

EEC

The American example

Mark Boléat

In the 1950s and early 1960s the uniting of Europe was a visionary concept that fired the imaginations of politicians and, to a lesser extent, the public. The European Coal and Steel Community, Euratom and the European Economic Community were established and all seemed to be making progress towards achieving their objectives. However, in the past ten years a malaise has developed in Europe and the process of integration has made little headway. The failure of the European Community, in the past few months, to meet the timetable laid down at the 1972 Paris Summit has further served to increase the sense of disillusion.

Why has the 'European Adventure' lost its way? A change in the external factors acting on Europe is one undoubted cause. In the 1950s the communist threat and the willingness of certain countries to pay a price for international respectability were important forces driving the European countries together. Now, this external pressure has largely disappeared and Germany and Italy have regained their status in the community of nations. Perhaps a more fundamental cause of the malaise in Europe, and one that has received far too little attention, is that too much has been attempted too quickly and, furthermore, Europe has concentrated on the unimportant while leaving aside some of the more truly vital matters. The situation can best be illustrated by looking at the economic and political union that is the United States of America.

The US is a federation — a union of fifty states with widely differing social, economic and political characteristics. However, the US is clearly one nation, and this is manifest in the willingness of the peoples of the various states to defend and protect the citizens of other states. Economically the US is a single market with state boundaries having little effect on industrial location. Firms regard the whole of the US as their domestic market and consumers similarly regard the fifty states as one source of supply. This economic and political union exists despite considerable differences in the policies and practices of the various states; differences which in many

cases exceed those currently existing between the nine members of the European Community. It is the professed aim of the European Community to create a single market and eventually a political union and the American experience would seem to be a valuable guide. But, in the economic field at least, Europe appears to be trying to harmonise and centralise those matters which are dealt with at the state level in the US, while little progress is being made in some fields which are centrally controlled by the Americans.

The American Constitution largely lays down the division of economic powers between the Federal Government and the individual states. Washington has complete responsibility for international economic matters, money supply, weights and measures, the Post Office and patents. The states are responsible for all other economic controls although they are prohibited from taxing exports, coining money and discriminating against other states. The Federal Government is empowered to levy taxes but these must be uniform throughout the country.

Europe has made a little progress towards centralising those practices which are so controlled in America. International trade, for example, is largely in the capable hands of Sir Christopher Soames at the Commission, although in international monetary affairs the Nine are still acting independently for the most part. In the field of patents, welcome progress has been made and this is a major achievement of the Community. The removal of differences in weights and measures and, more importantly today, technical and administrative standards, has proceeded at a disappointingly slow rate. This largely reflects the Commission's obsession with detailed and bureaucratic controls which tend to hinder trade rather than to free it. It is no coincidence that Britain's entry into the Community has been accompanied by a considerable increase in the paperwork required of British firms exporting to the euphemistically-called 'enlarged domestic market.'

One field in which the Community has made virtually no impact is the question of dis-

crimination by the member states against other member states, a problem that hardly exists in America. What is indeed ironic is that it is the governments of the member states that are largely responsible for this discrimination. In the European Community the public sector accounts for about 20 per cent of total expenditure and governments insist on giving massive preference to domestically produced goods. A British police force that buys BMWs or a nationalised industry that buys French equipment is subject to a campaign of abuse, not only from the press, but also from those who should know better. It would benefit all of the Nine if, for the majority of goods (i.e. leaving aside high technology goods which raise separate issues), governments bought on strictly non-nationalistic grounds. This would not mean the 'exporting of jobs' as British police forces bought Renaults; it would mean the more efficient use of labour as those firms supplying public services would be able to take advantage of the enlarged domestic market which is at present denied to them. Any losses in one field should be counterbalanced by gains in others. In the present-day world buying British makes little more sense than if everyone in this country tried to grow his own food. Discriminatory procurement can be ended at a stroke by governments and, unless they are prepared to do so and to educate public opinion that this is the right thing to do, they cannot be sincere in their expressed desire to promote European unity; nor will they succeed in creating a single market comparable to the United States.

The paradox of European integration is not so much that the Community has failed to centralise those things which must be centralised, but rather that the Commission is trying to harmonise and centralise those things which need not be so controlled and which are not in the US (and in some cases in Switzerland, Australia and other federal countries). Nowhere is this more true than in the field of taxation. The Commission tells us that VAT and excise duties must be harmonised with common rates and the same goods being subject to these taxes in each of the Nine. Economists have long argued that this is unnecessary even if the Community does succeed in establishing a monetary union.

America has shown that such harmonisation is not needed in practice (as indeed has the monetary union of the United Kingdom, Eire, Jersey, Guernsey and the Isle of Man). In the US, excise duties are levied by the Federal Government at a common rate throughout the country but the states can levy their own taxes at whatever rates they like on top of the

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Persons who have perverted the harmless Eccentricity known as 'Streaking' to political Ends, give as Precedent, Lady Godiva. I suggest that another famous Occasion of Public Nudity, Hans Andersen's Emperor, might be similarly construed.

We might then oblige those Politicians whose Policies are empty of Substance to parade this Fact in public.

Although we may still have to suffer from their Shortcomings we might derive therefrom some little Amusement.

Leuel Gulliver.



Federal duty. Thus for cigarettes, North Carolina only charges 2 cents per packet while Connecticut charges 21 cents; for petrol Hawaii charges 5 cents per gallon and Connecticut 10 cents; and for alcohol seventeen states charge no tax at all while the maximum rate is \$4.43 per gallon in Minnesota. The states do not even all have the same excise tax systems, something that the Commission assures us is necessary in Europe. For cigarettes, for example, most states levy a fixed tax per packet but New Hampshire imposes a levy on the retail price and Hawaii a levy on the wholesale price.

Similarly, for general indirect taxation the Commission, having persuaded the member states to impose a common type of tax, i.e. VAT, has now published a draft directive stipulating which items should be subject to the tax and there are longer-term plans for common rates. In America, New Hampshire and four other states do not levy any general indirect tax at all and while some of the other states tax gross receipts, yet others tax sales. Connecticut claims the highest tax rate at 6.5 per cent. There are widely varying rules for exemption from the state indirect taxes and these do present some problems, for example with respect to cars sold to non-residents.

Individual and corporate income taxes show similar variations in the US. The Community has not yet proposed harmonisation of the former although there are plans for the latter. In America there is a federal corporate income tax and forty-three states levy their own tax on top of this. Many of the states tax small businesses at a reduced rate and most tax some or all financial institutions at a different rate from business corporations. Alaska is unique in that it taxes corporations at a percentage of their Federal tax liability, but only ten states allow the Federal income tax as an expense against state tax liability. Minnesota claims the highest rate for corporate income tax — 12 per cent for business corporations and 13.64 per cent for banks.

Social security is largely centralised in America but even where the Federal Government provides money for the state programmes there are wide variations. This is particularly true of unemployment insurance where there are vast differences in eligibility requirements between the states. The states are solely responsible for selective social security on top of the government old age, survivors and disability schemes. Such are the variations that it can easily pay one to cross state borders if one is about to go blind or otherwise fall on hard times. In twelve states, for example, only short-term aid is given. The Americans do not seem happy about the inter-state variations and there are moves to centralise further the social security system.

The European Community has already achieved the essential thing in social security, i.e. it has ensured that benefits are transferable from country to country. However, as always, the Commission has wanted to go further and it has proposed trivia and nonsense that the American states would never countenance, e.g. common rules for mass redundancies. The Commission's favouring of a common minimum wage, eventually leading to common wage levels, is a gimmick and a dangerous one at that. There is abundant evidence from the US that the common Federal minimum wage has created unemployment and it is significant that thirty-seven states have their own minimum wage legislation.

Transport is another field in which the bureaucracy of the Commission has been clearly displayed. The Commission presses on with its expressed wish to harmonise the requirements for holding driving licences. Does the political and economic union of the US do this? Of course not. The minimum age for holding a driving licence is fifteen in New Mexico, sixteen with parents' consent in Kansas, seventeen in New Jersey and eighteen

in West Virginia. The cost of a driving licence varies between two and twelve dollars and they are valid for anything between one and five years.

In the field of anti-trust laws Europe does appear to be following America but the manner in which this is being done is a cause for alarm. In the US anti-trust legislation is centralised and state laws, although they do exist, are of little consequence and are frequently ignored. This is obviously right as firms operate across the entire US and if they are big enough to misuse their strength then they are probably too big to be controlled by the states. In Europe it is premature to say that national control is no longer appropriate but there is certainly a need for action at the European level in some cases. However, little has been achieved and the Commission's enthusiasm has far exceeded its abilities — as has been illustrated by the time that the Commission has taken to deal with the relatively straightforward Miles Druce/GKN case.

The capital market and banking are yet another field in which Europe's aspirations and America's achievements differ. In the US capital can flow freely across state borders but banks can operate only in one state (and in some states, e.g. Illinois, not even branch banking is permitted). In the European Community, exchange controls have multiplied rather than been reduced and the Commission is encouraging financial institutions to open foreign branches. The free movement of capital and a single source of money supply are undoubtedly crucial factors in making the US a single market and Europe will make little progress as long as exchange controls are needed to protect artificial exchange rates and as long as the Commission pretends that transnational institutions are the key to economic and monetary integration.

How does America survive with all of the varying policies and practices? Does it have a Commission to sort out problems caused by differences between the states? It does survive because the differences are not important obstacles to trade and are more than overcome by free capital movements, the absence of discriminatory procurement, common technical and administrative standards (although even here there are some differences between the states), a common language and the feeling that the US is a single nation.

Institutions do exist to sort out problems. The National Conference of Commissioners on Uniform State Laws, established in 1892, provides for the voluntary enactment of common state laws as an alternative to Federal legislation where differing state practices could be harmful. The Conference drafts model laws which are then introduced into the state legislatures by the normal means. Variations are permitted but the intention is that these should be deliberate rather than accidental. Among the drafts which have been widely accepted are those on narcotics, criminal extradition and simultaneous death. More recently the Multistate Tax Commission has been established to look at the problems caused by the tax differences between the states and to draw up rules to deal with these. Unlike the European Commission these bodies only act where the differences between the states cause problems and not in cases where the differences merely exist. The American states also come together for *ad hoc* projects which cross state borders. The Tennessee Valley Authority and the Port of New York Authority are the best examples of this sort of co-operation. An obvious analogy in Europe is the Channel Tunnel venture.

While it would be quite wrong to suggest that we should religiously follow the American model, surely this does have some relevance to the present position in Europe. It may be that Europe will never be able to make up for America's advantage of having been able to start from scratch; certainly it is

far easier to build a single large economy from its foundations than to merge several advanced economies such as those of the European Community. However, America should at least be able to show to Europe which are the important matters. Before the Commission presses on with tax harmonisation, common driving licences and the like it should explain why these are necessary and why Europe needs them whereas America does not.

The Community must also determine to make progress in what are clearly the major priorities, i.e. free capital movements, the abolition of discriminatory procurement and the removal of the technical and administrative barriers to trade. At the moment one feels that the Community agrees on trivia as a substitute for taking the really important decisions in the belief that any harmonisation is better than none. This surely is wrong; 'Eurobread,' 'Eurobeer' and the like bring the Community into disrepute rather than bring the peoples of Europe together and issues such as common driving tests and axle weights are capable of resulting in the maximum of dissension for the minimum of potential benefit.

America has shown that a political and economic union does not necessitate harmonisation of fairly important matters, e.g. taxation, let alone the trivia. The Commission should take note of the American experience and should leave alone those matters which can best be handled at the governmental and lower levels and concentrate on its real job; dealing with problems that can only be solved at inter-governmental level. The path to European unity can only lie through taking important decisions, not through taking the easy, but irrelevant, decisions.

Mark Boléat is an economist with a particular interest in European affairs.

Charities

Reforms needed

Tom Ponsonby

What is a charity? It is not possible to give a satisfactory answer to that question, nor has any comprehensive definition of a charity as a legal entity been laid down by the legislature or the judiciary. The general rule is that for a trust to be charitable it must satisfy three requirements:

- 1 Its objects must be of a charitable nature within the spirit and intendment of the preamble to the statute of Elizabeth, 1601, as interpreted by the courts or extended by statute.
- 2 It must be for the public benefit.
- 3 It must be exclusively charitable.

The statute of Elizabeth was repealed in 1888 but the list of charitable objects set out in the preamble has always been used as a guide to the courts in determining the legal meaning of charity. The preamble itself was repealed in 1960 but the guidelines remain the same, the courts having updated it by a process of analogy. For example the preamble mentions "the repair of . . . seabanks" which has led to lifeboats being regarded as charitable, and by a further analogy private fire brigades, and the "repair of churches" to the provision of cemeteries, churches and all religious advancement.

In 1891, Lord Macnaghten, in a speech in *Pemsel's case*, enumerated four classes of charitable purposes: the relief of poverty; the advancement of education; the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads.

For any trust to gain charitable status it