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The EurOmega Project

C O N S T I T U T I O N

By

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and
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1. INTRODUCTION

The aim of this report

This report is a contribution to the current debate on the structure and future of the European Community. It does not cover the debate as to whether the United Kingdom should or should not remain a member of the Community.

Many people will express surprise that the issue of membership should be questioned in any case. There seems to be a national UK consensus that Europe is 'a good thing', though great disagreements as to the United Kingdom's degree of involvement. However, there is no half-way house. Either the UK participates fully in the formation of a new European order or it decides to isolate itself whilst retaining access to vital European markets for its goods through a world free-trade order. The latter option assumes a successful outcome of the Uruguay Round of GATT negotiations. This report makes recommendations with respect only to what the UK should do if it decides to remain within the EC and shape its future.

It aims to consider the many and difficult questions currently being posed from a simple perspective, namely how to deliver to the peoples of Europe the most effective, efficient and legitimate governance.

This simple perspective has the potential to lead to a radical overhauling of our commonplace beliefs about the European Community. It urges upon us a reappraisal of our simplistic understanding of national sovereignty, for the fundamental basis of sovereignty is and must always remain the will of the people. Nation-state institutions are a crystallized expression of this will, and it is important for both politicians and the people to be aware of shifts in attitude of the will of the people. There is no doubt in the minds of the authors that there is a growing awareness and identification with all things 'European' on the part of the ordinary EC citizen. We believe in the final analysis that if the institutions of the EC do not fully embody the wishes of the people for democratic, open and efficient government, then those institutions will have to change.

With that in mind, this report aims to look at the present state of development of the institutions of the European Community. It looks forward to the future of Europe and lays down plans on how to get there most realistically.

A vision of Europe

It is hard to ignore the great benefits to be reaped by the countries of Europe from the opening up of all areas of their society to new influences from other countries and other peoples. This vision is greater than any artificial boundaries; it is a vision that is not limited to six, ten, or twelve countries, but rather a vision that appeals to all free-minded people. That is precisely why, in light of recent events in Central and Eastern Europe, we must under no circumstances deny them access to the kind of benefits that for over forty years were on display through what proved to be a rather transparent iron curtain. It was not a bureaucracy that created these benefits, and it most certainly should not be a eurocracy that denies them to the East European peoples who endured so much and fought so hard in order to attain them.

These benefits may be very difficult to quantify but they will be none the less real and visible for that. They will be as real and visible for the shopper in a supermarket, who will have more choice, and will see a competitive downward pressure on prices, as for the company that manufactured some particular product which will have a larger market which it can more easily reach. 1992 and after should be a purgative and renewal period for the EC, a time to shake loose from the dead hand of bureaucracy that so handicapped it in the 1970s and a good part of the 1980s. Instead it should adopt a much more enterprising approach to the challenges that are going to face it in the 1990s. It should ensure that the benefits promised to the public are delivered upon, in defiance of those who think that their vested interests are more important than the interests of the Community as a whole. It should make these benefits manifest to all the peoples of Europe then ask them to consider how they want the community to develop thereafter.

Accordingly the structure for a European constitution proposed in this paper is aimed at providing an environment which, by historical necessity, needs to meet the various expectations and aspirations of a wide range of peoples currently both inside and outside the European Community.

Re-writing the treaties

Europe is now in a state of great flux. This in itself must not be an excuse for political paralysis. Indeed, it is important to embrace new ideas speedily. In searching for an ever closer Europe, the richness of traditions and the interests of minorities throughout the continent must be considered.

Consequently we are proposing that the Inter Governmental Conferences to be held in Rome later this year should propose the re-writing of the presently existing treaties and the writing of a new one which simplifies the constitutional standing of the

Community institutions, and makes the Community (or at least the principles on which it is based) easily understandable by all the peoples of Europe.

This approach has many advantages. To start with it will allow for the clarification of exactly what the EC is about and in what direction it is going. It will consequently permit those who sign the new Treaty to know exactly what can be expected from membership (and indeed whether or not a country wishes to be a member of such a Community). This will make redundant the argument that in signing of the original terms of accession, we and other countries did not know what the consequences of such agreement would be. Furthermore, this approach would allow for some of the major issues of principle facing the Community to be settled now, such as future membership.

In our proposal, every member of the Community must fulfill certain obligations. These are the minimum criteria that have to be met by countries wishing to join the Community. Peter Bernholz in a recent paper to the Mont Pelerin Society laid out certain minimum requirements with which we concur. We propose that the following conditions would be mandatory for a country to be a member of the European Community:

- 1) They have a system of government that guarantees the rule of law and the continuance of democracy.
- 2) They participate fully in the European Free Market, and that private ownership, particularly by individuals, of property and businesses should be the principal form of ownership within the economy.
- 3) They accept the limited sovereignty of the European Community and agree to abide by its constitution, including a Bill of Rights and the laws made in accordance with the constitution.

Setting the hurdles

These requirements are not designed to create a homogeneous identikit Community. Rather, on the Cassis de Dijon principle, the community should be able to recognize a rough equivalence of respect for human rights and accord that country full membership status. The existing members of the EC should not erect hurdles that are too high for the emerging countries of the former communist bloc to have any reasonable expectation of clearing in the foreseeable future. The EC has a crucial role to play in helping these countries develop into mature democracies, but it can only do that if it draws them close to itself so that they can learn from the west and have a stable anchor of comparison on which they can depend when they are going through their ultra-rapid social and economic changes. The EC has a duty to help these countries and the proposed 'Association Agreements' do not fulfill this duty.

The requirements we propose are necessary to make Europe an effective and productive operator in the international environment. They should also prove to be a suitable framework for attracting countries currently outside the EC looking to future membership of the EC. The ability to subscribe to the minimum requirements of the reformed EC (and not obligatorily to any other elements of it, such as defence), mean that newly independent countries of the former Eastern bloc will find the EC much more attractive to them in the short term, and a more practical proposition. The minimum requirements will give them access to a rule of law, a free trade area, and the possibility to monetary stability. Other parts of the benefit package can be entered into later, when circumstances make it possible.

Not only should a certain portion of the agreements and obligations stemming from EC membership be made to wait until new members are ready to move into deeper partnership with the existing members; but other agreements (especially those designed for the benefit of the original members, and which remain burdensome to more recent or poorer members) probably need to be made voluntary rather than mandatory. This may require us to dismantle some institutions that have existed as long as the EC itself, but as we look towards the new vision of Europe, the survival of those historical relics should not trouble us overmuch.

2. THE 1999 CONSTITUTION

So what form of constitution should we be seeking, that will secure individuals' rights and promote a vibrant economy? For a new constitution we certainly need. At present we have a pan-European executive with a large amount of legislative power, and a developing European judiciary, neither of which is restrained by a properly thought out constitutional structure. As these central institutions grow and develop, we need to be sure that they will remain properly accountable.

That is the negative case. Some go much further in stressing the positive benefits of a new constitutional order. For it would indeed provide a welcome opportunity for the new Europe to set out with some precision its perception of the relationship between individuals and governments, states and Community. Capturing this prize, of course, will not be easy. One distinguished constitutional theorist, James Buchanan, in his paper to the Euro 92 Institute, correctly points out that Europe has been presented with an historic opportunity the likes of which arise only very rarely. Buchanan identifies the need for some kind of constitutional government in Europe but does not underestimate the skills needed:

'Europe waits for its own James Madison, who understands the constitutional economics of competition, and who, at the same time, appreciates the nuances of persuasive argument, bargaining and compromise required to generate agreement among apparently divergent interests... Europeans generally must be convinced that establishment of a constitutionally defined union is a positive-sum movement for all parties.'

Can centralism be restrained?

Is it a tenable belief, that a sound constitutional structure can help us resist the gradual drift to centralism that seems inevitable without it? Buchanan is optimistic, because he argues:

'Nowhere in the world, East or West, do we find, in the 1990s, the naive faith in collectivist nostrums that characterized both intellectual and public attitudes for most of the 19th and 20th centuries.'

Certainly the breaching of the Berlin Wall has had its effect on all of us. Nevertheless, there are many millions of people in Europe who have never had direct experience of the worst of

collectivism that those in the East have just escaped from; many others (despite the warnings of F A Hayek in The Road to Serfdom) are complacent that such a state of affairs could never occur under democratic structures; while others still believe in some kind of 'third way' (despite the warnings of Easterners themselves).

For all these reasons, we are less confident than James Buchanan that there are not a significant number of people, in positions of influence, who do not want to see some kind of European super-state based on collectivist ideals, or who would complacently go along with a drift towards that destination, wittingly or otherwise. Professor Ben Roberts, in a Bruges Group publication, identifies Jaques Delors as one of these people, and describes him as 'clearly a socialist of the pre-1980s vintage.'

From economic to political union

Such spectres may be of little consequence for us if we could resist becoming embroiled in debates other than the creation of the single market: about political institutions rather than economic ones alone. But can we? An economic structure, even a market-led economic structure, needs political backing to maintain it. We have to agree and enforce the framework of rules which make markets work. Consequently, many are warning that political and economic reforms are indissolubly linked. Thus Michael Heseltine argues in his 1990 pamphlet for the Centre for Policy Studies that, in considering the future of Europe:

'The British are left with a choice: either we can play a leading role and seek to influence the changing institutions and laws of Europe in line with British attitudes, furthering British interests, or we can settle for a two-speed Europe, with Britain bringing up the rear, more sure of what we are against than what we are for.'

For us there is no choice. The United Kingdom must be at the forefront of developments in the Community. It must bring its voice to bear in the arguments about economic and political co-operation. Given the legal, political, social, historical, and even intellectual differences between the UK and its EC partners, it will have to learn rather better how it should conduct itself in the negotiations to come. For, whether we are a willing partner or not, the outcome of those negotiations will affect all our lives. And we have an opportunity to ensure that the outcomes of the institutions that emerge from the negotiations, and which do affect our lives, are soundly based and effectively accountable and manageable.

A new constitution

With all this in mind, we propose that 1999 should be set as a

date for a new constitution for Europe to come into effect. By this time it should be clear how far the countries of the former communist bloc (and others) are in a position to take their place in the Community, and the entry of Austria, Sweden and perhaps Norway will be resolved.

The constitution of the new Community should be explicit. At present, the national governments of the Community, and the individuals and firms which live and work within them, are finding themselves facing a tidal stream of new EC initiatives. They have to spend a great deal of time and energy in reading, digesting, and arguing proposals that have the most far-reaching implications for their future. Yet many of these initiatives emanate from an unelected bureaucracy that is not subject to any explicit and effective constitutional control.

Now that we have seen how the institutions of the Community have evolved to date, it is certainly time to try to bring them under some rational structures of control so that they will develop to serve our purposes more precisely; and to decide the functional limits where their writ should and should not run. As well as ensuring that the Community's institutions are accountable for what they do, any new constitution should make sure that those central institutions have the power to make decisions only in the policy areas which are best dealt with at the centre.

We must also put in place some safeguards against the inevitable tendency for additional powers to be accumulated at the centre. For while a new EC constitution might bring the benefits of greater accountability and functional precision, it also brings with it a risk -- that the very existence of a Europe-wide constitution and decision making authority will make possible and perhaps even encourage a greater and greater centralization of power. Skeptics quite rightly point out that federal constitutions have been highly prone to this affliction in the past, and that even those which were framed specifically to rule out centralism have nevertheless found it pushed through, sometimes at gunpoint.

At the same time, the risks inherent in the present situation must be even larger. What constitutional controls there are over the central institutions remain imprecise, ineffective, or untested. In such circumstances, a movement towards centralism by just a few countries or prominent personalities could prove impossible to resist, and could proceed faster than anyone might imagine. Indeed, it is because this threat seems so real now that the present debate over the future of the Community has become so important in the UK.

The jurisdiction of the EC

At the moment and for the foreseeable future the functions that an EC government should carry out are fairly clear. They should all be based on the premise that the goals of an ever-closer union

can only be brought about by a natural process of interaction of countries and people. For convenience of discussion we identify the functions of the European government as:

- The co-ordination of foreign policy
- European competition and mergers policy
- Guaranteeing the free movement of people
- Guaranteeing the free movement of capital and services
- Europe-wide environmental issues
- External trade relations
- Internal and external security
- Producing a Europe for the people.

It is right that the EC should aggregate as far as possible the external interests of its members into a single policy. This would allow the EC to be a major player in world affairs and put more pressure on those countries who act against the interests of the Community as a whole or against the interests of any single member.

It is difficult to imagine that with their different historical traditions and aspirations, the EC countries will be able to reach complete agreement on foreign policy. Indeed, the capability of a country extracting itself from such positions and conducting its own foreign policy could be important, particularly in cases of aggression or expulsion from the Community where a country may wish to negotiate foreign affairs with its former partners.

However, progress towards a common foreign policy should be facilitated by establishing in the European foreign ministry effective ways of representing the interests of the member countries -- indeed, having people working in the ministry whose job it is to represent the interests of the country concerned.

Competition and mergers policy

This sort of policy already exists within the EC, and has existed for some time with regard to state subsidies or industry. The most sensible way to operate such a pan-European policy would be to establish the rules that are to apply, then allow agencies in the existing areas should be based in the member countries to administer these rules (taking into consideration any special considerations that are agreed to apply to that country). Thus, if a particular bid over a certain agreed level takes place then it is automatically referred to the agency dealing with bids of that European importance.

As far as this already exists we support it, though it should not be seen as an emancipation of the role of regulatory bodies by the nation-states who must continue to have competence in a wide range of such issues. The important element of any sound competition and mergers policy is that the rules should be clear and not arbitrary, so that businesses can make intelligent plans for their future.

3. EC GOVERNMENT FUNCTIONS

Foreign policy

For geopolitical and internal reasons it is right that the EC should aggregate as far as possible the external interests of its members into a single policy. This would allow the EC to be a major player in world affairs and put more pressure on those countries who act against the interests of the Community as a whole or against the interests of any single member.

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Free movement of people

To give the Community the legitimacy that it must have if it is going to be a credible union, the free movement of people must be guaranteed. Their movement must not be free only on paper, but free in reality. Thus there should be no customs points for internal travellers anywhere within the Community. A journey from England to France should be as easy as a journey from England to Scotland.

Free movement of people is not just about travel. In many instances it is about being able to move place of employment to another member country and having professional and vocational qualifications recognized there. It is being able to be based in one country for tax and social security purposes and earn income in another country without being pursued by overlapping legions of bureaucrats. The Community must make it as easy as possible for this to occur and take an aggressive policy of prosecuting those who seek to impede these goals.

Free movement of capital and services

Again, for the Community to achieve its goals the free movement of capital and services must be absolutely guaranteed. Any person should be allowed to open an account in any bank across the Community and not be subject to any kind of notification procedures, regardless of the amount deposited or withdrawn.

It is only by taking such a line that the privacy of the individual is protected. The EC would benefit by dropping the popular myth that it is only drug dealers and gun runners that have a need for non-national bank accounts or the services of foreign banks. As the recent high interest rates have shown in the UK, it can become a distinct advantage to take out a mortgage on a UK home that is raised from banks abroad (at considerably lower interest rates). Banks and others must be able to offer their services right throughout the Community without hindrance. If they cannot do this then we have a pale shadow of a common market that will have no chance of delivering the kind of benefits set out in the Cechinni Report.

The environment

Interest in environmental questions is only likely to grow in the Community, but there is no doubt that it will play a very important part in the role of the Community since; by their nature, many of the environmental questions that we face are international. It is therefore only logical that these questions should largely be settled in an international arena.

The simplest way for a consistent result to be achieved through the Community is to base policies on the need to achieve certain desired results rather than to specify in detail how those reports should be achieved technically. This should make the job of the Community governments much easier, in that instead of trying to ensure that some detailed plan is being carried out, they will have to ensure only that specified results are being achieved by the firms and governments under review.

This approach can be applied to many of the most important environmental matters including car emissions, power station emissions, effluent toxicity levels etc. Any organization which does not comply with the agreed EC standards (which may well depend on the local topography) has to pay a pollution fine, or induce other to reduce their pollution output to a corresponding degree. Thus a car manufacturer which does not meet emission control standards or fuel consumption standards, finds itself paying hefty fines per car that it produces -- a sure way to boost car-makers research on new non-polluting technologies. This approach makes it simply uneconomic for companies to pollute rivers, produce unclean fumes of electricity etc., yet gets round many of the problems of producing over-detailed legislation which needs a large number of enforcement officers and causes instant bankruptcy to some firms which cannot instantly change their processes. The polluter pays principle is greatly more simple in theory and much easier to apply in practice.

However, the EC should have only limited competence in applying it. It should be able to set standards for those things that have truly pan-European impact in their levels of pollution but it should not get itself involved in local environmental questions such as the pricing of minor roads in Andalusia.

External trade relations

The EC has already taken responsibility for negotiating at GATT and it is sensible that it should do so. In theory, it gives the members of the EC a more powerful voice in the representation of their interests and makes negotiation at the GATT simpler.

There is a danger, however, that EC negotiators at GATT lose sight of the benefits to be gained by the EC from free trade. Instead of trying to break down barriers in other countries, they often negotiate from the position that if that country does not agree to accept some kind of Voluntary Export Restriction (VER) for their products then they will be denied access to the market altogether.

This approach is potentially very damaging to the consumers and producers in the Community in that it denies them the advantages to be gained from free trade. The EC is the world's largest trading bloc, but that does not mean that it can profitably pursue a policy of economic isolationism. The EC will be judged

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for its fitness to take over other areas of policy by its success in negotiating at GATT. If it is seen to be held captive by inefficient producers it will not retain the trust of the majority of its people.

It should be a part of the treaties that the Community supports a free trade policy and the free world movement of capital. (The idea of the free movement of labour throughout the globe is a much more controversial subject carrying the threat of much more serious political upheavals; but free trade and free capital movement are at least within sight politically.) We envisage that there may be occasions where these ideals will need to be suspended -- to motivate other countries to share them, for example. However, that suspension should be of a limited and prenotified duration and subject to the veto of either house of the Parliament (which we will describe below).

Internal and external security

The creation of a European army is not being advocated. Once again, it is important that individual nation-states retain their own capability for self-defence; otherwise, a powerful centre with military forces at its disposal may well make impossible the possibility of secession or expulsion (a possibility upon which, ironically, the strength of the union depends).

However, there are many key areas where co-operation will be necessary. These include:

The identification of external risks to the community as a whole.

The co-ordination of a response to these risks so that they are neutralized as far as possible.

Counter-terrorist policy.

Anti-narcotics operations.

Countering Europe-wide crime.

A People's Europe

The concept of a people's Europe was first made concrete in the 1985 report 'The Report of the People's Europe Committee' to the European Council. This took as its premise that:

'What has been achieved until now in Europe has been the work of those who experienced the horrors and destruction of war. Continuation of the venture rests on the assumption that future generations will also understand and appreciate one another across borders, and will realize the benefits to be derived from closer cooperation and solidarity.'

CONSTITUTIONAL STRUCTURE, LEGISLATURE AND EXECUTIVE

We believe that any European government should indeed encourage the sponsorship of such things as the European Community Youth Orchestra and programmes such as the European City of Culture programme, along with other programmes that enhance the laudable aims of the Community, to promote these ideals of cooperation and understanding.

Essentials for any kind of open government are limited powers and proper accountability to the people who are governed. The Commission is making sure that these two essentials are met by any EC government has been tackled only recently. Dissatisfaction with the fundamental weaknesses of the EC system has been expressed. At the heart of this problem is the pivotal role of the Commission which combines executive and legislative functions. It is unaccountable and unanswerable to EC and other

It is being agreed that the EC should undertake some more... It therefore is necessary to devise a new... institutional structure that will meet the criteria above in the... the old one could not. Many commentators have... the need to address the 'democratic deficit', a... that has left in the Community thereby those who are... policy and those who are securing it are not accountable... actions. Thus ministers in private negotiations agree... and present it as a fait accompli to Parliament for... some weeks or months later. This is compounded by the... some in Brussels have an inordinately large amount of... on the shape of the proposed legislation from the... (the only body with the right to propose legislation)... in some areas the Commission has been delegated... which it is using more and more to write and enact... of a more technical nature without any real... of member governments.

Strengthening the institutions

It is clear that as the competence and geographical spread of the... becomes larger it is going to be impossible to exercise... democratic control of the institutions of the EC under the... system -- in under a system of consideration as proposed.

Presently there seems to be a clear case for reworking the... institutional structure in Europe in an attempt to... a system of government on a European level that is... transparent and accountable for its actions. Set out... a proposal for a European system of government which we... these goals. In drawing up this proposed structure... kept as far as possible the sizes of the EC institutions... believe that this would aid in creating a greater... of the new-style Community if these proposals were

4. INSTITUTIONAL REFORM: LEGISLATURE AND EXECUTIVE

Two essentials for any kind of open government are limited powers and proper accountability to the people who are governed. The task of making sure that these two essentials are met by any EC government has been tackled only recently. Dissatisfaction with some of the fundamental weaknesses of the EC system has been growing. At the heart of this problem is the pivotal role of the current Commission which combines executive and legislative powers: it is unelected and unaccountable to UK and other electors.

It is now being mooted that the EC should undertake many more functions. It therefore is necessary to devise a new institutional structure that will meet the criteria above in the way that the old one could not. Many commentators have identified the need to address the 'democratic deficit', a situation that has arisen in the Community whereby those who are making policy and those who are executing it are not accountable for their actions. Thus ministers in private negotiations agree a settlement and present it as a fait accompli to Parliament for approval some weeks or months later. This is compounded by the fact that some in Brussels have an inordinately large amount of influence on the shape of the proposed legislation from the Commission (the only body with the right to propose legislation). Furthermore, in some areas the Commission has been delegated powers which it is using more and more to write and enact legislation of a more technical nature without any real consultation of member governments.

Reworking the institutions

We believe that as the competence and geographical spread of the Community becomes larger it is going to be impossible to exercise proper democratic control of the institutions of the EC under the current system -- or under a system of confederation as proposed by others.

Consequently there seems to us a clear case for reworking the present institutional structure in Europe in an attempt to fashion a system of government on a European level that is democratic, transparent and accountable for its actions. Set out below is a proposal for a European system of government which we believe meets these goals. In drawing up this proposed structure we have kept as far as possible the names of the EC institutions as we believe that this would aid in creating a greater understanding of the new-style Community if these proposals were

to be brought about.

The Community legislature

A bicameral legislature is needed, with real powers within the restricted list of functions that we have identified as falling within the jurisdiction of the Community institutions.

The lower house would be the present European Parliament slightly reconstituted. Members would be elected for seats of a roughly standardized size in terms of population; so that the different countries in the Community will end up with a widely differing number of seats (as the various states do in respect of the US House of Representatives). But this is an assembly which represents people rather than countries.

The MEPs should be at liberty to join any of the groups or coalitions in the EP. In time it is to be expected that European political parties would form and campaign across the whole of Europe for seats in the European Parliament.

If a standardized electoral system was sought, it would probably be simplest for the majority of member states to conduct elections to the European Parliament by a mechanism of proportional representation which should allow for the representation in the EP of all those parties who register above a particular percentage in any one member state. However, the essential requirement is for fairness, rather than imposed uniformity between historically and politically different countries, and it would remain perfectly practical for some of the present electoral traditions within different countries to be maintained. This would be wise particularly if feelings about them were so strong that they posed an obstacle to the formation of the new lower house. Elections should take place every three or four years, though again a degree of flexibility is desirable if some different schedule proves more convenient in practical terms for particular countries -- for example, to coincide with (or avoid) their election campaigns for national parliaments or similar reasons.

The role of each MEP is to represent the interests and concerns of their constituents at a European level.

The upper house

An upper house should be established. It might well be called the Union Parliament, since it will more precisely represent the interests of the different countries that come together in the European Community, rather than individual constituents. However, a convenient name that runs with the grain of existing institutional labels might be the European Council. In discussing the case of an upper house, Peter Bernholz suggests calling it the Council of the Union, which neatly fuses the two

concepts together.

We suggest that in this upper house there should be between two and four representatives from each member country. Two would be a minimum in order to reflect divergent views within each country and to protect the interests of small countries. Larger countries (in population terms) should be able to have the interests of their citizens taken into account by having more votes, but they should not be able to dominate smaller states. So setting a maximum number of seats in the chamber for a particular country should stop this happening. (To save gerrymandering in future constitutional amendments, however, there remains a case for giving each member state an equal number of representatives, as happens in the US Senate.)

The method of appointment of this house should be left at the discretion of each individual country, so that some countries might wish to have their representatives directly elected and others may wish to have theirs appointed by the government of the day, or by other methods entirely.

A longer period of office might be appropriate in this chamber, given its rather different role from that of the European Parliament. We suggest that members should be elected to sit in this chamber for a period of five or six years.

the role of the members of this chamber is to safeguard the interests of the member state which they represent.

The European Commission

The European Commission will become the executive arm of government. The President of the Commission will be chosen from both houses of the Congress; and then he or she will propose cabinet members to complete it. However, the cabinet will have to be approved by a simple majority in both houses before they can take office. The President or any member of the Commission can be removed by a vote of no confidence in them at any time in either house.

The European Commission and any member of the upper house of the legislature will have the right of initiative in proposing legislation; which must be approved in both houses before entering into law. Legislation proposed by the Commission should go first to the European Parliament and then to the upper chamber; legislation proposed by a member of the upper chamber should be heard first in that chamber.

The European Commission will be responsible for the implementation of duly enacted European legislation and is accountable to both houses for all its actions and regulations.

Power of taxation and subsidy

In any association of countries, decentralised powers of taxation are important if more and more funds and powers are not to accrue to the central authorities on account of their financial dominance and bargaining strength.

Consequently we suggest that the main powers of taxation should remain with member states. What funds the EC requires to undertake its rather limited list of functions should be funded by a simple single tax, such as a sales tax. This should be payable on all items and should be added at point of payment. A single tax has been proven to be more effective in keeping down the overall levels of taxation, and having it added at point of sale will act as a constant reminder to EC citizens how much they are paying for being members of the EC. No other form of taxation should be permissible.

There is also a case for forbidding subsidies and transfers between the central governmental agencies to firms, communities, and member states. This will, of course, require some effort to extricate ourselves from the present web of subsidies and transfers; but it should be well worth the effort. For the power to raise taxation generally and to target it onto specific constituencies has been a significant force in the degeneration of some properly federal structures into nation-states. The reason is that politicians at the centre can use their discretionary spending power to buy local support for larger central programmes. The sums involved can be so large for the localities concerned that such inducements are hard to resist.

Voluntary transfers between member states, however, are rather different. There should be no objection to them in principle, provided that they are consonant with general EC objectives.

Peter Bernholz also proposes that a centralized harmonization of national tax rates and social-security programmes should be forbidden. This would prompt member states to compete to establish efficient and attractive systems, since the free movement of labour would allow people to move to the states which they found most congenial from these points of view.

5. SECESSION AND EXPULSION

We envisage that unlike the present Community it will be essential, and indeed only fair, that any member of the Community should have recourse to an explicit means of withdrawal from the Community by the member states. Equally it is only right that if one member's actions are deemed to be incompatible with continued membership of the Community then that country can be expelled by the community. These eventualities should hopefully never arise; however, they must be countenanced and provided for.

Secession

We propose that when a government of a member state formally declares its intent to seek secession from the EC, then a referendum (in that member country only, though also including the nationals of that country, resident in the other member states), would be declared automatically for a date six months after the declaration of intent.

If the referendum within the member state is in favour of secession by over two-thirds of those voting, then three things would happen:

- i) All EC funding is cut off from the member state within six months.
- ii) The member state starts negotiation with the EC on terms for secession. The Commission in consultation with the European Congress (the Union Parliament and the Union Senate) will negotiate the terms on behalf of the Community.
- iii) The member state continues its contributions to the EC for the period of one year after the referendum, at the same level as for the previous full financial year. This penalty will help ensure that the threat of secession will not be used frivolously, while keeping the possibility of secession still a realistic option for member states that find themselves in profound disagreement with Community policy.
- iv) All national representatives of that country on any EC body must resign by the end of the year's negotiations.

Expulsion

We envisage two occasions when a member state can be expelled

from the EC. First, if one member state initiates armed aggression against another member state, then that member state is automatically expelled on an emergency ruling of the European Court.

The second occasion would be an irretrievable breakdown in the observance of the Constitution of the Community. To establish such a breakdown, we suggest that the following procedure should be followed:

- a) The European Commission can initiate an action in the European Constitutional Court against any member state.
- b) The aim of the action would be to establish that previous repeated breaches of the constitution, and therefore the treaty, make impossible that member's continued membership of the Community.
- c) If such conditions are deemed to exist by the Constitutional Court, it will impose a fine on the offending country, the monies from which accrue to EC resources. The fine must be paid immediately and funded by the member state through a rise in VAT. (The object of raising the money in this way is to make evident to the people of the country concerned the fact that they are paying the fine from their own pockets.)
- d) Formal expulsion proceedings would commence if the member state concerned refuses to pay the fine.
- e) Funding of EC projects within that country would cease within six months.
- f) The member state would be expected to meet its financial obligations for the rest of the financial year.
- g) The member state would cease to be a member state as soon as a formal intent of refusal to pay the fine is notified or the payment deadline elapses.
- h) The Commission would then endeavour to negotiate as quickly as possible the terms of expulsion.

A realistic option

In all the negotiations for secession or expulsion detailed above it would be necessary for both sides to take a pragmatic view on what measures should be taken. The country soon to find itself outside the Community will obviously want to negotiate for itself the greatest possible access to the markets of the others, whilst the other member countries would not wish to see the interests of their corporations or citizens damaged to any unnecessary extent by overly aggressive negotiations.

At the same time, the threat of secession or expulsion has to be a realistic one if it is to work. A realistic threat of expulsion which imposes certain costs on the country concerned is, plainly enough, a useful mechanism to ensure that the basic conditions of membership including the human rights provisions are properly respected and enforced.

The threat of secession is somewhat more subtle. It has to be realistic enough to make the central authorities careful not take onto themselves too many of the powers and privileges of the individual states, not treat different states unfairly, and not place too great a burden of regulation and taxation on the members of the Community. At the same time, it has to be costly enough to the individual nation-states that it is not used routinely as a bargaining chip in annual negotiations. This is a difficult balance to strike, but one which will have to be decided upon at the start of the constitutional design process.

Upon examination, the proper balance may require member states to possess quite a large amount of power of their own. For example, member states must have the realistic prospect of possessing or retaining enough military power to resist any constitutional breaches by a coalition of powerful member states at the centre. Even if the constitution is not broken it may be that a member state comes to realise that membership is working against its long-term interests, and it must have the practical as well as the constitutional power to withdraw. This threat, in turn, will focus more of the centre's attention into the terms and conditions of membership, and should help it to evolve a more attractive membership package for the future.

It may seem odd to talk about secession and expulsion when we are thinking of ways to bring the European nations into closer partnership. Yet it is only the fact that a member can withdraw or be expelled that associations of any sort remain useful. A Community that could not expel a member which was flagrantly ignoring basic human rights would not be one that many people would wish to belong to; similarly a Community which does not have to respect the diverse wishes of its members because they cannot practicably withdraw must quickly degenerate into a majoritarian super-state.

Withdrawal from some programmes

Because of their diversity, if member states had the choice they would each like to associate themselves with some of the work of the Community but not with other elements. Some countries may be mature enough to play an effective part at all levels, while others may not; some might accept nearly all of the Community's programme while a tiny portion of it is blocked off to them by institutional, historical, or political obstacles.

If the Community is to enlarge and accept new members as diverse as Austria, Sweden, Hungary, Czechoslovakia and Poland, such problems will become more and more pronounced.

We propose, therefore, that it should be possible for member states to sign up selectively to Community programmes, and to withdraw from others. Beyond the basic qualifications of membership including human rights, many of the remaining elements could be treated in this way; with voluntary arrangements emerging between members, rather than by participation forced upon them by the centre. The exact range of programmes and the conditions of membership that would qualify would need some thought; but giving members the right to join particular programmes or not would again help to ensure that Community activities existed because they were thought useful by all the members, rather than by the central authorities.

Veto powers Constitutional Court

Switzerland's constitution allows cantons the power of veto over a certain number of decisions, including budget decisions. There may be a case for an analogous veto of member states over certain decisions of the Community. If creeping centralization is seen as a threat, retaining this sort of veto power will be a useful long-stop against it.

Another interesting part of the Swiss constitution is the people's veto, a referendum which can be initiated by a fairly low number of signatures, which can block certain legislative decisions. Although measures would have to be considered to prevent this mechanism becoming the source of a burgeoning number of positive initiatives (as in California) rather than as a strict veto arrangement, it does have attractions.

The Constitutional Court, we suggest, should be made up of 9 judges appointed for life. These judges should be appointed by the combined votes of the governments of the member states and should reflect a spread of members, with no two judges coming from the same member state. Each judge should be elected unanimously. Their ethical record must be irrefragably impartial.

The European Commission would nominate candidates for consideration by the upper house of the legislature, which would need to approve the appointments by a simple majority. If it rejects the Commission's candidate it can propose one of its own, which would have to be approved by two-thirds of members.

The Swiss constitutional system incorporates the possibility of a people's veto -- a referendum that which can overturn the court's

6. A BILL OF RIGHTS, AND THE COURT

A Bill of rights for Europe should be incorporated into the Constitution in order to ensure that in the creation and implementation of European statutes all the citizens of the Community have equal rights under the law. This document should aim to establish as rights the basic principles on which Community society is based: rights to vote, to own private property, protection against discrimination on colour, creed, and so on.

The European Constitutional Court

This court should be responsible for dealing with matters of interpretation and implementation of the European constitution. It will decide whether, for example, the constitution does or does not rule out a particular piece of legislation; or whether a particular member state was indeed recognizing the basic human rights and other terms of membership.

There is a strong case for having a body of this sort, which looks specifically at constitutional issues. It is noteworthy that the absence of a supreme court to decide this sort of constitutional dispute is one of the more problematic gaps in the Swiss federal structure, and it does cause problems when cantons disagree about what the constitution actually means. And while federal structures leave the resolution constitutional disputes to their highest court of appeal, the fact that constitutional and justice cases are being decided under the same roof gives perhaps too large a measure of power to such bodies.

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The Swiss constitutional system incorporates the possibility of a people's veto -- a referendum that which can overturn the court's

constitutional decisions. This might be appropriate in the context of constitutional disputes; it would allow the constitution to grow according to the will of the population, though of course it does carry some risks along with it.

The European Court of Justice

This should be the final court of appeal for all criminal and civil actions arising out of EC legislation. Once again, the standing of the judges has to be above reproach.

Access to this court should be limited, otherwise a backlog of unheard cases would build up: and we envisage that any individual or body must first initiate an action in a member state's Crown or High Courts (or equivalent level of court). This action may be against any person, persons, corporations, local or national governments or European institutions, with the prospect of appeal to the EC level available after that process is exhausted. However, the harm or injury caused by the alleged breach of these rights would have to arise within the judicial jurisdiction of the original court: a farmer in Italy cannot take to a court in France a claim for EC payments, but should pursue it through the Italian courts before having the matter taken up on a European level.

There will be no automatic leave of appeal to the Court of Justice. A Court of First Instance will hear both sides of the case and only if it considers that the ruling of a lower court presents questions or difficulties with EC legislation will its national Court of Appeal give it leave to allow an appeal to the European Court of Justice.

The ruling of a court anywhere in the Community on a matter of EC law will establish precedent in that particular law. Once a decision has been reached by a particular court, its decision will enter into the case law of the Community. A central registrar will keep records of all cases brought under European statute, and make this available to the judiciary throughout the Community for guidance in making their rulings.

Crown immunity and the immunity of other member states' governments would be dropped. In matters of EC legislation it is imperative that for the citizens of the Community to have equal access to the laws that affect them equally, and they should be allowed to prosecute the governments who are responsible for the implementation of those laws.

Amendments to the Bill of Rights

Amendments to the Bill of Rights should be difficult to achieve. They should not occur because of political expediency, but rather because the fundamentals of the political system have changed.

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They should be possible, however, when the constituent governments want them strongly enough -- or, if those governments are not sufficiently responsive to the will of the people, by direct indication from the people themselves.

To amend the European Bill of Rights therefore, two routes would be available, the popular route and the governmental one.

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Popular route

A petition from at least five million citizens of the Community would trigger a referendum on a specific amendment. These signatures would have to be gathered in a period of not more than one year from the date of the first signature. Notification of raising such a petition should be given to the European Constitutional Court, which would be able to monitor its progress and legality throughout. If the amendment was approved by a two-thirds majority on a referendum of all the citizens of the Community (with a minimum of fifty per cent of the population voting for the amendment), then it would go to the EC legislature where it would have to be approved by a simple majority.

Governmental route

Under this route, the Commission would introduce into both houses of parliament the proposed amendment which would have to be approved by a majority of two-thirds in both houses before being put to the people in the form of a referendum. For the amendment to enter into law it would have to be approved by over two-thirds of the electorate at national or EC referendum ballots held within two years thereafter.

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