



1 INTRODUCTION

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The relationship between the UK and the EU has never been completely untroubled. However, this book is published against a background in which both the UK and the EU as a whole are facing existential crises, which would not have been thought likely, or even possible, a few years ago. Across the EU, the seemingly inexorable movement towards ‘ever-closer union’ has run into major problems that have set European neighbours against each other in a way that has never occurred before in the decades since the Treaty of Rome.

The euro zone crisis has shown what happens when ill-matched economies enter into monetary union without proper preparation and commitment. The cavalier way in which Greece and some other Southern European countries joined the euro zone has had dire consequences. These were predicted at the time, not least by British economists, but political imperatives overrode such concerns. The financial crisis has now forced euro zone governments to face up to the massive fiscal problems of the weaker members, and the political fallout of the required responses has been dramatic.

Less predictable, perhaps, was the migration crisis set off by the consequences of the Arab Spring, the collapse of governments in Iraq, Syria and Libya, and the rise of the Islamic State of Iraq and the Levant (ISIL). Millions of people have been displaced by war in the Middle East and are seeking, by one means or another,





refuge in Europe. The struggles of EU countries to handle the influx of refugees, plus that of economic migrants from many other parts of the world, has placed severe strains on the principle of free movement within Europe – a basic feature of the European ideal since the beginning.

Here in the (still just about) United Kingdom, we face a referendum on EU membership, the outcome of which appears more uncertain than ever. The attempt by David Cameron to renegotiate the UK's terms of membership, always likely to be a difficult task, will not have been helped by other members' perceptions that the UK has stood back from helping resolve Europe's other problems. At home, the strongly pro-EU Scottish National Party has threatened a new referendum on independence should the EU vote go in favour of Brexit. The UK Independence Party polled four million votes in the May 2015 general election. Some of these votes were at the expense of the Labour Party. Following its poor election performance, Labour has swung dramatically leftwards under the leadership of Jeremy Corbyn. This has opened up doubts about Labour's previously strong support of EU membership. At the same time, although the Conservative Party is perhaps more eurosceptic than it has ever been, there are still considerable divisions about the appropriate relationship with Europe. Only the Liberal Democrats remain overwhelmingly pro-EU, although they are a greatly shrunken force after their disastrous general election results.

This volume attempts to step back from the immediate political battlefield and to consider longer-term issues about the appropriate relationship between Britain and the EU. It is not a eurosceptic treatise, but it is certainly not blindly pro-EU either. Instead, it is intended to clarify the choices available. Working from first principles, the authors were asked to provide their take on appropriate regulatory frameworks, legal arrangements and international commitments for promoting a liberal market economy in the various areas where the EU currently has substantial powers.



These powers, or competences, are set out in detail in 32 review reports commissioned by the coalition government. The reports, which also summarised over 2,000 submissions from interested parties, are a valuable source of information. However, given the politics of the coalition, no real conclusion was reached. In summarising the work at the time of the publication of the final seven reports, Foreign Secretary Philip Hammond contented himself with generalities about the importance of subsidiarity and proportionality, and the need for the EU to focus on areas where, in the banal cliché of government statements, it ‘adds genuine value’.¹

In the IEA tradition, our authors, unlike the coalition’s competences reviewers, were asked to go back to first principles. They were asked to go beyond reviewing the field and to make judgements: not judgements about what is currently politically possible, but about where we need to be after renegotiation is concluded. Some authors believed that, in respect of the area of policy they analysed, we would be better off if we were not in the EU; others believed that there is a legitimate EU role in policy, but that it should be radically reformed; and some authors were content, more or less, with the status quo. We hope that their analysis will provide readers who have a vote in the forthcoming referendum with a conceptual framework to help them judge the revised membership terms that Mr Cameron intends to put to the electorate.

The next section of the book sets out first principles – four chapters that look at fundamental issues concerning the relationship between the EU and its members, in particular the UK. This is then followed by a series of essays on particular policy areas.

¹ See <https://www.gov.uk/government/news/final-reports-in-review-of-eu-balance-of-competences-published> (accessed 10 October 2015).



Principles

In his chapter, Martin Ricketts applies economic reasoning to the process of assigning powers and responsibilities to different levels of government in the EU. He starts from the proposition that one of the state's basic roles is the provision of public goods. For some such goods, the existence of international spillovers suggests that the appropriate locus of decision-making is above the nation state, although Ricketts concedes that detailed examination of cases may call this into question. In some cases, decisions should possibly be taken at a higher level than the EU: for example, some defence issues are better determined by NATO than by the relatively feeble European capability. In many cases, however, appropriate jurisdiction is clearly at the national level, and there is little economic justification for 'ever-closer union'.

Using Coasean reasoning, Ricketts draws an analogy between decisions to assign competences between states and the EU on the one hand and firms' decisions to merge (often as a result of high transactions costs) rather than continue to rely on contractual relations between individual firms on the other hand. The important issue for the EU is 'the complex one of determining the relative bargaining costs, agency costs and effectiveness of different collective decision-making processes'.

Ricketts places great emphasis on the benefits from competition between jurisdictions over such matters as taxation and regulation. The argument in Tiebout (1956) that factor migration and 'exit' will reveal preferences better than a voting system may have been based on restrictive assumptions, but Ricketts feels it was essentially correct. He rejects claims that competition leads to a 'race to the bottom'. He argues that such claims – which lie behind the promotion of many of the EU's 'shared competences' – reflect producer interests. Many health, safety and environmental costs, for example, are truly local, and EU harmonisation may act as a barrier to trade and encourage rent seeking.



Roland Vaubel's contribution examines the institutions of the EU from the angle of the UK's renegotiation stance. He argues that negotiations should focus on these institutions because there is much wider support among governments for limiting centralising powers than for reversing specific policies.

Vaubel emphasises the need to reform the European Court of Justice (ECJ). He argues that the Court is the 'lynchpin of the system': the judges misinterpret the European treaties because they have a vested interest in centralisation at the EU level, for instance in relation to financial regulation. The Commission's role as initiator of legislation and enforcer/prosecutor breaches the principle of the separation of powers. The European Parliament should, in his view, be reduced in size, and a second part-time chamber added, with a veto over centralising legislation and consisting of members selected by lot from national parliaments.

Four types of institutions, Vaubel proposes, are needed for international cooperation: international courts or arbitration tribunals; international public prosecutors to monitor and enforce compliance; international fora to negotiate these commitments; and an independent international competition authority. Importantly, he argues that such cooperation should not necessarily be confined to the EU. Like Ricketts, he argues that wider cooperation through the North Atlantic Treaty Organization (NATO) or the Organisation for Economic Co-operation and Development (OECD) may sometimes be more appropriate.

Vaubel points out that EU institutions differ from the ideal because the 'founding fathers' of the European movement intended to use the common market as a stepping-stone to political integration, setting up institutions that went far beyond what was necessary to abolish national barriers to trade and capital movements. This theme is taken up by Gwythian Prins, whose contribution traces the origins of 'The Project' of European union to the generation of Monnet, Salter and Hallstein, who reacted against the horrors of World War I.



Prins emphasises that Monnet and his colleagues, seeing that a direct move to a united Europe was unlikely ever to be agreed by independent nations, promoted a ‘creeping federalism’, epitomised by the *acquis communautaire*, the ratchet principle by which all integration is essentially a one-way process.

Prins sees the lack of a true European identity as the fundamental flaw in Europeanism and the autocratic rule of the EU elite as a cause of the hollowing-out of democracy in Europe. Increasing integration and centralisation has ‘deepened the gulf between rulers and subjects’. The current crisis in Greece is only one aspect of a wider disillusionment with the EU, also manifested in Spain with the rise of Podemos and even, perhaps, in the election of Jeremy Corbyn as Labour Party leader.

For Prins, the issue is not simply, or even mainly, the economics of EU membership. He argues that the UK’s worldwide political and strategic interests are increasingly likely to be more important than belonging to a federal state founded on the ghosts of the past.

In an important chapter, Martin Howe spells out the legal framework for exiting the EU (relatively straightforward) or re-negotiating the terms of membership from within (much more difficult).

Withdrawal from the EU is possible under Article 50 of the Treaty of European Union. The state concerned notifies the European Council of its intention to withdraw. Negotiations then take place on the arrangements for withdrawal and the state’s future relationship with the EU. At the end of two years, the state ceases to be part of the EU, whether or not those negotiations have been completed. Howe shows that the negotiation of transitional and any continuing arrangements would be demanding but that there would be a strong mutual interest in maintaining a free trading relationship.

UK domestic law, much of which now builds on European Directives, would need to be amended, as otherwise whole areas of



regulation would potentially be wound up without replacement. It would not be sensible, for example, to have no laws on the licensing of medicines if and when we were no longer signed up to the European Medicines Agency. Howe argues that we can use mechanisms ('Henry VIII powers') rapidly to unravel and replace EU legislation – the same mechanisms that have been used to incorporate EU rules into law without Parliamentary debate.

He also discusses the areas in which we have international agreements with the wider world mediated through the EU and shows how these obligations could be handled. In discussing post-exit relations with the EU, he opts for developing a Swiss-style series of bilateral agreements on particular areas of interest, rather than adopting a relationship on the model of Norway, which is obliged to implement burdensome regulatory requirements without the Norwegian government having a vote in framing them.

If Howe is optimistic about the prospects of the UK following a possible Brexit, he is pessimistic about negotiating exemptions from various forms of regulation while remaining an EU member. He points out that many such changes (for example, in relation to employment law) would require an amendment to EU treaties, and that there is unlikely to be wide support for this, with many member states regarding 'Social Europe' as a key element of the union. Even if sufficient support were forthcoming, the process of ratification would take years and could subsequently be derailed by the changing political complexion of member countries' governments.

Thus Howe advocates a 'zero plus' approach to renegotiation: the UK should indicate its intention to exercise its right to give notice of withdrawal and then see what shape of future relationship mutual interests would dictate. The result could be that the UK ends up retaining its formal membership but with much wider exemptions and opt-out protocols than could be achieved by negotiating wholly from within.



Policies

The free movement of labour is one of the central features of the EU, dating back to the Treaty of Rome. At the time of writing, however, the EU appears to be tearing itself apart over the issue of mass migration from the Middle East and Africa, with the Schengen Agreement having been temporarily suspended, Germany and a number of East European countries at loggerheads and Britain pursuing a policy of its own.

In this turmoil, it is important not to lose perspective. In a challenging contribution, Philippe Legrain sets out a powerful classical liberal case for free mobility of labour between nation states. He points out that few would now quibble over the benefits of free movement within countries – a principle that was not, however, universally held until recently² – yet many balk at unconstrained cross-border movement. But Britons themselves move abroad in substantial numbers: the number of British expats working abroad is much greater than the number of American expats, for example, despite the US's much larger population. And certainly, Legrain notes, they value the freedom to relocate that the EU offers: British people list the freedom to travel, study and work elsewhere in Europe as one of the top benefits of EU membership.

Legrain stresses that most migrants wish to work, and their energies are likely to promote entrepreneurship, innovation and economic growth in host countries. In the UK, immigrants make a substantial net contribution to government revenue, take on jobs that native workers cannot or will not do and, by

2 Even in England, the Tudor Acts of Settlement (which tied poor relief to place of residence) inhibited internal migration: these were not repealed until the nineteenth century, and even then not entirely. A similar provision still exists today in China, where entitlement to welfare benefits is linked to place of birth and has been used by the authorities to deter migration from the countryside to cities (*The Economist* 2015).



expanding the numbers working, relieve the burden of the ageing population.³

But this is not a purely instrumental argument: the freedom to move is a fundamental liberty that should not be abridged unnecessarily. Legrain argues that it would be better if this freedom were extended to the world as a whole, but he points out that our acceptance of the EU's principle of free movement within Europe does not preclude the UK from pursuing a 'first-best' solution by opening immigration up more widely and pursuing agreements to allow our people to work in other non-EU countries. Although free movement of labour within Europe is often considered analogous to the single market in goods and services, Legrain points out an important difference: our membership of the EU's customs union prevents us from negotiating trade agreements with other non-EU countries, while nothing prevents us from extending free movement of labour beyond the EU.

Thus, Legrain argues that, from a liberal perspective on migration, EU membership is 'pretty much ideal', while talk of leaving the EU to gain control over our borders is 'illiberal and economically harmful'.

If free movement of labour is one defining feature of the EU, two others are the Common Agricultural Policy (CAP) and the customs union (which involves a common external tariff and no tariffs between member states) protecting European manufacturing. In his contribution, Patrick Minford evaluates the costs of these policies to the UK.

Minford points out that tariffs are only one barrier to trade employed by the EU and its members: others include 'anti-dumping' duties, quotas and tacit 'self-restraint' by non-EU states

3 Legrain downplays the argument that immigration causes pressure on public services and housing (the same reasoning would limit internal migration) and argues that the 'cultural' objections to migration are weak: Britishness is increasingly, and rightly in his view, based on civic values rather than ethnicity.



intimidated by the threat of EU action. He calculates that effective rates of protection are markedly higher than nominal tariff rates.

Using a computable general equilibrium model, Minford estimates that the total cost to the UK of the protection of agriculture and manufactures is over 4 per cent of Gross Domestic Product. The UK could thus gain significantly from leaving the EU.

Resources would switch away from manufacturing, which might be reduced to a small rump of design- and high tech-intensive products. This would not, in Minford's view, be a bad thing; service employment would rise to compensate and overall living standards would increase. He sees no case for artificially maintaining our manufacturing sector in the absence of clear evidence of divergence between the social and market values of manufacturing output.

It follows that, if the UK should leave the EU, Minford does not believe that we should tie ourselves into a free trade agreement with the EU, which would effectively keep us within the customs union. Such an agreement would maintain the distortions (and costs) created by our membership, but give us no voice. We would be better off if, like other smallish countries such as New Zealand and Singapore, we pursued a policy of free trade.

The issue of employment regulation is one that has exercised many British critics of the EU. Particular attention has focused on issues such as the Working Time Directive and the Temporary Agency Workers Directive, which have forced costly changes to employment practices on UK employers.

In his contribution, J. R. Shackleton critically analyses the arguments put forward for regulation in this area and describes the political pressures in most parts of the continent for 'Social Europe'. In fact, the EU's jurisdiction in this area was rather limited until the Maastricht Treaty of 1992, and the UK had an opt-out until Tony Blair's government accepted the 'Social Chapter' in 1997. Even today there are many areas of



employment regulation where the UK has freedom of manoeuvre, and this has meant it has chosen to be rather less restrictive over matters such as employment protection legislation than most other EU members. This is why the UK's job creation record has been so good and its unemployment record much better than the EU average.

However, in recent years domestically inspired regulation has sharply increased over such matters as the National Living Wage, auto-enrolment in pension schemes, an apprenticeship levy and so on, while some European Directives, such as that covering parental leave, have been 'gold-plated' (in other words, UK legislation has gone significantly beyond what the EU requires). This leads Shackleton to conclude that leaving the EU would probably do rather little to liberalise the UK labour market. It is difficult to see that much originally EU-driven legislation would be repealed unless a fundamental shift occurs in the attitudes of politicians and the general public. The ideal is definitely less regulation coming from the EU, but the fact that this ideal has not been attained is not the main factor preventing the UK from having more liberal labour markets.

In his detailed examination of the evolution of the CAP, Séan Rickard reminds us that the CAP remains the EU's most expensive policy, accounting for 40 per cent of the EU budget, while (as Minford shows) it raises consumer prices by protecting inefficient farmers across the continent.

Over time, the form of EU subvention to farmers has changed, and the decoupling of support payments from production has led to some modest 'renationalisation' of the CAP, as the introduction of co-funded 'Pillar II' payments has allowed national or regional input into policy. However, prospects for radical reform of the CAP are remote. Strong political support for the hazy vision of 'family farms', plus well-organised farmers' lobbies, makes it difficult to see how any reform could succeed that does not involve similar sums of support money being allocated.



Rickard believes that leaving the EU would bring some possible improvements, such as a more positive attitude to genetically modified (GM) and other new technologies and a greater focus on productivity and competitiveness. The ideal if we were to remain in it would be a much reduced role for the EU in agricultural regulation and price fixing. The example of New Zealand shows how a liberalised agriculture with little government financial support can be successful in the world economy. However, as with employment regulation, domestic pressures in the UK are likely to mean continued government intervention, and 'transitional' financial support for farmers would probably drag on for years.

The management of sea fisheries was originally something of an 'add-on' to the CAP: agriculture was defined in the Treaty of Rome to include the products of fisheries. However, apart from a price support system for fish similar to that of the CAP, little was done to develop a common policy for fishing until the planned enlargement of the European Economic Community (EEC) (which would bring in several important fishing nations) at the beginning of the 1970s. At that point the Community effectively declared the fish stocks in the 200-nautical-mile zone around its coasts to be a shared resource, to be managed by a Common Fisheries Policy. Rachel Tingle's chapter sets out its depressing history.

Tingle argues that the need for some sort of managed approach to fishing arises from the marine version of the Tragedy of the Commons: where resources (in this case fish stocks) are rival in use and non-excludable, they will be overused. But the EU's policies over many years have been contradictory and ineffective, and over-fishing has been rife. By 2008 the European Commission estimated that 80 per cent of fish stocks in EU waters were being fished above their Maximum Sustainable Yield, compared with a global average of 25 per cent.

The system of control, inspection and sanctions has been inadequate for much of the last 40 years: with catch data being



incomplete and unreliable, the inspection system being poor and few sanctions being imposed on those breaching quotas. In particular, quotas have been set too high, as the problem of the Commons has been played out within EU fisheries committees, rather than on the seas.

The UK fishing industry has suffered particularly badly because of the manner in which fishing rights have been carved up and the way in which the large EU structural funds, meant to bring about a staged reduction in EU fishing over-capacity, have been used to modernise many of the fishing fleets, particularly that of Spain.

Tingle argues that the UK fishing industry would probably fare much better if we left the EU, as our government could then take full control over UK fishing waters and administer them in the national interest as Norway, Greenland and Iceland have done. If we remain in the EU, fisheries is one area where we do not need, for economic or environmental reasons, to have a joint EU policy. It is an area of policy that should be repatriated to national level. Nation states could then manage fisheries at the most appropriate ecological unit for the fish stock concerned and experiment with making quotas more fully tradable.

The EU plays an increasing role in transport policy: its effects have been mixed. In some areas (uneconomic politically inspired infrastructure projects, excessive emission standards, unrealistic plans for switching freight from roads to rail and water) it has clearly imposed heavy costs on businesses and consumers. There are some benefits including savings from harmonisation of regulation and increased cross-Europe competition: one particular success has been aviation policy, in which state subsidies have been reduced and low-cost airlines are free to compete across the EU.

Kristian Niemietz and Richard Wellings see a need for international cooperation over some issues, such as transport emissions, air traffic control and cross-border rail travel. However, it is not necessarily the case that this cooperation needs the EU to



be involved: bilateral agreements between states might be feasible. Moreover, some such cooperation could also involve non-EU countries.

European regulation and investment decisions involve bureaucratic and political processes and an insufficient role for markets, in their view. An example is railway regulation, in which the superficially attractive ‘open-access’ policy has undermined property rights and prevented vertical integration – which emerged as the most efficient structure in the nineteenth century.⁴

Niemietz and Wellings would like to see a radical programme of deregulation, and believe, where state intervention remains necessary, that there should be a bias towards political decentralisation. This would lead to better use of local knowledge, reflect local preferences and facilitate competition between different countries and regions.

They see a role for transregional and transnational cooperation, but this should cluster around specific areas and be assessed on a case-by-case basis. Integration should not be an end in itself in transport policy. Such cooperation and integration also does not have to take place through formal political institutions, so there would not have to be an EU role in transport as such. If Britain remains a member, EU competence in this area should be dramatically reduced.

The EU has responded to the financial crisis with enhanced capital and supervisory regulation, with the creation of a Single Supervisory Mechanism under the European Central Bank, a Bank Recovery and Regulation Directive and other proposals. However, David Mayes and Geoffrey Wood argue that this approach has been mistaken.

As the UK is contemplating a new start in its relationship with the EU, they draw on the lessons of banking history to make

⁴ Though it could be argued that this policy may protect the industry against the complete renationalisation of the railways currently proposed by the Labour Party.



a case for going back to first principles. In nineteenth-century Britain, cash (on security) from the privately owned central bank ensured that one bank running out of cash did not lead to panics and the failure of other banks. This support was on some rare occasions supplemented with private consortia acting to cover losses. The system did not need substantial detailed regulation from the state.

In modern conditions, there needs to be ready overnight resolvability so that the financial system can be kept operating without a break. In this context, banks must hold adequate 'loss-absorbing capacity', bank structures should be simpler and there should be an enhanced 'lender of last resort' function.

Mayes and Wood point out that no system can remove all risk of bank failures and crises. But a simpler system on the lines they discuss is preferable to further detailed regulation: a lesson that needs to be learnt whether we are in or out of the EU.

In the related area of financial services, such as insurance and securities transactions, there has been a movement away from the principle of mutual recognition of diverse regulatory regimes across Europe and towards increased centralisation of regulation at the EU level. Ostensibly justified by the desire to promote free trade in services within a single market, the danger is that this may lead to more regulation and higher costs for consumers. The single market promoted by the EU is not a 'free market' by any means.

As Philip Booth reasons in his chapter, there is in practice little check on centralisation and excessive regulation: a unanimity requirement for new regulation is probably necessary to provide this. Within the EU, the UK should press for a return to greater use of mutual recognition and the resolution of disputed regulatory issues through the ECJ, which should adjudicate only with a view to removing restraints on free trade.

More fundamentally, if countries wish to obtain the advantages of unifying regulatory systems, they can in principle do



so through intergovernmental agreements. This could be done amongst EU countries or involve countries outside the EU, but it would be a process that would not need to involve the EU as an institution. The EU-specific role in relation to these aspects of financial services should simply be to remove barriers to trade. If we left the EU, we might face higher trade barriers, and it cannot be assumed that domestic businesses would be less heavily regulated than they are currently.

Climate policy is a major area of EU responsibility that was never envisaged at the time of the Treaty of Rome. It currently consists of targets for emissions reduction, the Emissions Trading System, renewable energy subsidies and green taxes. There is also a range of requirements for greater energy efficiency (for example, in regulations setting requirements for average fuel efficiency in motor vehicles).

Matthew Sinclair argues in his contribution that the EU has been too ambitious in terms of setting targets and ineffective in devising detailed policies. Too often, he claims, the UK has gone along uncritically with the rest of the EU: indeed, it has sometimes been responsible for putting forward or promoting some of the policies he decries.

The Emissions Trading System has been subject to massive fraud, and the carbon price has been subject to excessive fluctuations, caused partly by over-allocation of emissions allowances. Renewable energy subsidies have been poorly directed, with the most expensive energy sources receiving the most subsidy, and are proving so costly that governments are having to cut back on them. Green taxes have in practice led to confusion: are they there to raise revenue or to alter behaviour?

Sinclair argues that in some ways EU climate policy is attempting the impossible: it is assuming that an effective *global* policy can be instituted and trying to organise Europe's 'share' of such a policy. In reality, no effective global policy is ever going to be implemented. The EU should recognise this and instead focus



on directly supporting research into new technologies that could reduce greenhouse gas emissions intensity (an intervention that could be initiated unilaterally but, if successful, affect emissions globally) and promoting adaptability and resilience in the face of global warming. This could be an area where the UK might form better policy on its own.

There may be some economic arguments for EU intervention in health matters to help protect against communicable diseases and pollution, issues that transcend borders. There may also be EU single-market and consumer protection concerns over problems such as non-prescription and counterfeit medicines. The European Health Insurance Card could be justified in relation to free mobility of labour. But, as Christopher Snowden argues in his chapter, in European law there is no basis for (and little interest in) integrating healthcare provision or preventing non-communicable disease.

Snowdon focuses instead on the growing field of ‘lifestyle regulation’ – in particular, attempts by government prohibitions, taxes and subsidies to get people to cut tobacco and alcohol consumption and change their diets to reduce the prospect of obesity.

He points out that this overtly anti-market agenda threatens to limit personal freedoms. In the context of the EU, however, the interesting issue is that measures such as tax rises, advertising bans and minimum pricing can conflict with free trade and the single internal market. In fact, the European Court has usually held that the single market trumps lifestyle regulation where such regulation threatens competition across the EU. An example of this is the recent European Court opinion against the Scottish attempt to introduce a minimum per-unit alcohol price.⁵

5 The Scottish Parliament voted in 2012 to set a minimum price per unit, but in September 2015 Advocate-General Yves Bot concluded that minimum pricing was ‘difficult to justify’ as a means of curbing excessive alcohol consumption: it was a breach of trade rules. This opinion was accepted by the ECJ in December.



Direct legislation by the EU has been limited: examples include the Food Labelling and Nutrition Labelling Directives, and the recent Tobacco Products Directive. Fear of adverse legal judgement has meant that the European Commission has avoided some types of intervention (such as a cross-EU ban on tobacco retail displays) but has gone ahead with other, arguably less significant, prohibitions such as that on menthol cigarettes.⁶

Snowdon points out that the Tobacco Products Directive has been rationalised as an attempt to harmonise regulations and promote the single market, but its real aim has been to create a larger area of competence for the EU and allow more initiatives to cut smoking.

A particular concern highlighted by Snowdon is the way in which the European Commission funds a large number of activist organisations that promote lifestyle interventions. This funding enables activists to have a high profile promoting policies that the EU cannot currently endorse; by attempting to influence political debate in this way, the Commission is arguably behaving unethically.

In reviewing lifestyle regulation, Snowdon finds that the British (and Scottish) governments are frequently more draconian than the EU has so far proved to be. UK consumers have thus to some extent been protected against their own governments' legislative appetites. And, although taxes on tobacco and alcohol are arguably far too high in the UK, they would probably be higher still without the possibility of consumers legally importing significant amounts of these goods for personal use, and smugglers importing larger amounts illegally.

He concludes provocatively by pointing out that Brexit would only benefit those consumers who want to smoke, drink alcohol

6 There are no national differences between consumers of menthol cigarettes, and no particular country's retailers lose out disproportionately. There are thus no obvious grounds for objectors to take legal action against prohibition.



and freely choose what food they eat if British legislators become more liberal: an unlikely prospect. If we were outside the EU, British governments – whether Conservative, Labour or Coalition – would likely be more interventionist, restrictive and bureaucratic lifestyle regulators than the EU. Currently, the EU role in this field is, on balance, beneficial. It restrains governments from imposing burdens on their peoples. In an ideal world, and in the renegotiation, there is no need for great changes in this area of policy.

Change has to come

One common thread running through these contributions is that the goal of ‘ever-closer union’ – understandable in the generation that pioneered European integration – is no longer a useful guide to the future development of the EU.

Our authors suggest that, although there are some areas where cooperation with our European neighbours can bring positive benefits, there are many other areas where there is no clear reason for such heavy EU involvement. Greater freedom for nation states might allow them to pursue constructive relationships with others outside the EU (and, for that matter, arrangement with EU members outside EU structures) as well as allow their domestic policies to promote economic liberalism and respond more effectively, where necessary, to local and regional concerns.

Furthermore, even where there is a case for an EU competence – in some transport matters and in climate change policy, for example – the policies chosen have often been confused and ineffective. This is in part the result of decision-making processes and institutions that are badly designed and give too much influence to special interests. So, in these areas, even though a case for an EU competence can be made, the objectives might be better achieved through other forms of cooperation.



Bringing about change from within the EU is very difficult because of the culture of the *acquis communautaire*. It may be, as Howe suggests, that the only way to get effective reform is to vote to leave the EU, and then negotiate for a new partnership that would allow the UK and EU to build on the positives rather than endlessly squabble over the negatives.

Such a process might also bring greater clarity to the UK electorate, who often blame the EU for policies that our politicians may often approve of or even be largely responsible for. Several of our authors have pointed out the way in which UK politicians are as much or even more committed to potentially damaging policies than their European equivalents.

Most authors concur that the problem of our relationship with the EU is often not only the particular economic and social policies pursued by the EU (which are often supported, rightly or wrongly, by our own politicians), but also the manner in which decisions are made, and the constant emphasis on Brussels' centralising mission.

In personal affairs, marriages that become too inward-looking, and where a dominant partner is used to getting his or her own way, begin to sour. Where the other partner was once happy to defer in matters such as whose parents to spend Christmas with, or where and when to take holidays, he or she may increasingly come to resent more and more decisions being made on their behalf. Unless the dominant partner can loosen up, be less controlling, allow the spouse to make decisions for themselves and have the occasional night out with friends rather than doing everything as a couple, the divorce court may beckon.

The contributions of this book are diverse and not easy to summarise. But this last analogy may help us to frame the referendum discussion. It is clear that the UK and the rest of the EU have many common interests that can benefit from cooperation; this book's contributions are in effect an analysis of the form that such cooperation should take. The problem that arises in the



UK–EU relationship concerns the desire for dominance from the EU partner. The EU demands a commitment to ‘ever-closer union’ and the *acquis communautaire* is a ratchet where power always accumulates nearer to the centre. Yet the EU’s institutions do not appear to be well adapted for the decision-making apparatus of a modern state; there is poor accountability to electorates as well as an inability of opponents of state measures to challenge them in open and effective debate. Instead, the EU is heavily preyed on by lobbying from vested interests.

Furthermore, the political philosophy of the elite that dominates EU decision-making is ‘social democratic’, by which is meant a well-meaning but excessively managerial and bureaucratic socialism, albeit pursued through regulation rather than state ownership or by tax and redistribution. A liberal belief in markets, though occasionally mouthed, does not run deep.

The EU elite is impatient with dissent; the ECJ is its agent for suppressing it. For a UK with a long history of resistance to dictatorial powers, starting with Magna Carta through the Cromwellian wars to modern Parliamentary democracy, subjection in the twenty-first century to an EU superstate looks increasingly unacceptable.

Thus, in the renegotiation process, the emphasis should be on reform of the institutions. But what competences, ideally, should such reformed institutions have when it comes to economic life? If we are to have a more economically liberal Britain, then restraints on the use of powers by national governments to restrict freedom of movement or to introduce regulations that inhibit trade are generally desirable. In some areas, the EU has such powers and uses them in a way the authors of this book believe is desirable. In other areas where the EU has competences, it should be stripped of them – this would include fishing and labour market regulation. In a large group of further areas, such as financial markets regulation and climate change policy, the EU role should be minimised. These should be the priorities for renegotiation.



In the absence of a substantial package arising from the negotiation process, voters will have to continue to put up with the incursions into their domestic affairs of what many of them regard as a superstate – or they will have to vote to leave. Voting to leave could bring many economic benefits, but only if economically liberal policies are adopted domestically. It could also bring costs if domestic governments decide to regulate those activities (such as migration) in which the EU currently has a restraining role on states.

The referendum will give the UK's verdict. This book sets out a range of parameters by which the British people can frame their decision.

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