.com.

So, in other words, the quota system has failed to achieve its objective of subsidising over-expensive Western manufacturing. It wouldn't take a genius to work out that was always the most likely outcome. Then again, Mandelson is clearly nowhere near being a genius. Nor is he strong enough to represent the UK in Europe.

The British economy did not need or want the Chinese imports to be kidnapped *en route* to the shelves. It is the kick in the teeth that could send our beleaguered high streets to the receivers. But the French wanted it, so Mandelson capitulated, presumably without consulting Brown, who can't be happy that we are now facing a retail downturn even sooner than expected. Mandelson's decision was not only seriously harmful for the British finances, but it was unbelievably badly thought out too.

When you look at the affects these quotas are having, you spot that *"four million bras stranded in docks"* or *"48 million jumpers stuck in ships"*. How on earth are the numbers so high – £50m worth of goods headed for the UK could not get here (ten times that amount couldn't get to Europe as a whole). Then you think these are annual quotas – how on earth did Mandelson sign off on a plan that would hit our imports with such a vengeance with four months of the year left?

No one has handled the situation well, and Mandelson himself seems unwilling to shoulder the blame – but also unwilling to admit that anyone else is at fault. *"It is not the*

*fault of importers, it is not the fault of retailers,*" he said, adding that, "*the Commission, the Member States and the Chinese all bear some responsibility for this situation, but nobody in particular is to blame.*"

But if no one is to blame, how did we get into this mess? Every EU member agreed to this deal in June except for Denmark and Sweden, both of which, thankfully, have free trade aspirations. Why any British politician would dream of giving the nod to protectionism of this kind is beyond me – especially when it will only damage our economy, by putting costs, and therefore inflation, up: not helpful in a time of economic downturn. (A very experienced retail analyst I spoke to recently said he couldn't think of a worse time for British retail, with pressure coming to bear from enforced price competition, increasing costs, a consumer squeeze – and then the China effect to top it all off.)

According to Mandelson the system had a "*glitch*". And though he "*wasn't responsible for creating that glitch,*" he is "*taking responsibility for solving it.*" But he was "*holidaying in one of Italy's most exclusive resorts while his officials struggle to resolve the 'bra wars' crisis with China,*" says Robert Winnett in the *Sunday Times*. It would seem that misunderstandings all round are to blame for the current problems, but as trade minister, it was his job to ensure any such problems were sorted out.

Then again, the blame could lie with the whole concept of protectionism, suggests *The Times*. "*All quota systems are ultimately complicated and undesirable.*" Following the current debacle, the EU must not rush into another system without thinking it through. And the "*new EU quota must not be anything more than the most temporary of measures.*" Whatever the solution, the present situation is hitting retailers where it hurts. "*It is unfortunate that we had to wait until it reached crisis levels and until just a week before the critical sales period start,*" said Alisdair Gray, the director of the British Retail Consortium.

On top of economic and protectionist objections, there are the obvious issues with the practicality of the quotas. It is already clear that big retailers are going to source their goods from other cheap Asian countries, meaning that the whole enterprise fails in its objective, but there is another issue: that of the levels of the quotas. It is shambolic. Having seemingly failed to think through the impact of the restrictions in general terms, the European Commission also seems to have failed to find even vaguely realistic levels. Within just two weeks of the quotas coming into force, goods were being barred from entering the Union. It took two weeks to fill quotas that were meant to cover nearly six months.

**Act in haste, repent at leisure – how many more times will this be true for the unwieldy legislative nightmare that is the EU?**

To be fair to the EU, quotas of some sort have been in place for decades, yet that is where my ability to defend this muddle-headed thinking ends. When the old quota system ended last December the EU should have had an alternative system in place if it wanted to continue its protectionist ideology. It did not. As a result, the quantity of goods imported from China – especially clothing – rocketed and the EU felt (again with its protectionist hat on) that it had to act, rather than allow free trade to flourish. In June it rushed through legislation to keep Chinese underwear under wraps. Act in haste, repent at leisure – how many more times will this be true for the unwieldy legislative nightmare that is the EU?

## The Compromise

It would appear that Mandy has managed to wriggle himself, and the EU, out of trouble – temporarily. Just after Tony Blair jetted into the People's Republic of China, a deal was struck with the Chinese Government on 5 September. It took weeks of wrangling to come to any kind of compromise, during the annual EU-China Summit. Then finally, Tony Blair, who holds the EU presidency, Jose Manuel Barroso, and Peter Mandelson gleefully passed on news of their success to journalists at a press conference in Beijing. Alongside the Chinese Premier, Wen Jiabao, the 'EU three' announced that half of the stockpiled textiles will be allowed through, while the other half will count toward the quotas for 2006 or counted under other unfulfilled quota groups. It can't only be me that thinks that re-classifying bras as socks, or some other item of clothing, is not really a solution. Nor that reducing next year's quota in order to get through this year's embarrassing mistakes can be maintained long term. Certainly Kevin Hawkins of the British Retail Consortium believes the "*big worry now is the long-term consequences.*"

This whole episode reminds one of Laurel and Hardy, "*there's another fine mess you've got me into.*" Only who's got whom into the mess, as ever with the opaque EU, is entirely unclear. As to whose responsibility it is to sort it out, we're none the wiser. A muddle-headed, short-termist compromise is unlikely to provide any answers or solutions. We may have signed up to free trade with Europe, but was it meant to mean we lost control of our high street?

*Annunziata Rees-Mogg is Deputy Editor of* Money Week *and the former editor of the* European Journal.

## *… news in brief*

**Bare cleavages allowed by Brussels**

Conservatives and liberals in the European Parliament have taken the edge off a Commission directive which, *inter alia*, might have made waitresses in Bavarian beer gardens cover up their ample cleavages, which are otherwise shown off to great effect by the traditional Bavarian dress, the *Dirndl*.

The purpose of the directive was to protect workers from the effects of sunlight. Bare-chested British construction workers were apparently at risk from sunburn, and so Brussels decided to act. The proposed directive caused an outcry in Bavaria, however. The MEPs who voted against the proposal have boasted that they have rendered Europe less bureaucratic and more close to ordinary citizens, but most people will think that the fact that the proposal was ever made in the first place shows that there is something wrong. The Commission had proposed in its directive that all employers examine the risks of their employees getting sunburnt and develop an "*action plan*" for what to do about it. It is this part of the directive which the European Parliament has now cancelled. MEPs decided that such matters were best left to the Member States. One CDU MEP, Thomas Mann, said that it was completely crazy to pass a single set of regulations for sunshine over an area which extends from Finland to Greece. The Commission, however, has not lost hope that its directive will eventually be passed in full. The social affairs Commissar, Vladimir Spidla, said that it was essential that Brussels guarantee the highest possible level of protection for European workers. [*Handelsblatt*, 9th September 2005]

# Is it Time for Britain to Adopt a Written Constitution?

*by Bryan Smalley*

Many British people mistakenly believe that we do not have a Constitution. In fact, our Constitution is an uncodified Constitution whose component parts can be found in a variety of sources such as: the Magna Carta of 1215; the Bill of Rights of 1689; the Act of Settlement of 1701; the laws and customs of Parliament; political conventions, and case law. It will be noted that some of these components are unwritten.

Our Constitution is built primarily on the twin and equal principles of Parliamentary Sovereignty and the Rule of Law. Parliamentary Sovereignty means that Parliament is the supreme law making body. It alone can make legislation on a national level. It is an ancient principle that can be traced back to before the Restoration (1660). The Rule of Law is the principle which makes everyone equal before the law.

Constitutional monarchy is another key principle, meaning that the monarch does not actually rule, but has only a ceremonial role. This again is frequently misunderstood by people who think that the monarch has supreme authority. Amendments to Britain's unwritten Constitution can be made by a simple majority of votes in both Houses of Parliament, to be followed by the Royal Assent.

Supporters of the unwritten Constitution believe that it allows flexibility for change to meet the evolving needs of modern life. They support this by a number of tenuous beliefs:

One, that sovereignty belongs to the People and we have only lent it for five years to our parliamentary representatives;

Two, that we are, to some extent, protected by the House of Lords;

Three, that the Sovereign can protect us by refusing to grant a Bill her Royal Assent;

Four, that no government can bind its successor, thus giving an incoming government the opportunity to repeal the actions of its predecessor.

There is a fifth point regarding the Sovereign's Coronation Oath which relates to her position as Defender of the Faith. It concerns Article 37 of the 39 Articles of Religion, which declares that, "*[The Sovereign] has the chief power in this Realm and that the Realm is not, nor ought to be, subject to any foreign jurisdiction.*"

Most of these beliefs carry no weight today. It is a fallacy that the Queen might refuse to grant assent to a Parliamentary Bill. The Monarch has not refused to assent to a Bill since Queen Anne, who reigned from 1702 to 1714. Nor will the Monarch dissolve Parliament without the advice of the Prime Minister.

Our uncodified Constitution has concealed a growth in republicanism in the country led by many in high positions of office, not least senior politicians. This can best be explained by an abbreviated extract from a chapter on 'Elective Dictatorship' in a book written by Lord Hailsham in 1978:

"*The constitutional law of this island is based on the ancient prerogatives of the Crown, and the various Acts of Parliament by which these have been modified or extended. We have always possessed a strong central government, and when the powers of Crown and Parliament are united under a strong administration, the legal powers of government are virtually unlimited. The limitations are not imposed by law. In theory Parliament is supreme. There is nothing legally that it cannot do, and practically nothing which, at one time or another, it has not done. It has prolonged its own life. It has taken away the lives and liberties of its fellow citizens without semblance of a fair trial. It has confiscated property. It has ratified revolutions. In this we are almost unique. Few democracies, including the Commonwealth, possess these powers or anything like them. Their powers are limited by a Constitution which they have no right to exceed. Only the British live under the authority of a rule absolute in theory, if tolerable in practice. In our lifetime the use of the Parliament's powers has continuously increased, and the checks and balances have been rendered increasingly ineffective by the concentration of their effective operation more and more in the House of Commons, in the government side of the House of Commons, in the Cabinet within the government side, and in the Prime Minister within the Cabinet. The sovereignty of Parliament, absolute in theory, has become more and more the sovereignty of the House of Commons.*"

But things have moved on since Lord Hailsham wrote those words. The 'Elective Dictatorship' appears to be held in the power of one man, Tony Blair, who pays little heed to the workings of the House of Commons or indeed to his own party members in the Commons. But Tony Blair does not have the final say because most of our laws are now formulated by the European Union. On joining the so-called EEC, Edward Heath passed the European Communities Act 1972, which made European Union law supreme over UK law. We have therefore allowed Parliament to give our sovereignty away to a 'foreign jurisdiction'. This undermines the principle of Parliamentary Sovereignty and also makes the Queen unwittingly break her Coronation Oath. Our membership of the EU has put paid to us "*not being subject to any foreign jurisdiction*".

**Our membership of the EU has put paid to us *"not being subject to any foreign jurisdiction"***

A further basic concept of our Constitution is loyalty to the Crown, and, to demonstrate this, certain people in both high and low office are required to swear an oath of allegiance. In most cases, British EU Commissioners have also been Privy Counsellors. On taking up their appointment as a Privy Counsellor they swear "*to be a true and faithful Servant unto the Queen's Majesty*" … etc. But EU Commissioners also swear an oath to uphold the EU ideology and "*To perform (their) duties in complete independence*" and "*in carrying out (those) duties, neither to seek nor to take instruction from any government or any other body.*" The swearing of the Commissioner's oath is therefore treason. It cannot be possible to owe total allegiance to two governments.

After devolution in 1998, the Labour Government revised the oaths of allegiance to avoid conflict of interest between the Westminster Government and devolved Governments in Scotland, Wales and Northern Ireland. For the first time, the home civil service does not now owe its loyalty to the government of the day.

Instead, those working for regional executives now take an oath of loyalty to the devolved bodies. In the case of England, they swear their allegiance to the Home Secretary.

Similarly, any reference to the Crown is being slowly expunged from national institutions. An example is when Chris Patten changed the name of the Royal Ulster Constabulary to the Police Service of Northern Ireland. A further example is the renaming, and even disbanding, of our regiments. The Royal Anglian Regiment has become the East of England Regiment to conform to EU regionalisation.

Until recently there was a system of checks and balances within our Constitution. At that time there were three independent institutions within the Government: Parliament (comprising the Commons and the Lords); the Judiciary; and the Executive (Cabinet). In a speech to the House of Lords on 8 March 2004 on the proposed abolition of the Lord Chancellor, the Earl of Erroll not only drew attention to the dichotomy of swearing an oath of loyalty to two governments, but also explained how the three pillars of government were being drawn together under the control of one man – the Prime Minister. Extracts from his speech read:

*"In addition, as we have discovered in debates on the composition of this Chamber, even our unambiguous Privy Council oath has no standing if it is felt that it should be reinterpreted to suit circumstances"*. He went on to say, *"I refer to control by the executive. There used to be three pillars: the executive, with the Monarch as its titular head and the Prime Minister in actual control; the legislature, with the two Houses of Parliament [with] Back Benchers wielding considerable power; and the judiciary, headed by the Lord Chancellor, responsible through the judges to Parliament" … "The Prime Minister tells the Monarch what to do. The Prime Minister controls the Commons now, and that control could easily be extended to the Lords, too, as any statute regarding this House can be changed. It is now proposed that a junior Cabinet Minister, head of a department in the executive and appointed by the Prime Minister, should exercise co-decision processes with the chief judge and have a power of veto over the appointment of judges. Only in Orwellian doublespeak could that be called greater independence for the judiciary"* and then, *"I notice that the order of precedence in this country goes: Monarch and Royal Family, Archbishop of Canterbury, Lord Chancellor, Archbishop of York, Prime Minister. If we removed the Lord Chancellor – and we notice that the Crown is being steadily removed from government branding, probably in preparation for a downgrading of the monarchy, and we know that certain elements would dearly like to get rid of the Royal Family – and then we also remember that the Prime Minister appoints the two archbishops, using much the same mechanism as he intends to use to appoint the judges, we have a Prime Minister who is truly an elected dictator."*

The reference to 'national branding' is an unusual one, referring to the monarchy in marketing terms. Lord Erroll was pointing out that a good number of politicians merely regard the monarchy as a tourist attraction. This slow, deliberate and accelerating downgrading of the monarchy is being ignored by the populace.

As the supreme legislator in the land, the EU is also stealthily destroying our Constitution. It is in the EU's interest that all our institutions should be either eradicated or have their functions absorbed into the EU framework. The situation was well expressed in an article by Mark Leonard, the Foreign Policy Director of the Centre for European Reform, one of our leading pro-EU think tanks. Extracts read as follows: *"Europe's power is easy to miss. Like an 'invisible hand' it operates through the shell of traditional political structures. The British House of Commons, British law courts, and British civil servants are still here, but they have all become agents of the European Union implementing European law. This is no accident. By creating common standards that are implemented through national institutions, Europe can take over countries without necessarily becoming a target for hostility… This enables Europe to accommodate ever-greater numbers of countries without compromising their independence… Europe's obsession with legal frameworks means that it transforms the countries it comes into contact with, instead of just skimming the surface."*

**Delusion seems to be the methodology by which this Utopian ideal is implemented**

Of course, he is dishonest, because if laws are made in Brussels and implemented by British Parliaments and legislators with no power to change them, independence is compromised in every area where these laws are made. Delusion seems to be the methodology by which this Utopian ideal is implemented.

The EU has already changed our life dramatically. The principle in this country that no one is above the law has now passed into history. Many people within the EU, including Commissioners, MEPs and members of Europol, are absolved for life for any misdemeanour that they commit whilst working for the EU. Gone is the presumption that everyone is equal under the law.

The EU is changing our legal framework. It intends to introduce Eurojust, a system adopting the Napoleonic Code. Although this is alien to our traditions, the Government is already introducing it by stealth. *Habeas Corpus*, the right to trial by jury, the right to remain silent, and many of our traditional rights are being abolished. In the past, the assumption in this country was that we had a right to do anything unless the law forbad it. We are changing to a system where everything we are permitted to do is codified. The Human Rights Act is an example.

In Britain, our Executive members must come from the House of Commons or Lords. In the EU they are appointed, mainly from a collection of political has-beens.

It cannot be imagined that any serving British politician will be inclined to reverse this trend towards elected dictatorship. Our MPs are mainly career politicians who depend on their leaders' patronage for preferment.

Nor it seems will they be willing to leave the EU until it falls apart.

It is evident that the time has come for radical constitutional change. Positions of power in the future should be licensed by a Constitution which everyone understands and respects. This will not come from our elected Government or Opposition. It should be on the lines of the American Constitution, which is rigid and cannot be changed by devious politicians, and it should be safeguarded by a politically independent Constitutional Court.

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# Turkey and the EU

*by Ross Cowling*

Turkey is set to begin negotiations for its possible succession to the European Union this October. But when Recep Tayyip Erdogan, the Turkish Prime Minister, sits down in Brussels on 3 October, the road ahead of him will be a steep, and at times trecherous, one. On top of the inherant issues surrounding Turkey's EU membership application, which reach far and wide, there is the added complication, and embarassment, over the resignation of the man charged with leading Turkey's team of negotiators. Murat Sungar handed in his resignation just two months before the start of the official negotiation process. It is claimed that he had complained about "*persistent uncertainty and confusion*"[1] in the country's preparation for the negotiation start date.

As was apparent in the recent French and Dutch rejections of the EU Constitution, the issue of Turkey joining the EU is an important one to many people across Europe. For many, the key issue is the difference in fundamental ethical values between a predominantly Islamic country and the current members of the EU, all of whom have long Christian histories. In recent times, though, both Turkey and the current Member States have been moving towards becoming more secular societies. This may not be enough, however, to the people of France and The Netherlands, both of whose countries are encountering a number of targeted attacks against their Muslim populations, which are seen as a response to the growing number of immigrants travelling across the continent to find work.

## Growing Numbers

Leading the opposition to Turkish accession is the French Government. This obstinance is present for several reasons. Perhaps the key issue is the balance of power within the EU. In days gone by, our Gallic neighbours had been secure in the fact that if they wanted something to happen in the EU all they had to do was bully the weakened West Germany into siding with them and they would get what they wanted. But now with a more bold and powerful united Germany, along with the new former Eastern Bloc members who joined the Union in 2004, France is finding it increasingly difficult to get her wicked way. So with the prospect of seventy million additional people being added to the already 460 million-strong EU population, no wonder the French are trying to throw a spanner into the works. With the current rate of growth, it is entirely plausible that by the time Turkey enters the EU it will be the single largest nation in the organisation, surpassing even Germany. This is perhaps why the German CDU Party is keen on Turkey being granted *"privileged partner"* status rather than fully blown membership. So in twenty years time an expanded European Union, with Albania and Bosnia as possible members, could have a Muslim population making up one quarter of the total population. This will make France's negotiation position even weaker.

## The Cyprus Issue

Despite not previously imposing any conditions over and above those laid down by the European Commission, the French Prime Minister, Dominique de Villepin, has said that it would be "*inconceivable*" for negotiations to begin if Turkey "*does not recognise every one of the members of the European Union.*"[2] This is an unveiled demand for Turkey to give recognition to the Greek Cypriot Government. It had been thought, until M. de Villepin's remarks, that Turkey had met all of the pre-negotiation requirements set by the European Commission. This included extending a customs union to cover all 25 Member States – including Cyprus. But the Turkish Government insists that this does not mean that they have recognised the sovereignty of the Greek Cypriots over the entire island.

The island of Cyprus has long been a major issue of contention when it comes to Turkey's relationship with the European Union. Since the accession of the southern part of the island, which is recognised by the international community as the sole legitimate entity governing the island, Turkey has come under increasing pressure to acknowledge its legitimacy. The dispute began in 1974 when Turkey invaded the north of the island in response to a Greek sponsored *coup d'etat* against the Cypriot Government. Since then Turkey has supported the Turkish Republic of Northern Cyprus financially and militarily and is the only country to recognise it diplomatically. Because of this situation the EU has had a *de facto* border with the Northern Turkish Government of Cyprus for more than a year now.

## Human Rights

An interesting issue often overlooked is that Turkey is a signatory to the Cairo Declaration on Human Rights in Islam. This declaration contains statements asserting that legal systems should be defined according to Shari'ah law (Islamic law as laid down by the Koran). This is in stark contrast to a ruling of the European Court of Human Rights on 13 February 2003 that declared, "*Shari'ah is incompatible with the fundamental principles of democracy.*"[3] Many people continue to doubt Turkey's commitment to human rights, especially in regard to its large Kurdish population. This dispute, which has been running for almost a century, has cost tens of thousands of lives on both sides of the struggle. Only recently has the Kurdish language been legalised, and Kurdish television is only broadcast for half an hour per week on the state broadcasting corporation TRT.

## Religion

The issue of church and state separation is a complicated one in regard to Turkey. Even though it claims to be a secular state, the Turkish Government continues to award Islam special privileges over other religions. For example, thousands of imams are employed by the Government, of which many are sent to various countries in the EU. In contrast to this, the Greek Orthodox Church has been trying in vein to re-open the Theological School of Chalki in Turkey, despite promises made by the Turkish Government.[4]

Marriage is another main area of contention with respect to EU law and culture. To this day, state funded imams in Turkey continue to consecrate polygamous marriages. This is incompatible with the European Union's insistence that women be granted equal rights with their male counterparts. It is worth noting, however, that some existing Member States of the EU also award special status to particular religions. In the United Kingdom, for example, under the Act of Settlement of 1701, any person in the order of succession to the throne automatically removes

themselves from the aforementioned succession if they become a Roman Catholic or marry a Roman Catholic. The Act aims to keep intact the "*protestant line to the imperial crown and dignity of the said realms of England, France and Ireland.*"[5] Even though in practice the United Kingdom has evolved into a modern secular state, it is possible to argue that technically it isn't, whereas it is perfectly plausible to say the opposite about Turkey.

## Going it alone?

Many countries, including Austria, Germany and France, have suggested a "*partnership*" between the EU and Turkey, a proposal short of the full membership Turkey desires. However, Turkish officials have begun to play hardball. At a conference in Italy at the beginning of September, the Turkish Prime Minister warned EU officials that attempts to impose new conditions for entry on his country could make Turkey "*go its own way*". Quoted in the Turkish daily, *Zaman,* Mr Erdogan stated, "*if the promises are not kept, then we will name the Copenhagen criteria as Ankara criteria and continue our own way.*" This was a reiteration of a statement made in *The Economist* by Turkish Foreign Minister, Abdullah Gul, who said, "*Should [the EU] place anything short of full membership, or any new conditions, we will walk away. And this time it will be for good.*" It is clear that Turkey wants nothing short of full membership, and its leaders are prepared to put up a fight.

## What Now?

Many people talk of Turkey having come along way down the road to European Union membership, and that if it were to get knocked back at this stage, many of the reforms that have been made in the country could be repealed. Worse still, Islamofascists could topple the secular Government that currently exists. Turkish membership of course has its upsides and downsides. On the one hand, downsides of Turkish entry will be its dramatic effect on the demographics of European society and culture, along with the possible negative effects it will have on the overall economic performance of the EU. On the other, Turkish entry to the EU could give the Union a much more Atlanticist outlook and could counteract the French penchant for always disagreeing with the US. After all is said and done, Turkish accession is unlikely to come down to these key issues; in the end it will probably be a trade off with the French and other EU members who exploit the Common Agricultural Policy and don't want to see any of their share given away to Turkey.

If Turkey does become a fully-fledged Member State of the European Union, it would have a dramatic effect on the future direction of the EU. There is no doubt that Turkey is culturally and religiously quite different from the existing Member States. Therefore, with Turkey as a member, it would be increasingly difficult for the EU to continue down the path of deeper political integration. Those who believe that the European project has already gone too far and would like to see a return to purely economic cooperation will welcome this occurrence.

Mr Sungar was quite right in his claims that the Turkish application is blighted by "*persistent uncertainty and confusion*" and world will be closely watching on 3 October when negotiations between the EU and Turkey commence.

1 Turkish Daily News, 6 August 2005
2 Euobserver.com, 3 August 2005
3 *Refah Partisi (the Welfare Party) and Others v. Turkey* [www.echr.coe.int/echr]
4 www.ec-patr.gr/mones/chalki/english.htm
5 www.legislation.act.gov.au/a/db_1788/current/pdf/db_1788.pdf

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# Celebrating the Great French Defeat at Trafalgar

*by Christie Davies*

The 200th anniversary of the Battle of Trafalgar on 21 October this year should be celebrated not as a British victory, but as a French defeat. It is fitting that we should pay homage to the skill and bravery of our sailors and of their leader, the great Admiral Horatio Nelson. However, not to give equal weight to the humiliating defeat of the French does seem chauvinistic. It makes it seem as if we are merely celebrating our own triumph, regardless of the rightness of our cause or the wickedness of the enemy, as if any decisive victory will do.

Nelson's victory over the Danes at Copenhagen in 1801 was just as much a *tour de force* as Trafalgar, but would we want to celebrate it so enthusiastically? Denmark was a small wavering country and it was as necessary to destroy the Danish fleet in 1801 and again in 1807 to prevent it coming under Napoleon's control and blocking Britain's access to the Baltic, as it was to eliminate the French fleet in Oran in 1940. Copenhagen was the second of Nelson's three great victories between the Nile and Trafalgar. New words entered the English language, namely 'to Copenhagen' and 'Copenhagening', meaning a pre-emptive strike on a fleet in harbour. Likewise we still speak of 'turning a blind eye', after Nelson's famously putting his telescope to that eye so that he could not see the senior admiral's signal to withdraw. Yet we could not possibly bring to the anniversary of Copenhagen the zest we feel about the 200th anniversary of Trafalgar. The Danes were not in and of themselves a threat to the peace of Europe, but a small country designed for victim-hood, later to be despoiled by war of Norway, Schleswig-Holstein, and indirectly Iceland, and to be forced into the EC on Britain's coat tails. The Danes still resent Nelson's pre-emptive attack and their museums are full of pictures of troops from the Scottish Highland regiments who came to occupy their capital in 1807. Copenhagen was a tragedy. The Danes were guilty only of folly and perhaps an amalgam of fear and desire.

By contrast, we celebrate Trafalgar because of the wickedness of the French enemy and because it saved the independence of the other states of Europe. It enabled us to create our own way of life based on the democracy of the limited state and free trade, which was also the basis of our unprecedented economic progress. Trafalgar was important because it ensured that France's European ambitions and the French way of organising state and society were doomed, at least for the next century. Trafalgar was a great French defeat. It was important not so much because it saved Britain from invasion, for Napoleon had already abandoned his plans to invade much as Hitler was to do in similar circumstances, but for the other countries of Europe. It meant that they could continue to trade with Britain and receive British military assistance by sea. The sea, Pitt and Britain's share of the globe, Gillray's famous 'plumb pudding', encircled the mere peninsular of Europe.

When the French extravagantly celebrate Napoleon's greatness and his victories on land as they are doing with the 200th anniversary of Austerlitz this year, the politically correct British are apt to be silent. Yet this silence is that of a people whose country was never invaded and occupied by Napoleon. Germany was. The French occupation is still remembered by the Germans, except Schröder of course, as Germany's 'time of greatest humiliation'. At the time of Trafalgar, Spain was Napoleon's ally, which is why the Spanish as well as the French fleet were destroyed by Nelson. It was not an alliance that was in Spain's interest. What could they possibly stand to gain from it? Napoleon soon showed the contempt he had for Spain by sweeping aside any pretence of rule through Spaniards and making his brother King of Spain. It is also likely that he wanted to annex some of the northern provinces of Spain to France. When the Spaniards rebelled against French rule, the French responded with atrocities whose horror has been captured forever by the genius of Goya. Wellington was able to fight alongside the Spanish guerrilla forces only because Nelson had won at Trafalgar and he could bring in men and supplies by sea through Portugal.

Napoleon and the French were defeated in Spain and also in Russia where they lost nearly half a million men. It is a measure of the oppressiveness of Napoleon's rule that half of those who died in his army in Russia were not French at all but conscripts from the countries Napoleon had occupied. Napoleon's decision to invade Russia was also a consequence of Trafalgar. Napoleon had responded to Britain's control of the sea with his Continental System of excluding all British trade, but the Russians were not complying. They had to be forced to obey. Like Hitler, Napoleon made the mistake of invading Russia with an unvanquished Britain behind him.

Trafalgar was, then, vital to the final success of the coalition of France's enemies. It was a great French defeat which all other Europeans can, and should, celebrate. The celebrations of Trafalgar Day on 21 October should include the playing of Tchaikovsky's *1812 Overture* with the substitution of the music of *God Save the Queen* for the music of *God Save the Tsar* that Tchaikovsky used in 1880. This would be historically correct since in 1812 the Russian national hymn, *God Save the Tsar* was indeed played to the same tune as *God Save the Queen*. Tchaikovsky incorporated into his *1812 Overture* the newer version only composed by Alexis Lvov in 1833. (It is the same tune as the Protestant hymn *God the Omnipotent*). Imagine the *Marseillaise* being scattered by, drowned by, destroyed by the sound of cannon and of the swell of the real 1812 Anglo–Russian national anthem *God Save the Queen and Tsar.*

What we are celebrating in the great defeat of Trafalgar is the restoration of a Europe of independent nation-states after Napoleon had reduced them to mere satellites to be exploited for the benefit of France. Napoleon was not a monster like Lenin or Hitler, but he imposed an intrusive, controlling bureaucracy on France and was extending it to the rest of Europe. He believed in the concentration of power in the hands of officials. He even wanted a single European currency. Trafalgar ensured the dismantling of this French nightmare. That is why it is still important to celebrate the French defeat at Trafalgar today.

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# The EU and the Folly of Human Rights

*by Robert Broadhurst*

The role of the EU in importing human rights into UK law is less prominent than that of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), a 1950 treaty that the UK signed with other European states. This has a wholly independent legal basis from the EU, and a central court of its own, the European Court of Human Rights, situated in Strasbourg. The Human Rights Act 1998 gave effect to the great majority of ECHR rights in our domestic courts; previously, individuals and groups had to go to the Strasbourg court to argue a case based on these rights. The EU's influence, however, is also important, and increasingly so.

First, then, the principled opposition. Modern human rights represent a dangerous shift in the fundamental premise of our legal system. English law always used to be founded on the principle that everything was permissible unless there was a specific law against it. When the liberty of the subject was truly respected, this principle was accompanied by legislators who were, in general, sincerely wary of passing laws that impinged on people's lives. The result was a country inhabited by some of the freest people in the world. With positive, substantive human rights, which try to codify every entitlement we might have, this approach has been turned on its head. The dangerous step has been taken whereby we look to the state to determine what we can do, not just what we can't; in other words, we rely on the state to hand down our every freedom and right.

The above is an abstract argument. So what about the practice? Many of the harmful effects of human rights derive from one of their inevitable attributes – a high degree of vagueness. Human rights documents are inevitably vague because they try to incorporate every fundamental entitlement a human being might possess, and so need the potential to apply to every facet of our existence. With regard to the ECHR, this vagueness is exacerbated by the fact that many of the rights are actually highly qualified, meaning in the eyes of the law there are plenty of justifiable reasons for infringing them. These reasons, examples being protecting national security and public morals, are themselves very much open to interpretation.

Such vagueness, for one, renders unreliable what we are told are our fundamental rights. Does Article 3 ECHR, against inhuman or degrading treatment, protect us from sleep deprivation by the police if we are taken into custody? Are we allowed to block major roads for peaceful political protests under the Article 11 right to freedom of assembly and association? Does the Article 10, the right to freedom of expression, cover the making of a racist political speech in public? It is impossible to answer these questions, and so many others that may arise due to the infinite possibilities of a complex society, by just looking at the law itself. It is up to the courts to try and pin down the meaning in particular situations, but with such vague legal material to work with the interpretations can and do vary wildly. This means human rights fail the test for the Rule of Law prescribed by Friedrich von Hayek in *The Road to Serfdom*: the individual cannot foresee with any certainty the bounds of the state's coercive authority, and so cannot plan their actions in such a way as to avoid falling foul of it.

As already noted, the vagaries of human rights put a much greater emphasis on judicial interpretation. This has done no less than undermine our democracy. Human rights potentially apply to anything and everything before the courts, as Section 6(3) of the Human Rights Act defines courts as public authorities, and public authorities under Section 6(1) are prohibited from acting contrary to ECHR rights. Therefore, every court decision has to be human rights compatible. In addition to Section 6, Section 3(1) obliges the courts to interpret legislation in line with human rights if it is considered at all possible. The upshot of all this is that unaccountable judges end up making decisions that in a democracy should be made by elected law-makers, in order, as the judges see it, of satisfying rights demands. An example: The Rent Act 1977 takes into account the relationship of tenants, giving a person who lives with "*his or her wife or husband*" extra entitlements. In the 2004 *Ghaidan v Mendoza* case, the court interpreted "*his or her wife or husband*" to include monogamous homosexual relationships as well as heterosexual marriage. This was to make the law compatible with the right to non-discrimination under Article 14 ECHR. Whether or not you think this is a good change is irrelevant. In a democracy you should be prepared to fight your case before the public, not rely on low-profile judicial decree to get your way.

**As well as eroding democracy, human rights have seriously jeopardised common authority in society**

As well as eroding democracy, human rights have seriously jeopardised common authority in society. Simultaneously, they have proved useless against dangerous state empowerment brought about by the Blair Government, such as house arrest without charge or trial. The way the Human Rights Act is constructed gives us this worst of both worlds scenario. To preserve Parliamentary Sovereignty in critical situations, Section 3(2) of the Act states that if legislation absolutely cannot be read compatibly with the rights concerned, it remains entirely valid and must still be applied. The higher courts can then decide whether or not to issue a declaration of incompatibility under Section 4. This is what the House of Lords did in December 2004 when it ruled on a case brought against the imprisonment without charge or trial of foreign nationals suspected of terrorist involvement. It is likely the 'control orders' subsequently brought in by the Government, which can be applied to British citizens as well as aliens, would, if challenged, be found incompatible with the Article 6 right to a fair trial. But their legal potency would be untouched. In short, a determined central government can still limit freedom and curb rights as much as it likes.

**A crucial fact to remember is that there can be no freedom without social order**

On the other hand, the courts can quash policies and executive actions of public authorities if they are deemed rights-incompatible. The trouble is, many of these

actions represent far more reasonable lower-level authority, such as headmasters trying to enforce school uniform codes and prison governors trying to punish bad inmate behaviour. Liberal interpretations of human rights can totally hamstring such authority, and even if the case goes against the (often unworthy) challenger, the threat of legal action is always dangling over the head of those trying to maintain order in society. A crucial fact to remember is that there can be no freedom without social order. The ECHR right to non-discrimination seems pretty futile in the midst of a race riot.

**Do we really have an inalienable right to non-discrimination? Just how far does our right to freedom of expression extend?**

Some people argue that elevating human rights to a superior constitutional position, allowing the courts to strike down incompatible Acts of Parliament, would combat the worst authoritarianism of the Blair Government, and any similar future government. This might well be true. But such a seismic change would also greatly exacerbate the erosion of democracy brought about by human rights. A British Supreme Court would inevitably find itself ruling on matters of huge political import, insulated from the desires of the public, much as the US Supreme Court has long done. I believe this highlights the fundamentally bad character of human rights. They are an attempt to transfer political questions into the legal arena, where, naturally, democracy is not nearly as strong and debate is stymied. Do we really have an inalienable right to non-discrimination? Just how far does our right to freedom of expression extend? Should the right against 'degrading treatment' be absolute? These are intensely political questions, not ones of legal detail. It is a dangerous situation when people try to legally impose political notions they maintain are objectively true. No one can lay claim to objective political truth, but the case for inalienable human rights is often put in such terms. Not all politicians are always the epitome of responsibility when it comes to important issues, but that does not mean we should give up on democracy. It means we should make every effort to strengthen it.

How, then, has the EU contributed to the influence of harmful human rights? The original incorporation of human rights into the law of what was then the EEC can be ascribed to the highly activist European Court of Justice. The crunch decision that first established human rights as a permanent feature of Community law was the 1970 *Internationale Handelsgeschellschaft* case (Case 11/70). This was an action brought by a German national who claimed that an EEC regulation infringed some of his rights under German law. The case presented the ECJ with a significant problem. The Court was determined not to allow Community law to be subject to national legal principles, even constitutional ones. On the other hand, it realised that simply to deny any force to the concept of fundamental rights, held so dear in the German Constitution as well as many other Member State legal systems, would put it on an irretrievable collision course with national courts. Its answer was to accept and uphold fundamental rights as "*general principles*" of Community law, "*inspired by the constitutional traditions common to the Member States.*" The Court then promptly decided that the claimant's general principle rights had not been infringed by the regulation. The German courts disagreed, and there was a legal stand-off for years, until the German authorities more or less accepted the validity of Community rights principles in a domestic case in 1987.

*Internationale Handelsgeschellschaft* left the content of human rights general principles very unclear (which was largely why the German courts remained so sceptical about their efficacy). The ECJ had talked about drawing on principles common to the Member States; presumably Britain, with its common law legal tradition and uncodified Constitution, was glossed over in the judges' minds, as there is not a great deal in common between the legal system of this country and that of a Continental civil law state. More informative was the implication in this statement that the Community would have its own distinct principles, even though they may be "*inspired*" by concepts from the Member States. It was not until the 1974 *Nold* case (Case 4/73) that more light was shed on the ECJ's thinking. In this decision the Court firmly stated that fundamental rights form an integral part of the general principles of Community law (despite there being no mention of them in the Treaty of Rome), and that in upholding them the Court will draw inspiration from the constitutional traditions common to Member States, as well as international treaties for the protection of human rights that have been signed by Member States. The most obvious of the latter was of course the ECHR. In time, the *Nold* definition of human rights general principles would be enshrined in Article 6(2) of the Treaty of Maastricht.

A burning question that arose with the new enthusiasm of the ECJ to rule on human rights was this: would the Court take it upon itself to hear any human rights case from a national of a Member State? One answer came in 1985 in *Cinéthèque* (Joined Cases 60 and 61/84). The ECJ ruled that a French law restricting the sale of films on video while they were being shown in cinemas fell under a treaty provision allowing certain derogations to the free movement of goods. As the restriction was carried out by the French Government in the public interest and not specifically discriminatory to inter-state trade, it fell outside the jurisdiction of the Court to determine if it was compliant with human rights general principles (the claimant had partly argued on the basis of the right to freedom of expression in the ECHR). This reasoning was reinforced in the *Demirel* case of 1987 (Case 12/86). Taking both cases together, it seemed if Member State action was outside Community law, either because there was no Community competence or because a Member State had a valid derogation, human rights general principles could not be applied.

Of course, the clear implication was that if Community law did apply, Member States would be bound to act in compliance with ECJ-constructed rights. This was left in no doubt after the 1989 *Wachauf* case (Case 5/88), in which it was ruled that when implementing Community law, Member States had to ensure general principle human rights were respected. Considering the amount of national law that is actually implementation of EU measures, this was radical enough. But an even more worrying extension of both ECJ control and the influence of human rights followed. In 1991 the ECJ delivered its verdict in the *ERT* case (Case C-260/89), in which it appeared to go totally against its reasoning in *Cinéthèque*. It ruled that when Member States acted whilst relying on a derogation from Community law they were still bound by human rights general principles. The rather tortured rationale seemed to be that such action was still under Community law, albeit a

Community provision that allowed them to act outside of Community law. The *Familiapress* ruling in 1997 (Case C-368/95) backed up the *ERT* decision. In the face of the ECJ's fervour for human rights the prospects for national sovereignty were dire.

Aside from the inclusion of the concept of human rights general principles in the Treaty of Maastricht, it was not until 1994 that the politicians of the EU, rather than the judges, took the initiative in bolstering the effect of human rights. The Council of Ministers asked the ECJ to issue an opinion on whether or not the EC (solely the First Pillar of the EU) could legally accede to the ECHR in its own right. Perhaps surprisingly, Opinion 2/94, issued in 1996, came back negative. The fundamental obstacle the ECJ saw was that the Community did not have any treaty basis for creating binding human rights policies or entering international agreements for that purpose. Only treaty amendment could make accession possible. The ECJ's coolness might have derived from a realisation on its part of the legal problems accession would throw up. The relationship between the ECHR and Community legal systems would probably prove a minefield. For instance, the ECHR requires individuals seeking access to the European Court of Human Rights to first exhaust 'domestic remedies'; in other words, to have gone through all national legal channels beforehand. If the Community acceded, would Member State citizens have to go through the ECJ as well before they could apply to the Strasbourg court? Many have speculated that the ECJ was also concerned about its status within the Community legal order. Without accession, it would remain top court. With accession it would have to accept, along with the other institutions of the Community, the rulings of the European Court of Human Rights on fundamental rights issues, which as we have seen can be wide in scope.

**Many rights the EU claims to be guaranteeing, such as the right to education, cover subjects for which the EU has little competence to make provision**

Having ECHR membership rebuffed, the integrationists in the EU decided they would just have to draw up their own human rights document. At the 2000 Nice European Council, the Charter of Fundamental Rights for the EU was adopted as a "*solemn proclamation*" by the Commission, Council and Parliament and approved by the Member States. The Charter was certainly ambitious. As well as containing more familiar civil and political rights like those found in the ECHR, such as the right to respect for private and family life (Article 7) and the right to freedom of expression (Article 11), it also gave voice to social rights such as the right to education (Article 14), the right to engage in work (Article 15), and the right to asylum under the 1951 UN Convention on Refugees (Article 18). Chapter III of the Charter bestows all sorts of rights to equality between different categories of people, whereas Chapter IV hands down numerous labour rights, such as the right to limitation of working hours (Article 31) and workers' right to information and consultation within their place of employment (Article 27). There is also the right to social security benefits (Article 34) and a right to healthcare provision (Article 35). What the typically activist ECJ could do with a fully binding Charter causes the mind to boggle. Criticism has also been levelled at the fact that many rights the EU claims to be guaranteeing, such as the right to education, cover subjects for which the EU has little competence to make provision.

The rights of the Charter need to be seen in light of the document's rules on its application. Article 51(2) states quite categorically that the Charter creates no new competences for the EU, and in Article 51(1) it is said the rights only apply to EU bodies and Member States where they are implementing EU law. However, the same article also says the EU and Member States should "*promote*" the Charter's rights, which appears contradictory to Article 51(2). Article 52(1) allows for limitations on the Charter rights. These must be "*provided for by law and respect the essence*" of the rights being circumscribed. They may only be made subject to the principle of proportionality, and if they are "*necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.*" In other words, a determined ECJ could overrule just about any limitation. Interestingly, given the possible motivations for Opinion 2/94, Article 52(3) says that the interpretation of Charter rights that correspond with ECHR rights will at minimum be the same as the ECHR understanding. However, the Charter could be interpreted as giving even more fulsome entitlements.

**The Charter is not a legally binding document. A "*solemn proclamation*" it may be, but a legal agreement it is not**

Given all this, it is of some comfort to those concerned about the impact of human rights that the Charter is not a legally binding document. A "*solemn proclamation*" it may be, but a legal agreement it is not. However, it should come as no surprise that it has not been without some effect. The Commission has a policy of reviewing proposed legislation that may impact fundamental rights to ensure it complies with the Charter (in its opinion). The Court of First Instance referred to the Charter in the 2002 *Jégo-Quéré* judgement (Case T-177/01), where it relied on the Article 47 right to an effective remedy and fair trial to develop a less restrictive test for whether individuals could challenge EC regulations. The ECJ has yet to refer to the Charter in a judgement, but it seems to be only a matter of time.

As ever, though, the integrationists were not content; from the beginning, the likes of France and Germany had wanted the Charter to have full legal effect. Sure enough, when the draft Constitution was published, Part II consisted of the Charter of Fundamental Rights. If the Constitution is reanimated and implemented by one means or another, the Charter will be as legally binding as the rest of it. The ECJ, one can only assume, would have a field day. It should also be noted that the draft Constitution, under Article I-9(2), commits the EU to acceding to the ECHR. It seems the EU is determined to incorporate human rights into its ever-more extensive project. This is just one more reason why that project should be countered at every turn.

*Robert Broadhurst is studying Politics with Law at the University of Durham, where he also works on the student newspaper* Palatinate. *He can be contacted at r.j.k.broadhurst@dur.ac.uk.*

# Why the Europlane will Never Fly – a status report

*by Norman Sanders*

I published an article with this title in the November 2002 edition of *The European Journal*. Actually, I wrote it some years earlier before the euro became a reality, in the belief that even politicians wouldn't commit such a palpable error, but they did. The article compared the behaviour of mechanical energy in physical systems with that of economic energy in commercial systems. In mechanical systems, if you don't allow the energy to travel naturally from place to place, the system will fail; aircraft wings will fall off, tall buildings will fall down and your car engine will end up on the road. Similarly, if you don't allow economical energy to travel naturally, things will go wrong.

**If you don't allow economical energy to travel naturally, things will go wrong**

The euro is another way of saying that the exchange rates between the currencies of the participants is fixed for all time; you could equally have kept the national currencies but frozen their exchange rates. But it is the exchange rates that provide the necessary economic safety. In turn, natural exchange rates are determined by the economic success of each national component which includes, amongst many other factors, the cost of borrowing money, the bank rate.

When I wrote the article, I wasn't able to predict the specific problems that the euro would create. There was no history to go on; I didn't have the equivalent of our centuries of experience of machines and buildings. However, the analogy was crystal clear, and was accentuated by the fudging that went on on the part of some of the euro members; they pretended that their economies were within the ground rules, and Brussels pretended to believe them. Bad mechanical design.

But now we see it. The rupture had to start somewhere. It could have been Ireland or it could have been Portugal. As it turns out it is Italy, one of those originally guilty of creative bookkeeping. What undermines the ability of the European Central Bank to set a single bank rate to suit all is that it isn't possible to achieve a single inflation rate throughout euroland. This is equivalent to trying to arrange for the amplitudes of mechanical oscillations to be the same everywhere in an engine. Pure nonsense. There would be no point in trying to do it, and it cannot be done. We let the oscillations be a function of conditions local to the component – what it's made of, its thickness, elasticity, etc – which is precisely what Italy now needs because of its public debt. The fundamental solution to Italy's problem is to change its exchange rate; it must redesign its interface with the economies of the rest of the world – and not just Europe. Italy must be allowed to return to the lira, a lira totally independent of all other currencies, including the US dollar.

But Italy is not alone. There are significant disparities between the Spanish and German inflation rates. Spain is grappling with inflation while Germany is grappling with deflation; economic fatigue with a vengeance! They, too, need to wrest control of their lending rates.

Though today's problem concerns the euro, there is nothing new about it. We have seen it all before in other guises, and when you look at what has happened during the last hundred years or so you can only regret that politicians and economists have had such a tenuous grasp of the real world. None of the attempts at unifying economies has succeeded: the Gold Standard, Bretton Woods, the ERM. They are all manifestations of the fact that rigidly joining two (or more) oscillating components of a system results in its destruction.

**None of the attempts at unifying economies has succeeded: the Gold Standard, Bretton Woods, the ERM**

Instead of seeking some form of science in which to couch the discussion, it is all concerned with the names of the politicians involved at the time: Berlusconi *vs* Prodi, Blair *vs* Brown. It's as though the behaviour of an engine depended on what colour we painted it. A year from now some of the names will have changed, perhaps in Germany and France, and even possibly in Britain, and the recriminations will be expressed in different terminology, but the underlying problem will remain, and remain ignored if past experience is anything to go on. Until we reach chaos. The engine will then fall onto the road. I don't know when that will be, but it can't be far off. But if Tony Blair is looking for a departure bang instead of a whimper, he could hardly do better than set a smooth chain of events in motion leading to the non-chaotic end of the euro. However, the probability of that happening is not great.

*Norman Sanders is a retired computer pioneer from the early days at the Cambridge University Mathematics Laboratory.*

## *… news in brief*

**Paris continues to pressure Tehran**

The French President, Jacques Chirac, has again called on the Islamic Republic of Iran to end its uranium enrichment activities and to return to the negotiating table over its nuclear programme. He said that if Tehran did not do this, then the UN Security Council would have to be seized of the matter. Speaking at a meeting of diplomats in Paris, Chirac said that he hoped that Iran's sense of responsibility would prevail and that the country would work to build confidence. For nearly two years, three states in the European Union (Britain, France and Germany) have been trying to negotiate with the Iranians, hoping thereby to score a diplomatic victory and avoid a military strike by the United States or Israel. Chirac said there was still time for dialogue, even though everyone knows that the talks between the Europeans and the Iranians have been in crisis ever since the latter rejected the former's proposal, according to which Iran would have abandoned its nuclear programme altogether in return for a package of aid and trade cooperation.

Shortly after rejecting the European proposal, the Iranians reactivated the nuclear plant at Isfahan. This caused the Europeans to cancel a meeting which had been scheduled for Wednesday, as a protest at what they say is breach of the terms of an agreement reached last year. [*Die Welt*, 30th August 2005]

# FACTS

**1 Danes uneasy about Turkey**

A recent poll conducted by the Green Institute for the Danish financial daily, *Boersen*, shows that the majority of Danes are still against Turkish accession to the European Union. 62.8 per cent of Danes surveyed were against Turkey joining the EU; 24.2 per cent were in favour, while 7.3 per cent were undecided and another 5.6 per cent were neutral. 47 per cent of Danes feel that Turkish membership would lead to an influx of manual workers (who would work for lower wages) and a further 73 per cent feel that Turkish accession would not benefit the Danish economy.

[*www.eubusiness.com* 5 September 2005]

**2 Czechs push back euro adoption**

The Czech Republic had planned on joining the single currency as early as 2009, but Prime Minister Jiri Paroubek has now said that his country will not be able to join until at least 2010, He cites both political and economic reasons as factors in the delay. A general election will be held in mid 2006, and Czech officials want to give a new government sufficient time to consider its position on joining the euro. The Prime Minister expects his Government to approve his proposed 1 January 2010 adoption date at a meeting in November of this year.

[*BBC News* 5 September 2005]

**3 Brussels says go metric**

The European Commission has been kind to remind Britain of its legal obligation to switch to the metric system. After heavy lobbying from unnamed groups, officials in Brussels have stepped up their attempt to get Britain to dump the imperial system, the use of pints, miles and acres. (Britain's main pro-metrification group, the UK Metric Association, however, recently told the *Financial Times* that it was not *"strongly lobbying"* the Commission). If the UK fails to set a date for metrification, it faces an infringement procedure in the ECJ. Going to the pub and ordering 586ml doesn't have the same ring, now does it? [*EU Observer* 29 August 2005]

**4 EU to negotiate new visa-waiver scheme with US**

During a recent visit to Lithuania, Commissioner Franco Frattini announced that the EU will ask the United States to extend its visa-waiver programme on behalf of its 10 new Member States. If officials in Washington agree to the extension, nationals of the accession states would no longer require a visa before entering the US. Frattini will discuss the issue with officials on an upcoming trip to the US. He also agreed to help new Member States meet requirements for inclusion in the Schengen Area by 2007.

[*www.eubusiness.com* 2 September 2005]

**5 EU pledges support for Katrina victims**

The EU finally received an official request from the US Federal Emergency Management Agency (FEMA) on 4 September to provide emergency assistance to those devastated by Hurricane Katrina; this comes after several days of informal contact between US authorities and EU officials. The US has requested first aid kits, blankets, water and 500,000 prepared meals, but it is expected that additional aid requirements will be identified over the coming days and weeks. A Commission press release confirmed that, *"The European response will be channelled through the Community Civil Protection Mechanism, in close consultation with the UK Presidency. It has been agreed with the Presidency that they would act as the point of contact to the U.S. while the Mechanism would focus on internal coordination."*

[*European Commission, Midday Express* 5 September 2005]

**6 New 'Citizen-friendly' EP website**

In what seems a last ditch effort to engage what it sees as apathetic citizens, the European Parliament is relaunching its website. The revamped site, which has been billed as a *"dynamic and modern information tool"*, will include five sections in 20 languages and attempt to 'dumb-down' the jargon that is Eurospeak (a language not even those well-versed in the EU can be expected to understand fully). The EP President, Josep Borrell, will launch the new site at a special press conference in Brussels on September 13.

[*www.eupolitix.com* 2 September 2005]

**7 Putin warns Western leaders**

Vladimir Putin has warned that he would not accept Western interference in ex-Soviet republics. Speaking to academics and journalists in the Kremlin, the Russian President specifically denounced non-governmental organisations (that were 'quietly backed' by Western Governments), showing his continued contempt over the Ukraine's Orange Revolution last December that overthrew the country's then pro-Russian leader. Putin stated, *"Our foreign partners may be making a mistake… We are not against any changes in the former Soviet Union. We are afraid only that those changes will be chaotic. Otherwise there will be banana republics where he who shouts loudest wins."* He also insisted that he was not going to run for re-election in 2008. [*The Times* 6 September 2005]

**8 Cancer strikes Kosovan leader**

Just weeks before Kosovo was to enter a *"new diplomatic phase to determine its future,"* the country's President, Ibrahim Rugova, has announced that he is suffering from lung cancer. The announcement came after Rugova returned from a week of testing at a US military hospital in Germany; he said he would remain in office while undergoing intense treatment. The President's condition has come on the eve of a critical juncture in Kosovo's history – the UN Security Council will determine next month whether the country is prepared to begin negotiations on its possible independence from Serbia.

[*Financial Times* 6 September 2005]

# BOOK REVIEWS

## The Role of Business in the Modern World

By **David Henderson,** foreword by **Steve Forbes**

First published by the Institute of Economic Affairs, London, August 2004. Re-published in the USA by the Competitive Enterprise Institute, November 2004. ISBN 1-889865-04-4, £12.50.

*Reviewed by Roger Helmer, MEP*

### The business of business is business!

A few weeks ago in Pyongyang, I met with North Korea's Deputy Trade Minister, Mr Kim. Asked to explain the huge discrepancy between the economic performance of North and South Korea (per capita GDP in the North is around 5 per cent of the South's figure), he blamed the collapse of the socialist markets of Eastern Europe, the US embargo, and natural disasters. I asked him whether, in the spirit of "*Juche*" (self-reliance), they should not look for internal as well as external causes, and he replied rather huffily that they were entitled to choose their own economic system.

David Henderson's excellent book, *The Role of Business in the Modern World,* makes a powerful case that economic success is determined largely by a country's internal factors and policies, rather than by external factors. Looking at economic performance over the last half century, he notes that many countries that were poor in the fifties are now well on the road to prosperity, or in some cases (like Singapore) actually ahead of most Western countries in per capita terms. Yet many others, notably but not solely in Africa, are little richer, and in some cases poorer.

The key differences, he argues, are free markets, and their essential infrastructure – the rule of law, property rights, and honest and credible institutions. Here he agrees, perhaps surprisingly, with Graham Watson, MEP, leader of the Liberal group in the European Parliament. Graham was on our recent visit to North Korea, and he remarked that, *"Markets are the most powerful wealth-creation device known to man,*" and that, *"Over recent decades, markets have lifted 300+ million people out of poverty in Asia.*" Henderson would agree, and so do I.

North and South Korea provide perhaps the best head-to-head test of a free market against a centrally planned economy, and the contrast is dramatic.

**Without capitalism and free markets, we would none of us have become wealthier; and the poor remain poor not because of capitalism, but because of the lack of it.**

It follows that global inequality and global poverty are not the fault of capitalism or of globalisation. Without capitalism and free markets, we would none of us have become wealthier; and the poor remain poor not because of capitalism, but because of the lack of it. Henderson agrees that protectionism in the West (like the EU's infamous CAP) have made life tougher for developing countries, but still sees failure primarily as a result of the lack of free markets.

Henderson then turns his attention to the modern fad of *"Corporate Social Responsibility"*, or CSR. This says, in a nutshell, that businesses should not be judged on profit alone, but on the *"triple bottom line*" of social policy, environmental policy and economic efficiency. Many corporate CEOs have bought into CSR (or at least pay lip-service to it), presumably to ward off criticism from the green lobby and the anti-globalisation movement.

Henderson makes a strong case that profits remain the best overall measure of the value that an enterprise offers, not only to its customers, but to society as a whole, and argues convincingly that multiple objectives will undermine performance. He accepts that externalities need to be addressed (for example the presumed cost to the environment of $CO_2$ emissions), but these he says are the responsibility of government, which should address them by general regulation that would apply to all enterprises. Such regulation should be circumspect, however, to ensure it does not put at risk the competitiveness of the whole economy.

CSR may not deliver even in its own terms. For example, the *"social bottom line*" may lead to attempts to introduce Western social conditions to developing countries. But the standards that are right for Surbiton may not be right for Somalia. The low wages of developing countries enable them to get a foot on the ladder, and as they become more successful, wages and conditions improve. I can confirm this from my own experience. I have started businesses in Vietnam and Morocco. I also ran a business in the late 1980s in Malaysia and saw at first hand the rapid rise in wage levels and general prosperity.

Advocates of CSR call for *"vanguard companies*" to adopt CSR measures. But if others do not follow these companies, they will lose out to competitors. And if their policies become the norm, there is a risk that they will damage the competitiveness of the whole economy, compared (say) to China and India, and as usual we shall end up exporting businesses and jobs.

I rarely read a book that substantially changes my opinion, but this is one of them. I am dealing with the CSR issue on the European Parliament's Unemployment Committee. Previously, I was prepared to give CSR my qualified approval, provided it was approached on a voluntary and not a statutory basis. Now, I feel I can recognise it for what it is. It is anti-capitalism with a smile. It is Luddism with new clothes.

We shall all be better served if business gets on with business, leaving regulation (and not too much of it) to government.

*Roger Helmer is a Member of the European Parliament for the East Midlands and a member of the European Foundation's UK Advisory Board.*

# Plan B for Europe: Lost Opportunities in the EU Constitution Debate

Edited by **Dr Lee Rotherham**, Bruges Group/Skeptika, pp 71, £7.00

*Reviewed by Matthew Glanville*

It can be surprising how often grand efforts in politics come to little, think of the numerous Royal commissions or Select Committee reports that languish unread and unloved. The European Constitution is thankfully such a case. For almost two years, just over a hundred representatives and thousands of advisors (of which the author of this pamphlet was one), lobbyists, national civil servants, Commission and European Parliament staff laboured away drafting submissions and amendments to the evolving European Constitution. The actual work of writing the Constitution fell to a very small group, the Praesidium, who secretly and seemingly isolated from the debates within the Convention itself, produced the actual text. Yet, thanks ironically to the French, the whole grand exercise has come to nothing. *Plan B for Europe* contains a collection of the submissions that were fed into this process from those who represented sceptical opinion within the Convention.

The main document at the heart of this collection is the *Europe of Democracies* text, which set out an alternative vision of how the EU might work. The signatories to *Europe of Democracies* were a disparate group from various political backgrounds – from Scandinavian socialists through Gaullists to British Conservatives. Their range of backgrounds and political views was in many ways a strength; it showed that Eurocritical opinion was not limited to isolationist groups and had broadly based support.

As its authors would be the first to recognise, *Europe of Democracies* would not stand comparison with the stirring words of the American Constitution or even the overblown beginning of the Iraqi Constitution, "*We the Peoples of Mesopotamia … inventers of the alphabet,*" etc. However, as a corrective to the odd combination of hyperbole and obscurity that characterises the main Constitution text, it cannot be bettered. Setting out a series of broad principles on which any European Constitution could be based, it offers a firmly nation state and democratically based approach. An early version of the document appeared in this magazine in 2003. As the author explains in his preface, *Europe of Democracies* also served to show that the Constitution delivered with fanfare by Giscard D'Estaing was not the only way forward and that there was a Eurosceptic alternative.

As well as *Europe of Democracies*, this pamphlet contains a series of other submissions to the Constitution. Submissions were encouraged by the Praesidum and circulated to all the members of the Convention. The Convention process itself was opaque with interminable debates being summed up by Valerie Giscard D'Estaing with no reference to the substance of the debates, a tendency that grew worse when the Convention went into the drafting phase. Hundreds of amendments were submitted and some even debated but new elements of the Constitution would emerge slowly and shyly, often late in the evening and usually only in French for at least a day or two. In the face of this drip, drip of federalism the authors of the papers collected here valiantly sought signatures and tried to form coalitions to stem the insidious flood of federalism. Insidious is not too strong a term; consider the lessons of the Youth Convention when 50 of the Youth Conventioneers criticised the working methods as undemocratic and the federalist conclusions as unrepresentative of swathes of opinion in the Youth Convention (for more details see the paper entitled *Speaking from Experience*).

The sense of unreality is captured very well in the paper entitled *Systems of Mismanagement* on whistleblowing, which described the sorry state of the EU's financial systems. Sadly, as with so much in this collection, the immediate effect in terms of influencing the Constitution was limited and genuine opportunities for debate were lost. Unfortunately space precludes a discussion of the other submissions contained in this excellent collection, but the submissions covered topics as diverse as defence, fisheries policy, the extension of QMV and the Council of Europe.

The ideas contained in this collection offer a powerful critique of the Convention process and help explain how the Constitution was ultimately defeated. The ideas contained in these submissions quietly entered the mainstream in the UK; they started appearing in the press mainly through studious efforts by one of the British representatives on the Convention, the Rt Hon. David Heathcoat-Amory, MP. Once these ideas were taken up by *The Sun* and several other national papers, the pressure on the UK Government became too much to bear and they conceded a referendum on the Constitution. Referenda had been mooted by French ministers at the start of the Convention process, but once the UK Government had recognised the importance of the issue and conceded a referendum the French Government was duty bound to hold one. This collection is essential reading for understanding the Eurosceptic approach within the Convention and the seeds of the Eurosceptics' ultimate success in, if not killing the Convention outright, at least freezing it for the foreseeable future.

*Matthew Glanville is the former Secretary of the European Research Group.*

Copies of *Plan B for Europe* are available from the Bruges Group for £7.00

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# Alarming Drum: Britain's European Dilemma

By **Peter Morgan,** Imprint Academic, 412pp, 2005, ISBN 1-84540-105-1

*Reviewed by Matthew Attwood*

*"Parliamentary democracy is Britain's heritage; and its legacy to the world."*

So begins Peter Morgan's scholarly history of the EU and British participation in that most enduring of the Twentieth Century's many attempts to achieve political union across all or parts of the continent of Europe. Readers would be right to detect a martial tone; as the author reminds us, "*the alarming drum*" appears in Byron's *Childe Harold* prior to the battle of Quatre Bras, a prelude to Napoleon's final rout at Waterloo. But this impassioned beginning belies a measured and exhaustive study of what Morgan sees as our European dilemma: how to safeguard British political culture without abandoning the Union altogether. Those who find military analogy and Byronic quotations off-putting (surely a minority among *European Journal* subscribers) will be more impressed by Morgan's credentials. A former Director General of the Institute of Directors, he spent eight years as a delegate to the European Economic and Social Committee in Brussels and three decades in industry with IBM.

**How can a constantly evolving project ever claim the consent of Europe's disparate peoples?**

The narrative portion of the book – more than a hundred pages are given over to two useful appendices, one comparing the EU's development with that of the Atlantic Alliance and the second surveying the countries and regions of Europe – is divided into two portions. Part I, *Misconceived Union*, deals with the EU's history from its inception to the formulation of the beleaguered Constitution Treaty. Tracing the dynamics driving the Union's various incarnations, from French post-war ambitions to "*lock Germany in*" to more recent pretensions to superpower status, Morgan demonstrates the EU's progressive nature. The principle of "*ever-closer union*", he shows, demands the subordination of national interests to those of the emerging supranational entity. Underpinning his critique is the question of legitimacy: how can a constantly evolving project ever claim the consent of Europe's disparate peoples? Morgan's exposition of the Convention on the Future of Europe, (in his view an opportunity to correct the Union's democratic deficit that became hijacked by the proponents of political integration to produce the Constitution Treaty), reminds us that this fundamental controversy remains unresolved.

**Recent events (involving somewhat more than *quatre* bras) would justify, in this reviewer's opinion at least, a chapter entitled *I Told You So* in any future edition**

Part II, *Misconceived Destiny*, concentrates explicitly on the relationship between Britain and the EU. Morgan's vision of an alliance based on intergovernmental co-operation is a familiar one and, although *Alarming Drum* was published before this summer's referenda in France and Holland, his arguments remain relevant to the current debate. While his preference is for thoroughgoing reform of the entire Union, he presciently accepts that this may not be possible and advocates British withdrawal from full membership of a protectionist EU in order to safeguard our wider interests. A full discussion of these is beyond the scope of the book, but Morgan's appraisal of the world outside EU-25 demonstrates the futility of an inward-looking, unreformed Union. Recent events (involving somewhat more than *quatre* bras) would justify, in this reviewer's opinion at least, a chapter entitled *I Told You So* in any future edition.

*Alarming Drum* is the product of intensive research and as such is a valuable resource for anyone who needs easy access to the facts surrounding Britain's relationship with the EU. Well-referenced and intelligently organised, it deserves to have a readership beyond the Eurosceptic 'converted'. Morgan is at his best when discussing the Union's implications for British legal and political tradition, but his historical sensibility is not confined to domestic issues. He is confident enough in his argument to acknowledge the apparent benefits of EU membership to Member States unsure of their future in the wake of a turbulent century and faced with the new challenges of globalisation. His view that such trepidation should not be manipulated by political elites intent on the formulation of an anachronistic political bloc will strike a chord with readers who believe the "anti" side in the EU debate battles *for* Europe rather than against it.

Morgan deftly rubbishes some of the most egregious cant to have emanated from the European project: the chapter *United in Diversity*, for example, brilliantly demonstrates the absence of a European *demos*. Yet like all the best books written from a Eurosceptic perspective, *Alarming Drum* does not simply confirm the beliefs of readers who approach it in sympathy with its contentions. Its fluent scholarship provides us with ammunition and its urgency reminds us that we witness a critical period in the EU's history. Prospects for a British referendum on the Union's direction receded months ago. This book, which is in essence a detailed case for the 'No' vote we never got to deliver, is already a shaming artefact from a year in which our Government, aping its predecessors, denied us the right to self-determination.

*Matthew Attwood is a freelance writer and can be contacted through the European Foundation or by emailing him at matthew_attwood@hotmail.com.*

# LETTERS TO THE EDITOR

***From Mr L.G. Holt***
Dear Madam,

It is extraordinary the lengths to which even the European Foundation will go to avoid, or postpone, putting UKIP out of business. Now it is to be a 'European Reform Forum' (A funny thing happened on the way to) which will tell us how awful the EU is for Britain (other member countries must look after themselves), yet an endless succession of Conservative MPs troop through the columns of the *Journal* endlessly telling us just that. But their *Party* never does anything about it when in Government except make it worse, and only manages a certain amount of piety and breastbeating when in Opposition (if that's what a certain invisibility is).

Oh dear, the Stakhanovites of scepticism: what would we do without them.

Yours faithfully,
L.G. Holt

***From Mr W. Darrel***
Dear Madam,

Having some back-numbers of the *European Journal* and wondering how to put them to the best use, I tried taking one with me into a local waiting room and slipping it into the usual pile of household, country and motoring magazines, hoping it would not suffer the selective ejection that seems to attend other less restrained and weighty-looking publications in such circumstances.

The next visitor who came in looked through the pile, unhesitatingly picked up the *Journal* I had left and sat down to read it.

Thus encouraged, I tried the same at another waiting room. This one, too, was picked up by the first visitor, who only put it down when he was called. I put it back on the pile. The next visitor also picked it up and was still reading it when I left. A week later it was still there. Success!

Not only does this seem to confirm that you have got your layout and cover design right: it suggests an easy way for subscribers to spread the realities of Britain's present EU subjection. I hope that some who pick it up may find it interesting enough to take out a subscription, too!

Yours faithfully,
W. Darrel

***From Hilary Bosanquet***
Dear Madam,

Charles Grant suggests (*EJ,* August 2005, European Reform Forum) that it is possible to enhance European democracy by holding *"an annual grand assembly"* between Member States and MEPs. How on earth would this additional jamboree get people closer to those who legislate over them? Surely it is both better for democracy and simpler – not to mention cheaper – to repatriate powers to their national governments and then to agree areas of commonality as and when appropriate.

He would have *"the British Commissioner … appear in parliament once a month … to answer questions and to explain what is going on."* Is this not an insulting and platitudinous sop to a national parliament that used to be answerable to its people? A pep-talk from Peter Mandleson, Neil Kinnock or Chris Patten come to that, with updated details and instruction on the latest regulatory measures – the law, in fact – is hardly democracy.

Neither is the *"disconnect between citizens and EU institutions"*, as he puts it, likely to be mendeed through his suggestions of 'variable geometry' and red and yellow subsidiarity cards: it will just become more complex, more unweildly; and presumably employ yet more failed polticians.

He is right, though, when he says that *"the EU system – the MEPs, journalists and the Commission officials – lives in its little cloud cuckoo land and perhaps does not talk to real people in the real world."*

But a 'talking shop' from which yet more verbiage trickles through to the people – disempowered and hence disinterested – does nothing to address the major issue: that an unelected oligarchy still holds the reins of power over us.

'Wah wah' is fine, provided my taxes don't pay for it. It doesn't encourage people's interest; it doesn't allow them any greater control; it doesn't shift the balance from ruling and regulating back towards serving the people. It isn't democracy.

Your faithfully,
Hilary Bosanquet

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www.european-reform.org

# LJUBLJANA CITY GUIDE

*by Robert Broadhurst*

Slovenia and its capital city Ljubljana certainly have a rich history. For a start, Ljubljana claims a part in Greek mythology, as the place where Jason and his Argonauts fled from King Aetes, from whom they had stolen the Golden Fleece. When in the area, Jason encountered the terrible Ljubljana dragon, which he fought and slew. A depiction of the dragon still adorns the top of the tower of Ljubljana Castle, one of the key attractions in the Slovene capital today.

The roots of Ljubljana were set down in the 6th Century AD, when the Slav people arrived in the area and established an embryonic settlement around a castle on a hill. The settlement grew steadily, and in the 12th Century Ljubljana came under the ownership of the Carinthian Dukes of Spanheim, who in turn became vassals of the Austro-Hungarian Hapsburgs. The 13th Century was a period of rapid growth, to the point where Ljubljana was made the capital of the Carniola province of the Austrian realm. At this time, three distinct, walled suburbs grew up, which remain evident to this day: *Stari trg*, which was the suburb of craftsmen; *Mestni trg*, which was home to the secular and Church governments; and *Novi trg*, the dwelling-place of the nobility. In 1335, Ljubljana and the rest of the Carniola province came under the direct rule of the Hapsburgs, a situation that endured until the end of the First World War, aside from a brief period in the early 1800s when much of the Slovene area was occupied by the forces of Napoleonic France.

In 1511 natural disaster struck the city – a powerful earthquake levelled many of its buildings. With the necessity of rebuilding came the opportunity to craft many of the new structures in the Renaissance style of architecture that had grown popular. During the 17th Century, though, the Baroque movement very much took hold, and a long period of municipal renewal and expansion saw Baroque architecture steadily eclipsing the earlier Renaissance buildings. Master-sculptor Francesco Robba spent nine years crafting the exquisite *Fountain of the Three Carniolan Rivers*, which on completion in 1760 was installed in the square in front of the new, grand Ljubljana Town Hall. It is considered by many to be the jewel in the crown of the city's Baroque works.

The 18th Century saw other cultural pioneering in Ljubljana. In 1701 the Academia philharmonic was established, Slovenia's first music association. As with architecture, Baroque was the dominant musical style at this time, and one of the first orchestras outside Italy was formed in Ljubljana. The attendant Philharmonic Society counted amongst its honorary membership Beethoven, Haydn and Brahms. In 1714 the general seminary library was completed, the appearance of which has been preserved to the present day. A botanical garden was founded in the city in 1810, which has been in continuous use as a scientific and educational institution ever since and is currently comprised of many thousands of different plants both native to Slovenia and from further afield.

In 1821 Ljubljana played host to the Congress of the Holy Alliance, a summit attended by several European monarchs including the Austrian Emperor and Russian Tsar, which was aimed at dissuading other European nations from replacing monarchical absolutism with democracy. The success of the Congress was doubtful to say the least, but Ljubljana's esteem rose with being selected as the meeting place of such eminent dignitaries. The place



where the Congress was held is still named *Kongresni trg* ('Congress Square') in honour of the event.

Ljubljana once again found itself rocked by a destructive earthquake in 1895. Again this necessitated extensive reconstruction, but allowed architectural innovation to express itself. Austrian and Czech architects were influential this time in the city's development, who saw their favoured Art Nouveau style rise to prominence in Ljubljana.

The aftermath of the First World War brought the break-up of the Austro–Hungarian Empire, meaning Slovenia found its political circumstances greatly altered. In 1918 it formed the Kingdom of the Serbs, Croats and Slovenes with its Balkan neighbours, a political entity named the Kingdom of Yugoslavia in 1929. The name Yugoslavia means 'Land of the South Slavs'. It was at this point that Ljubljana became the official administrative centre of Slovenia, and its population stood at around 80,000. Population growth continued apace, though, and much of today's Ljubljana was constructed in the inter-war period, under the supervision of Slovene architect Joe Plecnik, who forged his own style as a combination of Baroque and Art Nouveau. Guided tours of the large area known as Plecnik's Ljubljana are run today.

During the Second World War, Ljubljana was first under Italian, then German occupation, and became a centre for resistance. In 1942 the occupiers tried to quell this by encircling the city with barbed wire. The route of this has been replaced today by the Green Ring, a pleasant walking trail near the city's outskirts. Following the end of the war, Slovenia became part of the renewed, Communist Yugoslavia. Dissatisfaction with this arrangement grew, however, and nearly 90 per cent of Slovenia's population voted for independence in a December 1990 referendum.

In June 1991 Slovenia declared independence, a status achieved following victory over the Serb-dominated Yugoslav People's Army after a ten-day war sparked by the declaration. Cementing its new alignment with the West, Slovenia joined NATO and the European Union in 2004. Ljubljana is a small capital city in comparison with those of larger states, but it should be borne in mind that the entire population of Slovenia is only around two million. Ljubljana's charm is partly derived from its compact nature.

## GETTING THERE

**EasyJet**
Tel: 0871 7500 100, www.easyjet.com
Flights from London Stansted from £188 return.
**Adria Airways**
Tel: +386 1 36 91 010,
www.adria-airways.com
Flights from London Gatwick from around £365 return.

## ACCOMMODATION

**Hotel Lev**
Vošnjakova ulica 1 Tel: +386 1 433 21 55 Fax: +386 1 433 20 03 www.hotel-lev.si
The Hotel Lev, the only 5-star hotel in Slovenia, is situated in central Ljubljana. The hotel counts among previous guests Agatha Christie, Orson Wells and Kirk Douglas. It has great views over Tivoli Park and in 1999 a new marble façade was added to the building. Rooms have air-conditioning, television, phone and Internet connections, a mini-bar, shower, bath, hairdryer and safe. Pets are allowed in rooms. Prices from €200 per night for a single room with breakfast included, and €240 per night for a double room with breakfast.

**Grand Hotel Union Garni**
Miklošieva 9 Tel: +386 1 308 43 01, Fax: +386 1 230 11 81,
www.astralhotel.net
The 4-star Hotel Garni, also located in the city centre, includes rooms with air-conditioning, television, phone and Internet connections, and other basic amenities. There is a restaurant and lobby bar, and leisure facilities include a Finnish sauna. Prices from €107 per night with breakfast.

**City Hotel Ljubljana**
Dalmatinova 15 Tel: +386 1 234 91 30
Fax: +386 1 234 91 40 www.cityhotel.si
The City Hotel is a 3-star hotel located only 300 metres from the train and bus station. All rooms have basic amenities and there is a main restaurant serving international cuisine as well as local specialities, supplemented by a bistro and aperitif bar. There is also a garden and summer terrace. Prices are from €98 with breakfast.

## SIGHTS

**Ljubljana Castle**
Tel: +386 1 241 60 08 Fax: +386 1 241 60 37 www.festival-lj.si
Perched on top of the hill that rises out of the city centre, Ljubljana Castle has been symbolic of the city for centuries. Recent investigations have proven the continuous existence of a fortified position at its location since the 12th Century BC. Construction of the castle that exists today was ordered by the Hapsburg Duke Frederick, later Emperor Frederick III, in the 15th Century. All the interior castle buildings date from the 16th and 17th Centuries. However, by 1814 the castle was in such poor condition that it was used as a prison. In a bid to restore the focal point of their city, the Ljubljana authorities purchased the castle from the Hapsburg estate in 1905, but it was not until 1963 that the first systematic restoration began, and finalising work as part of this still continues. In 1990 the Pentagonal Tower was restored, which now hosts small concerts and two galleries. Also worth visiting is the Castle Chapel of St George, Ljubljana's patron saint.

**Ljubljana Zoo**
Vena pot 70 Tel: +386 1 244 21 82
Fax: +386 1 244 21 85
www.zoo-ljubljana.si
Open: Summer, Daily 9am-7pm; Winter, Daily 9am-5pm.
Ljubljana Zoo is unlike the typical zoo; it comprises a 19.6 hectare section of the southern slope of Ronik Hill, in the natural environment of woods and meadows, and is an integral part of a protected natural park. It is a 20 minute walk from the city centre. Visitors can admire numerous wild animal species from all continents living in their natural environment. Particular emphasis is laid on the animal species living at the junction of the Alpine, Pannonian and Mediterranean zoogeographical areas. Aside from the ordinary opening times, on Thursdays and Saturdays there are guided tours of the zoo at night, from 9pm to 11pm.

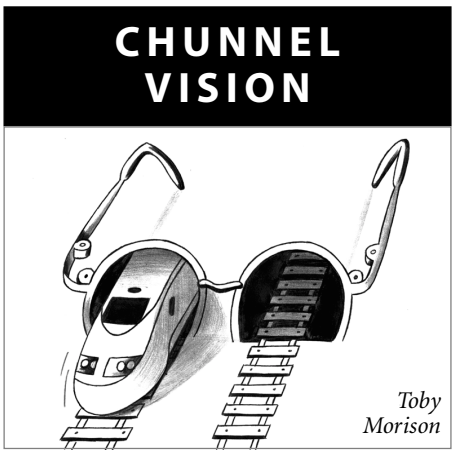
**National Gallery**
Cankarjeva ulica 20, Puharjeva ulica 9
Tel: +386 (0)1 241 54 18
Fax: +386 (0)1 241 54 03
www.ng-slo.si
Open: Tues-Sun 10am-6pm. Free admission on Saturdays after 2pm.
Since 1925 the National Gallery has been housed in the building of the National Centre, built by the Czech architect František Škabrout in 1896 on the model of Prague's National Theatre. One permanent collection is of Slovenian art from the 13th Century to first quarter of the 20th Century, including works by sculptors and painters from the periods of Romanticism, Gothic, Baroque, Classicism, Realism and Impressionism. The National Gallery now also houses the national collections of Slovenian art from the Middle Ages to the end of the 19th Century, as well as numerous temporary exhibitions. In 1993 an annexe in the postmodernist style was added, designed by Edvard Ravnikar.

## SHOPPING

**Flea Market and Antique Fair**
Cankarjevo nabreje
Held Sundays from 8am to 2pm
Ljubljana's flea market, located on the Cankarjevo nabreje embankment, offers antiques, art pieces and a variety of other items of collectible or souvenir value. Examples of the wide variety of objects typically available are pieces of furniture, decorative items and kitchenware, dating from the distant to recent past. This event is probably worth a look if only to see the different consumer tastes and design trends through different periods of history, specifically those that took place in and around Ljubljana.

**City Park**
Šmartinska ulica 152b
Tel: +386 1 587 30 10
Open: Mon-Fri 9am - 9pm; Sat 8am - 9pm; Sun 9am - 3pm.
A general shopping centre that will serve for the essentials as well as a place to browse fashion and consumer durables.

*Robert Broadhurst is currently studying Politics with Law at the University of Durham, where he also works on the student newspaper* Palatinate. *He can be contacted at r.j.k.broadhurst@dur.ac.uk*




# Up, Up and Away

*by Dr Lee Rotherham*

"Clarke Ken is afraid of dogs, afraid of heights, and willing to let almost anyone push him around. In his own words, 'My meek behavior is the *perfect disguise* for my real identity as *Superman*!' Clarke Ken lives in apartment 3-B at 344 Havana Street, a modest building in the downtown area of Nottingham. A fake wall in the apartment, which slides open at the touch of a secret button mounted on a bronze statuette of a box of doritos, conceals a secret closet housing a number of Superman's sophisticated automated monkeymen, several numbered boxes of Superman trophies and samples of kryptonite, and various other Superman mementos, plus an unread leather-bound copy of each major European Treaty. When he is not wearing his Superman costume, Clarke Ken sometimes hangs it in this secret closet with his hush puppies.

"Clarke Ken's closest friends are Lois Lane, Jimmy Goldsmith, and Al Jolsen.

"Because Clarke Ken is widely known as Superman's best friend, people often contact Ken, usually at the *Daily European*, as the most reliable means of getting in touch with Superman."

I paraphrase from a website fanzine. There is motive behind this madness. We are perhaps staggered to learn that Ken Clarke is apparently standing for the Conservative Party leadership under a campaign mantle declaring that his opinions on the EU have matured, or at best, don't matter any more.

To quote, *"Of course, I will be challenged on my views on Europe and my opposition to the British intervention in Iraq. Europe should no longer be a divisive issue within the Party. The Constitution is dead. I can see no circumstance in which British membership of the euro will be an issue this Parliament or the next."*

Really, Mr C? How then do you account for the continuing attempts to get national governments to pass the 'dead' Constitution? What about the mass of material whose legal basis is in limbo, but where EU agencies and laws are still coming into being through a perverse form of necro-legislation? The dead waaaaaalk.

Or again, if the economic situation shifted suddenly, would you then continue the euro changeover process and spend tens of millions 'preparing' the country to ditch the Pound, including the use of public funds to sell the European project? I haven't heard that possibility ruled out from your camp.

*"Europe,"* you say, *"should concentrate on building jobs, enterprise and competitiveness with a real attack on unnecessary regulation."* Bravo. Except that both during your time in office under John Major, and throughout successive Labour terms, all this mantra has led to zip. Always the same old tired rhetoric and never any action. Perhaps the red tape is dusted with kryptonite.

Then there is your talk of how, *"a healthy democracy needs vigorous political debate and the existence of real choice."* Really, Mr C? Like the choice you tried to offer Parliament over us joining ERM II? Just to recap, the fact of our joining had to be fished out of a short Commission paper I found quite by chance, hidden away in a few paragraphs of technical French. When the Select Committee that scrutinised your department were informed, your Whips tried to suppress the debate and keep it away from the floor of the House. So much for being a partisan of democracy. Perhaps we can excuse your zest. It may be that this comes from your time in the Whips' office in 1972.

As for the national debt, we see a nonchalance worthy of a fine cigar.

Then there is the war against terror. Out of interest, precisely when did Londonistan start to become an unofficial haven for Islamic militants – when you were Home Secretary, or merely a fellow member of the Cabinet? Certainly before the GIA planted the Metro bombs in Paris in 1995, because the French were openly protesting about our longstanding inactivity.

Then there is your policy direction. By talking of the party having spoken too much of policies and not about people, you are threatening to dump the former to flatter the latter. For to be *"less obsessed about issues"* is to reject philosophies. Perhaps philosophies are too hard to come up with, are too difficult to adhere to, too awkward to maintain. But some of us out there stand by some age-old tenets. Issues are the backbone of a political party, unless you plan to turn Cato's Ape on New Labour and mouth perfumed nothings.

**Unless the Conservative Party is seen to be a party of beliefs, it is nothing. And those beliefs have to be credible, meaningful, and sound.**

But to ditch core Conservative principles is not a means to win credit for some 'generosity of view' – it is the mechanism by which to lose all credit for a dearth of conviction. Unless the Conservative Party is seen to be a party of beliefs, it is nothing. And those beliefs have to be credible, meaningful, and sound.

In sum, which Ken Clarke do you think we are looking at? Which costume are you wearing next?

Four years past, I went out on the leadership election trail and, along with representatives from other campaign organisations, parked my scooter on your lawn. I mean this physically as well as metaphorically. As I recall, your cat liked the jumper of the rep from Save Britain's Fish. This was the only sign of recognition from your team for the lot of thousands dealing with the daily reality of Brussels, even as it then was. Your recent comments have done nothing to convince me that I see a different man. You might be a great bloke to have a curry with, but I do not trust the future of the Party, or of our economy, or of our country, in your hands.

It's nothing personal. I would trust Lex Luther more. And he's in the European Commission.

*Dr Lee Rotherham is a political advisor and consultant.*

# The European Foundation

**Mission Statement:** The aims and objectives listed below are summed up in The Foundation's overall policy of 'yes to European trade, no to European government'. We believe that greater democracy can only be achieved among the various peoples of Europe by the fundamental renegotiation of the treaties of Maastricht, Amsterdam and Nice. The Foundation does not advocate withdrawal from the European Union, rather its thoroughgoing reform.

## Objectives

- To further prosperity and democracy in Europe;
- To renegotiate the treaties of Maastricht, Amsterdam and Nice and prevent the ratification of the European Constitution;
- To reform and scale down the *acquis communautaire;*
- To ensure that future member states get a fair deal from EC/EU membership;
- To halt the continuing arrogation of power by the EC/EU;
- To prevent the UK from adopting the euro;
- To contribute as actively as possible to an informed public debate about the future of Europe;
- To liaise with like-minded organisations all over the world;
- To liaise with organisations affected by EC/EU action and policy.

## Activities

- Addresses itself to the general public and to politicians, journalists, academics, students, economists, lawyers, businessmen, trade associations and the City;
- Organises meetings and conferences in the UK and in mainland Europe;
- Publishes newsletters, periodicals and other material and participates in radio and television broadcasts;
- Produces policy papers, pamphlets and briefs;
- Monitors EU developments and the evolution of public opinion and its impact on the political process in the EU.

**The Foundation's History:** The Great College Street Group was formed in October 1992 in order to oppose the Maastricht Treaty. The Group, consisting of politicians, academics, businessmen, lawyers, and economists, provided comprehensive briefs in the campaign to win the arguments both in Parliament and in the country. The European Foundation was created by Bill Cash after the Maastricht debates. It exists to conduct a vigorous campaign in the UK and across Europe to reform the EC/EU into a community of free-trading, sovereign states. The Foundation continues to establish links with like-minded organisations across Europe and the world.

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## Subscription Rates & Donations

UK: Minimum £30; UK Senior Citizens & Students: £20.00; Europe excl. UK: £34; Rest of World: £38

**Donations and subscriptions should be made payable to "The European Foundation".**

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