

# Brussels 1992 – Philadelphia 1787

*The Hon. Lord Mackenzie-Stuart*

When some months ago in Washington I first put pen to paper, I proposed to begin by saying that few people nowadays read John Buchan. I have since been told that the Richard Hannay novels have been the subject of a television serial. This, of course, does not mean that people in fact *read* John Buchan, so may I still remind you of the opening pages of *The Three Hostages*. There one of the characters describes a device used by the writer of thrillers. “Let us”, he says, “take three things a long way apart – say an old blind woman spinning in the Western Highlands, a barn in a Norwegian *saeter*, and a little curiosity shop in North London . . . Not much connection between the three? You invent a connection – simple enough if you have any imagination, and you weave all three into the yarn.”

In a sense, this will be my approach – to take two apparently unrelated events and to see whether, like the writer of a mystery story, I can see by the exercise of a little imagination, persuade you that there is some logical connection between the two.

My two events – “Brussels 1992” and “Philadelphia 1787” – have this in common. They have each been encapsulated into a symbol of four digits. The first indicates a target date fixed by the Single European Act, itself an odd title, which in 1987 amended the European Community Treaties; the other is a reminder that two hundred years have passed since the signing of the American Constitution. Both dates are in fact misleading. The European target date is 31st December 1992. To convey the sense of the new dawn that is to greet us, according to its publicists, “1993” would have been more accurate, if less euphonious. As regards “1787” one must remember that that date is only a beginning. In the United States the constitutional celebrations are being phased, correctly, over a five year period from 1987 to 1992, since a corresponding period was required in the eighteenth century to hold the ratification debates in the thirteen States, events at least as important as the original signing, and for the introduction, by amendment, of the Bill of Rights, which, to the man in the street, is at the heart of the American Constitution.

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First, then, “1992”. To understand the meaning of this concept correctly, it is essential, I believe, to put it in its context. Please forgive, therefore, some historical recapitulation.

One starts, of course, with the Schuman Declaration of 9th May 1950 which proposed the placing of the coal and steel production of France and Germany under a common governance. It is difficult, forty years later, to recapture the radical nature of that proposal. It was, in major part, a recognition of the dangers to the West taking visible shape in the Soviet East. The proposal, moreover, involved an entirely fresh approach by Germany’s most implacable enemy to Germany’s future role in post-war Europe. In turn, the Schuman Declaration gave rise to the Coal and Steel Treaty in which France and Germany were joined by Italy and the Benelux countries; this, also in its turn, was followed by the two Treaties of Rome, the Economic Treaty and Euratom. Cumulatively they swept into their net most forms of economic activity. From now on I speak of “the Community” in the singular.

It is now conventional wisdom to regret the absence from the beginning, of the United Kingdom as a participant, a regret which, on the whole, I share; I sometimes wonder, however, whether in the end all was not for the best. When in the early 1970s the United Kingdom finally negotiated membership of the European Community the only real option was that of accepting the Treaties as they stood. Had the United Kingdom participated in the original negotiations one can ask whether, in the light of current Government pronouncements, the Treaties would have been as effectively drafted as, by and large, they were. Certainly, the Economic Treaty is a remarkable piece of work. I doubt whether we could produce its like today if we had to start from scratch.

The Economic Treaty, I scarcely need to remind you, sets out to create a “Common Market” although that phrase is nowhere used. This, naturally, included the abolition of all internal customs duties and, as important, the abolition of all other impediments to trade, be they administrative or para-fiscal, which affected cross-border transactions. The Treaty allowed workers to move freely in search of a job and, an essential adjunct, to take their acquired social security benefits with them. It freed the rendering of services across frontiers and gave to business the right freely to establish itself abroad. The Treaty, however, did far more than this. It provided for an integrated market in agriculture – in the 1950s the single most important economic activity in the original six. In the private sector the Treaty prohibited cartels or any other form of concerted practice which distorted trade across borders. In the public sector the Treaty set up machinery to control state aids which might affect the competitive position of producers in other states. As regards the Third World it prescribed a common external policy and gave the Community ample treaty-making powers to that end.

All this was put in hand – allowing for certain transition periods – and was for the most part, operative by the late 1960s.

In this achievement the Court played a notable role. It affirmed expressly what

was only implicit in the Treaties – the primacy of Community law; that is to say, that where a national rule and a community rule came into conflict the Community rule had to prevail. It affirmed the unique quality of Community law in that the latter could confer legally enforceable rights upon the individual citizens of the Member States; this is in contrast to classic international law. It showed its readiness in an appropriate case to control the actings of the Community Institutions, introducing a series of tests of legality which have been in use ever since. It brought home to the Member States the necessity that Community rules had to be applied in an identical manner throughout the territory of the Community. In this connection, I think often of my former colleague and mentor, Judge Donner of the Netherlands; who used to say “The Court never gives political decisions – but from time to time it reminds politicians of what they have agreed to.”

Nonetheless the momentum was lost. In the face of the financial and oil crises of the early 1970s the first flush of enthusiasm paled. The direct or self-executing provisions of the Treaties had been largely implemented. What was left required subordinate legislation. The negotiating machinery became clogged and, contrary to the expectations of some, the admission of new member states did little to improve matters. As an example of this, it took something like fifteen years to produce a directive on the mutual recognition of medical qualifications. It is right, however, to stress – since hard-won achievement is soon taken for granted – that much was done.

So we come to “1992”. When the new Commission assembled in January 1985 under the presidency of M. Jacques Delors they took stock of a number of outstanding problems and decided to give priority to a concerted programme to remove the remaining, and largely hidden, obstacles to intra-community trade. Their plan was an ambitious one and had as its object nothing less than the removal of all frontier controls. The Commission perceived, and indeed this had been obvious for a long time, that a great deal of subordinate legislation would be required and that unless the Community decision-making procedure was altered to give a much greater place to majority voting their plans would have little chance of success.

So in due course, and not without some initial opposition from the United Kingdom, the Treaties were amended by the Single European Act. The reason for that odd name is that originally three separate treaty documents had been envisaged. Not only was completion of the Common Market to be dealt with – there was also another agreement to bring environmental matters expressly under Community supervision and, yet another, to give institutional form to the already existing political co-operation. All these matters were finally included in a single instrument – hence the title.

The Single Act defined what it called the “internal market”. This concept is more limited than that of the “common market”, as one deduces the meaning of that phrase from the Treaty of Rome read as a whole. As the Single Act puts it:

“The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, and services and capital is ensured in accordance with the provisions of this Treaty.”

Note, in passing, two phrases. “Without internal frontiers” – this means what it says. With the completion of the internal market you should be no more aware that you are crossing a European frontier than you are aware that you are moving from Virginia to Maryland or, I am happy to say, you are already on the autoroute between Antwerp and Rotterdam. The other phrase is “in accordance with the provisions of this Treaty.” Here I can foresee much argument and litigation. How many of the existing restrictions and limitations of the original Treaty are to be carried forward?

However, reduced to a single sentence, the Single Act lays down a timetable of action in order to liberate the “internal market” and provides that the necessary decisions can be taken by a majority vote.

The Commission, in their original proposals in 1985, reckoned that with a combination of political pressure and goodwill on the part of the Council of Ministers the legislative programme could be accomplished within the life-span of the Commission – *i.e.* by 31st December 1992. This date was adopted by the Single European Act and “1992” became the shorthand symbol – the ‘logo’ – for the whole operation.

There is one additional feature of the Single European Act which I should mention. I referred, a moment ago, to the right under the original Treaty of Rome of Member States to enact or retain measures which impeded the free movement of goods on certain specified grounds – health and safety for example, public order or morality. To these specific exceptions which were well understood and which were strictly construed by the Court, the Single Act added a further ground, *viz.* “the protection of the environment or the working environment”.

Quite what these words mean remains to be seen. They were seized upon by certain commentators as representing a backward step, as an undermining of the Community *droit acquis*, and were, accordingly, as the authors of *1066 and all That* would have said “a bad thing”. I feel personally, that this view is over-pessimistic. I should be astonished if the Court were to retreat from its long-established position that any exception to the rule that goods are to move freely within the territory of the Community fell to be narrowly interpreted. It may be that the words which I have quoted were introduced to achieve consensus over the introduction of majority voting. If so, I feel no real harm has been done.

The expectations of the Commission and of the Member States concerning “1992” are high. We have been submerged by statistics – one even talks of increasing the G.N.P. of Europe by 6%. The enormous Cecchini report of last year appears to bear this out. I am content to take matters on the footing that those whose knowledge of economics is far greater than mine regard the potential gains as being very worthwhile indeed.

As a lawyer, however, I would like to emphasise that “1992” represents little new. In law, all that has been done is to improve the decision-making mechanisms of the Treaty of Rome in order that decisions may more easily be taken to bring about the results sought by the Treaty in 1957. Even the key date, 31st December 1992, does not, it seems to me, have binding force and have legal consequences as did the ending of the transition periods under the Treaty of Rome. The Court, one day, may prove me wrong on this. Nevertheless commonsense suggests that the full programme will not be accomplished by that date.

I am not, of course, in any way seeking to belittle the positive step forward that “1992” represents on the political front. It is always most satisfactory to see political action concentrated on moving in a forward direction. In addition, the attendant publicity is plainly providing the business world with a fresh motivation to seize the opportunities which they were originally given – as far as the United Kingdom was concerned – in 1973.

I find it very surprising that so many people, who really ought to know better, seem to regard “1992” as something totally new and as such something to be feared or welcomed according to their standpoint. It is as if a large part of the business world, and I have in mind, particularly but far from exclusively, American business, is reacting as if for the first time the existence of the European Communities had been brought to its attention. “1992” concerns only the “internal market” as narrowly defined by the Single European Act and to complete what had already been in place long since, not to create something *de novo*.

As I tried to say at the beginning, the Treaty of Rome seeks to do much more than to create an internal market. The Treaty is also concerned with Community relations with the external world, on the one hand, and on the other “the social dimension”, to use a jargon phrase. The “social dimension” is to be found in the problems of the migrant worker; his right to have his family to reside with him, and in the right of himself and his children to benefit, in the host country, from a variety of “social advantages” to use the words of the relevant Community regulation. Scores of cases in the European Court Reports demonstrate how important these questions are and how they have been resolved. To give another example of the “social dimension”, while education as such remains the preserve of the Member States, when education impinges upon the right of access to employment, and it does so increasingly, Community law, as interpreted by the Court, has something, I trust constructive, to say on the matter.

Moreover, the Court has interpreted widely the notion of the rendering of services and thus greatly extended the application of that chapter of the Treaty of Rome. Community law thus governs the right to travel abroad in the interest of health or education – or even tourism – and for the practitioner the right to travel freely in the exercise of his skills.

What the “1992” programme has done is to concentrate attention upon the ultimate goals of the European Community. Against the background of renewed legislative activity a further debate is beginning. The opening salvos have been

fired. In saying this I have in mind the speech given by the Prime Minister at the *College d' Europe* in Bruges in September of last year and the reply, although it was not expressed as such, by M. Delors in his address to the European Parliament in January, 1989. The latter was a particularly important occasion since it marked the beginning of M. Delors' second *tour* as President of the Commission.

Both speeches are important for the years ahead and both deserve close attention. Apart from an unfortunate reference to an "identikit European personality" a totally imaginary beast – the phrase should really have been excised in draft by her script-writer – much of what the Prime Minister had to say had a certain immediate attraction. Deeds, not words, was her theme. She rightly stressed Britain's role as a leader in abolishing restrictions on capital movements, exchange control and coastal shipping. The central argument, however, took shape in her "first guiding principle", *viz.* a "willing and active co-operation between independent sovereign states". In various colourful phrases she reacted strongly against the notion of central control:

"To try to suppress nationhood and concentrate power at the centre of a European conglomerate would be highly damaging and would jeopardise the objectives we seek to achieve."

I pass over in silence the effective pejorative use of the word "conglomerate" except to point out that the European Commission is staffed by fewer persons than the Ministry of Defence or, as I recently heard Sir Roy Denman say most strikingly, less than half the Los Angeles Municipal administration.

To continue, however, with the Prime Minister's text. It was epitomised in the much-quoted sentence:

"We have not successfully rolled back the frontiers of the State in Britain only to see them re-imposed at a European level with a European super-state exercising a new dominance from Brussels."

In short, she said, the object must be limited to "the removal of existing controls and a resolve that they should not be re-imposed in another form."

These sentiments, as they were intended, create a responsive echo in most of us. I do not need to pray in aid the recent observation of the Chancellor of the University of Oxford that "the British react to the word 'sovereignty' with all the predictability of Pavlov's dogs".<sup>1</sup> Something much more simple. None of us likes constraint, least of all constraint from afar.

M. Delors' speech was cast in a very different mould although he matched Mrs. Thatcher's call for action. Of "1992" he had this to say:

"Decisions have already been taken on practically half the measures needed to create the Single European Market: and the route for the remainder has been clearly mapped out."

1. *European Diary 1977-1981* (Collins – 1989), p.22.

There was what he regarded as a quantitative change: . . . “there has been an immense leap forward with the harmonisation of technical regulations and standards, simple mutual recognition sometimes taking its place. Substantial progress has been made on many fronts.”

M. Delors continued with his vision for the future:

“Europe will never be built if young people do not see it as a collective undertaking that will shape their future.”

In general, if imprecise, terms he stressed the need for research and protection of the environment. He then spoke of a “charter of fundamental social rights to give concrete form and life to the European mode of society.”<sup>2</sup>

Above all, M. Delors stressed education:

“Co-operation between universities and firms under the COMETT programme and inter-university exchanges under the ERASMUS programme – what better guarantee could there be of this newly-emerging European osmosis? How encouraging it is to see, as I have, the enthusiasm of students, teachers and businessmen who, as a result of the exchange schemes, have become active campaigners for a fifth freedom, the freedom to exchange ideas and experience.”

There was, of course, much more in M. Delors’ address but it is impossible to *précis* that which is already succinct and in any case, I have probably quoted more than enough for my purpose.

I said very recently that the two European voices were not irreconcilable. Short-term projects can co-exist with a more long-term goal. I said then that I was reminded of *Hymns Ancient and Modern*. Compare Newman’s “. . . I do not ask to see the distant scene; one step enough for me.” with Vaughan’s magnificent invocation, “My soul there is a country far beyond the stars.” Both I observed were written to be sung in the same church. In case you think I have made a grievous Oxford error may I remind you that ‘Lead Kindly Light’ was written before Cardinal Newman transferred his allegiance to Rome.

Nonetheless there is a notable divergence between the two voices. Mrs. Thatcher stresses the need for liberation, the sundering of shackles, the disappearance of regulation. Leave aside for the moment the comment that even at his most *laissez-faire* Adam Smith recognised a place for state intervention – he instances, if you remember, *inter alia* the taxing of spirits more harshly than ale in the interests of public health; leave aside the paradox that it requires a regulation to abolish a regulation and an even more complicated one if you only seek to amend – leave all this aside; although there is a passing reference to ‘the quality of life’; Mrs. Thatcher’s primary concern is for loss of sovereignty and a consequent loss of national identity.

2. It was presumably this idea which recently so infuriated the Chancellor of the Exchequer and led him to condemn what he called “social engineering”.

M. Delors, on the other hand, presents us with a vision of the future. Rightly, in my view, whether or not you agree with his particular vision. The economic success of the European market avails us little unless we have some vision of the Europe we seek for the generations that follow us.

I am old enough to recall the sight of bombed London and the ashes of the Ruhr. Let it never be forgotten that whatever may be its shortcomings the existence of the European Community has made sure that these days can never come again. All that we are doing now will be of little value if we cannot re-create for our children and our grandchildren the world of Edmund Burke, a world of which he said, "No citizen of Europe could be altogether an exile in any part of it" and that "when a man travelled from his own country he never felt himself abroad". That surely must be our long-term aim.

Here may I digress for a moment? It has been said, and said correctly, that the European Community is a community founded upon law. Community law is something *sui generis*. It is to be distinguished from classic international law which binds only the contracting states, in that Community law confers rights (and may impose obligations) upon each and every one of the 320 million community citizens. That it is an effective system can be seen in the close and continued co-operation between the Court of Justice of the European Communities and the national tribunals of all degrees in the Member States. The result is there for those who seek in the 50 or so substantial volumes of the *European Law Reports* and the even greater number of volumes of that remarkable publishing venture – unique in Europe – the *Common Market Law Reports*. Put crudely, law is about rule-making and rule-obeying. In Community law, as I have already mentioned, one of the essential and basic rules, now for a long time accepted by the Member States, with remarkably little difficulty all things considered, is that in a case of conflict between a national rule of law and a community rule the latter must prevail. This is sometimes referred to as the "supremacy" of Community law, but I dislike the word "supremacy" as much as Jean Monnet disliked the word "supranational".

The reason why the Community rule must prevail is that the Community cannot operate otherwise. Let us suppose that in order to stabilise the market in some agricultural product a directive is enacted allowing Member States to pay a subsidy of so much per tonne on specifically described goods in stock at the first of April.

Ruritania produces a domestic regulation making the subsidy payable on rather different goods and gives the date of payment as 1st March. The whole object of the regulation – to stabilise the market is thereby defeated.

There is here no question of Community supremacy, of a command by the Austenian superior, of liege-lord and lackey of *de haut en bas* or however you care to phrase it. The so-called supremacy of Community law is no more than a rule founded on necessity. Far from necessity knowing no law, necessity *is* the law. The Community would fall to bits if it were otherwise.

Which, it may surprise you, leads me to "1787". In fact I need little excuse for being led to the Philadelphia Convention of that year and the events which

preceded it and followed it. Never in modern history have a free people been given, in little more than a decade, not one but three opportunities to design their destiny. Nowhere in a country of little more than three million inhabitants has there been united such a constellation of talent. It is not my intention, however, to discourse at large on the making of the American Constitution – a spate of admirable new books have done that – but to select one thread which seems to me to be relevant to what I have been trying to say so far. A minimum of background is, however, essential.

The first Constitution of the United States, the Articles of Confederation, was finally approved by the last State to do so, Maryland, in March 1781. The War of Independence was not yet over. Indeed, the Treaty of Paris whereby Great Britain formally recognised the independence of the 13 colonies was not signed until 1783.

In many ways the Articles of Confederation were the logical offspring of the Declaration of Independence although at one stage the order of events – for example should confederation precede independence – was a matter of bitter debate. All, at least, were agreed on three things – independence, confederation and the need for foreign alliances. Little was said about the machinery of government. Indeed, Article II of the Articles places in the forefront the ‘sovereignty, freedom and independence’ of the member states.

Paradoxically the constitutional viewpoint of the Articles owed much to the picture of the British Empire as seen through the eyes of the American colonists. The British Parliament was not sovereign in the sense of being necessary for the good governance of the colonies – they had for many years successfully managed to govern themselves. “Not Parliament but the king was the head and unifying force of the empire”, to quote Professor Zuckart<sup>3</sup> but the king was not an absolute monarch. It was the king and parliament in combination which were needed to do what the colonies could not satisfactorily do for themselves, in particular to see to their defence and to regulate their external trade.

For the colonists the traditional view of sovereignty – as Dr. Johnson put it, “in sovereignty there are no gradations” – did not apply either in theory or as a matter of practical administration. What was required, so thought the newly emergent colonies, was a confederation which gave to Congress no more than the powers which the colonists had been prepared to grant to their former monarch, essentially only those needed for the defence of the realm. Funding was to be by levy upon the individual States who were the taxing authorities – as, in the opinion of the former colonists, they always had been. So limited in scope were the Articles of Confederation that they did not confer upon Congress any power to regulate commerce, although the colonists, for the most part at least, had always recognised such a power in the British Crown and had indeed benefitted from it.

3. *The Framing and Ratification of the Constitution* (Macmillan, New York – 1987), p.135.

The Articles had scarcely been approved when their weakness became apparent. As has been succinctly put, again by Professor Zuckert:

“Lacking any enforcement powers the confederate government proved unable to carry out confederate policy. Lacking a revenue power the Articles government was constantly on the verge of bankruptcy. Lacking the power to regulate commerce, the Articles government stood by while some of the states waged commercial warfare against others.”<sup>4</sup>

It was against this background that the Constitutional Convention met at Philadelphia in May 1787. As might be expected in this bi-centenary period the meeting at Philadelphia and the subsequent ratification debates have been the subject of voluminous re-appraisal. For me today, it is enough to say that the nature of the federation or confederation sought – the words at that epoch were largely interchangeable – varied greatly. For some it was enough that there should be a simple “society of societies” to use Montesquieu’s phrase. For others the states were to be replaced by a wholly national government. Although he refrained from making a formal proposal to that effect, Alexander Hamilton went so far as to suggest that the best solution might be to extinguish State Governments entirely.

What, however, united Federalist and Anti-federalist alike was the recognition that independence alone would not suffice the emerging nation. A minimum of effective central control was required; Congress had to be given powers of taxing, power to defend the nation, to enter into treaties, and to regulate commerce both external and inter-state. As a counter-part there had to be institutions capable of ensuring that constitutionally imposed limits were observed, particularly the limits between the domain of the state and the domain of central government. Above all, institutionalised control was essential to ensure that such powers as the Constitution conferred should not be subject to abuse.

These requirements were brilliantly met by the Constitution of 1787 when read along with the Bill of Rights amendments of 1791. That remarkable document remains virtually unchanged today. There have been only 16 subsequent amendments since 1791 and some of these were formal or have in their turn been superseded – prohibition for example.

What is the relevance to this to “1992”? First, may I avoid the semantic trap of trying to answer the question whether or not the European Community is a federation. If, as has been suggested, the essence of a federation is to be found in the existence of a common foreign ministry, a common foreign policy and a common army the obvious answer is ‘no’ although we may be further along the road than we realise. After all, by the Single European Act we have institutionalised political co-operation, the Treaty of Rome long ago provided for a common external commercial policy and, Ireland and France (in theory at least)

*4. Federalism and the Founding: Toward a Reinterpretation of the Constitutional Convention/The Review of Politics* (1987), p.168.

apart, we are all members of N.A.T.O.. However I accept that in some quarters "federalism" is a dirty word. It is enough for my argument that the Community is a "Society of Societies".

The lesson of the years preceding 1787 is that you cannot have even the most skeletal "Society of Societies" without an effective central organisation endowed with the minimum necessary administrative and legislative powers. The more complex the society you seek to achieve, inevitably and regretfully if you will, the more complex and far-reaching those powers must become. This is a fact that the United States of America had to face two hundred years ago and which the Member States of the European Community have to face today. With this difference, moreover, that the problems of "1992" are much more acute than the problems of 1787; while we, this side of the Atlantic, too often overlook the considerable differences, geological and cultural, between the 13 colonies in the eighteenth century – and which for that matter, persist to this day; they shared a predominantly agricultural and fishing economy and an Anglo-Saxon Protestant background. Life may have been hard but it was simpler and more leisurely. Those engaged in giving effect to the "1992" programme have to contend with the pressures of a much more sophisticated and technologically orientated economy; they have to contend with diverse prejudices built up across the centuries; with the divisions which language still imposes.

Both "1992" – or as I would prefer to say the Treaty of Rome in its entirety – and "1787" have this in common. Both involve a partial surrender of sovereignty. It is more honest to say so clearly than to have recourse to euphemisms. In the twentieth century, absolute national sovereignty is a myth. Every country has to give way before external constraints, political or contractual. Let us not pretend that by joining the European Community we have not transferred some of our national sovereignty to the Community Institutions. As I have tried to show such a transfer is inherent in the whole concept, necessarily inherent as the Philadelphia debate of 1787 has demonstrated.

Thus, and this is at the heart of what I have tried to say, it is not the existence of rule-making power in Brussels that should concern us but the manner of its exercise, its *modalités* to use an over-worked Community jargon word.

In each and every case the proper questions to be asked are, in the first place, do we need a rule at all? Secondly, if so, who is to make the rule and, thirdly, what is to be its content? In the context of the European Community there are certain basic principles to be kept in mind in answering these questions. They should be too obvious to require stating but experience often shows that they are forgotten.

First, it must always be asked whether legislation is necessary at all or whether market forces and individual initiative will provide both the necessary momentum and balance. Then it must be asked whether Community action is necessary or whether, consistently with the objects of the Community, the choice can be left to Member States. In other words how essential is uniformity? Finally, the content of any legislation must be clear as possible and of no greater width than is needed to

attain the end which is sought. That is to say, the doctrine of proportionality long applied by the Court in Luxembourg in assessing the validity of a Community Regulation must always be heeded by the legislator.

For all these reasons, it seems to me that the Prime Minister's resonant phrase about not having rolled back the frontiers of the state in Britain only to see them imposed at a European level, while it may suffice for the hustings, is, at best, a dangerous simplification. After all, people frequently need rules, clear and precise rules, and, what is more, ask that they be introduced. I take two examples from the recent daily press.

Under the constraints imposed by a European Directive the electricity industry has at last been forced to initiate a vastly expensive programme to reduce sulphur dioxide emissions from coal fired power stations. The Directive, however, does not deal with *coke* fired stations. According to the press reports the inhabitants of Monkton near Jarrow are lobbying the Commission in Brussels to extend the ambit of the Directive to repair this omission. Not for them is there any gain derived from rolling back the frontiers of the State. They are actively seeking to have restraints imposed at European level.

Not so dramatic, perhaps, but of concern to many, is the reaction of the Council for the Protection of Rural England to a proposed Directive dealing with the countryside and wildlife preservation. The comment of the Minister of State at the Department of the Environment, again as reported in the press, was that "the Brussels bureaucrat should be added to the official pest list." Good knock-about stuff to get an easy headline, I suppose, but the Council for the Protection of Rural England were not amused. They described the Minister's hostile attitude as hard to believe. For them at least the need for rules was clear and, plainly, they at least had no objection to their being imposed by Brussels.

For the last time I return again to Philadelphia in that hot summer of 1787. The principal meeting room in Independence Hall is not large and must have been unpleasantly stuffy when all fifty or so of the delegates and staff were present. To read again, however, the pages of Farrand's *Records* is to listen to a debate of the highest order; a debate correctly addressing itself to the fundamental problems of good government – where power should reside, how it should be exercised, how it should be controlled. These are also the problems and the challenge presented by the European Treaties as a whole and by their newest offspring "1992".

In no way do I suggest that the problems of today call for the same solutions as those found in 1787. Nonetheless, and I say it once more, the American experience teaches us that even the loosest of confederations, even the most rudimentary 'Society of Societies' cannot function without certain fundamental powers being located at the centre. *Pace* the Prime Minister, the European Community demands more of its members than "willing and active co-operation between independent states". The latter approach is to ignore the express terms of the European Treaties and can only lead to an impasse or, worse, to anarchy in the functioning of the Community. The duty of the Member States of the European

Community is not to castrate the Community Institutions but to make sure that they function intelligently and well; this, in a nut-shell, is the American lesson.

I began with John Buchan's *Three Hostages*. Let me end there. The character whom I quoted at the beginning continues to the effect that the reader is pleased with the 'ingenuity of the solution, for he doesn't realise that the author fixed upon the solution first and then invented a problem to suit it.'

Unlike the hypothetical author I hope that you feel I have not just been exercising my ingenuity in inventing a link between "1992" and "1787" but that the connection is truly evident.