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The UK and the Ratification of the Reform Treaty

From European Problem Child to Class
Swot

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Long treated as the problem child in the ratification of the European Constitutional Treaty (ECT), in 2005 the UK government gratefully handed this title to the French. The Blair-government's strategy had been simple: to string out the popular referendum on the ECT for as long as possible, hoping for the ratification process to fail elsewhere. This would have assuaged the necessity of putting the question to a very hostile British public. In the event, history proved kind.

Yet, it had been a risky strategy. The situation had been such that the parliamentary opposition could pursue their policy priorities—be it Liberal Democratic support for popular consultation or the fundamental Conservative opposition to the Treaty—without great concern about incurring practical or party-political costs. Moreover, the government had been exceedingly passive, never properly broaching the case for the ECT for fear of creating pressure for a more immediate referendum. In short, had a referendum taken place in the UK, this strategy would almost certainly have ended in defeat for the Treaty and severe crisis for the Blair-government.

The Brown-government's strategy is rather different. This is hardly surprising: it is operating in a situation where the opposition parties are less able to pursue their policy priorities without risking high costs. This gives the government greater scope for manoeuvre. At the same time, it cannot afford to remain passive: in 2004, the government's faith in a ratification failure in another member state was well grounded; today Brown has actively dissuaded his European counterparts from holding referendums.¹ The government must actively sure up its advantages.

This time around, then, no *deus ex machina* in the form of an external ratification failure is likely to make an appearance; yet nor is the crisis in the UK so acute. There is not the same configuration of factors that proved decisive in Blair's reluctant 2004 referendum-decision. The Treaty is therefore likely to undergo parliamentary ratification alone. This will be strenuous for the government but, as far as one can tell, not dangerous. In the House of Commons, a new and carefully balanced arrangement has emerged between the main opposition parties. Both are pushing loudly for their democratic and/or Eurosceptic principles, but at the same time appears careful to ensure that these are not actually realised: this might unleash negative consequences for the party.

Regardless of their frequent pronouncements, the Liberal Democrats and Conservatives are increasingly seen as willing agents in the non-consultation of the British public on EU affairs and/or the adoption of the government's eight-page *European Union (Amendment) Bill*². Despite the existence in each party of ideologically-motivated parliamentarians who may defect from the party-line, a ratification-upset in the current configuration therefore hardly appears likely. There is a long history of national governments pushing through further European integration on the basis

¹ "Portugal yields on EU treaty referendum", Times online, January 10th 2008.

² <http://www.publications.parliament.uk/pa/cm200708/cmbills/048/2008048.pdf>

of elite support alone. Seen in this light, the UK has gone from being Europe's "problem child", giving a broadly Eurosceptic public a popular vote on the Constitutional Treaty, to the EU's "class swot". One may wonder what effect all this will have on the British public's long-term attitude towards the EU and the legitimacy of future governments' European policy.

1. Learning from the past: avoiding a popular referendum

The UK government had not been legally obliged to hold a referendum on the ECT. Previous rounds of treaty reform had been ushered in through parliamentary ratification alone. Constitutional issues had been dealt with traditionally by "royal commissions", formal government inquiries. This is not to say that Tony Blair's decision was a voluntary one. His decision can instead be traced to four interrelated factors:

1. The novel quality of the ECT compared to previous rounds of treaty reform
2. The intensity of public and media support for a plebiscite
3. Cross-party support amongst opposition parties for a referendum
4. Blair's weakness within his own party

By contrast, Brown finds himself in a rather different, more amenable position, and at present it looks as though he will succeed in resisting a referendum. This is in no small part thanks to the fact that the Reform Treaty does not apparently boast the novel qualities of the ECT. Whilst the Constitutional Treaty warranted a referendum, Brown argues, the Reform Treaty is much more in the mould of previous treaty reforms.³ These were passed, in the UK, by parliamentary channels alone. In political terms, Brown is helped in these arguments by the fact that both the ECT and the cancelled referendum were strongly associated with his predecessor. Brown is thus able to present the issue as a closed chapter of the Blair era. This helps create a symbolic distinction between the ECT and the Reform Treaty.

His line of argument is highly contested. One high-profile financial backer of the Conservative Party, Stuart Wheeler, has reportedly launched a bid to check the legality of the government's decision not to hold a referendum.⁴ At first sight, this bid seems rather forlorn and appears above all to serve a political purpose. Its sponsor questions Brown's reasoning about the differences between the ECT and the Reform Treaty. It is a question posed by a January 2008 Report from the House of Commons Select Committee on Foreign Affairs. Looking specifically at the external-relations content of the new Treaty, the Report concludes that "there is no

³ The Foreign Minister, David Miliband, has gone rather further, questioning the necessity of the referendum on the ECT during the 2nd Reading of the European Union (Amendment) Bill.

⁴ "Legal bid to force EU referendum", BBC online, 29th January 2008.

material difference between the provisions on foreign affairs in the Constitutional Treaty which the Government made subject to approval in a referendum and those in the Lisbon Treaty on which a referendum is being denied”.⁵

Such arguments have repeatedly been made by the Press as well, and not just as regards the foreign affairs content of the Treaty.⁶ Indeed, the Murdoch-press, and particularly the Sun newspaper, has resumed where it left off in 2004, calling repeatedly for a referendum on the grounds that fundamental change has been effected by the Treaty in question.⁷ This renewed press-attention is significant because the print-media is thought to have played an important role in Blair’s 2004 referendum-decision.⁸ This time round, however, the media do not appear to have excited the same groundswell of public support for a popular consultation. Indicative of this is the absence of widespread pro-referendum activity within “civil society”. The groups that sprang up around the original question of the ECT-referendum have largely ceased existence. This is not to say that there are no social organisations agitating for a referendum (one such group, for example, states that it has commissioned Electoral Reform Services to organise a series of mini-referendums throughout the UK⁹). It is merely that these organisations appear to lack any real impetus.

This lack of public resonance may well explain the weakness of the Eurosceptic Press’s direct hold over Brown in the referendum-question. Yet, this apparent lack of influence may also be put down to the fact that Brown decided against calling an early election for 2007, and therefore is not under the same immediate pressure to curry favour with the Press as Blair was in 2004. One thing is sure: the Press’s lack of influence cannot be put down to the fact that Brown is in a particularly strong position generally.

For example, Brown is not seen as the key to the Labour Party’s future electoral success, and this weakens his position within his party. A small group of around 20 Labour MPs placed a motion before the House of Commons prior to the Second Reading of the *European Union (Amendment) Bill*. It called for the Bill to be rejected if the government did not agree to

⁵ “Third Report, Session 2007-2008”, Select Committee on Foreign Affairs, Section 8 para. 219.

⁶ For example: “50,000 back petition for EU treaty referendum”, Telegraph online, 24th August 2007; “New treaty same as EU constitution”, Mirror online, 22nd January 2008; “Boost for referendum on EU treaty”, Observer, 20th January 2008.

⁷ For example, “We fight them on beaches”, Sun online, 25th September 2007. For analysis: “UK press put pressure on Brown ahead of talks on EU treaty” IHT online, 16th October 2007; “The doublethink of ‘democracy’”, New Statesman online, 29th October 2007.

⁸ “Zum innenpolitischen Meinungsklima in Grossbritannien vor dem EU-Gipfel”, Konrad Adenauer Stiftung Länderbericht, 19th June 2007.

⁹ I Want a Referendum, www.iwantareferendum.com; “Mini EU ‘referendum’ to be staged”, BBC news online, 20th January 2008. On this movement more generally, see: “All-party push for referendum on EU treaty puts fresh pressure on Brown”, Guardian online, 6th September 2007.

hold a referendum on the Reform Treaty.¹⁰ In the event, the Speaker of the House did not accept it for debate.¹¹ However, the tactics of its sponsors are notable: in order to bolster support for the amendment, renegade Labour MPs have been appealing to the narrow self-interest of their colleagues: if the Brown-factor will not secure their re-election, they should not further jeopardise their position by loyalty to the government on this question.

This ploy of appealing to Labour MPs in marginal seats to push for a referendum has been picked up on by Conservatives as well.¹² The Conservatives remain relatively uniformly behind the idea of a popular consultation on the Reform Treaty. However, it seems that even with the prospect of support from renegade Labour MPs, the parliamentary movement behind the referendum will not come to fruition. Amongst Liberal and Conservative MPs, the cross-party support for a referendum that heralded the 2004 decision has collapsed. Even with Liberal Democratic support, the prospects of Parliament calling a referendum would have been small (the government retains a working majority of 67 MPs¹³). Yet in his first major decision as Liberal Democratic leader, former MEP Nick Clegg put another nail in its coffin, announcing that his party would abstain in parliamentary votes on the question.¹⁴

Of course much could still change. The Liberal Democrats might succumb to pressure to support the parliamentary movement for a referendum. The popular movement and media campaigns behind the referendum might equally take off. Suggestions have even been made that referendums, albeit without legal effect, might be held in Scotland or Northern Ireland.¹⁵ At this stage though, the likelihood of the Brown-government yielding on the referendum-question appears slim indeed. All eyes are on the parliamentary ratification process.

2. Parliamentary ratification: You're nothing but a pack of cards

The parliamentary ratification process in the UK requires the government to shepherd its Bill through three readings in the Commons and then three in the Lords.¹⁶ In this, it must naturally avoid any amendments

¹⁰ House of Commons Order of Business, Monday 21 January 2008,

www.publications.parliament.uk/pa/cm200708/cmagenda/ob80121.htm

¹¹ "Labour rebels seek to kill EU treaty bill", Guardian online, January 17th 2008.

¹² Commons Hansard, 21st January 2008, Column 1325,

www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080121/debtext/80121-0022.htm

¹³ State of the parties, www.parliament.uk/directories/hcio/stateparties.cfm

¹⁴ "Boost for referendum on EU treaty", Observer, 20th January 2008. Clegg later clarified that if it came to it, his party would actively vote against the proposed referendum, "Lib Dems oppose referendum vote", BBC news online, 22nd January 2008.

¹⁵ "How can we stop the Euro-constitution?" Daniel Hannan, Telegraph online, 9th November 2007,

<http://blogs.telegraph.co.uk/politics/danielhannan/nov07/howstopeuroconst2.htm>

¹⁶ The progress of the Bill can be traced on the internet at:

<http://services.parliament.uk/bills/2007-08/europeanunionamendment.html>. A useful tab on Labour Party revolts is kept at www.revolts.co.uk.

which would require it to reopen treaty negotiations with its EU partners.

The First Reading may be considered largely ceremonial and involves the presentation of the Bill to the House. The Second Reading, then, is the first instance at which the Bill can be rejected: the general principle of the Bill is debated, and the government proposal can be defeated in similar terms, i.e., on a general point of principle (such as that set out in the failed referendum-motion). The Bill then enters a Committee Stage (in the case of the *European Union (Amendment) Bill* the Committee is the whole of the House in question). Here proposed amendments are dealt with. Following the Report Stage, at which a Bill in its amended version is considered as a whole, the Third Reading occurs. In the case of the Commons, when the Third Reading is complete, the Bill is passed to the Lords.¹⁷

In the event, the *European Union (Amendment) Bill* passed its second reading in the Commons by a majority of 138 (362-224) on 21st January 2008. The Commons adopted the government's proposed timetable for debate in the Committee Stage. 12 days were allotted for debate on individual thematic elements in the Treaty, the first being Justice and Home Affairs. Revolts to the government's position on Justice and Home Affairs were made by a total of eight Labour MPs. This is treated by commentators as the level of Labour dissent to be reckoned with throughout the Bill's Passage, with the possible exception of the vote on a future referendum amendment where a greater rebellion might be expected.¹⁸ With a government majority of 67, and the support of the 63-strong and broadly pro-European Liberal Democrats, a ratification upset appears highly unlikely.

3. Short-term ratification success, long-term constraints

Against this background, the government scarcely needs to make the case for the Treaty to ensure the Bill's or indeed its own survival. However, broader issues are at stake beyond the immediate ratification process. These will have a bearing upon the EU's long-term capacity for action, and the UK's constructive engagement with it.

In order to ensure short-term ratification success, the Brown-government has, for example, made undertakings that will likely bind its successors. At the heart of David Miliband's speech to the Commons on 21st January lay the argument that the Treaty would provide a lasting solution to the EU's institutional running.¹⁹ He made the statement that "the treaty is unique [...] in one regard: it marks the end of a process of institutional reform". Whilst such promises will not bind future governments in a

¹⁷ A more detailed overview of the process may be found in: Parliamentary Stages of a Government Bill, House of Commons, 2007, <http://www.parliament.uk/documents/upload/l01.pdf>

¹⁸ See: "Pattern set on theme 1", www.revolts.co.uk/cat_news.html

¹⁹ "Foreign Secretary's opening statement on EU Bill (edited version)", 22nd January 2008, <http://www.fco.gov.uk/servlet/Servlet?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029391629&a=KArticle&aid=1199204203839>

formal sense, they could certainly undermine their legitimacy should the member states feel that change is necessary. Given that Clause 6 of the *European Union (Amendment) Bill* substantially increases the UK Parliament's powers over the use of so-called passerelle clauses, it is not just IGC-based institutional change that may be affected.

In general, then, the government has not made the positive case for the Treaty. It has defended it, defining it in "negative" terms: it is not the Constitution; it will not alter much; it will not herald further treaties. Of course, some positive arguments have been made. The point about its improving the functioning of the EU has been trotted out. The Treaty is also said to mark a turn in the EU's agenda from introspective institutional matters towards an effort to get to grips with citizens' real concerns. Thanks though, to its "negative" arguments, the government cannot go beyond this in making the positive case for the Treaty. If, for example, the Treaty does not alter much, then even changes that might be considered positive by the British public cannot be mentioned.

The public and parliamentary focus has therefore shifted, fixing upon the more fundamental issue of Britain's EU membership. Yet the government's tactics preclude it from properly engaging in this debate either: by leaving the Conservatives alone to broach the debate on membership, the government hopes to present them as fundamentalists. Although both Miliband and Brown (in his January 14th speech²⁰) have made the case for British EU membership, they have not done so resolutely.

Unable to constructively promote the Treaty, all that is left to the government is to allow other organisations to make the case, and to draw upon their support for it. Predictably enough though, David Miliband's citing Oxfam's support for the Treaty during the January 21st debate did not prove convincing to his parliamentary colleagues. In general, the government's approach to the Treaty is seen to be summed up by Gordon Brown's late arrival to the Lisbon ceremony: a sheepish reluctance to take responsibility for the Treaty.

Rather than democratic engagement, the government is seen to have focussed primarily upon political management. This does not merely refer to the government's efforts to avoid a referendum, but its apparently cynical management of the parliamentary ratification process too. There have been complaints about the amount of time allotted by the government for parliamentary debate²¹, and about the way that the government has thematically structured the debate²². At the same time, some commentators see the time allotted to the debate as ample; they argue that the timetable is "designed to give the almost wholly anti-European Conserva-

²⁰ "Beyond the Reform Treaty: Business Priorities for a 'Global Europe'", Speech by Gordon Brown, 14th January 2008, <http://www.pm.gov.uk/output/Page14251.asp>

²¹ See Hansard, 28th January 2008, Columns 37 and 38, David Heathcoat-Amory and Kenneth Clarke; "MPs back Lisbon Treaty timetable", BBC online, 28th January 2008.

²² "Government must allow adequate time for debate on the Lisbon Treaty", 28th January 2008, www.libdems.org.uk/parliament/government-must-allow-adequate-time-for-debate-on-the-lisbon-treaty.6938.html.

tive party as much rope as possible with which to hang themselves”.²³

To make matters worse, the Liberal Democrats and the Conservatives appear to the public in no small measure complicit in this political management. Of course, one might argue that such management marks the difference between the parliamentary and popular ratification processes in the UK: the theatre of parliamentary debate gives vent to sentiments which are then dispensed with in the vote thanks to tools of party discipline. The popular consultation has no such modifying mechanism. All the same, many sections of the media deem the theatricals particularly hollow in this case.

Both the Conservatives and the Liberals would be faced with costs if the democratic and/or Eurosceptic principles along the lines expressed in 2004 were actually realised. For the Conservatives, the prospect that they may win the next election enhances the practical costs upon their behaviour. In the next legislative term, they might be bound by the practical fallout from too stringent a Eurosceptic agenda today. This might for example include popular expectations of a renegotiation of the Treaty or even of Britain’s EU-membership.

It is thus noticeable that, although Conservative MPs have expressed a strong criticism of the Treaty and some have questioned Britain’s continued EU-membership, the main focus of the party’s complaints has been the “cancelled” referendum. Admittedly the Conservatives have been making vague noises about holding a post-ratification referendum, but they have been careful not to commit themselves too far.²⁴ By making Labour’s decision on the referendum the main issue, the Conservatives relieve any potentially negative ramifications for them in the next Parliament. Of course, if a referendum were actually carried out now as they demand and ended badly, the Conservatives would inherit an exceedingly difficult situation should they win the next election. However, they are able vociferously to demand this referendum without a real prospect of its being held thanks to some fancy footwork by the Liberal Democrats.

In 2004 the Liberals had, namely, been (late) advocates of a referendum. Together, the strong public support for a popular consultation, a feeling that the referendum on the ECT might actually be winnable and also a slight relativisation of the Liberals’ pro-European position meant that they had felt able to promote their democratic principles (referendum) at the possible expense of their pro-European values (the ratification of the ECT). The context today is different. There is not the same degree of *mobilisable* public support for a referendum, and it can be said with a degree of certainty that the result of any such referendum would be negative. Against this background, Liberal Democratic support for a referendum has unsurprisingly cooled. As noted above, the Liberals would thus help to block a referendum on the Treaty. Yet, they call for a more fundamental

²³ “Skirting the argument”, Guardian leader, 21st January 2008.

²⁴ “We would hold referendum even after EU treaty is ratified, William Hague suggests”, Times, 13th November 2007; “David Cameron in strong signal on EU treaty”, Telegraph, 31st December 2007.

referendum—this time on Britain’s EU-membership—knowing full well that the likelihood of this agenda succeeding is slim indeed. Whilst Nick Clegg has come under pressure for this stance from his own party, he suggests that the only grounds for reviewing his position would be if the party were refused the possibility to call in an amendment to the *European Union (Amendment) Bill* for a membership-referendum.

There are parliamentarians in each of the parties who feel that the Reform Treaty is not so different from the ECT as to absolve them from the commitments they made then. They have either conceptually reconciled these with the party interest, or will defy the party whip to pursue them. Indeed the Conservative leader, David Cameron, appears to have bowed somewhat to such pressure within his own party, stating that he would hold a referendum should the Tories win the next election, but only if a large number of conditions are met.²⁵ All this, though, cannot overcome the popular sentiment that the public has been excluded from having its say on the Treaty by a coalition of political parties throughout the UK. If this is the case, these parties are binding their hands for the future. Rather than increasing their capacity to deal constructively with the European issue by making their pro-European or Eurosceptic cases to the British public, they have engaged in short-termist political management.

²⁵ „Now Cameron fuels Eurosceptic anger over EU treaty vote”, *Independent*, 24th October 2007; “David Cameron promises Margaret Thatcher line on Europe”, *Times*, January 14th 2008.