

LISBON AND CITIZEN SOVEREIGNTY

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Bertolt Brecht once sarcastically advised the East German regime: since they believed the people had lost the government's confidence, wouldn't it be simpler to dissolve the people and elect another? Our Establishment may not (yet) have reached that point, but their exasperation at our failure to vote as directed on Lisbon is clearly tempting them to murky stratagems.

They're turning the EU into the oddest school ever: you might fail the exam, but don't worry; you'll be made re-sit until you pass! They don't seem to grasp that there's something lifeless about a question admitting only one right answer: what's the point of asking it?

The threat to set aside the referendum process and ratify Lisbon by Dáil vote is hugely revealing, as is the alleged conflict being proposed (e.g. by Pat Cox, *Irish Times* 26th August 2008) between "popular sovereignty", as in referendums, and "representative democracy". Such arguments vandalise the foundations of our Constitution:

All powers of government, legislative, executive and judicial, derive, under God, from the people, whose right it is to designate the rulers of the State and, in final appeal, to decide all questions of national policy, according to the requirements of the common good. (Art. 6.1)

If the people had voted down Bunreacht na hÉireann in the referendum of 1936, could de Valera's government have said "popular sovereignty" wasn't such a great idea after all, and passed it by "representative" vote? No: the whole structure of the Constitution is *founded in* popular

sovereignty, which *then* authorises legislative, executive and judicial powers – all clearly “derivative”, even if they sometimes forget the fact...

Of course, we are now concerned “merely” with the Lisbon Treaty. But it was called a Constitution until it stubbed its toe in France and the Netherlands, and it is still clearly about *constituting* the future shape of the EU. The British Foreign Secretary recently mused how ironic it was that Lisbon had precipitated such uncertainty, whereas its aim was to settle matters for the foreseeable future...

Quite so, Mr Miliband: but it’s the *shape* of what’s settled, and the *space left* for democratic accountability, that matter. Raymond Crotty won his Supreme Court case on the Single European Act in 1986 precisely because of the significance of such questions.

For an Establishment that promoted Lisbon by referendum – and lost – now to cherry-pick elements that just might survive a legal challenge to Dáil ratification risks a constitutional crisis, as Joe Noonan has warned (www.peoples.movement.ie/contreaty/noonan2.pdf). It would also be an act of political effrontery vis-à-vis the electorate: our politicians emerge *from* an electoral choice, *within* a constitutional framework, both of which are the business of the electorate rather than of the politicians themselves.

Our Establishment have made how Lisbon is handled even more crucial than what it contains. They have indeed fused the two into a stark moment of truth for European democrats: who has the last word – politicians, or the citizens who elect them? It is no surprise that, sometimes quite sincerely, our politicians misconceive this: the mandarin mind, and its seductive *raisons d’état*, are rooted much longer and deeper in the human story than is our fledgling growth towards democracy.

The last word is admittedly not the only word; a mature society learns through considering many different perspectives, coming from different

elements of its intricate structure. Usually we leave the content of law to the lawmakers, confident their work can be challenged in the courts and, if necessary, put to a referendum. But to conclude that “the professionals” are therefore inherently “better” at handling “complex questions” is quite perverse. We have learnt painfully to be wary whenever expert authority is proclaimed by the “experts” themselves, be they in medicine, law, banking, policing – or politics.

A well-functioning polity depends on trust, to be earned *by* the representatives *from* the citizens, and not vice versa. There is a crisis of such trust, in Ireland, in Europe and worldwide. Our Establishment cannot plausibly claim to have promoted reasoned debate: they have deepened and widened the crisis by furthering the sorry sequence of “[v]irtual incomprehensibility” and mere “presentational changes” identified by Dr Garret FitzGerald himself as “designed to enable certain heads of government to sell to their people the idea of ratification by parliamentary action rather than by referendum” (*Irish Times*, 30 June 2007).

They then have the gall to warn that “popular sovereignty” might make mistakes – by contrast no doubt with their own unblemished record on EU negotiations, the health services, education and other matters. Of course the citizens will sometimes need or want to revisit some constitutional decisions, as has previously happened – after significant intervals – with questions such as divorce.

But there is a huge, and so far overlooked, distinction between such exercises and the proposed “re-sit” of Lisbon. On divorce, for example, the Irish electorate was revisiting a decision *which remained within its sovereign power*; EU referendums by definition concern the **transfer** of elements of that sovereignty. The EU is unlikely to reverse such a transfer, but the Irish electorate as such is *unable* to do so – short of leaving the entire EU.

Some people reject any such transfer; others would accept it if the recipient were a significantly more democratic, transparent and accountable entity. The antics of our Establishment – and of their colleagues in other member states – over Nice and throughout the entire Constitution/Lisbon/ “Reform Treaty” saga are a telling symptom of their failure, and the EU’s, to respect or implement either genuine representative democracy *or* its vital underpinning, popular sovereignty.

Now is not the time to heed their advice to look away while they do “the business”: humanity’s slow progress towards genuine democracy is too fragile and too precious to be so trivialised.

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