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## **Barzini's Question: United Europe and the United Kingdom**

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## **Abstract**

This working paper, first presented as a Distinguished Lecture at the 2015 Academy of European Law summer course on European Union Law, explores Britain's increasingly ambivalent attitude towards Europe. Tracing the United Kingdom's participation in Europe, from both a personal and institutional perspective, the paper argues that the mild enthusiasm of the late 1980s and early 1990s towards European integration has given way to disenchantment in the present day. The paper argues that five factors have contributed to the increasingly negative attitude among the British people towards Europe: Britain's conception of its place in the world; its self-exclusion from important parts of the European project; the impact of specific policies and freedoms; a media hostile to European integration; and cowardly politicians.

## **Keywords**

European integration; Britain; Single market; British Eurosceptics; referendum



## 1. Introduction

These are dramatic times for Europe.

Waves of migrants, fleeing unimaginable hardship in the Middle East and Africa, demonstrate the inability of the Union to control its external frontier. Asylum seekers are not allocated among the Member States in a balanced and equitable manner, but are driven by successive Dublin Regulations to the countries of southern and eastern Europe where they first entered the Union. An unfairness which is mitigated not by balancing rules, but by unfairnesses of a different kind: failures in some gateway states to register refugees properly, rendering less likely their return or – more seriously still – failures to observe the fundamental rights guaranteed by the Refugee Convention and by the Union's own Charter, rendering such return legally impermissible.

Meanwhile, there is a crisis in the Eurozone for which the overused metaphor 'Greek tragedy' is scarcely sufficient. Whether you see current events as inevitable retribution for feckless behaviour or as the cruel subordination of democracy to the power of capital, the anxiety and suffering of EU citizens cannot be denied, and we find ourselves in uncharted economic and political waters. To vary the metaphor, the then Conservative Party leader William Hague's prediction, from 1998, that the Euro would turn into 'a burning building with no exits' seems less exaggerated than it did, at least from across the English Channel. No one can reliably predict whether Greece will stay in the Euro or indeed the European Union, describe what conditions its people will face five years from now, or guarantee that the contagion will not spread further.

Both these vital matters were discussed in the European Council last Friday (25 June 2015), one in a long series of high-level summits. But they were not the only items on the agenda. For the first time in the formal setting of an EU summit, the United Kingdom – through its Prime Minister, David Cameron – put forward its plans for the renegotiation that is supposed to precede the referendum to be held next year or in 2017 on continued British membership of the European Union.

One diplomat who was present described the moment as follows: 'There was a very emotional discussion on migration, and David Cameron gave us a commercial break.'

The prime minister's intervention is said to have lasted between eight and 10 minutes, and there were no responses from any of the other 27 EU heads of government. He said afterwards:

It has been a long night and we have discussed some very important subjects, but *above all* I am delighted that the process of British reform and renegotiation and the referendum that we are going to hold – that process is now properly under way.

That delight was not shared by senior members of his own party back at home, including the Mayor of London, who were busy setting him up to fail. They have told us that we should vote to leave the Union if Mr Cameron does not achieve such manifestly unachievable goals as a national parliamentary veto over all EU law.

## 2. The United Kingdom and the European Ideal

Going back a little way into the history of our continent, it is not difficult to find resounding endorsements of the European ideal, even from British politicians.

In 1943, as the Second World War raged, Winston Churchill broadcast publicly on how to achieve what he described as:

the largest common measure of the integrated life of Europe that is possible, without destroying the individual characteristics and traditions of its many ancient and historic races.

In his famous Zurich speech of December 1946, Churchill said:

We must recreate the European family in a regional structure called, as it may be, 'the United States of Europe'.

However, as usually, though not invariably, appeared to be the case, his vision for the United Kingdom was as a 'friend and sponsor' of the new Europe, rather than a core member.

Ernest Bevin, the Labour Foreign Secretary just after the War, when asked in London what his foreign policy was, revealed himself to be a Schengenite *avant la lettre*:

I have only one: it is to go down to Victoria Station here, take a ticket and go where the hell I like without anybody pulling me up with a passport.

Harold Macmillan, whose attempt to take the UK into the 'common market' as Prime Minister was met by the first of de Gaulle's two vetoes in 1963, in later life put the case for Europe as powerfully and as lyrically as any continental visionary has done:

We argue about fish, about potatoes, about milk, on the periphery. But what is Europe really for? Because the countries of Europe, none of them anything but second-rate powers by themselves, can, if they get together, be a power in the world, an economic power, a power in foreign policy, a power in defence equal to either of the superpowers. We are in the position of the Greek city-states: they fought one another and they fell victim to Alexander the Great and then to the Romans. Europe united could still, by not haggling about the size of lorries but by having a single foreign policy, a single defence policy and a single economic policy, be equal to the great superpowers.'

Three months after those words were written, in 1979, Margaret Thatcher began her 11-year premiership. Though now remembered chiefly for her fierce budgetary battles and her resistance to what she called a European super-state, she was a proponent of a stronger and more unified European foreign policy, and appointed as Commissioner Lord Cockfield, the 'cool Cartesian' who, together with Jacques Delors, pushed through the almost 300 measures that were deemed necessary in order to create the internal market by 31 December 1992.

Here I slow down a little, because I become, in my small way, an eye witness. Blessed during my education with exchange visits to France and Germany, spells of work in Greece, Germany and France and a first degree in European history, it made sense to add practical experience to my studies of European Law. So I headed to Brussels.

### **3. Lord Cockfield and the Single Market**

It was my good fortune to work as a stagiaire in the Commissioner's private office in that time of the Commission's greatest influence and success. Cockfield was motivated by an unshakeable faith in Europe as an agent for peace, taking time every Armistice Day to visit the grave of his father who had been killed in the First World War. And I think he believed also in the evolution of that beautiful concept, visible here, in Bruges and in Brussels, but rather more elusive elsewhere: the European demos.

Cockfield was concerned that some of us to whom it fell to draft answers to parliamentary questions had not always treated the European Parliament with the respect that it deserved. He summoned us to

his office at New Year 1988, and told us that, just as the absolutist King Charles I had to cede control to the English Parliament, so we must realize that the Commission would someday be fully accountable to the voice of the people of Europe as expressed through the European Parliament in Strasbourg. He didn't mention the word *Spitzenkandidaten*, but I suppose it was the sort of thing he was anticipating.

Coming back to England later that year, I encountered interest in the European project that I have not experienced either before or since. For the Right, Europe stood at last for effective liberalization, personified by Lord Cockfield; and Delors, the French socialist, had won over the Left, which had always been suspicious of the project but was sick of Mrs Thatcher, with the emergence of 'social Europe'. If you were starting a small business at that time in London, there was a fair chance – incredible though it seems today – that you would call it the Euro dry cleaners or the Euro café, and decorate the sign with yellow stars on a blue background.

And that interest and enthusiasm increased exponentially when the Berlin Wall came down in November 1989. Already married for two months to the girl I had met in Brussels, we watched with awe and excitement on our little television as the pickaxes were swung and the cheering people flooded through. Only the previous year, Mrs Thatcher had said in her famous speech at the College of Europe in Bruges:

We must never forget that east of the Iron Curtain, people who once enjoyed a full share of European culture, freedom and identity have been cut off from their roots. We shall always look on Warsaw, Prague and Budapest as great European cities.

The cities she mentioned seemed, at the time, hidden and mysterious; and her sentiment – shame on my generation for whom the Iron Curtain had seemed an immovable fact of life – almost eccentric. With intoxicating suddenness, it was becoming a reality. And how extraordinary to think that for all its apparent permanence, the Berlin Wall only stood for 28 years.

#### **4. European Law in the Courts**

Curiosity about the European project spilled over even into those bastions of cool reflection, the courts. I saw it myself in two unusual pieces of litigation: *Factortame* and *Sunday Trading*.

##### **A. *Factortame***

The *Factortame* case was a legal challenge to an Act of Parliament. Promised just before an election, the Act sought to restrict the ownership of British fishing vessels to UK citizens, domiciled and resident in the UK. Justification was claimed for this in international law as it related to the flagging of vessels. But the unlawful discrimination inherent in this Act seemed clear to my clients, Spaniards who had purchased British fishing vessels from British fishermen and who used them to develop new fishing grounds and to land types of fish not commonly eaten in the UK.

In the absence of a Constitutional Court, Acts of Parliament had been considered inviolable in the United Kingdom for almost 400 years. But encouraged by the European Court of Justice, from which three rulings were obtained, the English courts first suspended the Act on an interim basis, then set it aside, then awarded substantial damages to the fishermen for the period of time that they had been unable to earn their livelihood. The case did more than any other to bring home not only to law students but to the general public the primacy of EU law. What was striking to me was the matter of fact way in which the British judges proceeded, at all levels of the court system. Politics didn't come into it. They read the law, as it was contained in judgments of the Court of Justice, and acted on it as they thought was right.

## **B. Sunday Trading**

If *Factortame* was litigation on the grand scale, the *Sunday Trading* cases were a cottage industry. The law in England used to forbid the opening of most shops on Sundays, and the do-it-yourself chain B&Q was prosecuted for breaking the law. Relying on the simple proposition that shops that are open sell more than shops that are shut, B&Q resisted the prosecutions on the basis that the obligation to close resulted in a reduction of imports from other Member States, and could not be objectively justified.

In the first reference to be decided by the Court of Justice, the Court ruled that the right to free movement of goods could be infringed by Sunday trading rules, but only if the restrictive effects on Community trade that resulted therefrom exceeded the effects intrinsic to rules of that kind. On the basis of that Delphic formulation it was argued in subsequent proceedings, with mixed success, that the national rule was indeed unsustainable. The fashion grew and spread to other Member States: eventually, after a series of further references, the Court of Justice ruled in the case of *Keck* that selling arrangements would infringe the free movement rules only where they were aimed at products from other Member States. By then, the English law had been changed anyway, in part because of the incessant legal challenges. But the case taught us another lesson: that we could be instrumental in changing not just English law, but European law as well.

## **5. Lawyers Out of Court**

European lawyers were active not only in the courts, but also in law schools around the continent. Students from all over Europe flocked to British universities to be instructed in European law by people like Marise Cremona (if they were lucky) or myself. Something they are still doing, incidentally, though if my own subjective observations are anything to go by, both their fellow students and their teachers – rather like the tennis players at Wimbledon or the best footballers in the English Premier League – are drawn overwhelmingly from countries other than the UK.

After the Wall came down, something very unusual happened: the British, or some of them, became evangelists for Europe. Judges and lawyers, often led or influenced by the brilliant and charismatic European Court judge, Gordon Slynn, travelled the length and breadth of the continent, bringing European Law *à l'anglaise* to the benighted folk of Finland, Albania and places in between. Many of us have happy memories of these slightly anarchic expeditions: Lord Slynn sprinkling stardust on Supreme Court Justices and packed halls of students alike; his juniors filling in the detail; Lady Slynn visiting the local prison; then all repairing to a Hungarian opera, a Latvian bikers' café or the reception which they had persuaded the Ambassador to provide.

And our ideals were nourished by the people we met. In the months after Estonia won her independence from the Soviet Union, a number of us were invited on a Saturday afternoon to the new offices of Estonia's first independent law firm, where we were proudly greeted by what seemed to be almost the entire membership of the Estonian Bar, some of them recent veterans of the Singing Revolution. Taped to the walls by way of decoration were photocopies of Magna Carta and the Declaration of Independence; and set into the great wooden partners' table was a brass plaque engraved with the miraculous words PACTA SUNT SURVANDA. The rule of law had arrived, a common body of principles was spreading across the continent, and we felt privileged to be there at the birth of something so exciting, so new and so important.

## **6. What Explains the Change?**

One has to be careful when looking back to one's youth to allow for the ever-present possibility that memories may be rose-tinted. But so far as my country is concerned, that period in the late 1980s and early 1990s looks like a period if not of enthusiasm, then at least of untypical openness to the concept of European integration. The point was not so much that the process was loved – this has never been the case – as that it seemed, for a while, irreversible: and as Jean Monnet is said to have observed (though I have never managed to trace the reference), the English resist ideas, but they do not resist facts.

At this point, I suspend my narrative and ask a question. What happened to take us from the happy picture I have painted, with I hope not too much exaggeration, of Lord Cockfield, *Sunday Trading* and the Singing Revolution to the depressing snapshot with which I started: a European Council facing humanitarian, even existential catastrophes, which it seems unable or unwilling to resolve, while the Union itself is threatened by Grexit, Brexit and after that who knows what?

### **A. Universal Tendency**

In seeking to answer that question, I would start by observing that the decline in British acceptance of the European construct over the past quarter of a century mirrors a trend which is to be observed across the continent. In the spring of 1991, 71 per cent of EU citizens thought that their country's membership of the EU was a good thing, as opposed to only 47 per cent 20 years later. Idealism, perhaps, is in short supply around the continent; and self-interest – particularly since the crash of 2008 – very much to the fore.

Eurobarometer surveys prove that the British are unenthusiastic Europeans: but their divergence from the norm is sometimes less than may be imagined. So, for example:

- Asked at the end of 2014 whether the EU had a positive effect on life in Europe, 45 per cent of the British thought so, as against an EU average of only 49 per cent.
- And in the UK, as elsewhere, younger and better-educated people had a noticeably more positive view of the EU than others.

There are some more marked differences. The British are unusual – along with the Swedes, the Dutch and the Germans – in placing a higher level of trust in their national government than in the EU. Asked whether they felt like citizens of the EU, only 50 per cent of the British said yes, against an EU average of 63 per cent. These figures describe, to some extent, the uncomfortable nature of Britain's relationship with the EU. But to explain it, we have to look for the factors that lie behind those figures.

### **B. Dislike of Fellow Europeans?**

One factor that I believe can immediately be discounted is that the British have lower than average levels of liking for their fellow Europeans. It is true that our language skills are often woeful, and that school exchanges and town twinnings are sadly in decline. But there is no shortage of willingness to appreciate the way that other European countries manage things, whether that means the high-speed trains of France, the safe cyclists of the Netherlands, the television dramas of Scandinavia or the hard work and enterprise so frequently displayed by the Poles who have chosen to make their lives in the UK.

Paradoxically perhaps, prominent Eurosceptics often have close personal ties with Europe: the politicians Michael Portillo and Gisela Stuart MP, both born in other European countries; Nigel Farage, leader of the UK Independence Party, who does not like hearing foreign languages on trains but has a German wife; and the arch-sceptic Owen Paterson MP, until recently a Cabinet Minister, former President of the European Tanners Confederation and a fluent French and German speaker. Each maintain that they appreciate Europeans and Europe, reserving their hostility for the structures of the European Union – and on that at least, I think we can believe them.

### **C. Court of Justice?**

Another factor that I think we can more or less discount is the work of the Court of Justice of the European Union. When one considers the political travails of the past 50 years or more, the manner in which that court has earned the respect of the national counterparts upon which it largely relies for the enforcement of its judgments seems to me remarkable. Its rulings, though robotic in style, command at least a grudging respect, even when adverse rulings are delivered in cases of the highest national importance. Allow me, once again, to dip into personal experience.

It is taken from a low point in British relations with Europe – the so-called Beef War of 1996, when concern over the EU's reaction to 'mad cow disease', culminating in a ban on British exports of beef, had caused the British Government to introduce a policy of 'non-cooperation' at European meetings. The wisdom of that policy, forced on the Prime Minister by the strength of Eurosceptic opinion in Parliament, was questionable. It seemed, at any rate, an unpromising background for an application to the Court of Justice for the suspension of the ban. And the application duly failed.

But no one present in court, or reading the judgments, could have gone away with the impression that this was a political decision. After politely tolerating the formal speeches, the juge-rapporteur, Judge Sevón, got down to business with a long series of acute technical questions that demonstrated beyond any doubt that the Court was approaching these issues in exactly the right spirit of dispassionate inquiry.

And as the UK was subsequently reminded, you win some and you lose some. After the EU lifted its ban, France was said to be slow in complying; and the Court agreed. French advocates can be among the most able performers in the Court of Justice, as indeed are their administrators in negotiation. But the French Government had slipped up. It granted permission for British beef to be exhibited at an international trade fair in France, hoping thereby to deflect the argument that it was preventing beef being exported to third countries. But it granted the permission in a letter that required British exhibitors to ensure that their beef was either (a) destroyed, (b) returned to the United Kingdom or (c) consumed within the British Embassy in Paris. That was what we advocates refer to as an open goal. At the oral hearing, we expressed our gratitude to the French for acknowledging that British beef was safe for consumption by British diplomats – and asked the Court to confirm that it was safe also for the other inhabitants of France.

There is great camaraderie between advocates at the Court of Justice, and such little amusements are an agreeable way of humanizing the sometimes rather dry subject-matter of the cases.

I do not wish to sound uncritical about the work of the Court. A frequent criticism of it, sometimes valid in my opinion, is a tendency to overstep the bounds of judicial interpretation by venturing into the treacherous field of judicial legislation. We each have our favourite examples: mine is the decision of the Court in the aviation case *Sturgeon*, affirmed by the Grand Chamber in 2012 in my own case of *TUI*. In those cases, the Court interpreted the Denied Boarding Regulation as providing compensation for flights that had been delayed as well as flights that had been cancelled,

notwithstanding that this possibility had been specifically raised, and rejected, during the legislative process. This tendency offends lawyers of an orthodox cast of mind, particularly when they are on the losing side. I would say that it is positively anti-democratic. But the public visibility of the Court is low, and it would be wrong to say that such matters have a significant impact on public opinion in the UK, or I suspect any other Member State.

The United Kingdom courts have been generally loyal over the years to EU jurisprudence: but there was a potentially significant departure last year in the *HS2* case, in which they took issue with the approach of two Advocates General – one of them, ironically, British – in cases concerning the Environmental Impact Directive: *Boxus* and *Normachiaki*. The Advocates General had demanded close scrutiny by national judges of the legislative process to see whether ‘the people’s elected representatives’ had been able ‘properly’ to examine and debate the proposal or had ‘perform[ed] their democratic function correctly and effectively’. To perform such an exercise, said the Supreme Court, would have put British judges in breach of the Bill of Rights 1689, a constitutional statute which precludes the impeaching or questioning in any court of debates or proceedings in Parliament. This led the Court to say for the first time, in the first authoritative British equivalent of the *Solange* judgments of the *Bundesverfassungsgericht*:

It is, putting the point at its lowest, certainly arguable (and it is for United Kingdom law and courts to determine) that there may be fundamental principles, whether contained in other constitutional instruments or recognised at common law, of which Parliament when it enacted the European Communities Act 1972 did not either contemplate or authorise the abrogation.

In other words, it is conceivable – though it has not yet happened – that the primacy of European law may founder upon constitutional principles interpreted by United Kingdom judges.

But I have digressed: and once again, these are matters of concern to constitutional lawyers rather than to the general public.

## **7. Five Factors Fuelling British Disenchantment**

If I had to identify five factors that have contributed to the current disenchantment with Europe in Britain, I would mention these: Britain’s conception of its place in the world, its self-exclusion from important parts of the European project, the impact of specific policies and freedoms, a media hostile to European integration and cowardly politicians. Let me say a word about each.

### ***A. Place in the World***

The first is the issue of Britain’s place in the world. I don’t mean, by this, continued nostalgia for empire.

It was certainly once the case that the British felt the loss of their Empire, rather as it is said that one feels an arm even after it has been amputated. Indeed post-imperial ties were a significant part of the reason why the UK was slow to join the European Economic Community. When it was suggested in 1952 that Britain should join ‘a federation on the continent of Europe’, Anthony Eden, Foreign Secretary and later Prime Minister, commented that this was something ‘we know in our bones we cannot do’.

But imperial afterglow, I think, is no longer a factor of real significance. Family links remain, particularly with the old Commonwealth where so many people have at least one friend or relative.

But times have moved on. Current attitudes to empire are represented by the much-photographed statue of Mahatma Gandhi, liberator of his people from British rule, which stands next to that of Nelson Mandela, just opposite the Houses of Parliament.

Rather, I mean *pride in a history* which is often perceived, in the United Kingdom, as a series of successful attempts to defend itself, and sometimes others, from overweening European power – whether exercised in the name of the Catholic Church or through the military might of Napoleon or Hitler. For too many people, the European Union fits that narrative. One would hope, in this 200th anniversary of the Battle of Waterloo and 100th anniversary of the First World War, that it is the advantages of collaboration, rather than splendid isolation, which would be drawn from that history. But the alliances that are spoken of with real affection, and those which in some respects remain the closest, are those with the English-speaking peoples of the world – an ever-present palliative.

This is what de Gaulle meant when he is said to have remarked that, faced with a choice between Europe and the open sea, Britain would always choose *le grand large*. His successor Georges Pompidou renounced this view when he was eventually persuaded to allow Britain to join the Community in 1973, and I myself believed that it was in retreat during the golden period that I have described, 15 or 20 years later. But that state of mind has proved very resistant. It is well expressed by Luigi Barzini, the Italian journalist whose question is alluded to in the title of this lecture. In his book *The Europeans*, he explained why the British, as he put it, ‘missed the European bus’, as follows:

They did not really believe Europe was their business. Still today, when one asks a Briton, any Briton, ‘Are you European?’, the answer is always, ‘European? Did you say European? Er, er’ – a long thoughtful pause in which all other continents are mentally evoked and regretfully discarded – ‘Yes, of course I’m European.’ This admission is pronounced without pride and with resignation.

### **B. Self-exclusion from European Projects**

The second and paradoxical reason that I would give for growing disenchantment is Britain’s self-exclusion from important parts of the European project. There is a long history of this, dating back to the Spaak Committee meetings of 1955 which eventuated in the Treaty of Rome but to which the sole British delegate was a minor trade official, Russell Bretherton. He was eventually summoned home on the ground that Britain should have no part in what a more senior civil servant described as ‘this mysticism ... which appeals to European Catholic federalists’. Interviewed in later life about the experience, Bretherton observed:

If we had been able to say that we agreed in principle, we could have got any kind of common market we wanted. I have no doubt of that at all.

Most people would now acknowledge that British non-participation in the formation of the original Communities was, from a British point of view at least, an historic mistake. Even today, it fuels distrust of the whole project. The EU, in sharp contrast to NATO and even the Council of Europe, for which the UK took a major role in setting up, is perceived as essentially Gallic in its structures and un-British in its functioning. Hierarchy and protocol seem to count for more than they do at home. You might think it would have helped that English has now become the primary language of the institutions (with the notable exception of the Court of Justice); but the past quarter of a century has seen a decline in talented British civil servants wishing to make a life in Brussels, and there are perennial difficulties in recruiting Britons to the European civil service. There is irony in the fact that the supposedly alien bureaucracy of the EU has been rejected in Britain, just as the French – or some of them – have

themselves become disenchanted with an EU which they perceive as having been taken over by Anglo-Saxon free-marketeers.

Further exclusions have followed, once again self-imposed: from the Schengen area, from the Euro, from which the United Kingdom has a permanent opt-out, and from elements of Justice and Home Affairs (now Freedom, Security and Justice). The UK-Polish Protocol on the Charter of Fundamental Rights, misleadingly characterized by some as an opt-out, is evidence of the same mentality.

These self-imposed exclusions are invariably supported by the population, particularly where the Euro is concerned. It is common wisdom, at least in the United Kingdom, that a single currency cannot work without financial solidarity and – to support it – a high degree of political integration. As only a small minority of Britons wish to go down that road, future membership of the Euro scarcely even registers on the political agenda. We shudder at unemployment levels in the south of Europe and reflect, whether accurately or not, that as members of the Euro we could have found ourselves in the same place.

It is mystifying to Britons that Euro membership remains popular with a majority of the population in most or even all Eurozone states, and only marginally unpopular in most of the candidate states. Indeed so one-sided is public opinion that polling companies in the UK rarely trouble even to ask the Euro question. The last poll that I was able to find on this subject dates from 2012, in which 6 per cent said they were in favour of Euro membership, as against 81 per cent who were against, the rest being unsure. It is hard to imagine that the 6 per cent figure would be larger today.

So we can assume that if the United Kingdom were part of the Euro, and indeed of Schengen, its current mood of scepticism would not be improved. Yet its removal from the centre of the European project has itself encouraged a sense of detachment. Treaty negotiators have, over the years, been adept at extricating the United Kingdom from elements of the European project. But the more this is done, the more Europe is perceived as a project for others, rather than for us. And the further the UK moves from the intellectual and policy-making heart of the European movement, the less attractive the governance of Europe becomes as a field where ambitious and intelligent young people want to make their mark.

The same is true even in the law. At my Chambers in London, where I chaired the recruitment committee for many years, candidates routinely express their passion for public law, international law, human rights law, commercial law, even for competition law – but only rarely, now, for European law. This lack of enthusiasm feeds through into a significant under-representation of UK nationals in the European institutions, including in particular the Court of Justice.

### ***C. Impact of Specific Policies and Freedoms***

The third factor in British disillusionment with the European project is disillusionment with specific policies. Progress towards a single market is seen as painfully slow, particularly where *services* are concerned. The perception, rightly or wrongly, is that lucrative British industries such as energy supply and rail transport have been opened to competition from other Member States, but that this has not always been reciprocated.

The common agricultural and fisheries policies, traditional targets of British Eurosceptics, figure less prominently on the scale of grievances than was once the case. After all, agricultural spending as a proportion of the EU budget has fallen from 70 per cent in 1985 to less than 40 per cent today. And there have been recent improvements to the common fisheries policy – though there is still resentment of the way in which the policy was hurriedly cobbled together in the period immediately prior to UK

accession, with the apparent aim of giving access to the fleets of other Member States to the historic fishing grounds of the UK industry.

But the greatest concern today, for many people, is the issue of *immigration*. The United Kingdom was a strong proponent of enlarging the European Union to the east, and was surely on the right side of that argument. It was one of only a very few Member States to open its doors to workers from Poland and other accession states in advance of its obligation to do so. But predictions of migration levels have consistently proved to be huge underestimates.

Eurobarometer tells us that 38 per cent of the British population considers immigration to be one of the two most important issues facing their country at the moment – a figure matched only in Denmark, Germany and Malta. Of course much of that concern relates to immigration from third countries. And it is true also that Britons exercise their right, in large numbers, to work and to retire in other Member States. But net immigration is currently running at over 300,000 a year, including net immigration from the EU of some 180,000 per year. These are figures that require the construction of the equivalent of a substantial new city every year. And as those of you who know England are aware, the south of the country where people mainly want to live is already one of the most densely-populated regions of Europe. Few Britons are racist, and most value the undoubted contribution that immigrants make to our economy; but many point to overcrowding and find it disorienting to live through such an unprecedented rate of change.

Of course, these figures may be influenced by temporary factors, notably high unemployment in the south of Europe and the relatively healthy jobs market in the UK. But net immigration has exceeded 150,000 in every year since 1998, and is on an upward trend. The population has grown as much in the past 10 years as it did in the previous 40, and the rate of increase is projected to rise.

If reports are to be believed, the Government recognizes that it is not politically feasible to secure any kind of modification of the central Treaty right to free movement, so as to introduce, for example, the cap or quota that would speak most directly to people's concerns. Its efforts in the renegotiation appear, rather, to be focused on limiting initial eligibility for in-work benefits.

But even if such measures could be agreed by our partners – and at first hearing, they have a discriminatory feel to them – they would do little to reduce the feeling of powerlessness over the vital national issue of border control. People look with envy to countries like Australia which can choose the numbers and qualifications of economic migrants to suit their own needs. Law-abiding European migrants are not resented, but the inability to control the level of migration or to plan for it is.

#### ***D. A Media Hostile to European Integration***

The fourth of my factors is a media largely hostile to European integration. I don't want to exaggerate the importance of this. There is no anti-European bias in broadcasting, so far as I can see, only in parts of what used to be known as the print media. And there is also the question of chicken and egg: no paper will sell copies by promoting views that its readers find distasteful.

But a number of widely-read newspapers have for decades been misrepresenting the European project and spreading Euro-myths, usually relating to alleged proposals by the Commission to interfere in everyday life, or the tendency of other Member States to apply the rules less strictly than we do ourselves. This tendency is insidious in its effects, and shows no signs of diminishing. Let me give you a few headlines from the past three months alone:

- Europe bans tourist photos of the London Eye
- Brussels is trying to restrict the drinking habits of Britain's coffee lovers

- Fury at EU plot to tax Britain
- EU orders organic farmers to use homeopathic medicine (on their animals apparently, not on themselves)

And a couple of festive headlines from last Christmas:

- Christmas deliveries put at risk by EU, and
- EU ruling gobbles up Christmas dinner

(both, apparently, a reference to new rules requiring additional training for lorry drivers).

In case you think I have taken those headlines from the sort of papers you find free outside public toilets, I should tell you that the last two come, respectively, from *The Times* and *The Sunday Times*. The EU has a rather witty webpage dedicated to debunking such stories. But I doubt it is read by more than a tiny proportion of those who read the offending papers.

Even knowledgeable and influential public figures join in. *The Times* (again) published an article last week by the moderate Conservative Matthew Parris, a former diplomat and MP, entitled 'The EU is doomed, whether we stay or go'. Mr Parris declared himself to be not a Eurosceptic but a Europhobe. He spoke of his aversion to his diplomatic colleagues' 'silky-tongued disregard for mere democracy as they worshipped in the temples of the Berlaymont, and spoke in a language of 'pillars' and 'chapters' only nominally English but with no meaning in English'. He went on:

Almost everything about the institution irritates, from its bossy mandarins to its greedy MEPs to its indecisive heads of state; from its corruptions to its sniggering, winking, rule-benders to its self-lurching grandiosity; from its head-in-the-sand aversion to hard decisions, to its itch to regulate trivialities. Bossy, flabby, broken-backed and pompous, the European Union has a big yellow streak running right through it. Like the Holy Roman Empire, the organisation has become an overhang from the past into the future; and the future is eating away its foundations.

Having heard that, it may surprise you to learn that he advised voting Yes in the forthcoming referendum. But on grounds which have nothing whatever to do with the clear-headed idealism of Harold Macmillan. As he concluded:

In short, it's probably best to string along with the EU for the time being but I wouldn't go to the stake on it. Tens of millions of my fellow-citizens think like this. But we're open to persuasion the other way if 'Europe' gets too big for its boots. .. [P]recisely because most of us don't feel all that strongly, the mood could flip.

He was right about one thing: that as previous referenda in other countries and recent UK opinion polls have shown, electorates can indeed be volatile where European questions are concerned.

But did these childish caricatures resonate with his readers? I went below the line, and read some of the many hundreds of readers' comments on the online version of his article. Of the 20 'most recommended' comments, nine agreed with him, praising, for example, his 'coherent and lucid approach'. One – the 20th most recommended – took him to task for underestimating the prosperity and freedom that the EU has brought to Europe. The other 10 agreed with his Europhobic criticisms but found them insufficient: they attacked the author for recommending a vote in favour of continued membership. As the most recommended comment put it: 'If it is doomed to fail, are we not better off to jump before the ship sinks?'

### **E. Cowardly Politicians**

And here we come to the fifth and last of my explanations: cowardly politicians. The great majority of them are in favour of continued EU membership: but they dare not advance reasons for it going beyond the narrowest of self-interest: safeguarding jobs, cheaper holidays, reduction of roaming charges. The trouble with arguing in such terms is that one is vulnerable to counter-examples of narrow self-interest not being served: for example, the UK's net contribution to the EU budget, reduced by a rebate but still sizeable at some £8 billion per year.

The broader debate tends to be couched, depressingly, in terms of protecting us from things that Europe wants to do, rather than how we can influence Europe, and through Europe the wider world. The public is told that in 2011 the UK vetoed a Treaty, when in fact 25 other Member States shrugged their shoulders and then signed it anyway. Even European human rights are characterized as a threat to our traditions and our well-being.

European law is more central to our national life than most politicians are prepared to allow. Perhaps they think that if they acknowledge that fact, we will disapprove. Or perhaps they delude themselves, clinging to the notion of national sovereignty without accepting that it can often be used more effectively in conjunction with others.

Either way, the cumulative effect of ignoring or downplaying the importance of Europe is to render Europe dispensable in the national mind. It is a dangerous game to play.

### **8. Referendum**

So what of the referendum? Four quick points to end on.

The first thing I would say is that the result is no foregone conclusion. Polls currently show a large majority in favour of continued membership: but the young who are most favourable are also the least likely to vote, and as recently as November 2012, 56 per cent opposed membership as against only 30 per cent who wished to remain. The result of Mr Cameron's renegotiation has the potential to be determinative of the outcome.

The second thing I would say is that even if the British vote to stay in, they will not become Euro-enthusiasts overnight. When the last referendum, in 1975, two years after UK accession, produced a victory for the 'yes' camp, the then Home Secretary, Roy Jenkins, stated:

It puts the uncertainty behind us. It commits Britain to Europe; it commits us to playing an active, constructive and enthusiastic role in it.'

Those words were not, on the whole, borne out by history. Referenda, like elections, produce results: but they do not silence the losing side.

Thirdly, and at the risk of perpetrating a heresy in this secular Vatican of European law, it may be time to recognize that even the concept of 'two-speed Europe' – with its implication that all will eventually arrive at the same destination – is insufficiently flexible to accommodate the diverse aspirations of European states.

In his excellent book, *The Future of Europe*, published in 2011, Jean-Claude Piris firmly dismissed the concept of 'Europe à la carte', which he defined as optional participation in policies falling outside a mandatory common core. 'It will not be examined in this book', he said, 'as it appears to go in a direction that is opposed to the very basic principles on which the EU is built.' One disagrees reluctantly with such a brilliant lawyer and civil servant. But in speaking up for an element of choice, I would make two observations.

First, is it not time to abandon the fiction that opt-outs must be only temporary? Indeed has it not already been abandoned, in the case not only of those experienced opters-out, the United Kingdom and Denmark, but of the other European countries – Norway, Switzerland – which participate in some parts of the European project but not in others?

Secondly, life was not *à la carte* in the 1950s, but in almost every respect it is now. If the only restaurant in town requires its patrons to consume a standard menu which some of them (however unaccountably) find unpalatable, then who could be surprised if, at some stage, they take the decision to eat at home instead?

But finally, I hope we stay in the restaurant, including in the kitchen. With barely 7 per cent of the world's population and a declining relative share of its economy and its trade, Europe's best chance of future influence can only come from unity: as Benjamin Franklin said at the signing of the Declaration of Independence, 'We must all hang together, or assuredly we must all hang separately.'

For all its imperfections, our Union is the most advanced expression yet of the international rule of law, and thus a model to the world. And for all *our* imperfections, it is my fervent hope that the 'bloody Brits' will find a way to be there for the long term, helping to develop both flexible ground rules for the peoples of our continent to live harmoniously together and a framework for Europe to project itself to the outside world.