

The Lisbon Treaty would give the EU the constitutional form of a supranational European Federation - The Demise of the Republic.

Introduction: By rejecting the Lisbon Treaty Ireland has saved both itself and the EU from a thoroughly bad Treaty which people in the other EU countries would reject too if they got the chance to vote on it. This paper explains how the Lisbon Treaty, like the EU Constitution before it, would turn the Nation States of Europe into provinces of an undemocratically-run EU Federation and turn the peoples of Europe into real citizens of this EU State in the making.

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“The pooling of coal and steel production should immediately provide for the setting up of common foundations for economic development as a first step in the federation of Europe.” (emphasis added)

- *Schumann Declaration* on the formation of the European Coal and Steel Community, 9 May 1950

“The Constitution is the capstone of a European Federal State.”

- Guy Verhofstadt, Belgian Prime Minister, *Financial Times*, 21 June 2004

“The State may ratify the Treaty of Lisbon signed at Lisbon on the 13th day of December 2007, and may be a member of the European Union established by virtue of that Treaty. No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State that are necessitated by membership of the European Union, or prevents laws enacted, acts done or measures adopted by the said European Union or by institutions thereof, or by bodies competent under the treaties referred to in this section, from having the force of law in the State.” (emphasis added)

- *Ireland's 28th Amendment of the Constitution Bill 2008* ...The first two sentences of the proposed constitutional amendment which Irish voters rejected on 12 June 2008

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1. The Treaty of Lisbon is the EU Constitution revamped. It is quite different from previous European Treaties, as it would give the EU its own State Constitution. If Lisbon is ratified it would establish a legally new EU in the constitutional form of a supranational Federation, and in the process revolutionise the constitutional and political order of the EU itself and of its Member States.

Implicit in the first sentence quoted earlier from the *28th Amendment of the Constitution Bill*, which Irish voters rejected on

12 June 2008 is the fact that the Lisbon Treaty would establish a constitutionally new European Union which would be different legally and politically from what we know as the European Union today. The proposed constitutional amendment would have permitted Ireland to become a member of “*the European Union established by virtue of that Treaty*”, namely the Treaty of Lisbon.

This first sentence of the constitutional amendment recognized clearly therefore that the post-Lisbon Union would be a different Union from that which stems from the 1992 Maastricht *Treaty on European Union*, which is the EU that we are members of at present. Unfortunately Ireland’s statutory Referendum Commission, whose legal duty it was to explain the constitutional amendment to voters, made no reference whatever in its €5 million information campaign to the second part of this key sentence of the amendment and confined its information material entirely to the first part - so fundamentally misleading Irish voters as to the radical character of what they were voting on.

The “*European Union established by virtue of that Treaty*”, which the majority of voters rejected in the Irish referendum, corresponds to the Union that was referred to in the first sentence of Article I-1 of the *Treaty Establishing a Constitution for Europe*, which the voters of France and Holland rejected in their 2005 referendums. This sentence stated: “*This Constitution establishes the European Union.*” That sentence in turn corresponds to the following sentences in Article 1 of the amended *Treaty on European Union* which would be inserted by the Treaty of Lisbon if that treaty should be ratified: “*By this treaty the High Contracting Parties establish among themselves a European Union, hereinafter called 'the Union', on which the Member States confer competences to attain objectives they have in common ... The Union shall be founded on the present Treaty and on the Treaty on the Functioning of the Union (hereinafter referred to as 'the Treaties'). Those two Treaties shall have the same legal value. The Union shall replace and succeed the European Community.*”

Both the 2004 EU Constitutional Treaty and the Treaty of Lisbon which succeeded it would give the constitutional form of a supranational Federation to the new European Union which they each aimed to establish. Ratification of the Lisbon Treaty would therefore usher in a constitutional and political revolution in what we call the European Union today and in the national constitutional order of the EU's Member States.

Most Irish people and media commentators are unaware of this, even after the June 2008 referendum, for the whole process has

been shrouded in deception. Explaining the constitutional and political difference between the post-Lisbon Union and the pre-Lisbon Union is made difficult by the fact that the same name, "*The European Union*", is being used for two entities, the pre-Lisbon EU and the post-Lisbon EU, which are constitutionally and politically profoundly different from one another.

The Lisbon Treaty would bring about this constitutional revolution by amending fundamentally the two existing European Treaties, the *Treaty on European Union* (TEU) and the *Treaty Establishing the European Community* (TEC). The former would retain its name, while the latter would be renamed the *Treaty on the Functioning of the European Union* (TFEU). These two amended Treaties would then become the *de facto* Constitution of the post-Lisbon European Union which they would constitute or establish, although they would not be formally called a Constitution. The EU would thus be given a Constitution indirectly rather than directly, as had been proposed in the original *Treaty Establishing a Constitution for Europe* of 2004 which French and Dutch voters rejected.

The provision of the Lisbon Treaty that "*The Union shall replace and succeed the European Community*" (Art.1, amended TEU) makes clear that the post-Lisbon Union would be quite a new entity, as the European Community which Ireland joined in 1973 would cease to exist. The European Community is one of the "European Communities" which are explicitly referred to in the Irish Constitution and which the 27 countries are still all currently members of. The other community is the European Atomic Energy Community (EURATOM).

Member States would still retain their national Constitutions post-Lisbon, but they would be subordinate to the new Union Constitution, as the second of the two sentences quoted above from the *28th Amendment of the Constitution Bill* makes clear. The Irish and other Member State Constitutions would then no longer be constitutions of sovereign States, just as the various local states of the USA retain their constitutions although they are subordinate to the Federal USA Constitution.

The new European Union's powers would be conferred on it by its 27 Member States, who would voluntarily agree to obey the EU's superior authority in the policy areas surrendered, which at this stage cover the greater part of government.

This so-called "principle of conferral" is normal in all classical "bottom-up" Federations, such as the USA, 19th Century Germany, Switzerland, Canada and Australia, where States that were

originally sovereign agreed to surrender sovereignty to a higher federal authority. These contrast with Federations which have been established by unitary States assuming federal form, for example India, Nigeria etc., which might be regarded as “top-down” Federations.

The provision of the Lisbon Treaty that permits a Member State to leave the EU (Art.50, amended TEU) also occurs in some Federal constitutions. There was such a provision for example in the early constitution of the USSR. The remaining governmental powers, which have mainly to do with the traditional social services and the taxation needed to finance them, would remain with the Member States post-Lisbon. State sovereignty in the new post-Lisbon Union would be divided between the Federal and local national state levels, as is normal in classical Federations.

The metamorphosis of the pre-Lisbon European Union into a post-Lisbon Union with the same name but of fundamentally different constitutional and political character, is reflected in changes in the formal structure of the amended Treaties which would become the new Union's Constitution. The two treaties, the TEU and TFEU, are stated to have the same legal value (Art.1, amended TEU). Up to now, Article 47 TEU has determined that the *Treaty on European Union* is subsidiary to the *Treaty Establishing the European Community* (TEC), which Lisbon would rename *The Treaty on the Functioning of the European Union* (TFEU). Post-Lisbon, this Article 47 TEU would be replaced by Article 40, amended TEU, which stipulates the subsidiarity of the Common Foreign and Security Policy (CFSP) only, as against the other competences set out in the treaties. Moreover the Lisbon Treaty would insert the new Title III on the institutions of the new Union into the *Treaty on European Union*, the primary treaty, and remove them from the *Treaty on the Functioning of the Union*, the present TEC, where they are currently set out.

2. The Treaty would empower the post-Lisbon European Union to act as a State vis-a-vis other States

To understand the dramatic constitutional change which would be introduced by the Lisbon Treaty one needs to appreciate that what we call the European Union today is not a State. It is not even a distinct legal or corporate entity in its own right, for it does not have legal personality, although some legal writers have suggested that it has a form of embryonic personality. Certain it is that the name "European Union" at present is the descriptive legal term for the totality of relations between its 27 Member States and their peoples. Article 1 of the current *Treaty on European Union*, deriving from

the 1992 Maastricht Treaty which established the present EU, makes this quite clear when it states that “*the Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty. Its task shall be to organize, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples.*”

These relations appertain both to the "European Community" area, where supranational European law is operative, and the "intergovernmental" areas of foreign and security policy on the one hand and justice and home affairs on the other, where Member States cooperate freely with one another on the basis of retaining their State sovereignty and where European laws do not apply. These different areas - or “pillars” in EU terminology - taken together constitute what we call the European Union today.

The Lisbon Treaty would change this situation fundamentally by creating a constitutionally and politically new Union, while retaining the same name, the “*European Union*”. Unlike the present European Union, this constitutionally new EU would be legally separate from and superior to its Member States, just as the USA is separate from and superior to Massachusetts or Kansas, or as Federal Germany is to the various German Länder.

This post-Lisbon Union would sign treaties with other States in all areas of its powers and would conduct itself as a State in the international community of States. It would speak at the United Nations on agreed foreign policy positions, just as in the days of the Soviet Union the USSR had a UN seat while some of its component states, Ukraine and Byelorussia for example, had UN seats too. Member States would be obliged to support the Union's foreign and security policy “*actively and unreservedly in a spirit of loyalty and mutual solidarity*”(Art.24.3, amended TEU) (emphasis added). The word “*loyalty*” makes clear the constitutional relation involved.

The Lisbon Treaty would also give the EU a political President, a Foreign Minister - to be called the High Representative for Foreign and Security Policy - a diplomatic corps, to be called the External Action Service, and a Public Prosecutor. The new EU would accede to the European Convention on Human Rights (ECHR), as most European States inside and outside the EU have already done.

This post-Lisbon European Union would then make most of our laws. At present the European Union does not make European laws; it is the European Community which does that. Strictly speaking therefore there is no such thing as “EU” law today, only “EC” law. This would change if the Lisbon Treaty were to be ratified, for

Lisbon would abolish the European Community and replace it with the new Union, whose laws would be superior to national laws in any case of conflict between the two.

The principle of the primacy and superiority of European law over the law of its Member States has not been stated in a European Treaty before. Whereas Article I-6 of the abandoned 2004 *Treaty Establishing a Constitution for Europe* did state this explicitly, the Lisbon Treaty does so by referring in *Declaration 17 concerning Primacy* to the case-law of the European Court of Justice. Over the years this has asserted the principles of (a) the superiority of EU law over national law, (b) its direct effect in the territory of its Member States even if it has not been formally put through their National Parliaments, and (c) the constitutional character of the legal order from which European law emanates.

If the Lisbon Treaty were to be ratified European law and national law would deal with different areas and matters, as is normal in Federal States where laws are made at the federal and the provincial or regional state levels. Lisbon would also give the EU the power to make supranational laws that are binding on Member States and their citizens in some 30 new areas and would take that power away from national Parliaments and from the citizens who elect these Parliaments. The EU would also be given new powers to take decisions in relation to as many specific issues. Altogether there would be some 68 areas or issues where individual Member States decide matters now and where under Lisbon they would lose their veto or their right to decide.

3. The enormity of the constitutional change proposed by Lisbon is not generally appreciated because the same name - "*The European Union*" - would be used before and after the Treaty would come into force, and because the notion of EU "citizenship" has already been introduced by the 1992 Maastricht Treaty, although the Lisbon Treaty would change fundamentally the constitutional nature of the Union itself, its Member States and the character and implications of EU citizenship.

The change in the constitutional and political nature of the Union, its Member States and their citizens would be made in four logical legal steps that are set out in the Lisbon Treaty:-

(a) Lisbon would establish a European Union with full legal personality and a fully independent corporate existence in all Union areas for the first time, so that the post-Lisbon Union would be able to function as a State vis-a-vis other States and in relation to its own citizens (Art. 47, amended TEU; cf. Art.281 TEC);

(b) This new European Union would replace the existing European Community and take over all of its powers and institutions (Art.1,amended TEU).

It would take over as well the "intergovernmental" powers over crime, justice and home affairs, as well as foreign policy and security, which at present are outside the scope of European law-making, leaving only aspects of the Common Foreign, Security and Defence Policy outside the scope of its supranational power (Title 1 TFEU; Title V, amended TEU);

(c) It would thereby give a unified constitutional structure to the new Union which Lisbon would constitute or establish.

The European Community would disappear and all spheres of public policy would come within the scope of supranational EU law-making either actually or potentially, as in any constitutionally unified Federation (Art.4.1 and Art.5, amended TEU and Arts.1-6 TFEU). One says "potentially" because further inter-State treaties would be required to transfer the minority of law-making powers still remaining with the Member States to the new Union in the future, or to shift powers back from the supranational level to the Member States, something that has so far never happened. Under Lisbon supranational legislative acts would not yet be adopted in the sphere of Common Foreign and Security Policy and a new treaty would be needed to change that. However the European Commission, a key supranational body, would through the High Representative proposed in the Lisbon Treaty gain the right of initiative in the foreign policy field, so that even in the light of Art. 31.2, amended TEU, a *de facto* "supranationality" would be attained there.

(d) Lisbon would make 500 million Europeans into real citizens of the new Federal Union which the Treaty would establish (Arts.9, amended TEU and 20 TFEU), with all the implications of that for downgrading their present personal status as citizens of sovereign Nation States and superseding it by citizenship of the component member states of a supranational European Federation of which they would henceforth become citizens also. We would all be endowed thus with a real dual citizenship henceforth, as in the classical Federations mentioned.

4. Lisbon would make us all real citizens of this new European Union for the first time, instead of our continuing as symbolical or honorary European "citizens" as at present. In constitutional terms this would give the post-Lisbon Union a new source of democratic legitimacy. Population size would in turn become the primary basis

for EU law-making, as in any unified State with a common citizenry.

Citizenship of the European Union at present is stated to “*complement*” national citizenship (Art.17 TEC), the latter being clearly primary, not least because the present EU is not a State or even a corporate entity which can have individuals as members. Our “*complementary*” citizenship of the present EU is therefore essentially notional, symbolical or honorary.

By transforming the legal character of the European Union, the Lisbon Treaty would simultaneously transform the meaning of Union citizenship. The Treaty would delete the word “*complement*” in the sentence, “*Citizenship of the Union shall complement national citizenship*”, so that the amended sentence would read: “*Citizenship of the Union shall be additional to national citizenship*” (Arts.9, amended TEU and 20 TFEU). This would not replace our national citizenship, but would for the first time make us real citizens of a real European Union in addition to our national citizenship.

This would be a real dual citizenship - not of two different States, but of two different levels of one State - as is normal in Federations which are established from the bottom up by constituent states surrendering their sovereignty to a superior entity, as occurred historically with the USA, 19th Century Germany, Switzerland, Canada and Australia. This development would for the first time give the 500 million inhabitants of the present EU Member States a real citizenship that was distinct and separate from citizenship of their national States.

It would give a treble citizenship to citizens of the individual Länder within Federal Germany. Again Ireland’s Referendum Commission was extraordinarily remiss in failing to make the slightest mention of this profound constitutional change in the information material that it sent to voters for the June 2008 referendum, despite its statutory obligation to explain the implications of the proposed constitutional amendment to the Irish people.

The rights and duties attaching to this citizenship of the new Union would be superior to those attaching to citizenship of Ireland in any case of conflict between the two, because of the superiority of EU law over national law and Constitutions.

The Preamble to the *Treaty on European Union* refers to the aim of “*establishing a citizenship common to nationals of their countries*”. As most States recognise that one can only have a single

citizenship internationally, it is probable that over time one's European Union citizenship would tend to be regarded by other countries as one's primary and internationally definitive citizenship rather than one's Irish citizenship, especially if a network of EU embassies and an EU diplomatic service were to be established to deal with citizenship issues internationally, as the Lisbon Treaty envisages.

An important federalist feature of the post-Lisbon EU is that its laws would be made primarily on the basis of aggregate population size, as in any unified State with a common citizenry, rather than on the basis of the weighted votes of the Member States as at present. Currently European laws are made by a qualified or weighted majority of Member States, so long as they can muster 255 votes out of 345, with each State having so many votes, so long as a majority of the Member States vote in favour. Under the Lisbon Treaty EU laws would be made by 15 States or more out of 27, so long as they constitute 65% of the aggregate EU population (Art.16.4, amended TEU).

The number of EU citizens presumed to be for or against an EU law would thus become the primarily determining factor in adopting it or not, although the votes would be cast by Government Ministers on the EU Council of Ministers rather than by the citizens themselves or their directly elected representatives. Germany and France between them contain nearly one-third the EU's population, so that this citizen-population criterion would significantly increase the relative weight of these and other Big Member States in EU law-making, while it would significantly diminish that of smaller States. For example, under Lisbon Germany's relative weight in EU law-making would go from its present 8% today under the Nice Treaty to 17%, while Ireland's would halve from 2% to 0.8%.

Lisbon would insert a new Article 10 into the amended Treaty on European Union: *"The functioning of the Union shall be founded on representative democracy. Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments ..."* This provision clearly sets up an alternative source of democratic legitimacy which challenges the right of national governments to be the representatives of their electorates in the EU. Contrast this Lisbon Treaty formulation with what is stated to be the foundation of the present, Maastricht-based, European Union (Art.6 TEU): *"The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States."*

It seems fair to say that Lisbon marks a qualitatively new stage in the gradual evolution of institutional structure away from Europe's Nation States, which slowly but surely emphasises the idea of democratic legitimacy being developed independently of the Member States by EU-level institutions.

The concept of a direct democratic citizens' mandate for the new post-Lisbon European Union is reinforced by the encouragement which the same Article gives to the development of European-level political parties that would be partly funded by the EU Commission. These are stated to “*contribute to forming European political awareness and to expressing the will of citizens of the Union.*”(Art.10.4, amended TEU). It is also emphasised by the obligation imposed on the EU Commission to bypass national governments and “*maintain an open, transparent and regular dialogue with representative associations and civil society*”(Art.11.2, amended TEU).

5. Lisbon would create a Union Parliament for the Union's new citizens

The Lisbon Treaty would make Members of the European Parliament, who under the current treaties are “*representatives of the peoples of the States brought together in the Community*”(Art.189 TEC) into “*representatives of the Union's citizens*” (Art.14.2, amended TEU). This illustrates vividly the constitutional shift which the Treaty would make from the present European Union of national States and peoples to the new Federal Union of European citizens and their national states - the latter being henceforth reduced constitutionally and politically to effective provincial or regional status within the new post-Lisbon Union.

The role of the European Parliament, which was first introduced as a modest check on the EU Executive and was styled an “*Assembly*” rather than a Parliament under the 1957 Treaty of Rome, has been elevated in successive EU Treaties. Its MEPs, direct representatives of EU citizens, now have co-decision-making powers that put the EU Parliament on virtually equal terms with the Member Nation States in ever more areas - including electing the President of the Commission as presented to it by the European Council. The shift of EU authority as arising directly from EU citizens rather than from the Member Nation States is reflected in the Lisbon Treaty when it states unequivocally that: “*The Commission, as a body, shall be responsible to the European Parliament*” (Art.17.8, amended TEU). The European Parliament approves the Commission members en bloc and may force their collective resignation by a vote of censure.

By contrast, the Council of Ministers - consisting of representatives of the Member Nation States - has shifted over time from being the directing authority of a European cooperation in which the Member States acted largely by unanimous agreement, to being a “second chamber” of national representatives casting votes on a qualified majority basis on European legislation proposed by the Commission. At the same time the Lisbon Treaty proposes to give the EU's Prime Ministers and Presidents, collectively termed the “European Council”, more political control over the post-Lisbon Union

6. Lisbon would create a political Government of the new Union

The Lisbon Treaty would turn the European Council of Prime Ministers and Presidents into an “institution” of the new Union (Art.13, amended TEU), so that its acts or its “failing to act” would, like the other Union institutions, be subject to legal review by the EU Court of Justice (Arts.263-265, TFEU).

Legally speaking, these summit meetings of the European Council would thereafter no longer be "intergovernmental" gatherings of Prime Ministers and Presidents outside supranational European structures, as they have been up to now. As part of the new EUs institutional framework, the Prime Ministers and Presidents would instead be constitutionally required to "*promote the Union's values, advance its objectives, serve its interests*" and "*ensure the consistency, effectiveness and continuity of its policies and actions*" (Art. 13.1, amended TEU). They would also "*define the general political direction and priorities thereof*" (Art.15.1, amended TEU).

The European Council would thus become in effect the Cabinet Government of the post-Lisbon Federal EU. Its individual members would, in constitutional terms, be obliged to represent the Union to their Member States as well as their Member States to the Union, with the former function having legal primacy in any case of conflict between the two.

As an Institution of the new Union, the European Council of Prime Ministers and Presidents would, for example, be open in principle to exhortation or direction from the European Court of Justice to initiate steps to harmonise indirect taxes which constituted a "*distortion of competition*", something that at present requires unanimity, if they were slow or reluctant to do this (Art.113 TFEU), or if they failed to take steps to ensure that the new Union's "*own resources*" were adequate to meet its objectives (Art.311 TFEU).

7. The federalist character of the new Union political President

The federalist character of the European Council "summit" meetings in the proposed new Union structure is further underlined by the provision which would give the European Council a permanent political President for up to five years - two and a half years renewable once (Art.15.5, amended TEU).

There is no gathering of Heads of State or Government in any other international context which maintains the same chairman or president for several years, while individual national Prime Ministers and Presidents come and go. The federalist character of the new Union President is emphasised also by the Treaty provision which forbids that person from holding any national office and which lays down that he or she shall "*ensure the external representation of the Union*"(Art.15.6, amended TEU).

It is part of the federalist evolution of the Union that the President of the European Council, the quarterly "summit" meetings of Member State Heads of State or Government, would no longer be a rotating Head of Government, but a permanent EU official. If the President plays this role effectively - including setting the agenda for legislation and representing the EU on the international stage - he or she is bound to assume increasing status and importance. As a result it would be surprising if there were not suggestions in due course that the President should be directly elected by EU citizens, as France's President Sarkozy has already urged.

8. The federalist character of the post-Lisbon EU Commission

As regards the EU's executive arm, the Commission, the provision of the Lisbon Treaty which would reduce the number of Commissioners by one third of its Member States (Art. 17, amended TEU) is a symbolically important move away from "intergovernmentalism", for that required that every Member State had one of its own nationals at all times on the body which proposed all European laws.

An additional move towards a Federal institutional structure is the provision of the Lisbon Treaty which would remove from Member States the right to "*propose*" members of the Commission - which ensures that each State can insist if need be on its proposals being accepted by the others as a condition for it accepting their proposals (Art. 214 TEC) - and its replacement by a right to make "*suggestions*" only, for the new Commission President to decide (Art.17.7, amended TEU). Again Ireland's Referendum Commission failed to make any reference to this significant treaty amendment in

the information material that it sent to voters before the June 2008 referendum. It used the word “*nominate*” for the two situations, as if there were no difference between a right to propose and a right to suggest.

The Treaty provides that individual Commissioners shall be chosen on the ground of their “European commitment” amongst other criteria (Art.17.3, amended TEU). The Commission President would also have the power to shuffle the portfolios of individual Commissioners and require them to resign at will (Art.17.6, amended TEU) These provisions would effectively give the Commission President powers equivalent to a national Prime Minister in the post-Lisbon European Union.

9. Lisbon would endow the citizens of the new Union with a code of civil rights

All States have codes setting out the rights of their citizens. The EU Charter of Fundamental Rights would be that for the EU Federation. It would be made legally binding by the Lisbon Treaty and would “*have the same legal value as the Treaties*”(Art. 6.1, amended TEU) . This further embeds the concept that EU citizens have rights and responsibilities defined by the EU itself which transcend those attaching to their national citizenship. Indeed it embodies the concept that the EU determines and is the guarantor of those European citizenship rights across national boundaries.

The Charter is stated to be binding on the Union's own institutions and on Member States in implementing Union law (*Charter of Fundamental Rights*, Art. 51). This limitation to EU law and to the EU institutions is unrealistic however because (a) the principles of the primacy and uniformity of Union law mean that Member States would not only be bound by the Fundamental Rights Charter when implementing EU law, but also through the “*interpretation and application of their national laws in conformity with Union laws*” (v. ECJ judgements in the *Factortame*, *Simmmenthal* and other law cases); and (b) the Charter sets out the fundamental rights of EU citizens in areas where the Union has currently no competence, e.g. outlawing the death penalty, asserting citizens' rights in criminal proceedings. In any case if Lisbon were to be ratified Union law would require that the rights set out in the Charter of Fundamental Rights would be guaranteed for 500 million Europeans in their capacity as real EU citizens for the first time. They would be part of their EU citizens' entitlements. There would be little point to the Charter otherwise. In implementing EU law Member States would be required to implement people's rights as EU citizens side by side with their rights as national citizens.

The EU has already got a human rights competence in that the Court of Justice can adjudicate on such rights as equality and non-discrimination under the existing Treaties. Therefore making the Charter legally binding does not extend the powers or competence of the Union as such. What Lisbon would do would be to give the ECJ a much wider range of human and civil rights to interpret and decide on.

If Lisbon were to be ratified it is only realistic to expect that the EU Commission would in time come to propose European laws to ensure the uniform implementation and guarantee of the EU citizens' rights provisions of the Charter throughout the Member States. The citizens of the new Union would surely demand no less. American constitutional history provides ample evidence of the radical federalising potential of the fundamental rights jurisdiction of the US Supreme Court. One can expect that things would be no different in a post-Lisbon EU.

10. Lisbon would make National Parliaments formally subordinate to the new Union

The Treaty underlines the implicitly subordinate role of National Parliaments in the institutional structure of the new Union by stating that "*National Parliaments contribute actively to the good functioning of the Union*" by various means which are set out in Article 12, amended TEU.

Under the pretext of enhancing the role of National Parliaments, the Lisbon Treaty actually institutionalises their subservience by defining such a limited role for them in the new Union's structures. National Parliaments must be informed of and may scrutinise draft EU legislative acts, but while the Commission is required to review the legislation if one third or more of National Parliaments object, the Commission can then decide to continue with the legislation unamended, with its decision confirmed by the normal QMV procedures (*Protocol on Subsidiarity and Proportionality*, Article 7.2).

Ultimately it is the EU itself, through the Court of Justice, which has the final right to arbitrate on claims of subsidiarity infringement (*idem*, Art. 8). This provision of the Treaty permitting National Parliaments in effect to complain to the Commission, is small compensation for the loss of democracy involved by the loss of some 68 vetoes by National Parliaments as a result of other changes proposed by the Lisbon Treaty. National Parliaments have in any case already lost most of their law-making powers to the EC/EU.

The citizens who elect them have lost their powers to decide these laws also.

11. Lisbon would give the new Union self-empowerment powers

These are shown by:

- (a) the enlarged scope of the Flexibility Clause (Art.352 TFEU), whereby if the Treaty does not provide the necessary powers to enable the Union attain its very wide objectives, the Council may take appropriate measures by unanimity. The Lisbon Treaty would extend this provision from the area of operation of the Common Market to all of the new Union's policies directed at attaining its much wider post-Lisbon objectives. The Flexibility Clause has been widely used to extend EU law-making over the years;
- (b) the proposed Simplified Treaty Revision Procedure (Art.48, amended TEU), which would permit the Prime Ministers and Presidents on the European Council unanimously to shift Union decision-taking from unanimity to qualified majority voting in the *Treaty on the Functioning of the Union*; and
- (c) the several "passerelles" or "ratchet-clauses", which would allow the European Council to switch from unanimity to majority voting in certain specified areas, such as judicial cooperation in civil matters (Art.81.3 TFEU), in criminal matters (Art.83.1 TFEU), in relation to the EU Public Prosecutor (Art.86.4 TFEU) and the Multiannual financial framework (Art.312.2 TFEU).

Conclusion: A Federation without democracy

It is hard to think of any area of national law which would be unaffected by European law in the post-Lisbon EU. It is hard to think of any major function of a sovereign State which the new EU would not have if the Lisbon Treaty were to be ratified. The main one would seem to be the power to make its Member States go to war against their will. The Treaty does however provide that the EU may go to war while individual Member States may "constructively abstain"(Arts.42-46, amended TEU).

The Treaty also contains a mutual defence clause (Art.42.7, amended TEU), which was so characterised by Commission President J.M.Barroso in a speech on the Treaty on 4 December 2007. This commitment to an EU "*mutual defence*" is to be distinguished from an obligation to participate in an EU "*common defence*", viz. a common European army, which Art.42.2, amended TEU lays down that the "*progressive framing of a common Union defence policy... will lead to*" (emphasis added).

The obligation on the Union to “provide itself with the means necessary to attain its objectives and carry through its policies”(Art. 311 TFEU), which means raising its "own resources" to finance them, may be regarded as conferring on it wide taxation and revenue-raising powers. This Article empowers the new Union to “establish new categories of own resources” and in effect to endow itself by means of any tax, so long as the Council of Ministers agrees that unanimously and it is approved by National Parliaments if that is constitutionally required in the states in question. If Lisbon is ratified no further treaties or referendums would be required to permit EU taxes. Currently public expenditure and the taxation measures needed to finance it remain overwhelmingly at National State level. This is because such social services as health, education, social security and public housing, as well as policing and public transport - the government functions which cost most money - are still mainly at this level. That too is normal in Federal States like the USA, Germany etc.

The Lisbon Treaty would shift power away from voters in all EU countries and from small and middle-sized countries to the largest ones. The post-Lisbon European Union would have its own government, with a legislative, executive and judicial arm, its own political President, its own citizens and citizenship, its own human and civil rights code, its own currency, economic policy and revenue, its own international treaty-making powers, foreign policy, foreign minister, diplomatic corps and United Nations voice, its own crime and justice code and Public Prosecutor. It already possesses such normal State symbols as its own flag, anthem, motto and annual official holiday, Europe Day - 9 May - when it commemorates the 1950 Schumann Declaration proposing the European Coal and Steel Community as "*the first step in the federation of Europe*", although these symbols are without a formal legal basis in the Treaties. This is one small difference between the 2004 Constitutional Treaty and the Lisbon Treaty.

As regards the State authority of the new Union, this would be embodied in the Union' s own executive, legislative and judicial institutions: the European Council, Council of Ministers, Commission, Parliament and Court of Justice. It would be embodied also in the Member States and their authorities as they implement and apply EU law and interpret and apply national law in conformity with Union law. Member States would be constitutionally required to do this under the Lisbon Treaty. Thus EU "State authorities" as represented for example by EU soldiers and policemen patrolling our streets in EU uniforms, would not be needed as such.

Allowing for the special features of each case, all the classical Federal States which have been formed on the basis of power being surrendered by lower constituent states to a higher Federal authority have developed in a gradual way, just as has happened in the case of the European Union. The USA, Switzerland, Canada and Australia are the best-known examples. None of these came into the world as fully-fledged sovereign States. Indeed the EU has accumulated its powers much more rapidly than some of these Federations - in the short historical time-span of some fifty years.

However, the key difference between these classical Federations and the proposed new European Union is that the former, once their people had settled, share a common language, history, culture and national solidarity which gave them a democratic basis and made their State authority popularly legitimate and acceptable.

All stable and long-lasting States are founded on such communities, where people speak a common language and mutually identify with one another as one people. Because of this mutual identification, solidarity and community feeling, minorities are willing freely to obey majority rule while majorities are willing to respect minority rights. The Treaty of Lisbon, like the EU Constitution before it, is an attempt to construct a highly centralised European Federation artificially, from the top down, out of Europe's many nations, peoples and States, without their free consent and knowledge and in the interest of the Big States which would dominate its subsequent policy-making.

If it is accepted in our second referendum, it will signal the end of the sovereignty established by the proclamation of the Irish Republic in 1916, its declaration in 1919

(Dáil Éireann - Volume 1 - 21 January, 1919 Whereas the Irish people is by right a free people: And Whereas for seven hundred years the Irish people has never ceased to repudiate and has repeatedly protested in arms against foreign usurpation)

and it's confirmation in April 1949. It may have taken over 800 years but it can be undone in a short sixty.
