

# LAND & LIBERTY

Editor: V. H. Blundell

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SIXPENCE



## EDITORIAL

### The Common Market and Individual Liberty

ONE of the tests by which any organisation affecting the lives of citizens, such as the European Economic Community, must be judged, is *does it increase or decrease human liberty?*

Unfortunately, it has become a commonplace of modern political and economic thinking to talk of the "long and the short term benefits" of any proposal, from which position it almost inevitably follows that, even if such a proposal is admitted to have bad features in the short term — restrictions of one kind or another — it is always going to be all right in the sweet by and by. Thus the advocates of almost any political or social programme justify suppression, restrictive practices, curtailment of individual freedom of action — usually glossed over by the euphemism "discipline" — by the benefits which it is alleged will, in the long run, be enjoyed by everybody. Communism, fascism, socialism, nazism, and a host of other "disciplines" have all been propagated with this promise of "pie in the sky," either for universal or for blatantly nationalistic aims. The one thing they all embrace in common, to a greater or less degree, is the exploitation of the individual.

Examination of the E.E.C. and the question of Britain's proposed membership, then, in the light of this question of individual liberty, brings to light features which are, to say the least, disquieting. Leaving aside purely economic considerations which after all have received and no doubt will continue to receive a great deal of attention before the die is cast, an aspect which needs to be most carefully considered is the effect of Britain's acceptance of the legal institutions and obligations of the Rome Treaty upon the freedom of action of British citizens. The ground for an analysis of this question has been very well prepared for

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us by a recent publication of the Bow Group of Conservatives, called "The Rome Treaty and the Law," published as a supplement to "Crossbow," the Group's quarterly journal, and written by Denis Thompson, joint-author with Alan Campbell of "Common Market Law."

The first important thing Mr. Thompson makes clear is the basic difference between the Common Law of Britain and the legal system adopted by the E.E.C. which, since the Community is composed of purely European elements, is naturally based upon Roman Law, the basis of the law of all the member countries, either pure or modified to suit their own requirements. The second point is that there is nothing in Europe corresponding to the British Parliament; the third is Britain's unique position of not possessing a written Constitution.

Without going into the actual ways in which these differences of legal principle and procedure pose problems in international relations — which Mr. Thompson does well enough in his excellent study — it is possible to obtain a pretty clear picture of the way in which the E.E.C. will impinge upon this vital issue of the liberty of the subject should Britain join.

"Accession to the Rome Treaty," says Mr. Thompson, "will present us with problems of great constitutional importance. Some of the old traditional forms will have to be abandoned and new methods introduced . . . At present we are faced with the problem of fitting the requirements of a treaty to which the United Kingdom was not a party, into the highly individual constitutional structure of Britain . . . One of the important functions of the Community is to make regulations and to give decisions in the future which are immediately binding on all persons within the jurisdiction of member states . . . The national parliaments, therefore, give up their right to legislate in these particular fields."

"Parliament," we are told, "would have to surrender the principle, to some extent, that no law may be passed which affects the individual in Britain without the consent of Parliament . . . In the realm of supranational organisation, the Parliament at Westminster is no longer sovereign and must give up its rights in order to allow British representatives their share in shaping the common instrument. So, too, Parliament must stand aside when regulations are made by the Community . . . Under parliamentary practice it is common for the power to legislate by ministerial order to be delegated by Parliament to Ministers of the Crown or other bodies, and such orders have the force of law. It is customary, however, for such orders to lie on the table in the House of Commons for a number of days in order that an opportunity may be given for a prayer for their revocation. Such a procedure would not be permissible in the case of regulations made under the Rome Treaty as Parliament would have no right to prevent these regulations becoming law."

A vital point, particularly relevant is brought out by Mr. Thompson in this passage: "There is the question

of the regulations that may be made in the future which are to be directly operative. If the Treaty is made part of the law of the United Kingdom then the regulations will also be part of the law of the United Kingdom as and when they are made. This is important, as persons directly affected by them have a right of challenge to the European Court, and, if they are not directly affected by the regulations they might not have any right to challenge their validity in Luxembourg. Furthermore, the interpretation of the Treaty is left by a special procedure very much in the hands of the Court at Luxembourg."

What is here involved is an obvious widening of the gap between the individual citizen and those who make and interpret regulations governing his existence, and a narrowing of his sphere of liberty of action. The increased costliness of litigation in which he is likely to find himself involved by the remoteness and "eminence" of the court to which he must make his appeal is one very important element in this process of forcing him further and further away from the fountain of justice, access to which has always been (in theory at any rate) one of the cardinal principles of British law. The provisions of the Treaty which penetrate most deeply into the domain of private rights are those concerned with the movement of workers, the right of establishment, the regulations on agriculture, the regulations on transport and the rules on restrictive practices and monopolies.

Some indication of the dangerous trend among our political leaders towards more and more regimentation and less and less individual liberty — of which the proposal that Britain should join the E.E.C. is but one — is illustrated by the following remark extracted from a reference to the European Court of Justice, in Luxembourg. Mr. Thompson is referring to cases against Italy and Germany taken before the Court recently. "On the whole," says Mr. Thompson, "these relate to minor matters, such as the quota regulations or tariffs on particular commodities." By this remark he shows himself to be involved as deeply as any other politician or economist of our day in this heresy that individuals have few actual rights against "society" or the "State" or whatever other abstraction one cares to invoke. The imposition of a tariff may raise the cost of living but be declared to be "in the public interest" or "for the good of the State," or even for the benefit of a particular industry. Such matters are "minor" to those doctrinaires to whom human freedom to choose, to decline to be exploited, to satisfy his desires by exchanging his products where it suits him, are unimportant.

And joining the E.E.C., whatever it may mean for British prestige, will mean for the citizens of Britain not only an extension of the denial of their right to buy and sell wherever they like, but the denial of the right to demand, and get, changes in official acts which they may consider arbitrary or discriminatory. It could be nothing more than a disastrous step further along the gadarene track.