

Planning for Independence by Edward Spalton

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Forty one years ago I served on a Ministry of Agriculture committee of millers and grain merchants who had the job of preparing our trade for joining the European Common Agricultural Policy. From the abolition of the Corn Laws in 1846 Britain had enjoyed a policy of free trade with the rest of the world in food for its increasingly urban population. That all changed on the stroke of **midnight** on January 1 1973 when we were instantly cut off from our Commonwealth suppliers and entered a siege economy system where much higher European prices were fixed politically with a huge increase of officialdom.

Most of the men on the committee were a generation older than I and they were utterly outraged when the new system was explained to them. They wanted nothing to do with it and were ready to walk out. A very suave senior civil servant, not unlike Sir Humphrey Appleby,* smoothed the situation expertly.

“Well gentlemen, we were not founder-members of the Community” he said “So these arrangements are not what we would have wished. But just give it a few years of British common sense and we'll soon get it licked into shape”. Tea and biscuits were brought in. “In the meantime” he said “the political decision having been taken, we want to help you get the very best out of it”. It was beautifully done and enormously deceitful. The walk-out was averted.

The key words were “the political decision having been taken”. The European project was always a political project. The economic side was the cover for gradually creating a single European state. On one of the rare occasions when he spoke the truth about it, Sir Edward Heath said “The project was and is political. The means were and are economic”. People were deliberately misled by the deceitful use of the term “The Common Market” into thinking that we were entering a simple trade agreement. In the **Sunday Telegraph** of July 28 2013, a Mr John Lidstone wrote

“From 1961 to 1972, as part of a team of key businessmen, I spoke to meetings throughout Britain arguing the case for the United Kingdom to join for trade purposes what was then known as the European Common Market. The case for enjoying the benefits of favourable access to a market place of millions of people was overwhelming. Had Ted Heath, the chief negotiator, told the British people what the long term consequences of joining the EU would be, I and my team would never have supported such a policy”.

And the long term consequences were certainly known to the Foreign Office and to Mr Heath. They can now no longer be concealed.

1.

As long as we remain in the EU, the European treaties are our country's supreme constitution over and above all our laws - a sovereignty and democracy bypass around Queen, Lords and Commons, Magna Carta, the Bill of Rights and everything. They provide that all existing and future EU regulations will be enforced upon us “without further enactment” by Parliament, as it says in the 1972 European Communities Act.

For forty years the British political class has lied and lied again about the nature of the EU project. The lies no longer convince. I want you to imagine now that the political decision has been taken to

reverse this evil and to restore sovereign democratic government to our country, to look at what happens to our laws when this is done and to consider some of the means which will ensure that our economic interests and those of our European neighbours, with whom we have no quarrel, can be assured.

But first I need to explain the problem which has led Mr Cameron to reverse his earlier policy of being “the heir to Blair”, stopping his back benchers from “banging on about Europe” and why he is holding out the prospect of a referendum - a promise on which, in common with the other party leaders, he previously ratted.

Although its cash contribution is second only to Germany, Britain has always been a second class member in the EU. Enthusiastic Europhiles always told us that we weren't getting the best out of it because we didn't really believe in Europe strongly enough. This reminds me of the scene in the pantomime, Peter Pan, where Tinker Bell is dying and the audience is told that a fairy dies whenever somebody says “I don't believe in fairies”. The audience is persuaded to say in unison “We DO believe in fairies” and Tinker Bell recovers. So, the Euro-enthusiasts said, would our prosperity in Europe, if only we said “We DO believe in Europe”!

Of course, it was nothing to do with that. It all boiled down to the fact that France and Germany had signed the Elysee Treaty by which they co-ordinated their positions ahead of every negotiation and conference. With the votes of the subsidy-receiving countries (who feed off the British taxpayer) they could always outvote and run rings round us.

The 18 countries of the Eurozone may be on an economic death march under German command but they have agreed to co-ordinate their affairs increasingly into a single, economic government which has a permanent majority of votes in the EU. They can stitch us up any time. Britain is now a permanent, second class member of the EU which can only be “at the heart of Europe” (as Mr Major said he wanted) as a payer, not a player.

2.

The Eurozone countries have also agreed to abolish what little remaining democracy they have in order to save the Euro currency. Do not forget that, when this was launched, it was a supposedly unbreakable rule that no Euro country would ever be made responsible for the debts of another.

By the European Stability Mechanism, the ESM, the treaty of debt by which they hope to save the Euro, the Euro countries agree irrevocably and unconditionally to pay any required capital demand **within seven days**. Frau Merkel told the Bundestag “Never will you be able to change this by anything you do in parliament”.

Article 27 of the ESM treaty gives the institution “full legal capacity to institute legal proceedings but “The ESM and its property, funding and assets shall enjoy immunity from every form of judicial process”. It is also immune from “search, requisition, confiscation, expropriation or any other form of seizure by executive, judicial or legislative action.” So it is a law which can never be changed. What is more, the officers of the organisation also enjoy immunity from every form of legal process.

It is literally a super-state agency above the law and, whilst we are not in the Eurozone, those same anti-democratic governments are part of our government whilst we remain in the EU. To keep the Greeks and Spaniards and others in austerity with more than one in four people unemployed and 70 per cent or more of young people unemployed, they have abandoned democracy for bureaucratic

dictatorship to save the imperial vanity project of the Euro currency. Child mortality in Greece has increased by forty per cent as a result of the collapse of the Greek NHS but the babies too are considered a worthwhile sacrifice to keep the Euro.

So Mr Cameron wants to renegotiate the terms of our EU membership with this anti-democratic clique whilst still remaining an EU member. It seems nobody has told him that powers, once granted to the EU, never come back. To renegotiate a treaty, an Intergovernmental Conference has to be convened. That takes two years. Then the conference has to agree unanimously to any change to an existing treaty.

I expect that the Eurozone countries may well try to throw Mr Cameron a bone, so that he can come back, as Harold Wilson did from Dublin in 1975, proclaiming “Britain's New Deal in Europe” and that he had secured a “fundamental renegotiation”. Of course, Wilson had done nothing of the sort.

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He had secured permission from his European masters for a modest increase in the amount of butter and lamb which our New Zealand friends and relations were allowed to send us and a tweak in the European agricultural policy which slightly reduced the extortionate price increases it had caused. There was no return of powers – and there never can be under the EU treaty structure. It is an irreversible ratchet. The old tricks are always the good ones. So watch out for the phony prospectus of “Britain's New Deal in Europe”. It will be the same meat with different gravy all over again.

Let us now assume that Mr Cameron's purported “renegotiation” has failed to convince either people, Parliament or both and that the government has set out to leave the EU and return to sovereign government. What are the options?

Some say that it would be enough to repeal the European Communities Act of 1972 and, as it were, to make a unilateral declaration of independence, leaving all the economic and legal consequences to fall in place behind this single act of political will.

It has been done before. Henry VIII did it in no uncertain terms in 1534. Some of his problems have quite a modern flavour – shortage of tax revenue and a royal love triangle! Like all governments, his was short of money. He was building the Royal Navy, which was expensive, and he had a problem with a cartel of large, multi-national corporations which were dodging taxes – the great estates held by the monastic orders of the Church. Taxes then were levied by generation, so there was a big lump to pay when a landowner died and his son succeeded. But the Church was a corporation which never died and so was never taxed. Not only were they not paying their share but other lay landowners could dodge tax by making over portions of their estate to the Church in trust for their families. There were tax accountants in those days too! Kings of England had wrestled with this problem for centuries. Henry was a greedy, unpleasant man and he made short work of it by dissolving the monasteries and confiscating their property – a large proportion of the land in the Kingdom.

But he had another problem too “The King's great matter”. He wanted a new wife to give him an heir to the throne and was desperately keen to get into bed with Anne Boleyn to do just that. But first he needed an annulment of his marriage to Catherine of Aragon and for that he had to go to the “European Court of Conjugal Rights” in Rome. Whilst earlier Popes had often obliged monarchs in

such matters, Pope Clement VII was under the control of Catherine's relative, the Emperor Charles, and would not agree. So what did Henry do? Like Edward Heath but going in the opposite direction, he got an Act of Parliament. And what did it say?

4.

“The King's Majesty hath the chief power in this Realm of England and other his dominions unto whom the chief Government of all Estates of this Realm...

in all causes doth appertain and is not, nor ought to be, subject to any foreign jurisdiction”. This version is from the Articles of the Church of England.

I am only concerned with the politics here, not the religious angle. It went on to say “The Bishop of Rome hath no jurisdiction in this Realm of England”.

If you just deleted “Bishop” and wrote “Treaty” you have the makings of an Act which might serve our purpose today. Many would cheer!

So, after the Act is passed, the celebrations and the bonfires, the firing of salutes from the Tower and the Park, what would happen the following rather hung-over morning? Well, we would be outside the EU according to our domestic law. When the container Lorries started to roll across the channel, they would have to be stopped at customs to be inspected and for duty to be charged. But there is a problem – there are no longer adequate customs posts to do this! They would have the same problems on the other side of the channel too. It would be a horrid mess.

Britain would also have acquired a reputation as a breaker of treaties. International law does not allow countries simply to tear up treaties which have been validly agreed. Whilst we were deceived by Mr Heath, his government and succeeding governments knew exactly what they were doing and, deplorable though they are, there is no question that the treaties are valid. We would be in a dreadful mess, our credit damaged, part of our trade paralysed, our interest rates skyrocketing as investors rushed for the door.

So negotiation is needed. We have been entangled in the EU to our great loss for forty years and the evil will not be undone in an instant. It is in our own interest and that of our European neighbours to achieve this in an orderly way.

Nigel Farage has called for an “amicable divorce” but such a divorce demands a detailed settlement which respects the interests of both parties.

There is another problem too. If we simply repeal the European Communities Act, as some wish, then all the subsequent regulations made by the EU would fall too. I will give just two examples of the chaos that would cause. We would be left entirely without laws to protect food safety. Outside the EU Common Agricultural Policy and with nothing in its place, most British farmers would be in severe financial difficulties and food production would fall. I am not a lawyer, still less an international lawyer, but have some idea of what happens to law when a country becomes independent in a reasonably orderly manner.

5.

From the Federation of Canada in 1867, Britain has been conferring independence on countries all over the world. The independent countries inherit the laws which they received from their former ruler but the input of laws from overseas ceases. The statute book is nationalised and the newly independent country can amend it over time, as best suits its requirements.

For the security of persons and property, public health, the maintenance of law and order and continuation of trade, most things remain the same until decided otherwise. This even happened in Ireland where the transition was far from peaceful and happy. Apart from a new flag, painting the pillar boxes green and putting Irish on the signposts, the laws and institutions which governed everyday life and trade in the Irish Free State, like contract law, County Councils and weights and measures, remained overwhelmingly those which had been received from the Westminster Parliament during the 120 years when Ireland had been part of the United Kingdom and were only gradually amended over time. I must add here that I am a unionist as far as the United Kingdom is concerned so that our CIB members in Northern Ireland have no doubt about it!

The process of leaving the EU is simple enough. Doing it in a way which respects our European neighbours and protects our own interests is a little more complicated and time consuming. The main thing is to have the political will to do it.

There is a procedure for leaving in the Lisbon treaty, called Article 50, of which there are copies available. It is very short for a EU document. When I first looked at it, my hackles went up and I thought “an EU trap”. Many of my friends for whom I have great respect think the same. They say we should simply ignore it and proceed under the general provisions of the Vienna Convention on treaties.

Now I am not so sure that such a method would be in compliance with the Vienna Convention. Article 50 is what is called a “lex specialis”, part of a treaty to which the British government has lawfully agreed, taking precedence over general rules. Parliament can, of course, do whatever it likes domestically but I don't think we can simply abrogate it internationally. Under it, we would be out of our 40 year Babylonish captivity in the EU **within two years** at the most.

The article also obliges the EU to try to make provision for continuing trade.

It appears simple enough and I think we should pass “Henry VIII- style” legislation, partly to prevent any new EU requirements being sprung on us during the negotiating period but principally to make absolutely clear to our own Foreign Office and civil servants that there is no going back.

6.

Lord Tebbit famously remarked “It's called the Foreign Office because it works for foreigners” and it now has a settled habit of forty years continuous appeasement, collaboration and surrender to the EU. It even has a department called EU (Internal) to represent the interests of the EU favourably to the British people. That should go at once!

Such a “Henry VIII” Act could continue existing arrangements on an ex gratia basis for a limited specified period whilst negotiations continue. It would serve notice on the EU authorities of Britain's settled political will and a need for speed on their part. There would be a common interest of both parties to keep trade flowing. I can then see no disadvantage in proceeding in outward conformity with Article 50 – working, as it were, with the grain of the treaty rather than against it. You could call it “The Belt and Braces Act” or the British Declaration of Independence.

The important thing is the political will and determination. Without that, no negotiation will succeed under any framework. The EU holds itself out to be a community of laws - “a common area of freedom and justice” and it has plenty of laws, 320,000 pages of them, I am told. But it is primarily a community of political will and the laws are instantly disregarded when the authorities perceive the EU itself to be in danger. We saw this with the extraordinary exertions to save the euro currency

which were, initially at any rate, quite illegal according to the EU's own rules and what the participating countries had agreed to.

The fate of Slovakia is an object lesson. Slovakia has about the same population as Scotland and it joined the euro currency, keeping strictly to all the rules. One of those rules was that no Eurozone country would ever be made responsible for the debts of another. Yet when push came to shove, Slovakia was compelled to pay its share into the bail-out fund for far richer countries which had broken the rules flagrantly. The party of the deputy prime minister resisted this and the injustice was resisted for all of three days. The political class of Slovakia, a small, land-locked country, acquiesced in being bullied into line.

That sort of thing would be far more difficult to do with a country the size of the United Kingdom which, for many Eurozone and other EU countries, is their best export market. But, of course, the EU authorities would try it on if there was the least hint of wavering by Britain's negotiators. If that is firmly excluded, the whole heated argument for or against using Article 50 becomes a false antithesis and no longer a cause of dissent between good men and true.

The decision to join the EU always was a political decision to become part of a progressively developing, single European state and for Britain to become one province among many in that state.

7.

Our political leaders always knew that but did their best to keep it from us.

The decision to reverse that subjection will also be a political and constitutional one but taken in the open, in plain view. It will open up great economic opportunities as we look beyond stagnating Europe, in the toils of its self-inflicted currency crisis, to the rapidly developing wider world. As always, there are risks and dangers but none in Europe which cannot be faced and overcome with determined, principled negotiation.

Various future relationships with our European neighbours are then open to us.

Hugo van Randwyck is going to talk about one of them which is very quickly available – the European Free Trade Association – ironically enough an organisation which Britain helped to found before our politicians took us into the dead end of the EU. EFTA and membership of the EEA (European Economic Area) give free access to the Single Market and is an option which is ready made – off the peg, as it were, if we can negotiate an agreement with its members at the same time as we negotiate with the EU.

* Sir Humphrey Appleby was the Permanent Secretary in a very funny comedy series called “Yes, Minister” which was reckoned to be rather true to life!