

# SPEECH TO THE BRUGES GROUP BY BILL CASH MP

## Parliament, the EU and National Sovereignty

The reality is that Barry and I started out our political life together really, certainly in these matters when in the Maastricht Treaty I can say without any doubt whatever, Barry was the staunchest of the staunch. I knew I could always rely upon him; he always spoke with great authority and as a great expert in Treasury matters of course. Of course he was also Chairman of the Treasury Select Committee. He always had a massive contribution to make when it came to the question of the Euro single currency and the whole issue of the Maastricht criteria as we put it.



But today we had a little bit of an interesting time this morning because yesterday – I’m sure they did this actually just because you were going to be meeting up with us this evening – the Portuguese Government went into tribulation. Now that has enormous consequences for the UK because if it continues, and it looks by all the indicators that it will, then what will follow is a thing called the European Financial Stability Mechanism – I’m sorry I have to use this ridiculous jargon but that’s what they call it – we are exposed to underwriting a total of about £8 billion but actually of that, in relation to this particular issue, it will be around about £4 billion.

So I’ve decided, exercising my right as Chairman of the European Scrutiny Committee but also in defence of British sovereignty and the decision for the British taxpayer should be taken by the British Parliament – so that’s really the theme tonight – that I would say to the Prime Minister, no we should not make any further payments in respect of a Portuguese bailout because in fact, as the European Scrutiny Committee said in its recent report, the arrangements which led to that provision, that bailout arrangement were, in the words of the European Scrutiny Committee, legally unsound, which to put it another way means unlawful.

And the reason for that is very simple because under the Articles of the Treaty, which I don’t have to mention, the provision in question which they used was in relation to natural disasters and not to the complete mishandling of Government finances. So for practical purposes there was no real reason why we should be paying it out at all.

And in fact Madame Lagarde, the French Finance Minister said on the 17<sup>th</sup> December last year “*we violated all the rules*”. Now I take a simple view about this and I said in my opening question this morning which has become a nuclear option these days under the new parliamentary procedures, where you demand irrespective of any other business that the Minister has to come to the floor of the house and explain himself. That because of this problem in Portugal it’s an absolute necessity for them to explain why it is that they are not intending to repeal this unlawful provision at least in return for making the other arrangements applying only to the Euro zone.

So without making it too complicated what it really boils down to is that I’m saying that we have no right or business to make this payment to Portugal because we’re not part of the Euro zone and if they want to go ahead – I’ve got grave reservations

by the way about the idea of having a two tier Europe, but that's a separate issue – on this particular one I said the Prime Minister today must go to the summit and say he is not going to continue with these arrangements, that they should be repealed and that the British taxpayer should not be exposed to this £4 billion.

I'm going to ask you a simple question, is there anybody in this room who disagrees with me? Thank you.

Right, I may tell you that nobody in the House of Commons disagreed with me either and yesterday, believe it or not, we had a division in the house on the question that I just mentioned and interestingly enough the Labour Party decided to abstain because they knew that this is a very serious problem for the Prime Minister. However, we shall see how it goes on at the summit.

Now more generally speaking the question is this, are we still completely in charge of our own affairs? The definition for what its worth in the Oxford Dictionary of sovereignty, I'll just read out to you, is: supreme power or authority, the sovereignty of Parliament, the authority of a state to govern itself or another state, a self-governing state.



Now I take a view and have always taken a view that the European Communities Act is an entirely voluntary act which we passed to a certain extent on the basis of British Parliament being seriously misled as to some of the implications of that but the very fact that it's a voluntary act means that within the sovereignty of the doctrine we can if we wish repeal that act or we can amend it. And when I say amend it I mean amend the regulations made under it.

You may or may not have heard of the formula which I devised for dealing with this, its just terribly simple you just say at the beginning of a piece of legislation that you wish to dis-apply, you just simply say at the beginning of the enactment, notwithstanding the European Communities Act 1972.

And again, without getting into all the details, the fact is that under Lord Denning and Lord Diplock's judgements, which are still the law, it is obligatory on the courts then to give the effect of that latest enactment and if it says notwithstanding the European Communities Act we can override any provision which emerges from the European Communities Act, the reason being of course that within it it says that we're under an obligation to accept everything that comes from the European Union by way of legislation and in addition to that we also have to accept that our courts will enforce it.

But if you put those magic words at the front and you clearly state that you do not want the European Communities Act to apply to a piece of European legislation of whatever kind, from top to bottom, fisheries, the whole question of trade, anything you like, European arrest warrants, working time directive, we have the legal capacity to do it.

Now the issue to me is so important that the moment I became Chairman of the European Scrutiny Committee – which I was honoured to be elected unopposed, they did actually try one or two people but I'm reliably informed in fact by them that they decided that they would back down – the position is that the whole question of sovereignty was so big, particularly in the aftermath of the Lisbon Treaty.

I mean look here, the Conservative Party has been very disunited over Europe over a long period of time. I don't think it should have been; I think we should have maintained our position from a very, very early stage and certainly since Maastricht. But I wanted to make sure that we could redefine sovereignty in a way that was meaningful and so my first act was to set up the enquiry into the relationship with parliamentary sovereignty to the European Union. And I can tell you that we have all the top experts quite deliberately from both sides of the argument because the most favourable thing in this kind of situation is to try and pack the committee. Like for example I would suggest Kenneth Clarke has with respect to the Bill of Rights Commission. You only have to look at the list of people to realise just exactly how people like Lord Leicester and Baroness Kennedy etc., and there are several others as well, have got such entrenched views that really it doesn't look as if it's a really evenly handed commission, but we shall be dealing with that in due course.



But I set up the sovereignty enquiry and we have evidence which demonstrated that the clause and the provisions that the Government came forward, having promised a sovereignty bill in the manifesto and having agreed to review it and then to come forward with legislation under the coalition agreement, was not what was on the tin. It was not a sovereignty clause at all. What it did was merely to reflect the status of EU law.

And we took evidence from a number of people as I've said, and the conclusion was that the Government had actually created a very big bear trap, which they quite clearly hoped that nobody would notice and it was contained in the explanatory notes. And what it did because the explanatory notes are used by the courts as a means of interpreting the legislation, and in those explanatory notes they referred to the common law principle.

Now I'm not going to go into the detail on that either other than to tell you that it is an open sesame, it's an open door for the Supreme Court to argue that the sovereignty of Parliament is qualified and that effectively the Supreme Court, as a matter of United Kingdom constitutional law, is the ultimate authority.

Now I'm not saying the whole of the Supreme Court has said this but a number of them have. And they've been quite unequivocal about it and they fall back on this proposition that they are applying the rule of law. But of course the rule of law depends upon the rule of which law and if they, as matter of United Kingdom constitutional law, are applying the European Communities Act, which itself says that all that legislation is binding on the United Kingdom, then quite clearly they have a case.

But the real question comes back to what I said earlier which is that if we say that in our sovereign right as a Parliament on behalf of the people of this country as

Members of Parliament elected, decide that we will pass legislation inconsistent with the European Communities Act that is exactly what we can do and there is nothing that the Supreme Court can or must be allowed to interfere with that proposition. And I made that case in the House of Commons during the course of the bill and I have absolutely no doubt whatsoever that that is right in a matter of UK law.

However, I'm going to ask you another question. If I was to ask you do you agree that the United Kingdom Parliament is sovereign what would your answer be? You would say I imagine, not to lead you into it, yes. Is there anybody in this room who would argue that the United Kingdom Parliament is not sovereign? That is a very important qualification by virtue of the very fact that I have just made which is that the people elect the Members of Parliament and on the manifesto they enter into as it were a promise to the electorate and that goes to the Government as well.

So you are right, but you can only get a referendum if you pass an Act of Parliament of authorised expenditure, but that's a side issue. Fundamentally the people are sovereign but through their elected representatives in order to arrive at a point where it is understandable because you couldn't have everybody deciding all the legislation all the time. But it is absolutely incumbent of the Members of Parliament to maintain that sovereignty because they hold it on trust for the people. That's the point, hold it on trust for the people and nothing can or should interfere with that trust.



And I'm afraid to say that in the course of the European Union bill's passage I put down a motion which was – it was in fact a new clause – and it said this house reaffirms the sovereignty of the United Kingdom Parliament and I have to tell you that much to my regret there was a division and the parties voted against it.

Did anybody in this room know that? It was scarcely mentioned, some people may know but the very fact that that was done I believe was quite appalling.

Furthermore, there was a motion the other day which said, in relation to certain European documents, that this house in relation to direct taxation is primarily responsible for direct taxation. Now that is not the case as far as the British constitutional arrangements are concerned, for the reason that we've already given relating to the trust of the Members of Parliament held on behalf of the electorate, it is absolute, direct taxation is the exclusive provenance of the British Parliament on your behalf.

And as I repeatedly say in the house it is not our Parliament it is their Parliament by which I mean the people's Parliament and we have an absolute necessity and an absolute obligation to ensure that that takes place.

Now what does all this add up to? First of all that you've got Judges who are claiming a greater and greater degree of ultimate authority over Parliament, which is

completely unacceptable. I'm not saying its all of them, I'm saying there are increasing tendencies and there are judgements emerging along those lines.

Then the second question is the extent to which the British people are in control of their own affairs and we know that the European Union is invading us in every direction. Is this just a lot of theoretical waffle or is it real? The answer is it is real.

And I'll give you a few examples. In relation to the current budget and the necessity to make certain that we can achieve growth in order to get out of this appalling deficit that we were left. How do you do that? You need small businesses to be able to have the oxygen to enable them, without unnecessary regulations and without unnecessary restrictions, to be able to carry out their business and to become prosperous, its terribly simple. None of this is complicated, it's all straight forward.

But unfortunately, according to even the Government's own figures, 50% of all economic regulation is based on European Directives so now you will see why it is so important that in the light of the sovereignty, which is the trust, and in the light of the formula that I have given you to override European legislation, we must override unnecessary economic regulation which comes from the European Union.



And indeed in 2006 I did actually put forward an amendment to what was known as the Legislative and Regulatory Reform bill, which was the burdens on business bill. And what happened? I put forward my amendment notwithstanding the European Communities Act and the Whips came up to me halfway through the afternoon, they said Bill, would you like us to take over your amendment? I said I'd be delighted, they said can we put in tellers? I said you can do anything you like. And the whole of the Conservative Party trooped through the lobbies to uphold the principle that we could override European legislation. And what is more, six weeks later in the House of Lords, without any further prompting, they whipped exactly the same amendment in the House of Lords as well. So let us not hear that it can't be done and let us not hear that there isn't the will for it to be done.

Furthermore, in 2005 David Cameron, when he had just become the leader, gave a very important speech at the Centre for Policy Studies in which he said, and I'm paraphrasing but accurately: It is our imperative requirement to repatriate social and employment legislation in order to make us competitive in the world, that equals growth doesn't it.

So that is the commitment that was made then and of course its now been overtaken by the coalition and we now have Nick Clegg, and when we had the Liberal statement the other day I happened to be on my feet and I turned to the Deputy Prime Minister and I said by the way I will not have anymore talk of a refusal to repatriate these

laws because that is what's preventing us from achieving growth to a very significant extent.

So there are many, many aspects of this which are nothing to do with the pure abstraction. People love to be able to say that people like me are just engaged in constitutional outrage or that we engage in theoretical distractions, no we are not. What we are doing is insisting on that trust, that trust between the people and Parliament and between the promises that are made in manifestos of the kind that were made with regard to the question of repatriation.

There are also other elements relating to the European Union which include the fact that they are now moving through the Lisbon Treaty, on which the Conservative Party for the first time was united. I put down something like 140 amendments, the Conservative Party and I were in complete agreement with my friends who are what I call the realists, and we combined together and we all, with the exception as it happens of just one, Kenneth Clarke, and I do respect him for the fact that he is prepared to stand up and be counted. I mean make no mistake about this, you know you can't just have everybody agreeing the whole time, he just disagrees, but he disagrees with a degree of honour because he does disagree but he was completely outvoted by the votes that we cast.



And now we move onto the next area, which is the whole question of justice and Home Affairs, the European arrest warrant, investigative orders, the manner in which people are being hijacked either by European legislation in a way that is not in their interests and it can have police turning up from other countries and things that I regard as entirely alien.

In fact in Staffordshire recently a man was convicted in his absence for 15 years for a murder that he couldn't have committed and it was all done under the European arrest warrant and in point of fact, he was actually somewhere else altogether. But this is the kind of thing that we have to resist.

And in relation to small businesses the costs are huge. Lets be practical about this, since 1999 and George Osborne referred to this yesterday, its about £100 billion worth of costs imposed on small businesses in that period of time. We can't afford that. He says quite rightly that we should deal with this over regulation but James Forsyth in this week's *Spectator*, and I'll just quote this to you because this is straight off the press.

He says to understand what Osborne is expected to put right one must first understand what Cameron believes has gone wrong. In the summer everything appeared fine and so on. The problem of growth is to be his defining mission but has found that the pro-growth policies he wished to pursue are being rejected by the system. Regulation, bureaucratic inertia and European interference are threatening – as I've argued now for about 15-20 years. I wrote a pamphlet called the *Strangulation of British Business* about ten years ago setting it all out.

He said Tory Ministers complain that if European laws, the Human Rights Act or the Equalities Act don't study their initiatives then the Civil Service or the judiciary will. I repeat the judiciary has the right to interpret the law but that is the rule of law.

The question as I say is which law and is it necessary in our own interests, the national interests, to override that law or to amend or change it and then have them interpret the new law.

But he also goes on to say that had they listened to the Conservative Jeremiahs – I suppose that includes us – warning them of the obstacles they would face in office they would have been far better prepared. There is no better example of this than the European Union he says, Mr Cameron has spoken curtly – I think that's probably an exaggeration but I'm not sure – about people who – wait for it – bang on about Europe – I've heard that one before – but in office he has found to his horror, says James Forsyth, that about a third of all Government activity is driven by EU directives. It is as if Brussels is the third member of his coalition.

The constant deluge of EU rules has also thwarted Oliver Letwin's attempts to follow a one in/one out approach to regulation and then he says that Government that places deregulation at the heart of its program strategy, this is a serious embarrassment.

Then he goes on to deal with the Equalities Act and I'll just mention briefly, because I think I should bring my remarks to a close, that the Charter of Fundamental Rights which is included in the legal arrangements for the Lisbon Treaty carry with it – and I've got it here for anyone who's interested – the derivation of all the provisions that are contained in the Charter of Fundamental Rights. There are pages and pages of them and many of them come from the European Convention on Human Rights etc., etc.

But the effect – and this is the crucial point and I debated this personally with Kenneth Clarke in the European Committee ten days ago, a very interesting debate we had – and it was basically that I was saying the problem with the Charter of Fundamental Rights is that it then gives jurisdiction to the European Court of Justice in enforcing these and we are acceding, that is the European Union is as they say acceding to the European Court of Human Rights. And the effect of all this is to turn that into the jurisdiction of the European Court which brings me back to the necessity to make such provisions we need to bypass those provisions where it is in our national interest to do so.

Now I would also just add that we have also to have a look at the whole question of the European Convention on Human Rights and although I was delighted that we actually made that motion by I think it was 235 to 12/15 regarding prisoners' votes, I also would say that that was a free vote and I don't think you can take it for granted that that's what will happen if it is a Whip vote if Kenneth Clarke and the others within the Ministry of Justice insist that we have to comply with the European Convention on Human Rights.

I personally am deeply worried that, to a great extent, the rule of habeas corpus has been adversely affected in relation to for example terrorism, which I can explain any questions if you want me to do so. But fundamentally I put down a bill on the terrorism side of things the other day to say that the Human Rights Act should not apply to these Control Orders but that we must insist that an alleged terrorist – and

this is what I regard as fundamental British justice – must be given habeas corpus, due process and a fair trial. That's the way we've operated for centuries, that's the way we should behave.

And I happen to know that the problem of the Human Rights Act, controversial as it is, and the repeal of it is a proposal I put forward when I was Shadow Attorney General.

We have to be positive as well of course and I am deeply worried about the whole business of European economic Governments. And I know and you may have read in the *Economist* and I've been saying this if I may say so for many years, that the two tier Europe, the proposals that Chancellor Kohl came forward with are themselves extremely damaging to the United Kingdom.

And that unfortunately – although I have some sympathy with their reasons for doing so – the Germans are now increasingly seeking a greater degree of predominance if not domination in Europe, which I think is not in Germany's interests let alone in ours and I wrote about all that back in 1990 both in a book and a pamphlet.

Now we're seeing it in reality because these proposals being discussed today by David Cameron in the summit in which the Government is acquiescing is effectively going to create a German Europe. And I think that that is extremely bad for Germany let alone for everybody else.

It's going to give them a far greater degree of control and I do think to be positive, that we need to think of alternatives. I wrote a pamphlet on the Associated but Not Absorbed using Churchill's expression some years ago and I'm very glad to see this excellent pamphlet written by Hugo Van Randwyck, who may be here for all I know this evening, which I found extremely interesting where he said EFTA or the EU.

And I really do believe that the time has come where in the defence of the liberties of the people of this country, in defence of their right to govern themselves, in defence of the trust that the British people put in their Members of Parliament that we don't pass anymore motions which suggest that the sovereignty of the United Kingdom Parliament is not absolute but at the same time to find sensible ways of protecting our national interests in a way that would guarantee that that trust can be seriously fulfilled in the interests of the people as a whole.

And we must not allow judicial supremacy to become an absolute. They do of course have the right to interpret the law, that is what the rule of law means, but it just says there is no definition of sovereignty so in the Constitutional Reform Act of 2005 there is no definition of the rule of law.

And that's as it should be because the question remains which law. And I say the law that we should be governed by is the law as decided by the British people for themselves. So I say British laws for British Judges and British Judges for British laws. And above all else the trust of the British people has to be not only resided in its Parliament but actually carried through by its Parliament for the people of this country and have us ourselves governed by majority vote without retaining the right to be able to decide that we will override that legislation is completely inconsistent with the sovereignty of Parliament and, as the gentleman there indicated, the sovereignty of the British people as well.

We've been around a long time and we do and ought to be insistent that we will always get the decisions and judgements right in matters of that kind. I for one will continue to fight that battle without any hindrance whatsoever. I will not be told that we are to be governed by other countries. I do believe that we have a right to continue to govern ourselves but the most important factor is to retain the trust of the British people and we will lose that trust if we don't continue to uphold the sovereignty of Parliament.

Thank you very much.