

# EU SOCIAL MARKET AND SOCIAL POLICY

The SMF at twenty-one

Rt Hon Lord Owen CH



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### RT HON LORD OWEN CH

David Owen was a Member of Parliament for 26 years from 1966-92. Under Labour Governments, he served as Navy Minister, Health Minister and Foreign Secretary. As one of the “Gang of Four”, he was co-founder of the Social Democratic Party established in 1981 and its Leader from 1983-87 and 1988-90. He helped to create the Social Market Foundation and served on its initial Board with Tom Chandos, Alistair Kilmarnock, David Sainsbury and Robert Skidelsky,

David Owen was created a Life Baron in 1992 and sits as an independent social democrat in the House of Lords. From 1992-95 Lord Owen served as EU peace negotiator in the former Yugoslavia and was co-author of the Vance-Owen Peace Plan.

He was Chairman of New Europe from 1999-2005, an organization that campaigned successfully for the UK to stay outside the eurozone while remaining a committed member of the EU. He served as Chancellor of the University of Liverpool from 1996-2009. He is currently a Director of the Centre for International Humanitarian Cooperation and has business interests in America and Russia.

He is the author of several publications including *Balkan Odyssey* (1995) *In Sickness and In Power* (2008) a unique study of illness in Heads of Government during the last 100 years; *Nuclear Papers* (2009) which made available for the first time newly declassified government papers from his time as Foreign Secretary relating to the UK's last full review of nuclear weapons policy and *Time To Declare: Second Innings* (2009), an updated and revised edition of his original autobiography, *Time to Declare*.

## EU SOCIAL MARKET AND SOCIAL POLICY

As we celebrate the 21st anniversary of the Social Market Foundation, it needs to be recognised by all political parties in the UK that the term social market economy is now in Article 2 of the Treaty on the European Union inserted by Article 1 of the Treaty of Lisbon.

A highly charged subject in the UK at the start of the second decade of the 21st Century is to what extent is social and employment policy better exercised in detail by the Member States of the European Union? Another question is whether the EU can define limits or achieve a separation of powers between what are appropriate powers to be exercised by the Member States and what powers are really needed for an effective EU. The relevant words of Article 2 (3), with, are:

“3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive **social market economy**, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.”

If David Cameron becomes Prime Minister after the General Election in 2010 the issue of repatriation of social and employment policies is likely to become a highly controversial question both within the UK and the EU. There are few, if any, organisations better placed to contribute constructively to that debate than the SMF. There are some Labour and Liberal Democrat MPs who will dismiss this debate as being either irrelevant because they think it is impossible to negotiate changes to the Lisbon Treaty or wrong because they want more EU integration and greater powers. There are some Conservative MPs who disparage the very word social and see the EU as a Single Market, pure and simple. Yet even as committed a European enthusiast as Kenneth Clarke MP has disputed the notion that any attempt to

repatriate powers would leave the Conservatives isolated in Europe. On 10th November 2009 he said, "I do think we will not be alone. We will have allies. So long as you don't over-dramatise it, done properly, there's a serious negotiation to be had". I agree wholeheartedly with this assessment, membership of the EU involves continuous negotiation.

The EU cannot avoid debate and negotiation over the parameters of its social market. Though the term has won acceptance the shifting balance of political forces within the Council of Ministers and in the European Parliament ensures that the parameters cannot be set in concrete. Also any worthwhile organisation adapts to changing circumstances and learns from experience.

The crucial country that will shape that social market over the next few years is the Federal Republic of Germany. "Rhineland capitalism" and its associated social market economy which prevails in Germany, Austria, the Netherlands and part of Belgium was well described in 2002 by Will Hutton in his *The World We're In*.<sup>1</sup> But there has been a continued shift in attitudes within the political parties in Germany since then over the Social Market. The Social Democrat Chancellor, Gerhard Schroeder, made significant changes towards emphasising the market and the need within the euro to remain competitive by internal labour market disciplines. For a while his fellow social democrats were on board for moving in some areas closer to the Anglo-Saxon model. Now no longer in government they will inevitably rethink aspects of the German viewpoint on the social market. When the Christian Democrats, under Angela Merkel, formed a coalition with the Social Democrats she reduced some of the emphasis of previous Christian Democrat leaders on market forces. Now in 2010 Angela Merkel's new coalition is with the Free Democratic Party (FDP). This party is in the Liberal grouping in the European Parliament which is overall more market orientated than the British Liberal Democrats. Angela Merkel, having appointed the senior and influential Christian Democrat Wolfgang Schauble as Finance Minister, has set the coalition on the path of economic growth, hopefully to be stimulated by tax breaks of about €25 billion. These economic changes stemmed from negotiating a four year programme with the FDP. Already the Opposition parties, Social Democrats, Greens, and the Left, are calling that €25 billion unconscionable in the current economic situation while Schauble defends the borrowing of some €100 billion in this current year. Almost certainly this German government, while retaining the traditional Christian Democrat commitment to a social agenda, will be more open minded about the frontier between social and employment policies suitable for a Member State and ready to contemplate some changes in direction over what should be covered by EU legislation. A CDU

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<sup>1</sup> Will Hutton, *The World We're In* (Little Brown, 2002), p. 259-264.

Labour Minister and an FDP Economics Minister between them are likely to have to cope with rises in unemployment. In the health field, the German health insurance scheme faces ever rising costs and the FDP Health Minister, Philipp Rosler, appears ready to contemplate radical changes.

Ten years ago in the EU eleven of the fifteen Member States were governed by nominally social democratic parties. Europe's social democratic leaders, then Gerhard Schroeder, Lionel Jospin, Romano Prodi, Goran Persson and perhaps Tony Blair were the main players, though he appeared uncomfortable at times being described as social democratic. In varying degrees they espoused 'modernisation'; all were 'Europeans' and 'socially concerned' but voters lost faith with them as leaders and with their parties. Today, however, Greece has turned to PASOK and George Papandreou in a deep economic crisis. Spain too still has Jose Zapatero's Social Democrats and Gordon Brown's Labour Party faces an election no later than June 2010.

Inside the UK there are levels of political disillusionment deeper even than in the 1930s. The virtues of open free markets are being questioned as are flexible labour markets. The enthusiasm for the Anglo-Saxon or US-UK economic model is tempered by perceived failure. At the moment when the UK might have looked with more favour than hitherto at the eurozone, its' intrinsic design is seen to be far more vulnerable and more people fear structurally flawed.

What of a specifically European model? If there is to be one it is yet to emerge and its contours are hard to discern. The eurozone will have to demonstrate first far greater economic convergence, discipline and political cohesion. A European social market economy will have to develop at a far faster pace than that which started at Lisbon and set in motion significant reforms of the agricultural and manufacturing sectors with the Christian Democratic groupings or People's Party, the EPP, in the European Parliament supporting it and the Liberal grouping pursuing active market reforms. At last in the UK the Liberal Democrats have three leading figures Nick Clegg, Vince Cable and Chris Huhne, who are far more attuned to market solutions than their predecessors and for the first time since Jo Grimond was the leader of the Liberal Party, it is possible, just, to conceive of Liberal Democrats working in government with a David Cameron led Conservative Party. The Anglo-Saxon model is not about to win ground in continental Europe. Indeed it is rejected by the EPP and Liberal groups. Their energy is being spent in saving the eurozone in Greece, Portugal and Spain.

They will draw some comfort from a new book *Europe's Promise. Why the European Way is the Best Hope in an Insecure Age*. Written by Steven Hill and published by the University of California Press, it is an optimistic view of the potential of the European social market from the director of the political reform program of a think tank called the New America Foundation. He believes that the new global order will be "based on the European model" and that America is "behind in nearly every socioeconomic category". It is an upbeat and somewhat optimistic account of European achievements; but there are deep-seated flaws in the US' apparent belief that they can go on managing the dollar with such scant regard for the interests of other countries. The global model is unlikely to be either European or American but will owe far more than hitherto to China, India and Russia.

There are many profound questions rightly being asked in Europe about the social viability and economic efficiency of market solutions in the light of the conduct of bankers and financiers. Yet all is not gloom; the *Financial Times* in an editorial on 13 November 2009 described in the UK an Anglo-social model where on a voluntary basis employers, employees and government have cooperated well to alleviate the rise in unemployment, while warning that the EU's agency workers directive, delayed until 2011, could discourage the hiring of temporary staff. On 3rd February in the House of Lords a newly created Conservative Peer, Lord Freud, a party spokesman on welfare congratulated the Labour government and defended the flexible labour market saying Labour had not fallen into the trap of subsidising it like the German and Belgian governments and as a result the process of adjustment in the UK has meant that some 500,000 people did not lose their jobs, albeit many having to work part time. What this points to is that we must all be prepared to learn afresh and keep open minds about the effective way to combine social values and market realism.

We are bound, therefore, to see a considerable debate in Europe about the right balance to strike not just on labour markets but also on financial regulation. This has already started on hedge funds. Some of the suggested reforms in the Alternative Investment Fund Managers (AIFM) Directive are clearly misguided in content and in direction. Yet the principles underlying it, greater transparency and better supervision, are undoubtedly necessary. The UK will have to argue its case with tenacity and consistency in 2010 if the innovative side of the City of London is not to be damagingly curtailed. In this debate, inevitably, social and employment policies will start to play an evermore important, if not central, role. Also it will be a forerunner for the wider reforms of the banking and financial systems. Here the emergence of the G20 and the sidelining of the G8 is welcome in providing a more realistic grouping of nations for international, not just European, reform. But reform must not be merely technical

and must not ignore greed, hubris and deep rooted abnormal behaviour. The Financial Times journalist Gillian Tett's analysis of the 'silo' mentality, in her book *Fool's Gold*<sup>2</sup>, drew on her training as a social anthropologist. I have tried in writing about Hubris Syndrome, in financial, not just political, decision makers, to point to both social and neurobiological factors<sup>3</sup>. Larry McDonald, a trader with Lehman Brothers, demonstrates in his book<sup>4</sup> how the repeal of the 1933 Glass-Steagall Act in late 1999 heralded a devastating new era in human behaviour on Wall Street and it is good that the wisdom of Paul Volker has influenced President Obama to call for legislation restoring some clearer demarcation. Canada, noticeably, came through the banking crisis unscathed. Old and new lessons must now be brought to bear to create a behavioural approach to financial regulation. It was a mistake to remove the Bank of England's powers in this area in 1997, for the Governor could check the behaviour of some leading bankers in ways no-one else could.

When I decided to establish the Social Market Foundation in 1989, a charity devoted to promoting the concept of the social market economy, I was still a Social Democrat MP. It was impossible to become too closely involved since there was an overriding need to respect the political neutrality under the legislation for charities overseen by the Charity Commissioners. I did, however, become initially a Trustee. The first Director was Alistair Kilmarnock and its first chairman was Tom Chandos. After a while, Robert Skidelsky became the Chairman and Danny Finkelstein the Director followed by Rick Nye. David Sainsbury helped with the initial funding and it was perhaps inevitable that they had all been actively involved in the SDP. When the SDP was wrapping up, individuals began to choose different political homes. David Sainsbury and Tom Chandos went with New Labour. Like Alistair Kilmarnock I never joined any other political party and remain today a crossbench Peer, though when asked to define my status I call myself an independent social democrat. Robert Skidelsky became first a Conservative and later a Crossbencher; Danny Finkelstein and Rick Nye became Conservatives, along with a number of other young active social democrats. Many former SDP members are now playing significant roles in David Cameron's Conservative Party. Many from the SDP contributed to Tony Blair's new Labour. David Sainsbury served throughout Blair's premiership as Minister for Science, others like Derek Scott, who advised me on economic policy in the SDP, was in No 10 for nine years advising Tony Blair on the economy as was Roger Liddle who advised on the EU. In addition, over the last 22 years, many in the SDP have helped build the Liberal Democrats.

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<sup>2</sup> Gillian Tett, *Fool's Gold: How Unrestrained Greed Corrupted a Dream, Shattered Global Markets and Unleashed a Catastrophe*, (Little Brown, 2009).

<sup>3</sup> David Owen, *Time To Declare; Second Innings*, (Politico's, 2009), Chapter 10 'The Financial and Economic Crisis of 2007 onwards'. David Owen and Jonathan Davidson, 'Hubris Syndrome: An acquired personality disorder? A Study of US Presidents and UK Prime Ministers over the last 100 years, *BRAIN* 2009 doi:10.1093/brain/awp008

<sup>4</sup> Larry McDonald, *A Colossal Failure of Common Sense. The Collapse of Lehman Brothers* (Ebury Press, 2009).

Vince Cable, Chris Huhne and Tom McNally are today among its leaders influencing the policy direction. In the Conservative Party, shadow spokesmen Chris Grayling, Greg Clark, Andrew Lansley and David Mundell were all in the SDP.

The SMF was not established, however, to influence or provide a platform for any one political party. It was established to focus its activity on whichever party formed the government of the day. John Major's government was influenced when Danny Finkelstein went to No 10; likewise Tony Blair's when Phil Collins, a former Director of the SMF, went to No 10. When it became obvious that the new Labour government was likely to be in office for a decade or more it seemed wise to reflect this reality within the SMF. Robert Skidelsky, who had done so much as Chairman to establish the intellectual personality of the SMF, stepped down after 10 years. David Lipsey, a Labour Peer, formerly political adviser to Anthony Crosland and a writer on the Economist, then became Chairman in 2001. No doubt after the next General Election the Chairman and Trustees of the SMF will consider whether it is sensible to make a similar adjustment in the light of which party or parties form the government of the day.

The SMF has not, and hopefully will never become, the monopoly or the preserve of a single party. Prominent Conservatives like David Willetts, a member of the Shadow Cabinet, and always unafraid of using the word social, has been involved from the early stages. It is particularly appropriate that that pluralist identity is maintained for the UK's membership of the European Union makes it inevitable that social policy has a European, as well as a domestic and national identity. That means there needs to be a fair measure of continuity in social matters when governments change in the Member States.

It has been uncomfortable, to say the least, for some Conservative politicians in the UK to accommodate to anything like a common social policy accompanying the Single Market. The Left/Right language of British politics does not fit easily with social policy being determined by the wording of European treaties. A minimum wage was controversial between the parties, thankfully no longer. It is now an EU-wide social policy but fixing its level must surely remain a Member State responsibility, just as fixing the balance in tax levels and social security provision. Social democrats, almost by definition, in arguments about the balance between financial incentives and redistribution will incline towards redistribution.

My own involvement with the term social market began when I delivered the Hoover Lecture entitled "The Social Market" on 19 May, 1981 to Strathclyde University. I took the issue much further when I became the Leader of the SDP in the summer of 1983. My article for the

Institute of Economic Affairs entitled “Agenda for Competitiveness with Compassion”<sup>5</sup> was described in the Financial Times in broadly supportive terms, as “Thatcherism with a human face” and a Guardian editorial argued “embrace with proper caution”. But for many in the then Liberal Party and sadly also three of my colleagues in the Gang of Four, who came together to help create the SDP, there was opposition both to the terminology and the underlying shift of emphasis towards the market. They preferred to stick to the term ‘mixed economy’. Yet this had been used too often in the post-war Labour Party to straddle profound differences over the balance between nationalised industries and the private sector. A trial of strength within the SDP on the politics, as well as the economics, behind the term social market took place at the SDP Conference in Torquay in the summer of 1985. There the social market economy was overwhelmingly endorsed and in the Financial Times Peter Riddell wrote, “the activists claim the party has its own social democratic values, combining in the market economy and radical social priorities which cannot easily be labelled left or right”.

In the Hugh Gaitskell Memorial Lecture “Politics and Consensus in Modern Britain”<sup>6</sup> delivered in that same year I developed the underlying assumptions of John Rawls’ “A Theory of Justice” of a society with the property of “close-knittedness” and also explored Rawls’ concept of ‘social union’. I reminded people in that lecture that Hugh Gaitskell from 1955 to 1958 chaired an independent Commission of Inquiry on the future of the cooperative movement and that Tony Crosland was the secretary. I am convinced that one of the few beneficial effects of the recent world financial crisis is that it has exposed raw greed and hubris and to compensate there will be a rediscovery of the benefits of cooperatives and mutual and friendly societies. One of my quirks of nature in recent years has been to enjoy watching the surprise on the face of New Labour friends when I bring out my Cooperative Bank credit card. All through the present financial crisis I never for one moment felt any concern for money in the Cooperative Bank but was deeply anxious about money in our Nat West account.

It is easy to forget the deep questioning about the parameters of the market economy in the post war Labour Party by people like Evan Durbin who was strongly influenced by American economists Berle and Means who had written in the 1930s<sup>7</sup>. Durbin, like Gaitskell and Crosland, were well aware that changing patterns of ownership had invalidated the economic analysis of Clause IV socialism. I argued in my Gaitskell Lecture that the thinking of the American economist, Martin Weizman<sup>8</sup> should recast our views on the forms of partnership

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<sup>5</sup> David Owen, “David Owen’s Economics: Agenda for Competitiveness with Compassion” *Economic Affairs*, IEA, October 1983.

<sup>6</sup> *Lectures in Memory of Hugh Gaitskell* edited by John Morgan, Macmillan Press 1988.

<sup>7</sup> A A Berle and G C Means, *The Modern Corporation and Private Property*, (New York, Commerce Clearing House, 1932).

<sup>8</sup> Martin Weizman, *The Share Economy* (Cambridge Mass, Harvard University Press, 1984).

and participation in British industry. Weizman wanted in Share Economy to move from a wage-orientated economy to a share-income economy, so that a substantial part of the average person's take home pay would be expressed not as a regular wage but as a share of the profit earned or value added in the company to which he or she contributed. At much the same time, in 1984, John Meade, who was a distinguished member of the Economic Policy Committee of the SDP, was putting forward arguments for a more flexible pattern of "labour-capital partnerships", based on share certificates<sup>9</sup>.

Since 1995 I have earned my income as an international businessman serving on the Boards of companies based in the UK, Russia and America. I have of course learnt a more practical approach to the market economy over these years.

I hope that out of the public controversy about bankers' bonuses there will be a new push to reward people through share options or restricted stock with a limit on how soon they can be sold and in as much as bonuses are paid they should be rewarding actual performance. Institutional investors in public companies pay insufficient attention to shareholder interests having often too cosy a relationship with management. Independent non-executive directors in public companies often get too close to management, forgetting they have a responsibility to shareholders to see that financial incentives reward effort and enterprise.

In my Gaitskell Lecture I draw attention to the merits of examples like the John Lewis Partnership where all the profits go to the worker members or partners. These concepts, after years of neglect, may now be about to experience a new lease of life. I know I am not alone in finding, as a director of very different companies, or just as a shopper at the Waitrose check-out, that when employees are expecting an announcement about the company's performance, there is an excitement and anticipation of how much profit distribution there will be to the workforce which creates a commitment to improving the company's performance.

Yet along with the return of these values relating to workplace partnerships, I hope for the return to the political values associated with a fairer redistribution of wealth in society. The SDP championed integrating tax and benefits. For a time Gordon Brown's tax credit reforms looked as if they might achieve this but the momentum went along with the loss of control of public expenditure in 2002 and an excellent opportunity coinciding with economic growth has been

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<sup>9</sup> J E Meade, *Wage Fixing Revisited*, (London Institute of Economic Affairs, 1984).

lost. Yet the challenge cannot be ignored again by any properly constituted social democratic government.

The Conservative government under Margaret Thatcher, in the 1980s and not before time, radically shifted the economic frontiers between the state, industry and the private sector and in housing between public and private provision - a shift supported then by the SDP. While Margaret Thatcher was Prime Minister there were few references by Conservatives to the social market even though Sir Keith Joseph had given a boost to the use of the term in speeches in 1974 while re-thinking the mistakes of Edward Heath's government. I examined his thinking on this in some detail in a Keith Joseph Memorial Lecture which I gave in 2001.<sup>10</sup>

Labour and Liberal Democrats now, 30 years later, accept virtually all these hated 'Thatcherite' changes. Some of the controversial Conservative privatisation programmes also tried to establish a wider share ownership and yet somehow the active policy debate on this which took place in the SDP and the Conservative Party simply passed the Labour Party by.

Labour concentrated on recovering lost ground reversing state ownership, re-adopting UK membership of the European Community and in the process unfortunately accepting all its policies with the zealotry of the convert. I sensed the shift in the Labour Party's policy stance in 1988 when Jacques Delors, the former French Socialist Minister of Finance and then President of the Commission, gave a fraternal address to the TUC Conference where his reception had been so warm and his exposition about the Social Charter so well received that it was apparent that Labour was in the process of abandoning its rejection of membership of the European Community. That process continued with a series of policy papers, all moving closer to an acceptance of market economics. Whether to also reverse engines and accept the nuclear deterrent was, however, not resolved at the 1988 Labour Conference and Neil Kinnock's attempt to support unilateralism, bilateralism and multilateralism convinced very few. Nevertheless it was an indication that he personally was on the move on nuclear weapons. Even so Ron Todd managed with the Transport and General Workers Union block vote to secure the passage of a hardline unilateralist resolution.

By the 1992 Election Labour were firm supporters of the European Community and all its social content. They had also embraced, somewhat unfortunately as events turned out, the Exchange Rate Mechanism with an unbridled fervour. It was not just the Conservatives, but

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<sup>10</sup> David Owen, 'Limits to EU Integration', Keith Joseph Memorial Lecture, Centre for Policy Studies, 25 January 2001.

Labour and Liberal Democrats who had egg on their face when the UK could not obtain an agreed realignment and the UK was forced to leave the ERM.

The political argument between centralised and decentralised decision making was strong in Labour politics until Herbert Morrison lost the argument with Aneurin Bevan in 1945-46 about local government control of the health service. Decentralisation is becoming fashionable again, in part because of the failures of Tony Blair's Third Way, with targets and "deliverology" handed down from No 10. It is a safe bet that the social market will outlast the Third Way, indeed it probably already has. The 21st Century may be a time when all parties re-examine the case for greater decentralisation. The first disappointment for me, following the welcome victory of new Labour in 1997, was their early decision to dismantle the GP funding initiative that was started by the Conservative government. Admittedly the Labour government later reversed engines and brought funding back but in a way that was too large and bureaucratic. Interestingly, when the SDP endorsed an internal market<sup>11</sup> for the NHS based on the belief that changes in medical attitudes towards the cost of health care were far more important than structural changes, the Conservatives were its strongest critics before the 1987 Election. Having won they then adopted the very proposition they had attacked. If Labour in government had continued with that internal market we might have seen the evolution of sensible health reform. The arrival of the distinguished surgeon, Lord Ara Darzi, as Health Minister in Gordon Brown's government, for a few years brought a welcome return to clinical standards and professional leadership. While many Labour initiatives on the NHS, particularly the increase in expenditure, have been welcome, the constant top-down political interference with the management of the NHS and the near obsession with postcode inequalities has hindered more worthwhile evolutionary reforms. As large and as complex an organisation as the NHS cannot thrive in an atmosphere of constant change. I now fear that instead of an internal market we are seeing the emergence of an external market involving the NHS. The pace of this so-called reform may increase under a Conservative government. I have yet to be convinced that the inherent incoherence of these changes will enhance the overall quality of health care.

Another area where a pure market is hard to sustain is energy. I am far from convinced that the UK's attempt to have an entirely market-based energy policy can succeed in a world where very few other governments even pretend that they have not preserved for their state key areas of policy intervention and provision, particularly in the areas of supply and storage.

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<sup>11</sup> David Owen, *Our NHS* (Pan Books, 1988).

It is an old adage that there is not much new in politics. My own “tough and tender” formulation which I tried to highlight in the SDP version of the social market, seemed to ignite public interest at the time but it was merely the reformulation of an older concept developed by the American philosopher William James<sup>12</sup>, “The tough think of the tender as sentimentalists and soft heads, the tender feel the tough to be unrefined, callous or brutal.” Yet when it came to drafting the 1987 SDP/Liberal Alliance manifesto, that vision of the social market was so unacceptable to Roy Jenkins, then our economic spokesman, and other Liberals that I did not press for its inclusion in our joint manifesto. Yet on the Friday morning after the General Election in 1987, Matthew Symonds in the Independent followed up the newspaper criticism of our bland manifesto as “moderate dirigisme” with the headline “Disappointing packaging buries the Alliance’s ideals”. He criticised the fact that there was not a single reference to the social market in the entire document.

Social policy within the EU became controversial in domestic politics when John Major was Prime Minister in 1991. Hubert Védrine, then Secretary General of the Elysée talked that year to the British Cabinet Secretary, Sir Robin Butler. Védrine elaborated on the French desire for a social dimension within the EU, saying “a nationalistic strain and a fear for French national identity were rising. The Community was becoming less popular again. The Government felt that the social dimension of the Community was correspondingly more important. French public opinion needed to be assured that the European Union would raise the standards for all Member States to those of the best in all areas including social aspects. In general, France did not want to see regulation and increased bureaucracy in the social area but to increase negotiation and dialogue.”<sup>13</sup> The German Christian Democrats were ready to accept a social policy as defined by the French. Yet by 1991 that had become an anathema to some influential people within the Conservative party. Stephen Wall, working as a diplomat in No 10, has revealed that officials in the Department of Employment had tried their hands at a draft on a British interpretation of a Social Chapter which their Secretary of State, Michael Howard, had never allowed them to put forward. Wall believes that had they done so, perhaps the text on the table when the Maastricht Treaty began to be negotiated would have been “less problematic”. I believe that should have been the approach. John Major’s instincts to preserve his room for manoeuvre were, however, inhibited, by Michael Howard making frequent telephone discussions during the three days of negotiations and making it “subtly, but plainly, clear that this was a resigning matter”.<sup>14</sup> While for some Heads of Government like Francois

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12 William James, *Pragmatism: A New Name for Some Old Ways of Thinking* 1907.

13 Stephen Wall, *A Stranger in Europe. Britain and the EU from Thatcher to Blair* (Oxford University Press, 2008) p.124.

14 Ibid p. 136-7.

Mitterrand initially there could be no Maastricht Treaty unless there was a Social Chapter, for John Major there would be no Maastricht Treaty if there was a Social Chapter.

The conflict was settled when Ruud Lubbers, the Dutch Prime Minister, and the German Chancellor, Helmut Kohl, accepted that there could only be a Protocol to the Treaty on the Social Chapter which the other eleven countries would sign and that was the most they could achieve. John Major believed that he could only sell the British euro opt out as not simply a backdated surrender notice to his anti-EU MPs if Britain had no part of and would not be contributing to any of the administrative expenditure involved in implementing the Social Protocol.

Highly relevant to the ferocity of any post election debate between perhaps a Conservative government and a Labour Party in Opposition over repatriation of the social and employment provisions in the Lisbon Treaty will be past, but not forgotten, parliamentary struggles. In particular the attempt of the Labour and Liberal Democrat parties in opposition in 1993 to force acceptance of the Protocol on the Social Chapter in the Parliamentary discussion over the Maastricht Treaty. Because of the size of the Conservative MPs' revolt the Parliamentary arithmetic became very tight in 1992-93. At one stage opposition for its own sake seemed to triumph and despite wanting the Maastricht Treaty John Smith, then the leader of the Labour Party, went very close to risking ratification of the Treaty. In April 1993 Labour championed a tactical device in the House of Commons that tied ratification of the Maastricht Treaty to acceptance of the Social Chapter. This device attracted many Conservative rebel MPs who neither wanted ratification nor in many cases for the UK to remain in what was due to become the European Union. Those Conservatives were ready to vote for acceptance of the Social Chapter, despite their opposition to the Chapter, in order to destroy any prospect of ratification. What emerged was described by John Major in his autobiography as "a madhatter coalition".<sup>15</sup> Though the vote did not block the Treaty becoming law it was called "the ticking time bomb". It required another vote on the Social Chapter before the Treaty could be officially ratified and come into effect. By July 1993 it was clear Labour would be accompanied in a vote to incorporate the Social Chapter by the Liberal Democrats which was a change in tactics by their leader, Paddy Ashdown. Also the Scottish National Party and Ian Paisley's Democratic Unionists would vote for the Social Chapter. Only the Official Ulster Unionists, under James Molyneaux, with nine MPs, were ready to vote against. The Labour amendment resulted in a tied vote 317 for, 317 against, with the Speaker voting that night to maintain the status quo. That vote was amended next day because of a miscount to 317 to 318. But the

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<sup>15</sup> John Major, *The Autobiography* (Harper Collins 1999), p.315.

main motion that night was lost by 8 votes and had the effect of stopping ratification of the Treaty, the legislation for which Parliament had already approved. John Major rose to address an inflamed House of Commons, having pencilled in a General Election date for early September. He announced a Motion of Confidence in the policy of Her Majesty's Government for the next day on the adoption of the Protocol on Social Policy. That vote was won by the Conservative Government by 38 votes because the Conservative rebels had been forced to choose between a General Election, where they would have to explain their vote for the Social Chapter to their Conservative Associations, or climbing down and voting specifically for their government's policy on the Social Chapter. For those Conservatives who wish the UK to remain in the European Union that Parliamentary cliffhanger left its legacy. When Labour, having won the 1997 General Election, accepted the Social Chapter many of those Conservative MPs were not ready to resign themselves to these policies being a permanent feature of the UK's relationship with the EU. It is therefore a great mistake for Labour or Liberal Democrats to believe that the issue of the Social Chapter concerns only the closet anti-EU faction within the Conservative Party. The problem was compounded by the former French President, Giscard d'Estaing, in his draft Constitutional Treaty that advocated an increase in the social policy element in the Treaties and as part of the destruction of the pillared approach in the Maastricht Treaty took the elements of the social protocol and spread them right across the new Constitution. This meant that in the Lisbon Treaty there would be no separate Social Chapter.

The German Constitutional Court, in a press release on June 30th 2009, made an extremely important ruling on the Lisbon Treaty. It laid down general guidance as to how it might be possible to establish a narrow interpretation, setting limits and parameters, perhaps in a new Protocol, or perhaps by amendment of the Treaties, for the future development of social and employment policies within the framework of the Lisbon Treaty.

“European unification on the basis of a union of sovereign states under the Treaties may, however, not be realised in such a way that the Member States do not retain sufficient room for the political formation of the economic, cultural and social circumstances of life. This applies in particular to areas which shape the citizens' circumstances of life, in particular the private space of their own responsibility and of political and social security, which is protected by the fundamental rights, and to political decisions that particularly depend on previous understanding as regards culture, history and language and which unfold in discourses in the space of a political public that

is organised by party politics and Parliament. To the extent that in these areas, which are of particular importance for democracy, a transfer of sovereign powers is permitted at all, *a narrow interpretation*<sup>16</sup> is required. This concerns in particular the administration of criminal law, the police monopoly, and that of the military, on the use of force, fundamental fiscal decisions on revenue and expenditure, the shaping of the circumstances of life by social policy and important decisions on cultural issues such as the school and education system, the provisions governing the media, and dealing with religious communities.”

In the English version of the full German Constitutional Court’s ruling, paras 395, 396 and 397 spell out the legal situation. Since the Social Charter, which had been an independent instrument under international law beside the Treaty of Maastricht, was incorporated into Community law. They are quite specific on the details of the existing legal framework. It is written with a directness and compression that is hard to find in any documents provided by the UK Government. Para 395 reads:

“Article 136 to Article 150 ECT contain competences inter alia in the areas of social security, basic and advanced vocational training, codecision, dialogue with the social partners and working conditions. These provisions are complemented by Article 13 ECT, which is the legal basis of the Anti-Discrimination Directives, Article 39 ECT, which provides for the freedom of movement for workers, and by the social fundamental rights laid down in the Charter of Fundamental Rights, to which, under the heading “Solidarity”, the entire Title IV of the Charter of Fundamental Rights is dedicated (Article 27 to Article 38 of the Charter). The Court of Justice of the European Communities, in particular, has for some years now understood the citizenship of the Union as the nucleus of a European solidarity and has further developed it in its case-law on the basis of Article 18 in conjunction with Article 12 ECT. This line of case-law stands for the attempt of founding a European social identity by promoting the participation of the citizens of the Union in the respective social systems of the Member States.”

The Treaty of Lisbon, according to the German Constitutional Court, is situated in this line of development (paras 396 and 397):

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<sup>16</sup>Author’s emphasis

“...the Preamble of the Treaty on the Functioning of the European Union states its being resolved “to ensure the economic and social progress” of the Member States “by common action”. The aims of the Treaty on European Union are adapted in such a way that the Union works for a “highly competitive social market economy, aiming at full employment and social progress” (Article 3.3(1) TEU Lisbon). At the same time, the aim of “free and undistorted competition” is deleted from the operative part of the Treaty on European Union and is shifted to Protocol no. 27 on the Internal Market and on Competition. A new cross-sectional clause (Article 9 TFEU) is intended to ensure that requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion is taken into account in all policies and activities of the Union (other new elements in the social area are introduced by the Treaty of Lisbon through Article 5.3 (coordination of the Member States’ social policies), Article 21.3 (citizenship of the Union and social security), Article 152 (role of the social partners) and Article 165.2 TFEU (social function of sport); Protocol no. 29 mentions the connection of the existence of a system of public broadcasting with the social needs of each society).

Political initiatives and programmes which fill the law and lend it concrete shape correspond to the legal framework of action. In its Presidency conclusions, the Brussels European Council of 11 and 12 December 2007 explicitly recognised that the subjects social progress and the protection of workers’ rights, public services as an indispensable instrument of social and regional cohesion, the responsibility of Member States for the delivery of education and health services, the essential role and wide discretion of national, regional and local Governments in providing, commissioning and organising non-economic services of general interest Union, are of high importance (Bulletin EU 12-2008, I-17 (Annex 1)).

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ECT = Treaty establishing the European Community

TEU = Treaty on European Union

The Treaty of Lisbon amends these two EU core treaties, the Treaty on European Union and the Treaty establishing the European Community. The latter is renamed the Treaty on the Functioning of the European Union.”

Regardless of who wins the Election in 2010 the UK under all governments have had a stricter interpretation of what social and employment policies should remain with the Member States and not pass to the EU. If David Cameron becomes Prime Minister we know he will seek repatriation of some of these powers that have passed to the EU. This, he recognises, has to be done by negotiation. But if the UK had its own form of constitutional court it would strengthen the UK position that there has to be defined limits to ever greater integration, very different from ever greater unity, which is desirable if not always obtainable.

The next EU Treaty will cover enlargement to Croatia and possibly, Iceland, though this looks less likely, as domestic opposition builds, to their coming into the EU. The exact timing is uncertain – Croatia hopes for entry in 2011 but it may slip to 2012 or even 2013. The Treaty may cover other important matters as part of the horse trading over fixing the Budget due in 2013. Also if Iceland were to become a member it would involve large reforms to the CFP. The Irish government will also want to put into the first Treaty, even if it is primarily on enlargement, all the verbal assurances that they extracted from other Member States before voting in a second ballot to accept the Lisbon Treaty. In such a Treaty which covers more than enlargement it would not be unreasonable for the UK to negotiate amendments to existing Treaty language on social and employment policies and including that in the Lisbon Treaty.

Before a sensible dialogue in the EU on its social legislation can occur we need in the UK to dissect and to determine what aspects of the social market economy need to be covered by EU Treaty language and those that are best left for Member States to determine through their own procedures. For many people the detail on matters such as maternity leave, the working week, and the rights of part-time workers should not be fixed on an EU-basis though there are good arguments for a general injunction to Member States to ensure such provisions are made. Variations between Member States would not affect the broadly level playing field of a Single Market. The same applies to the detail of the Working Time Directive which it can be argued is already hampering the provision of public services, such as health and fire, which every Member State provides according to their own requirements. There is adequate time, fortunately, for this UK debate since David Cameron has made it clear that for Conservatives these social questions are not of immediate concern and that the first priority of any government that he may lead will be to deal with the UK fiscal crisis.

I have written my own views about the detailed changes in parliamentary procedure and giving the new UK Supreme Court the powers of the German Constitutional Court over EU legislation and also negotiating strategies for the handling of the Lisbon Treaty, in my recently re-issued autobiography.<sup>17</sup> I have taken constitutional reform one step further by being a founder contributor of a website [www.charter2010.co.uk](http://www.charter2010.co.uk). I believe that the dire nature of the fiscal crisis facing us in 2010 will require, if there is a hung parliament in 2010, the establishment of a government of more than one party that may speak for over 50% of the people of this country not the 35.2% of the UK that voted Labour in 2005. Yet I am a realist, I know this will only occur if the public make it clear before the election that they will not accept a minority government taking office intending to have an early election. This very damaging concept was tested to destruction in 1974 and was followed by the IMF's financial package in 1976. Instead with a real threat of a loss of international financial confidence a hung parliament should be transformed into a government formed on a cross party basis following a negotiated programme that would last for a fixed term of four years. That means the smaller parties, above all the Liberal Democrats, should be ready to negotiate with whichever party – Conservative or Labour – that has clearly come out on top. Such a development takes place naturally in most countries in the EU because they already have proportional representation. Our existing voting system can, if it does not give a majority of MPs to any one party, create a form of government of national unity in 2010 which could combine fiscal discipline with social radicalism and have a referendum on proportional representation to settle that disputed matter late in the third or early in the fourth year of a fixed term four year parliament. It would be far easier to win acceptance from the British public to the necessary budgetary and financial measures as well as a new negotiated concordat over our continued EU membership if we had a government made up of more than one party from 2010-14.

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<sup>17</sup> David Owen, *Time To Declare: Second Innings* (Politico's, 2008), Chapters 8 & 10.

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## EU SOCIAL MARKET AND SOCIAL POLICY

*"It is a safe bet that the social market will outlast the Third Way, indeed it probably already has"*

Lord David Owen, one of the founders of the SDP, played a key role in the establishment of the Social Market Foundation. In this publication, Lord Owen looks at the social market today. His analysis takes in different EU member states and argues for a continuing negotiation of the balance of responsibility for social and economic policies between the EU and member states.

At this time of political and economic upheaval across Europe, this publication is a timely contribution to an ongoing debate in UK domestic politics. With trust in politics in the UK at a low ebb, is it time to look to Europe for a new social market model for the economy?

This publication, part of the ongoing celebrations of the SMF at Twenty-One, looks back at the intellectual history of the Social Market Foundation to show how social market ideas can influence policy and politics into the future.

