

Robert Ingham

# The Liberal Contribution



Address given by Winston Churchill at the Congress of Europe in The Hague (7 May 1948)

‘THE COUNCIL OF Europe is a Liberal conception. It is a realisation of a dream of European Liberals for two centuries.’ This was the claim of the Liberal Party’s 1951 election manifesto. The Council of Europe had been established in 1949 out of the ashes of the Second World War and heralded a new era of internationalism and ‘the end of the era of national self-sufficiency’, as the manifesto put it. This article will examine the relationship between the Liberals and the Council of Europe, both at the time it was set up and subsequently, assessing whether there was a distinctively Liberal contribution to the UK’s participation in the organisation.

## **Liberals and the creation of the Council of Europe**

The primary impetus in the UK for the creation of a multinational organisation of European states came from Winston Churchill, who had spoken

of the need for Europe to unite during the Second World War and, in a speech in Zurich in September 1946, called for the creation of a ‘United States of Europe’. Churchill gathered together an eclectic group of people of like mind, including Bertrand Russell, Victor Gollancz and Bob Boothby. Lady Violet Bonham Carter, Asquith’s daughter and a prominent Liberal, joined the group in March 1947; and other Liberals involved included Juliet Rhys-Williams and the academic Gilbert Murray.<sup>1</sup> It was unclear from the start what the group was aiming to achieve. Churchill, said Bonham Carter, was ‘rambling off into long passages of purple prose’ and there were deep but ultimately unresolved philosophical debates about whether European unity could appeal to the ‘Soul of Europe’ without also dealing with hard economics.<sup>2</sup>

This gathering eventually took shape as the Committee for United Europe, part of a broader European Movement, prominent members of which included the Belgian politician Paul-Henri

# to the Council of Europe



Spaak and the Spanish author and former diplomat Salvador de Madariaga, who was influential in British Liberal circles. This group organised a congress in The Hague, in May 1948, which sketched out the basis for the Council of Europe. Liberal representation included Violet Bonham Carter, Lady Rhys Williams, Roy Harrod and Frances Josephy, chairman of the executive of the Federal Union, who argued vociferously for a federal Europe.<sup>3</sup>

Also prominent in these debates was Lord Layton, the chairman of the Liberal *News Chronicle*, an academic economist and former Liberal parliamentary candidate. Layton had lectured in 1946 in favour of a federation of European nations excluding the UK and the Soviet Union, which would form part of a new semi-federal global order. Encouraged by Churchill to join the United Europe committee, his contacts with European politicians helped facilitate the congress in The Hague. Layton was closely involved in the economic debates that took place there and which

led to the founding in 1948 of the Organisation for European Economic Cooperation (which evolved in due course into the Organisation for Economic Cooperation and Development, OECD). His wife, Dorothy, who was president of the Women's Liberal Federation, also attended the congress in her own right.<sup>4</sup>

The Council of Europe was founded on 5 May 1949 by the Treaty of London, and its parliamentary assembly met for the first time on 10 August 1949 in Strasbourg. The Labour government had initially decided to send only Labour politicians to the assembly, but was persuaded to appoint an all-party delegation. There was space for just one Liberal and Layton was put forward,<sup>5</sup> although it was subsequently claimed that Layton was present in an individual capacity rather than as a representative of the Liberal Party.<sup>6</sup> This opened a new chapter in Layton's already long and varied career. He was proposed by Churchill as the British vice-president and served in that capacity until 1957. As such he was involved in the drafting of

Council of Europe  
headquarters,  
Strasbourg

## The Liberal contribution to the Council of Europe

the European Convention on Human Rights and helped smooth the path for German accession to the Council of Europe.<sup>7</sup>

### The Liberal perspective on the Council of Europe 1945–55

There was nothing specific in the Liberal Party's 1945 manifesto about greater cooperation between European countries, although there was a general commitment to an international rule of law. In 1950 the party called for 'quicker action' in developing the Council of Europe and went on to refer to the need to 'make European currencies convertible with one another and remove restrictions of [sic] trade among ourselves'. The manifesto gave explicit support to a European court of human rights and to German accession to the Council of Europe. The 1951 manifesto, quoted at the start of this article, contained no policy proposals in relation to Europe. However in 1955 a single anodyne reference to the Council of Europe was accompanied by an expression of 'whole-hearted support' for the European Defence Community and the Coal and Steel Community.

By this time, the Council of Europe was increasingly being seen in the UK as an irrelevant talking shop that had been superseded by newer initiatives with more specific objectives. 'Rarely, if ever, have I felt such despair about European Unity!' complained Lady Violet in 1950, describing the procedural rows and arguments between 'Federalists and The Rest' at a meeting of the European Movement's international executive.<sup>8</sup> Attending the assembly in November 1950 she recorded an 'interminably boring discussion on structure' which culminated in a walk-out by federalists, including Josephy.<sup>9</sup> Bonham Carter blamed Churchill's lack of grip and opposition by the Foreign Office for the UK's decision not to embrace the new initiatives for European defence and economic cooperation that were growing up apart from the Council of Europe.<sup>10</sup> Layton spoke passionately in the assembly in favour of the Coal and Steel Community and sought to establish institutional links between the Council of Europe and the new body. He spoke similarly in the House of Lords in a debate on European defence, calling for close links between the Council and other nascent European institutions. However, he was concerned that 'If the Council of Europe develops ... as an organisation for general purposes, supplemented by special, and sometimes limited, institutions for particular tasks, it will have no political organ with legislative or mandatory power covering the whole of the countries concerned'.<sup>11</sup> There could be no hiding the fact that there were two different views of how European countries should work together and there was no political will to reconcile them.<sup>12</sup>

If Churchill's United Europe committee was excited by the prospect of establishing a pan-European political bloc, the same could not be

**The work of the Council of Europe was next debated in the Commons in November 1950 and Emrys Roberts, MP for Merionethshire, spoke for the Liberals. He listed what he saw as the main achievements of the Council: a full employment plan, a social security code, a policy on refugees, and the Convention on Human Rights, which was opened for signature on 4 November 1950 and which Roberts described as 'an immense advance in the history of human freedom'.**

said of the House of Commons, which devoted little time to considering this new development. MPs were not invited to debate or vote on the establishment of the Council of Europe, something deplored by Liberal MP Wilfred Roberts, who blamed the Labour Party, which he described, in a general debate on foreign affairs, as 'the greatest obstacle to the further development of European unity'.<sup>13</sup> Roberts argued that a democratic Germany needed to be treated as an equal partner and not dismantled by the allied powers and thought that something more than a loose association of independent states was needed to stop the spread of communism.<sup>14</sup> The minister winding up the debate for the government was Christopher Mayhew, a fervent pro-European who later defected to the Liberals. He rejected the charge of obstruction and threw back a challenge which applied to the Liberals as much as to other critics of the government:

My question is, what precisely do they want us to do? Why do they not forward some precise proposals ... Are they in favour of political or economic federation? They do not say so. What do they want? What powers do they want the Assembly to have, or what powers now given do they wish to be taken away?<sup>15</sup>

The work of the Council of Europe was next debated in the Commons in November 1950 and Emrys Roberts, MP for Merionethshire, spoke for the Liberals. He listed what he saw as the main achievements of the Council: a full employment plan, a social security code, a policy on refugees, and the Convention on Human Rights, which was opened for signature on 4 November 1950 and which Roberts described as 'an immense advance in the history of human freedom'. Roberts pointed out that the convention had been weakened by national governments in three key respects: there was no article dealing with the right to vote in free and fair elections (democratic rights were added by means of a separate protocol in 1952); states could choose not to opt into the jurisdiction of the court; and states could choose not to allow individuals the right to bring cases before the court. Roberts called on the government to ratify the convention and not to make use of the opt-outs. The Council, he said, was 'the chief instrument for building up a real community in Europe'.<sup>16</sup>

Donald Wade offered the Liberal perspective during the next Commons debate on the Council of Europe, in 1953. He had been a delegate at the Strasbourg assembly and described it as 'at its lowest ... a valuable and worthwhile experiment'. Although debates were sometimes of a high quality, and there was value in parliamentarians from different countries becoming acquainted with each other's perspectives, the assembly lacked teeth and was too remote from other institutions, such as NATO.<sup>17</sup> Wade was

followed by the Conservative Bob Boothby, a veteran of the European Movement, who was blunter in his assessment: the Council of Europe was suffering from a ‘death agony of frustration’ due to disagreements between national governments about how far to push European cooperation and integration.<sup>18</sup> It was presumably in this context of ambivalence about the usefulness of the Council of Europe that Liberal MPs chose not to participate in debates on the work of the organisation in 1955 and 1957.

### Bringing human rights back home

The European Court of Human Rights, which hears cases of alleged breaches of the European Convention on Human Rights, came into being in 1959. The UK chose not to permit individuals to apply to the European Court of Human Rights and also refused to accept the compulsory jurisdiction of the court. This essentially neutered the court’s role in monitoring the UK’s compliance with the treaty and reflected the view of politicians in both major parties that it would be a waste of the court’s time to receive applications from the UK as the British parliament and judiciary were between them perfectly capable of delivering compliance with the convention.

While a small number of Labour MPs challenged the government on this matter in the Commons, Lord Layton raised the issue in the Lords in an exchange with Viscount Kilmuir, the Lord Chancellor, on 18 November 1958. Layton’s speech was described by his biographer as ‘the most cogent of his life’.<sup>19</sup> It was an academic tour de force on the history and contents of the convention. Layton’s argument was that in setting up the Council of Europe and drafting the convention the UK had agreed to pool sovereignty with its European neighbours in order to help strengthen democracy and the rule of law in Western Europe. Using an argument that was to become familiar, he emphasised the extent to which the convention was ‘in the British tradition ... [owing] much to British ideas and to British lawyers, politicians and civil servants’.<sup>20</sup> Although he was supported by Lord Beveridge, Layton did not persuade the Lord Chancellor. Kilmuir argued that the right of individual petition would simply encourage frivolous and vexatious petitions because ‘no one seriously says that English Common Law does not protect the rights and freedoms, at least to the extent which the convention says’.<sup>21</sup> As for the supremacy of the Court, Kilmuir, who was one of the drafters of the convention, said that it had been drafted not as ‘a rigorously defined system of law’ but as a ‘number of general principles which could be applied to the different legal systems of the countries concerned’.<sup>22</sup> In other words, an adverse finding of the Court should be treated as advice for the government to consider rather than as something that might directly affect the law.

**Layton’s argument was that in setting up the Council of Europe and drafting the convention the UK had agreed to pool sovereignty with its European neighbours in order to help strengthen democracy and the rule of law in Western Europe. Using an argument that was to become familiar, he emphasised the extent to which the convention was ‘in the British tradition ... [owing] much to British ideas and to British lawyers, politicians and civil servants’.**

However, this was not a party campaign. The 1959 election manifesto did not mention the European Convention or human rights: in fact, it did not mention Europe at all, other than a vague reference to the UK ‘leading a partnership’ in Europe. The 1964 manifesto referred to the Liberals having a role in ensuring that a future chance to join ‘a European Political and Economic Community’ was not lost, but also did not mention the European Convention. When Harold Wilson announced on 7 December 1965 that the UK would accept the individual right of petition and the compulsory jurisdiction of the Court it was in answer to a question from Terence Higgins, a newly elected Conservative MP.<sup>23</sup>

Although individuals could now petition the Court, according to the convention they could do so only after all domestic legal options had been exhausted. Cases inevitably took years to reach Strasbourg and were extremely costly. The next aim was to incorporate the convention rights into domestic legislation, so human rights arguments could be considered and determined by the domestic courts. However, the Liberal manifestos in 1970 and in the two 1974 elections did not mention human rights. There matters might have rested had it not been for the perseverance of Lord Donald Wade, formerly Liberal MP for Huddersfield West, who made four attempts in the late 1970s and early 1980s to pilot a Bill of Rights Bill onto the statute book, which would have incorporated the European Convention into domestic law.<sup>24</sup> Wade’s campaigning ensured that the 1979 manifesto included a whole section on human rights, including incorporating the convention rights into domestic law and advocating in particular:

- The right to see, correct and add comments to one’s personal records held by public and private bodies.
- The right of individual privacy.
- The right of free association with others, including the right to be represented through a trade union.
- The right to work without having to be a member of a trade union and the right to cross a picket line without intimidation.
- The rights of those in police custody, by means of revised Judges’ Rules.

Human rights entered the political mainstream during the 1980s, particularly with the founding of the Charter88 pressure group, and incorporation of the European Convention was one of the achievements of the Cook–Maclennan agreement between the Labour and Liberal Democrat parties which led to the Human Rights Act 1998.

Unlike in countries with a written constitution and a constitutional court, it was not appropriate for UK legislation to be struck down by the courts if it was found to be incompatible with convention rights. The ingenious solution enshrined in the Act was that courts could issue a declaration of incompatibility and then look to parliament to

## The Liberal contribution to the Council of Europe

remedy the situation. This placed a new onus on parliament to monitor human rights matters and, in particular, to hold the government's feet to the fire once a declaration of incompatibility had been issued. In 2001, when the Human Rights Act came into force, the two Houses established the Joint Committee on Human Rights which fulfils this role. It has been singled out for praise by the Council of Europe Parliamentary Assembly, as a model of how parliaments can ensure human rights are upheld. Liberal Democrat peer Lord Lester of Herne Hill was hugely influential in the establishment of the joint committee and in shaping its objectives and working practices during his fourteen years' service on the committee. A lawyer with extensive experience of human rights cases, Lester had been a special adviser to Home Secretary Roy Jenkins in the mid-1970s. Leaving Labour for the SDP, Lester was increasingly prominent in public policy debates on constitutional matters in the 1980s and 1990s.<sup>25</sup> He more than anyone in the UK parliament ensured that successive governments from 2001 paid attention to the jurisprudence of the European Court, no matter how awkward or inconvenient the judgments of the Court.

### British Liberals in Strasbourg

The Parliamentary Assembly of the Council of Europe records 562 UK parliamentarians who have been members of the assembly, of which twenty-seven were Liberals or Liberal Democrats.<sup>26</sup> The full list of UK Liberals and Liberal Democrats, including the years in which they were full or substitute delegates is included in the table below.

Numerous prominent Social Democrats – including Roy Jenkins, William Rodgers, Robert

Maclennan, Dick Taverne and John Roper – were also members of the Parliamentary Assembly while still in the Labour Party.

The preponderance of Liberal Democrats elected after 1997 in the list reflects the fact that the composition of the UK delegation to the Council of Europe was (and is still) based on the party composition of the House of Commons. It is also noticeable that the Liberal delegates were principally drawn from the Lords during the 1960s, which may have reflected the unwillingness of Liberal MPs at that time to devote time and energy to work in Strasbourg, or a conscious decision on the part of Jo Grimond and Jeremy Thorpe to send Liberal peers.

The Assembly's website provides data on the reports for which members acted as committee rapporteurs and the motions, declarations and questions they tabled. This is an imperfect measure of members' level of activity in the Assembly because members can speak frequently without tabling documents or acting as a rapporteur, or can be heavily involved in committee work without being vocal in plenary sittings. Nevertheless, the available data shows that thirteen of the twenty-seven Liberal and Liberal Democrat members were active contributors to the Assembly (these are marked in the table with an asterisk). The range of issues with which Liberal and Liberal Democrat members were involved was considerable, from Europe's architectural heritage (Beith) and desertification in the Mediterranean Basin (Mackie) to political prisoners in Azerbaijan (Bruce) and crucifixes in Italian classrooms (Rowen).

In recent times, two very different Liberal Democrats were amongst the most active in the Council of Europe. Charles Kennedy made an impact in Strasbourg during his five years as a

**British Liberal and Liberal Democrats members of the Council of Europe's Parliamentary Assembly**

Lord Layton	1949–57	Russell Johnston*	1985–2008
Donald Wade	1951–55, 1963–64, 1970	Lord Mackie*	1986–97
Roderic Bowen	1955	Emma Nicholson*	1992–2015†
Arthur Holt	1956–59*	Mike Hancock*	1997–2015
Lord Rea	1957	Peter Brand	1999–2000
Lord Grantchester	1958–66*	Malcolm Bruce*	2000–05
Mark Bonham Carter	1959–60	Nick Harvey	2005–07
Jeremy Thorpe	1960–62	Jenny Willott	2005–07
Lord Henley	1965–66	Mark Oaten*	2007–10
Lord Gladwyn	1966–73	Paul Rowen*	2007–10
David Steel	1970–76, 1997–99	David Chidgey*	2009–10
Lord Beaumont*	1975–86	Charles Kennedy*	2010–15
Alan Beith*	1976–84	Jeremy Browne	2015
Stephen Ross*	1984–87		

\* The member is recorded as having acted as rapporteur on a report or tabled a written question or motion. It is not possible to analyse which members spoke in debates.

† Conservative before 1995



**British Liberals – from Lord Layton to Russell Johnston – have made their mark in the Council of Europe, reflecting the longstanding Liberal commitment to internationalism and European cooperation. Layton, Donald Wade and Lord Lester also deserve recognition for championing the European Convention on Human Rights in the UK parliament, helping to bring rights drafted by British lawyers for other countries.**

delegate before his untimely death. His status as a former party leader, who had opposed the war in Iraq and championed human rights, ensured that his speeches were listened to attentively. By far the most active Liberal Democrat in the Council of Europe Assembly was Mike Hancock, who spoke as often as he could (often getting round the Assembly's rules limiting members to three speeches every sitting week) and whose mastery of procedure and capacity for straight talking ensured his colleagues took notice.

However, by far the most significant Liberal contributor to the work of the Parliamentary Assembly was Lord Russell Johnston, who was associated with the Assembly for over thirty years and was its president from 1999 to 2002, one of only four Britons to have performed the role. This was a significant period in the history of the Assembly. With the fall of the Berlin Wall, what had been a rather quiet gathering of Western European nations, all broadly committed to the respect of human rights and democratic norms, was transformed by a sudden influx of Eastern European parliamentarians. Four countries – Armenia, Azerbaijan, Bosnia and Herzegovina, and Georgia – joined the Assembly during Johnston's time as president. The Assembly took on a new role in supporting the development of democratic institutions and the rule of law in Eastern Europe and acting as a means by which the new democracies could prepare for European Union membership. The Assembly found its procedures tested as never before by the rapid increase in membership and the new issues it had to consider. Conflicts between Armenia and Azerbaijan, Georgia and Russia, and over the little-known region of Transnistria (involving Moldova, Romania and Russia) were now played out in the Assembly's committee rooms and chamber.

Johnston was ideally placed to take on this challenge. A committed internationalist, he had been Liberal spokesperson on foreign affairs and on European matters as well as a member of the European Parliament from 1974 to 1979, before direct elections. He was an intellectual and a humanitarian, always ready to argue his case from first principles. His speeches to the Scottish Liberal conference linked his analysis of the domestic political and economic situation with events in Cambodia, Chile or Spain and explained how liberalism brought new insights to each problem. Perhaps most importantly, Johnston adopted a pragmatic and convivial approach to the disputes and difficulties he encountered, ensuring that even the continent's most intractable and bitter disputes could be debated in Strasbourg and thus demonstrating the Assembly's continuing usefulness.

### Conclusion

British Liberals – from Lord Layton to Russell Johnston – have made their mark in the Council

of Europe, reflecting the longstanding Liberal commitment to internationalism and European cooperation. Layton, Donald Wade and Lord Lester also deserve recognition for championing the European Convention on Human Rights in the UK parliament, helping to bring rights drafted by British lawyers for other countries back home. The incorporation of Convention rights into UK legislation was one of the most significant constitutional developments of the last century and owed much to the pioneering work of Wade and the negotiations between Robert Maclennan and Robin Cook which shaped the Blair government's legislative programme. However, this was mostly a story of individuals rather than of party initiatives. It is striking how little the Liberal Party had to say about Europe during the 1950s, for example, when the great debates about the nature of European cooperation were underway. As William Wallace describes elsewhere in this edition, the fundamental divisions between social and economic liberals played their part in paralysing the party leadership. However, it is hard to escape the conclusion that the party as a whole often missed chances to lead debates on Europe and on human rights.

*Robert Ingham is a historical writer and a regular contributor to the Journal of Liberal History and to the Liberal Democrat History Group's publications*

- 1 M. Pottle (ed.), *Daring to Hope: The Diaries and Letters of Violet Bonham Carter 1946–1969* (Weidenfeld and Nicolson, 2000), p. 25.
- 2 *Ibid.*, pp. 26 and 36–7.
- 3 *Ibid.*, pp. 49–51.
- 4 D. Hubback, *No Ordinary Press Baron: A Life of Walter Layton* (Weidenfeld and Nicolson, 1985), pp. 205–7.
- 5 Pottle, *Daring to Hope*, p. 59.
- 6 Hansard, HC Deb, 17 Nov 1949, c2266, speech by Wilfrid Roberts, Liberal MP for North Cumberland.
- 7 Hubback, *No Ordinary Press Baron*, pp. 208–11.
- 8 Pottle, *Daring to Hope*, pp. 90–1.
- 9 *Ibid.*, pp. 94–5.
- 10 *Ibid.*, p. 208.
- 11 HL Deb, 9 Apr. 1952, cc. 142–5.
- 12 Hubback, *No Ordinary Press Baron*, pp. 212–14.
- 13 HC Deb, 17 Nov. 1949, c. 2266.
- 14 *Ibid.*, cc. 2263–7.
- 15 HC Deb, 17 Nov. 1949, c. 2332.
- 16 HC Deb, 13 Nov. 1950, cc. 1463–69.
- 17 HC Deb, 23 Oct. 1953, cc. 2332–8.
- 18 HC Deb, 23 Oct. 1953, c. 2342.
- 19 Hubback, *No Ordinary Press Baron*, p. 212.
- 20 HL Deb, 18 Nov. 1958, c. 609.
- 21 *Ibid.*, c. 624.
- 22 *Ibid.*, c. 625.
- 23 HC Deb, 7 Dec. 1965, c. 235.
- 24 D. Brack (ed.), *Dictionary of Liberal Biography* (Politicos, 1998), pp. 368–9.
- 25 *Ibid.*, pp. 219–20.
- 26 <http://www.assembly.coe.int/nw/xml/AssemblyList/MP-Search-Country-Archives-EN.asp?CountryID=46>.