

Sovereignty and the European Communities

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Annotated by:
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Introduction

In 1971, during the final stages of the negotiations for Britain's entry into what was then termed the "Common Market", the "anti-marketeters" – as they were then called - had made some impact with the claim that membership would involve an unacceptable loss of sovereignty.

This claim clearly had a significant impact on the Foreign and Commonwealth Office, sufficient at least for anonymous civil servants to write a detailed briefing on the sovereignty issue. This confidential document was never published and, for the last thirty years has lain in an FCO file, guarded by official secrecy. Only under the thirty year rule was it finally released and its contents laid bare.

The document is massively important for many reasons, not least because it demonstrates that the FCO had a very clear idea of the repercussions of joining the "Community", as it put it. It knew that it would involve a major loss of sovereignty and, in due course, an end to parliamentary democracy. Despite knowing this, it offered the advice that HMG and "all political parties" should not "exacerbate public concern by attributing unpopular measures or unfavourable economic developments to the remote and unmanageable workings of the Community".

Entitled "Sovereignty and the European Communities", had this document been published during the debate which led up to Britain joining the EEC, it is hard to believe that public opinion would have been unaffected. In fact, so great would probably have been the outrage that it is hardly likely that any political party could have sanctioned our entry. It is a measure of the deceit perpetrated by the then government, therefore, that its findings were kept confidential.

If the magnitude of the concepts explored by this document are even now fully understood, it is hard to see how any rational person could wish for the United Kingdom to remain a member of what has now become the European Union. For that reason, the paper has been reproduced here, together with a running commentary, which brings home the stunning duplicity of the FCO and the terrible deceit that has been perpetrated on the British peoples.

Original portions of the text are reproduced in *italics*, retaining the original numbering scheme. The Annex is reproduced without annotated comment, the inferences from this being self-evident.

The FCO paper

The object of the paper was, according to the FCO author(s), “to examine the implications of entry into the European Communities for British Sovereignty”. This was a subject, it was felt, that aroused “widespread if somewhat vague public concern and which could become the central political issue in the national debate on entry to the Community”.

Nevertheless, the paper did not seek to provide a comprehensive philosophical analysis of sovereignty but set out to clarify the various ways in which the term was then commonly used. The authors also sought to “identify the relevant changes which will be involved in joining the European Communities” and suggested “a number of conclusions and implications for policy”.

The concept of sovereignty

1. Historically the concept of sovereignty has been of major importance to both political scientists and jurists. The growth of its use was closely associated with the development of the system of nation states in Western Europe: there was no full mediaeval equivalent and the wider claims of the Holy Roman Empire and the temporal power of the Pope cannot really be considered in terms of national sovereignty or nation states.

So wrote the authors, who immediately position sovereignty as an academic issue, distinct from the concerns of ordinary people. The bias is there from the start, and continues throughout the paper. They continue with a rudimentary, if accurate, summary of the historical status of sovereignty:

2. Sovereignty was initially invoked to describe the powers of the ruler within his State. When dealing with other States the ruler asserted his (internally) sovereign status, an attribute which, given the identification between the ruler and his State, attached, also to his State. Since the other States similarly had sovereign rulers, and regarded themselves equally as sovereign States, the relationship between such sovereign States had to be formally one of equality and independence. On the international plane the Sovereignty of the “sovereign” State is not a truly international sovereignty, but a transposed internal concept of sovereignty - a description of a legal status possessed in some other (i.e., the internal) legal order.

In the next paragraph, however, the authors come to the nub of the matter. In distinguishing between “internal” and “external” sovereignty, they note that external sovereignty “has been primarily a negative matter of denying the existence of an external sovereign authority”. Under this dictum, the United Kingdom is legally “independent of all other sovereign states”:

3. Consequently, from the outset the antithesis between the connotation of “sovereignty” in its internal and external aspects has been evident. Internal sovereignty has been primarily a matter of positive possession of ultimate power in a hierarchically structured internal legal framework, so that interest has lain in identifying the location of that power within the State; but external sovereignty has been primarily a negative matter of denying the existence of an external sovereign authority, with consequent emphasis on equality and, independence as the legal framework for international relations. In the particular instance of the United Kingdom the State, externally, is legally equal to and independent of all other “sovereign” States; the international personality is that of the United Kingdom as a State, represented

internationally by the Crown as head of State (a situation accurately reflected in our internal constitutional law by the Crown's prerogative in matters of foreign affairs). Internally, the sovereign power in the State (at least in matters of legislation) is usually considered to be located in the Queen in Parliament.

This section then concludes with the helpful observation that sovereignty “must not be confused with the realities of power”, something which the occasional Europhile has been wont to do. But the authors clearly put “power” above sovereignty.

4. The technical legal aspects of sovereignty, both internal and external (particularly the latter), must not be confused with the realities of power. Ultimately it is the latter which count. There may be a tendency that, in proportion as the facts about the realities of power are unpalatable, so emphasis on and interest in the comforting and reassuring legal aspects of sovereignty increases,

We now come to a long dissertation about “contemporary aspects of sovereignty”, where the distinction is made between internal and external aspects of sovereignty in the contemporary political system.

Sovereignty in external relations still includes formal equality of status with other states, A striking expression is in voting arrangements in the UN General Assembly, where, for example, Mauritius has the same vote as the US (but the realities of power are reflected by the veto in the Security Council, and by systems of weighted voting in many organisations, not least the European Communities), it involves also the absence of any formally superior source of authority external to the State. It does not mean equal power or influence, or freedom of action in the international scene, or even within the state itself, though these ideas naturally spring to mind in the context of sovereignty. To take an extreme example, while the Central American republics are sovereign states recognised as such by other states, in practice they are limited by their relations with the US Government, and perhaps more critically with private US interests, both in their freedom of international action and in their ability to regulate affairs within their own boundaries. All states are under some degree of external constraint and most have deliberately limited their freedom of action in pursuit of national interests, for example by military alliances, entry into international organisations or even by the conclusion of routine treaties.

Slowly and insidiously, however, the authors begin to make a case for the limitations of sovereignty, although the key phrase is “a question of degree”. At some time, the authors concede, restraints on the exercise of sovereignty can become so extensive that a nation ceases to be independent.

These limitations are reinforced by the increasing interdependence of modern states and the development of economic and other links which cut across national boundaries. It is therefore generally recognised that sovereign states can lose some degree of independence of action in external relations without forfeiting their international legal status. But it is always a question of degree in each particular case whether the restraints are so extensive as to be incompatible with continued existence as an equal and independent member of the international community, with the capacity to conduct its own international relations.

Having thus set out the issues, pains are then taken to diminish the importance of the

“sovereignty” debate. Thus is the issue gradually circumscribed.

7. The effect of the above is that, externally, sovereignty is a technical concept with in many ways only limited bearing on the questions of power and influence that form the normal preoccupation of foreign policy. As a result, much of the debate on entry into the Communities in terms of the power and influence we should gain or lose thereby and on the corresponding effect of non-entry, while a crucial debate in terms of political decisions and British interests, is strictly not a debate on the legal issues of external sovereignty. It is, however, a debate which arises naturally from that issue and which is tied up with ideas of sovereignty in the public mind (see paragraph 15(iv) below).

However, in the next paragraph, the authors do concede that sovereignty and the power of Parliament are inherently bound together:

8. Internally within the United Kingdom, the notion of sovereignty is bound up with the doctrine of Parliamentary Sovereignty, which in turn is the outcome of the battle between Crown and Parliament as to which should wield supreme power in the land. The formal compromise has been to accept that supreme power to legislate should rest with the Queen in Parliament. For present day practical and political purposes in the UK, Parliamentary sovereignty may be taken to involve the exclusive power to make supreme law. This power has three essential features:

- (a) a statute which has been duly enacted by Parliament and received the Royal assent cannot be declared invalid by the courts on any grounds, for example that its provisions are contrary to constitutional law or to common law or to international law;*
- (b) Parliament may enact any law it wishes; consequently no Parliament is bound by the acts of its predecessors, and any prior statute may be amended or repealed later statute;*
- (c) there is no legislative power in the land save by the authority of Parliament.*

This is followed by a clear statement that the “Queen in Parliament” has the sovereign lawmaking power in the UK,

To the layman those features mean that the Queen in Parliament has sovereign lawmaking power in the territory, unchallenged by any rival national or international source of authority and that its freedom to enact legislation is in law untrammelled by acts of its predecessors or otherwise. The purity of this doctrine is not absolute, particularly as regards the second feature mentioned. For example, Parliament has for all practical purposes limited the jurisdiction of its successors in a geographical sense, by granting independence to colonial and other territories. It is unthinkable that Parliament would attempt to repeal an independence act so as forcibly to regain legislative power over the territory in question.

Then, tucked in at the end of this paragraph, is the admission that entry to the “Community” involves an unprecedented transfer of authority from Parliament. The admission is all the more stark for the fact that it is so effectively “buried”.

But there has been no comparable (and irrevocable) transfer of authority within the UK itself purporting to bind successor Parliaments; and although Parliament has occasionally enacted legislation which in terms purports to regulate the freedom of action of future Parliaments, in strictly legal terms such legislation does not prevent future Parliaments from legislating to

the contrary.

Having thus set out their stall, the FCO authors then go on to consider the specific implications of joining the EEC for British sovereignty". They write:

10.. If we have correctly identified the two major aspects of sovereignty, then we are now in a position to consider how they will be affected by British accession to the Community. The first stage is to consider the Community as it will be upon enlargement putting on one side the prospective implications of any future development or "deepening" of the Community.

Here comes the rub:

11. Membership of the Communities will involve us in extensive limitations upon our freedom of action.

"Our" freedom of action, of course, means the freedom of Parliament to take action, i.e., a diminution of Parliamentary sovereignty. But the authors are careful to sugar the pill:

In many respects these are essentially the result of a contractual arrangement, not dissimilar in kind from other international contractual arrangements which we have e.g. in the GATT: those constitute restraints upon the exercise of sovereign powers as a result of an act entered into by virtue of our sovereign status, and they do not amount to a restriction of that status.

Even then, they cannot conceal the full extent of the implications of joining the EEC, clearly indicating that the EC treaties **are not** equivalent to other existing treaties:

But it is not correct to regard the European Community Treaties as involving solely matters of a legal significance equivalent to that of other existing treaties. For example, in matters within the Community field (see Annex) we shall be accepting an external legislature which regards itself as having direct powers of legislating with effect within the United Kingdom, even in derogation of United Kingdom statutes, and as having in certain fields exclusive legislative competence, so that our own legislature has none;

There it is: "we shall be accepting an external legislature which regards itself as having direct powers of legislating with effect within the United Kingdom". And, if this is not bad enough,

...in matters in which the Community has already adopted a common policy, we shall be accepting that the Commission will jointly represent the Member States, who to that extent will have their individual international negotiating powers limited; and we shall in various fields be accepting a wide degree of coordination of our policy with that of the rest of the Community. All of this we shall be accepting "for an unlimited period", with no provision for withdrawal.

Note the use of the anodyne phrasing: "a wide degree of coordination of our policy". Coordination? More honest phrasing would be "subjugation". Then there is the chilling phrase: "...no provision for withdrawal". Yet, lest any reader now take fright, the authors are quick to reassure:

But at the same time France or Italy for example as members of the Communities, have not come to be regarded internationally as less than sovereign states. This is particularly so since, despite the appearance of permanence of membership it is commonly recognised that the member states do still have the ultimate political option of renouncing membership cannot and that the Community cannot at this stage impose its will against the firm opposition of a major member.

And still they have not finished:

...In other words in practice and in the final analysis it remains to date a cooperative venture of independent equal sovereign units and not some supranational and overriding authority.

This, even within the limited terms of the FCO document, is an outright lie. The authors, having written that "...in matters within the Community field... we shall be accepting an external legislature which regards itself as having direct powers of legislating with effect within the United Kingdom", cannot honestly conclude that the EEC was "a cooperative venture of independent equal sovereign units".

And, to give the lie to their own conclusion, they continue:

Membership would mean an increasing range of subjects on which Britain's policy was concerted with the remainder of the Community and also that in negotiations with the rest of the world on matters forming the subject of common Community policies, there would be joint representation by the Commission. The Community being exclusive in character and membership also means in practice giving up some of our important links with the remainder of the world (Commonwealth Preference for example).

Needles to say, however, the weasel words intrude once again. They add:

But overall it is clear that membership of the Community in its present form would involve only limited diminution of external sovereignty in practice.

Carefully do they write. Considering at the time, the EEC was in its early stages of formation, this claim could just about have been true. But note the all-important qualification "in its present form". But, as will be seen, the authors knew well that the "Community" was a continually developing entity. However, they chose to argue from the situation as it was prior to our entry, which allowed the following words:

If it is right to say that the question of the retention of the international status of a sovereign State is a matter of assessing in each case the degree to which a State's external independence, equality and capacity to conduct its own international relations are restricted, we could nevertheless fairly conclude that although the implications for our freedom of independent action are considerable no substantial impairment of our international status would follow immediately upon our membership of the European Communities.

Here, the key phrasing is "no substantial impairment of our international status would follow *immediately* upon our membership of the European Communities". But the authors are honest enough then to concede:

The loss of external sovereignty will however increase as the Community develops, according to the intention of the preamble to the Treaty of Rome “to establish the foundations of an even closer union among the European peoples”.

That is the nub of the question: “the loss of external sovereignty will... increase”. And, if we take even this document to its logical conclusion, the loss will continue until sovereignty is no more, although this is not explicitly stated.

As regards internal sovereignty the FCO authors regard the implications as “more immediate”. In paragraph 12 (I), they write:

By accepting the Community Treaties we shall have to adapt the whole range of subsidiary law which has been made by the Communities. Not only this but we shall be making provision in advance for the unquestioned direct application (i.e. without any further participation by Parliament) of Community laws not yet made (even though Ministers would have a part, through membership of the Council, in the making of some of these laws). Community law operates only in the fields covered by the Treaties, viz, customs duties; agriculture; free movement of labour; services and capital; transport; monopolies and restrictive practices; state aid for industry; and the regulation of the coal and steel and nuclear energy industries. Outside this considerable range there would remain unchanged by far the greater part of our domestic law (see Annex).

Then they add in (ii):

Community law is required to take precedence over domestic law: i.e. if a Community law conflicts with a statute, it is the statute which has to give way. This is something not implied in other commitments which we have entered into in the past. Previous treaties have imposed on us obligations which have required us to legislate in order to fulfill the international obligations set out in the treaty, but any discrepancy between our legislation and the treaty obligations has been solely a question of a possible breach of those international obligations the conflicting statute has still undoubtedly been the law to be applied in this country. But the community system requires that such Community Law as applies directly as law in this country should by virtue of its own legal force as law in this country prevail over conflicting national legislation.

It could not be spelt out more clearly: “the community system requires that such Community Law as applies directly as law in this country should by virtue of its own legal force as law in this country prevail over conflicting national legislation”. Even then, however, the weasels are at work. They add:

The Law Officers have, however, concluded that while the European Community will uphold the supremacy of Community Law in its application within the United Kingdom, our Courts, if faced with a statute intended by Parliament to override Community Law, are most unlikely in the immediately foreseeable future to be restrained from giving effect to the statute.

Once again, however, note the all-important caveat: “in the immediately foreseeable future”. But, as with Factortame, this was not always to be. As the FCO was well aware, there would come a time when British law would be over-ruled. In the next two sub-paragraphs, they make the situation abundantly clear:

(iii) The power of the European Court to consider the extent to which a UK statute is compatible with Community Law will indirectly involve an innovation for us, as the European Court's decisions will be binding on our courts which might then have to rule on the validity or applicability of the United Kingdom statute.

(iv) The Law Officers have emphasised that in accepting Community Law in this country we shall need to make it effective as part of a new and separate legal order, distinct from, but co-existing side by side with, the law of the United Kingdom. They have referred to the basic European Communities Treaty provisions as amounting "in effect to a new body of 'Federal' statute law".

Having thus dealt with what they describe as the "technical case", the FCO authors now deal with "political reality and popular concern", in the following terms.

13. ...In lay terms we may say that if Britain joined the Community there would be many implications for both external and internal (particularly parliamentary) sovereignty. Some of these would be wholly novel, and the general effect particularly in the longer turn would be of more pervasive and wide-ranging change than with any earlier commitments. Largely this is because the Community treaties when drawn up were seen as arrangements not merely for collaboration but for positive integration of large parts of the economic and social life of the Member States. As a result the conventional theoretical line dividing internal from external affairs has become blurred, a process which as we have seen is already advancing with the development of transnational economic activity.

Note the observation that: "the Community treaties when drawn up were seen as arrangements not merely for collaboration but for positive integration of large parts of the economic and social life of the Member States" and compare and contrast this with the conclusion expressed in paragraph 11: "...In other words in practice and in the final analysis it remains to date a cooperative venture of independent equal sovereign units and not some supranational and overriding authority".

Venturing into consideration of "public and political concern over 'loss of sovereignty'", the authors then conclude that this "...cannot be allayed simply by setting out these technical considerations". They then observe:

14. ...In the public debate advocates of entry deny that sovereignty will be lost or transferred and argue that account should be taken "of the effective ability of Britain's national institutions to protect and advance the interests, domestic and external, of the British people". They imply that sovereignty as defined above should be disregarded - considering it to have been eroded past usefulness by GATT, NATO etc and the powerlessness of the medium sized state acting alone. Although this approach rides roughshod over "sovereignty" in its technical sense it has the merit that in addressing the political rather than the legal reality it comes nearer to the sources of active public concern.

How nice it is of the FCO to agree that this approach "rides roughshod over 'sovereignty' on its technical sense. But implicit in this tranche, and elsewhere, is the view that the British peoples are actually not really interested in "sovereignty" in its technical sense. What they are really concerned with are:

15. (i) National Identity

We are all deeply conscious through tradition, upbringing and education of the distinctive fact of being British. Given our island position and long territorial and national integrity, the traditional relative freedom from comprehensive foreign, especially European, alliances and entanglements, this national consciousness may well be stronger than that of most nations.

When “sovereignty” is called into question in the debate about entry to the Community, people may feel that it is this “Britishness” that is at stake. Hence Mr Rippon’s pointed question “are the French any less French?” for their membership. There is another, less attractive, aspect of this national pride. This is the large measure of dislike and mistrust of foreigners that persists in Britain. Nancy Mitford’s Uncle Matthew was not alone in considering that: “Abroad is hell and foreigners are fiends”.

(ii) Change

However it is presented, entry to the Community will mean major change. It is natural and inevitable that this should be disliked and resisted by many. Even though the “loss of sovereignty” may be limited to fairly precise areas of Government and Parliamentary powers and be without significance for the lives of most of the country, still the phrase conjures up a spectre of major and uncontrollable change and of adjustments that will have to be made which are deeply disturbing. “Loss of Sovereignty” may be a euphemism for fear of change and of the unknown.

(iii) Remoteness of the Bureaucracy

It is generally acknowledged that in modern industrialised society the impersonal and remote workings of the Government bureaucracy are sources of major anxiety and mistrust. The operations of democracy seem decreasingly fitted to control the all-embracing regulatory activities of the Civil Service. In entry to the Community we may seem to be opting for a system in which bureaucracy will be more remote (as well as largely foreign) and will operate in ways many of which are already determined and which are deeply strange to us. This bureaucracy is by common consent more powerful than compared with the democratic systems of the Community than is ideal. Yet the way to remedy this balance without reducing the Community to a mere standing association for negotiation between national Ministers is by strengthening the Community’s democratic processes which in turn means more change and more “loss of sovereignty”.

(iv) National Power

As explained in paragraph 6 above, questions of power and influence have a close popular connection with ideas of sovereignty. The British have long been accustomed to the belief that we play a major part in ordering the affairs of the world and that in ordering our own affairs we are beholden to none. Much of this is mere illusion. As a middle power we can proceed only by treaty, alliance and compromise. So we are dependent on others both for the effective defence of the United Kingdom and also for the commercial and international financial conditions which govern our own economy. But this fact though intellectually

conceded, is not widely or deeply understood; instinctive attitudes derive from a period of greater British power. Joining the Community does strike at these attitudes: it is a further large step away from what is thought to be unfettered national freedom and a public acknowledgement of our reduced national power; moreover, joining the Community institutionalises in a single, permanent coalition the necessary process of accommodation and alliance over large areas of policy, domestic as well as external. Even though these areas may be less immediately relevant to survival than defence, as covered by NATO, the form of the Community structure and the intentions explicit in the preamble to the Treaty of Rome emphasise the merging of national interests.

What clearly emerges from this is the patronising attitude of the writers. The “mere” public is actually not able to consider “technical” issues and is really against joining the EEC because “Abroad is hell and foreigners are fiends”.

But particularly perspicacious is the view on “bureaucracy”, the writers observing: “This bureaucracy is by common consent more powerful than compared with the democratic systems of the Community than is ideal. Yet the way to remedy this balance without reducing the Community to a mere standing association for negotiation between national Ministers is by strengthening the Community’s democratic processes which in turn means more change and more ‘loss of sovereignty’”.

It acknowledges three things: (i) that the EEC is an inherently bureaucratic organisation and, by implication, is not democratic; (ii) that it is not “an association for negotiation” and therefore is not a “cooperative venture of independent equal sovereign units”; and (iii) involves a loss of sovereignty, which will intensify as attempts are made to make democratise the “Community”. Undismayed, the authors continue:

16. We do not suggest that these issues of public concern have any necessary connection with the technical meaning of sovereignty, but the debate hitherto has been conducted on two levels. On the one level there have been legal arguments defining the implications for external and Parliamentary Sovereignty of accession, implications which are important but have been found politically acceptable. On the other level we believe that argument about loss of sovereignty couched in more general terms has elicited a strong response because of the anxieties about national identity, power and change outlined above.

What is chilling here is another acknowledgement, that the implications for sovereignty “have been found politically acceptable”. Were we told this? I think not.

With that, however, the authors change tack, to deal with the future development of the Community. They write:

17. The account presented of the implications for sovereignty of membership has up to this point dealt with the Community as a static institution. Its effective role now centres upon, though it is not limited to, the Common Agricultural Policy and the Common Commercial Policy based on but now going beyond the Common External Tariff. The Council of Ministers continues to be dominated by tradeoffs between national interests and the principle of majority voting has been side-tracked. The European Parliament exercises little control over the processes of the Community while the Commission though committed to the “deepening” of the Community is hamstrung by the difficulty of reaching agreement on

major policy in the Council of Ministers

They then conclude:

18. That the Community within its present limitations should present little challenge to national sovereignty is perhaps inevitable;

This is fair enough, but now the real agenda is laid bare. This is **not** a Common Market. The authors write:

...but it will be in the British interest after accession to encourage the development of the Community toward an effectively harmonised economic, fiscal and monetary system and a fairly closely coordinated and consistent foreign and defence policy. This sort of grouping would bring major politico/economic advantages but would take many years to develop and to win political acceptance. If it came to do so then essential aspects of sovereignty both internal and external would indeed increasingly be transferred to the Community itself.

Here it is naked in tooth and claw – the prospectus for political integration, including a single currency a common foreign and defence policy. It “may take years to develop and will political acceptance”, the FCO opines, and sovereignty “...would indeed be transferred to the Community”.

“If such a development took place”, they write:

19. ...then over a wide range of subjects (trade, aid, monetary affairs and most technological questions) Community policies toward the outside world would be common or closely harmonised. Although diplomatic representation would remain country by country its national role would be much diminished since the instructions to representatives would have been coordinated among member states. By the end of the century with effective defence and political harmonisation the erosion of the international role of the member states could be almost complete. This is a far distant prospect; but as members of the Community our major interests may lie in its progressive development since it is only when the Western Europe of which we shall be a part can realise its full potential as a political as well as economic unit that we shall derive full benefits from membership.

The conclusion, unwritten, is self-evident. The FCO is entirely at ease with the “far distant prospect” that we should lose our sovereignty since it is only then “that we shall derive full benefits from membership”. Their only problem is that this “far distant” prospect is now upon us and is far from gaining political acceptance.

It is a measure of the FCO, however, that its authors write: “Such positive development...”. In that single phrase is their ambition revealed. The continue...

20. ...of the functions of the Community could probably only take place with concomitant development of the institutions of the Community. It is hard to envisage the necessary decisions being taken under the present organisation of the Community; more effective decision-making at Community level would either require majority voting on an increasing range of issues in the Council or stronger pressures to reach quick decisions by consensus. In either case the role of the Commission would become more important as the Community

became responsible for the regulation of wider areas of the internal affairs of the member states and this would in turn increase the need to strengthen the democratic institutions of the Community, including perhaps a directly elected Parliament. In that event the development of a prestigious and effective directly elected Community Parliament would clearly mean the consequential weakening of the British Parliament as well as the erosion of "parliamentary sovereignty".

Here, qualified majority voting is predicted, with a directly elected European (Union) Parliament, both of which developments would mean "the weakening of the British Parliament" and "the erosion of parliamentary sovereignty". The FCO knew exactly what it was doing, and exactly what to expect.

And, with more chilling prescience, they observe:

21. The process outlined is an exceedingly long-term one, and depends upon the continuing progressive development of the Community. For a very long time - almost certainly until the end of the century - the major member states would retain the practical "last resort" political possibility of succession (albeit in probable breach of international obligations and with increasingly damaging economic consequences for the defector). So long as the member state's participation is subject to national scrutiny and can in practice be withdrawn, it may be said that the nation's status as an equal and independent state in the international community will be unaffected. Parliament's power will likewise survive; if Britain can in practice renounce the Treaty then the Community laws which are applied automatically within the member states are seen to depend upon the continuing (and pre-eminent) acquiescence of Parliament which may in the last resort be withdrawn.

adding...

22. Even with the most dramatic development of the Community the major member states can hardly lose the "last resort" ability to withdraw in much less than three decades. The Community's development could produce before then a period in which the political practicability of withdrawal was doubtful. If the point should ever be reached at which inability to renounce the Treaty (and with it the degeneration of the national institutions which could opt for such a policy) was clear, then sovereignty, external, parliamentary and practical would indeed be diminished.

...sovereignty, external, parliamentary and practical would indeed be diminished. What more needs to be said, other than we are now at the end of the century?

All that is left is for the authors are their "conclusions and implications". Here they write:

23. We have examined the two main aspects of sovereignty: external and parliamentary sovereignty will be limited, while in the case of parliamentary sovereignty it will be real and novel but not likely to damage British interests. There are in addition major aspects of public concern which are evoked by reference to sovereignty though that is not what they are about - national identity, opposition to change, mistrust of bureaucracy and a belief that Britain standing alone should control its destiny. These may be at the source of much anxiety about and instinctive opposition to British entry. Finally we have argued that in the longest term the progressive development of the Community could indeed mean the weakening of the

member states' independence of action and in the last resort of their national institutions and their sovereignty.

There it is again: "...in the longest term the progressive development of the Community could indeed mean the weakening of the member states' independence of action and in the last resort of their national institutions and their sovereignty". Remember, that "longest term" is the end of the century.

From there, the FCO authors then identify a number of "implications to be drawn from this analysis":

24. (i) although public concern is not over technical sovereignty itself but over more generally national traditions it is real and important and can be evoked by reference to sovereignty. Before entry it is important to deal squarely with the anxieties about British power and influence (masquerading under the term sovereignty) by presenting the choice between the effect of entry and on Britain's power and influence in a rapidly changing world.

Interestingly, without adducing any evidence whatsoever, apart from their own opinions, the writers thus decide that the way to handle the entry concerns is to deal with the "anxieties" which they themselves have defined. Note also the pejorative, patronising use of the word "anxieties". People do not have "concerns", valid or otherwise – they have "anxieties", as if they are little children who need soothing. And those "anxieties" concerning sovereignty and not actually genuine. They are a "masquerade", with the real agenda "loss of power and influence". Thus concerns about sovereignty are not to be addressed. We are to be offered eulogies about how Britain's "power and influence" are to be improved if we enter the (then) Common Market.

Then, the deception continues:

After entry there would be a major responsibility on HMG and on all political parties not to exacerbate public concern by attributing unpopular measures or unfavourable economic developments to the remote and unmanageable workings of the Community. This counsel of perfection may be the more difficult to achieve because these same unpopular measures may sometimes be made more acceptable if they are put in a Community context, and this technique may offer a way to avoid the more sterile forms of inter-governmental bargaining. But the difference between on the one hand explaining policy in terms of general and Community-wide interest and, on the other, blaming membership for national problems is real and important.

In the age of "spin doctors" we are perhaps used to the cynical manipulation of news, but here is its genesis – an active, deliberate encouragement to conceal the bad news. The authors are aware that some of the Community activities may be unpopular, but they are to be "spun" in a Community context to make them more acceptable. Nevertheless, it is not all plain sailing:

(ii) the transfer of major executive responsibilities to the bureaucratic Commission in Brussels will exacerbate popular feeling of alienation from government. To counter this feeling, strengthened local and regional democratic processes within the member states and effective Community regional economic and social policies will be essential.

How true this first observation has proved to be. And now is revealed the British “take” on the regionalisation process. Anticipating the destruction of national democracy, the authors propose to supplement it with “strengthened local and regional democratic processes”, bolstered by “effective regional economic and social policies”.

And, with Parliament having thus been rendered obsolete, these civil servants have their own recipe for the deployment of redundant MPs:

(iii) Parliamentary sovereignty will be affected as we have seen. But the need for Parliament to play an increasing (if perhaps more specialised) role may develop. Firstly, although a European Parliament might in the longest term become an effective, directly elected democratic check upon the bureaucracy, this will not be for a long time, and certainly not in the decade to come. In the interval, to minimise the loss of democratic control it will be important that the British Parliamentarians should play an effective role both through the British membership in the European Parliament and through the processes of the British Parliament itself. Few if any of the Parliaments of the Six make the most of their role in either respect. It would be clearly in the interest of the UK that British parliamentarians should acquire a position of influence in the European Parliament against the day when it assumes effective powers.

Some lip-service is paid to the scrutinising role of Parliament:

(iv) The process of consultation between the Commission, Government experts and the European Parliament is complex. The issues dealt with are neither “foreign affairs” nor wholly domestic to the member states. The form of the consultations is such that they can hardly be watched over by the House of Commons as a whole - despite the flexibility of Question Time. The result in the present member states is that Community affairs are largely the prerogative of the executive to be endorsed after the event by the elected representative body as though in foreign affairs. To meet this new problem the creation of a Select Committee on Community Affairs or some quite new parliamentary device might be considered.

...but it really is a waste of time.

(v) It will be recognised that the more the Community considered is developed as an effective wide-ranging and democratically controlled organisation the more Parliamentary sovereignty will be eroded and the less important external state sovereignty will become. The ability and the ultimate political right in the last resort to withdraw will remain for a very considerable time though it may come to have mainly theoretical significance. In that last resort the ultimate sovereignty of the State will surely remain unchallenged for this century at least. Meanwhile it will continue to be important to stress the potential gains in real international influence (albeit indirect) through participation in the Community’s policies and to contrast this with the highly formal and technical nature of the “sovereignty” that will be eroded.

Parliamentary sovereignty is steadily eroded, until it comes to have “mainly theoretic significance”, while the “potential gains” of community membership are stressed, in order to suppress our anxieties.

25. The conclusions and implications we have drawn are highly political and may be judged beyond the competence of the FCO to advise. Nevertheless the impact of entry upon sovereignty is closely related to the blurring of distinctions between domestic political and foreign affairs, to the relatively greater political responsibility of the bureaucracy of the Community and the lack of effective democratic control.

And there we have it, the take-over by the civil servants, as they assume “relatively greater political responsibility”. And thus is their role ordained:

26. To play an effective part in the Community, British Members of the Commission and their staffs and British officials as negotiators will necessarily assume more political roles than is traditional in the UK. The Community, if we are to benefit to the full, will develop wider powers and coordinate and manage policy over wider areas of public business.

While other measures are foreseen to eliminate the vestigial influence of the national Parliament:

To control and supervise this process it will be necessary to strengthen the democratic organisation of the Community with consequent decline of the primacy and prestige of the national parliaments.

Finally, and chillingly, these civil servants applaud the process. They know what they have to do:

The task will not be to arrest this process, since to do so would be to put considerations of formal sovereignty before effective influence and power, but to adapt institutions and policies both in the UK and in Brussels to meet and reduce the real and substantial public anxieties over national identity and alienation from government, fear of change and loss of control over their fate which are aroused by talk of the “loss of sovereignty”.

And to think we were told by the Heath government that entry to the “Common Market” would involve “no essential loss of sovereignty”. Liars they are all.

ANNEX

AREAS OF POLICY IN WHICH PARLIAMENTARY FREEDOM TO LEGISLATE WILL BE AFFECTED BY ENTRY INTO THE EUROPEAN COMMUNITIES.

1. *In general it should be noted that there are very few if any areas in which Parliament will be wholly incapable of action or in which Parliament will be wholly free from restraint. It should also be noted that the boundaries which distinguish these areas are changing all the time, as Community policies develop.*

2. *Much depends upon the way in which the Community has taken action in any particular area. In the case of action by way of Regulation there is, once the Regulation has been made, no room for Parliamentary action (other than, possibly, to supplement the Regulation or mere debate). Generally speaking Parliament must take the Regulation as it stands, and while with Regulations made by the Council, a United Kingdom Minister (who is subject of course to Parliamentary pressure) will take part in the proceedings leading up to adoption of this Regulation, this is not the case with Regulations made by the Commission. Regulations made by the Commission are however essentially of an implementing rather than policy-making nature. Community action by way of a Directive leaves Parliament freedom of choice as to means but no freedom as to the result to be achieved. A Recommendation leaves Parliament free to decide not only on the means, but also upon whether to comply with the Recommendation at all.*

3. *Given these major qualifications the lists below, which are by no means exhaustive, identify the areas of legislative action which will be principally affected and those which will not.*

*Customs duties and all other matters incidental to the formation of a customs union;
Agriculture;
Free movement of labour, services and capital;
Transport;
Monopolies and restrictive practices;
State aid for Industry;
Coal and Steel;
Nuclear energy industry;
Company Law;
Insurance Law;
Value added tax;
Social Security for migrant workers.*

AREAS IN WHICH PARLIAMENT'S FREEDOM OF LEGISLATIVE ACTION WILL NOT BE SIGNIFICANTLY RESTRAINED

*The general principles of criminal law;
The general principles of the law of the contract;
The general principles of the law of civil wrongs (tort);
Land Law;
Relations of landlord and tenant;*

Housing and town and country planning law;
Matrimonial and family law;
The law of inheritance;
Nationality Law;
Trusts;
Social services (other than for migrant workers);
Education;
Health;
Local government;
Rates of Direct Taxation

FURTHER IMPORTANT AREAS IN WHICH MEMBERSHIP OF THE COMMUNITY MIGHT AFFECT HER MAJESTY'S GOVERNMENT'S FREEDOM OF ACTION

In addition to the areas listed above, there are a number of important areas in which membership of the Community would impose obligations vis-a-vis the Commission or other Member States. These obligations which will restrain our freedom of action in areas hitherto within the discretion of the Executive may be divided into two classes: (a) present obligations to consult; (b) future obligations to consult, or to coordinate policies.

2. Present obligations to consult include:

(i) Economic Policy: Articles 103-9 of the Treaty of Rome enjoin a wide measure of consultation and coordination on policy on current trends on balance of payments problems.

On exchange rates each member State is required under the Treaty "to treat its policy... as a matter of common interest". In practice the main common interest has been the need to allow the CAP to work smoothly; but this has not prevented member states changing parity sometimes with, sometimes without, much consultation.

On balance of payments difficulties member states are allowed (under the Treaty) to pursue policies necessary to preserve or restore equilibrium, preferably with consultation beforehand. The Commission is empowered to investigate and to make recommendations but national freedom is not significantly restrained at this stage.

(ii) Foreign Policy. The Davignon report (1970) provided for six-monthly meetings of Foreign Ministers and quarterly meetings of Political Directors to coordinate foreign policies and Governments should consult on all important questions. Two such meetings of Foreign Ministers have so far occurred. But no effective restraint exists upon national responsibility for foreign policy as such, and the obligations go no further than those we already have under WEU.

3. Future obligations, where we as members would of course have a full and equal voice in the creation of the detailed policy, include

(a) Economic and Monetary Union

The Council of Ministers adopted a programme of action on 9 February 1971 aimed at establishing economic and monetary union of the Six (and by implication of an enlarged

Community of Ten) in ten years. Only the first stage is agreed: Central Banks are to coordinate their monetary policies; the Commission and member governments are to consult three times a year with a view to coordinating their economic policies and are to produce a joint annual report on short-term economic policy; arrangements were to be instituted for a first step in narrowing the margins of fluctuation of members' currencies against each other. These measures are to remain in force for five years and then lapse if agreement has not then been reached on the second stage, which ought to begin on 1 January 1974. Although the arrangements for narrowing the exchange margins have been postponed by the May currency crisis and the German Government's decision to float the D-mark, it is likely that on entry the UK will have to adhere to the agreement summarised above, assuming that current difficulties in implementing these agreements have been overcome by the time we join. We shall of course take part as full members in the discussions which must precede any move to the second stage.

(b) General provisions for harmonisation of legal practices

There are two relevant general provisions. Article 100 of the Rome Treaty, on the Approximation of Laws and article 220 on the negotiation of mutually beneficial agreements which could in theory both lead to encroachment in the future on areas where our freedom to decide on policy is not now significantly restrained. A large number of miscellaneous regulations of little political significance have already been made under Article 100. They are designed to facilitate intra-Community trade by the establishment of uniform standards and practices. After entry we should of course have a full say in the scope and application of future work in this field.