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From Unity in Diversity to Variable Geometry?

As the dust fails to settle following the June 2008 Irish referendum, Europe wonders whether this latest accident on its journey towards an unknown destination is only one more bump on the road, or whether this may mark a more fundamental turning-point. Have we reached the end of the road in terms of “deepening” the integration project, at least at the level of EU27? Can the European Union, especially after enlargement, ever gain real democratic legitimacy? Calm political deliberation over these questions may have to wait until the post-Ireland situation is resolved one way or another. However, some points can be made now.

In the first place, the referendums in France and The Netherlands in 2005, and now in Ireland, have been a distraction from meaningful discussions of democracy in the European context. Despite some demagoguery surrounding the Irish result, this latest episode has not been a triumph for democracy, nor a measure of whether the Union is democratic. Referendums are not appropriate for dealing with large-scale complex issues. They should only be used for single issues which can reasonably be answered in yes/no terms, with voters’ having a reasonable awareness as to the consequences of the outcome. Moreover, when the consequences of a vote go far beyond the interests of those having the right to vote, it is hard to see how this is such a good example of democratic practice.

These episodes have not shown up the failings of the EU institutional system so much as failures at national level to manage the challenges of EU integration. If there is a gap in preference between the political class and the population at large, this is primarily a national responsibility. Governments, parliaments and political parties have the obligation to inform and educate citizens adequately, just as much as to follow public feeling. And countries affected by their partners’ decisions have a legitimate right to ask whether it is acceptable for governments to let responsibility be dumped on populations who do not all feel that they even understand the question. By way of comparison, recall that the Portuguese Constitutional Court in December 2004 ruled that even the more specific text proposed by the Government for a referendum on the EU Constitutional Treaty was incompatible with the Portuguese Constitution’s provisions concerning referendums, precisely on the grounds that it did not permit a serious yes/no answer.

Yet, it must be recognised that, if the same question had been put to electorates in other countries, the result would in many cases also have been negative.

Let us imagine how a 22nd century historian may look back at the situation. The last decade of the 20th century was one of rapid development and change for the Union. Building on the internal market, it adopted a common currency, deepening integration in some respects while adopting more flexible approaches in others, while preparing for massive enlargement. This left some important problems unresolved, a bit of a mess in terms of structures and procedures, and an evident gap in terms of popular support. At the beginning of the 21st century, the Member States had the noble ambition to tidy things up, simplify how the EU works, and to adopt a short and simple text of basic principles which the people(s) of Europe could understand and to which they could give their informed consent. Things then went wrong. ... Our future analyst may judge that it was a first historical mistake to allow the simplifying and problem-solving post-Nice agenda to be hijacked in 2001-2002 into a formal Constitutionalisation agenda which failed: the Constitutional Treaty was neither short nor simple and did not always fare well in popular perception. (S)he may well conclude that it was a second – and perhaps even greater – historical mistake then to try to push through an incomprehensible “reform” treaty with as much speed

and as little public discussion as possible. This could have been an opportunity to conduct a reasoned open debate on key issues in terms of problem-solving benefits and sovereignty costs which could then – and still could now – help build a meaningful consensus on substance, not institutions.

The institutional changes, moreover, were not so urgent as to justify rushing ahead. The EU has already adapted to enlargement. The further extension of qualified-majority voting would have further facilitated decision-making, but no change would have taken place in the system of qualified-majority voting for at least five years. We can live without a President of the European Council. Ironically, a difficult decision will now have to be taken sooner rather than later over reducing the Commission. Without the Lisbon Treaty, which put this off until 2014, Member States have to decide how – or whether – to implement the Nice Protocol which commits them to reducing the number of Commissioners to less than 27 when the EU has 27 members.

Pushing ahead with Lisbon now, moreover, may make it even more difficult to implement problem-solving changes in foreign policy and internal security – some of which could probably have been adopted already had it not been for the “Constitutional” adventure. One should not exaggerate the ease with which things may be slipped into, say, a treaty of accession with Croatia (quite apart from the delay). Second thoughts and threatened interests abound. Prime Ministers and Foreign Ministers have woken up to the fact that they alone would no longer have any role in chairing EU business. Not everyone is enthusiastic about the European External Action Service. Further exacerbation of people’s suspicions about the EU sneaking things past them will not help.

The EU can continue to operate reasonably well without the Lisbon Treaty and without the specific changes proposed therein. There is no reason not to take the time now – at last – to face up to two basic challenges. The first is to gain the confidence of a large majority of EU citizens. This has been said so many times that it risks seeming meaningless – and experiences to date regarding periods of public reflection and debate are certainly not encouraging. Yet it is no less true as a result. Things have just gone too fast for people to understand what is going on, far less why.

The second is to prepare more openly for variable geometry – that is, to accept the legitimate existence of various overlapping clusters of countries which respectively participate in forms of deeper cooperation around the “hard core” of integration constituted by the internal market and essential flanking policies. This is happening anyway, and it is not necessarily a bad thing for integration in the long run. This kind of flexibility may help manage sensitivities and divergences in “non-essential” areas of integration. In some cases, it may prove to be the beginning of new EU commitments. For example, the “Prüm Treaty” on intensified police cooperation to combat terrorism and cross-border crime, originally signed between five Member States in 2005, was incorporated into EU legislation in 2007.

There is important work to be done on these two fronts if the fall-out from France, the Netherlands, Ireland and who knows where else, is to be contained and given a constructive response. So far, we have signally failed to take advantage of the process to increase popular support: we seem rather to have confirmed to people that public support was always seen as a secondary consideration, a luxury if you can afford it. Over 20 Member States had completed ratification procedures by late July 2008. However, pushing on with the Lisbon Treaty in the face of isolated, but stubborn, resistance may only worsen the damage. It is not so much a question of burying a treaty but of following Healey’s First Law of Holes: if you are in one, stop digging!

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