

Tory ‘renegotiation’ is a slogan not a policy

the Cameron approach does
further damage to Britain’s
‘broken politics’

Gerald Frost



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About the Author

Gerald Frost is a senior journalist, author and speechwriter who has written widely about domestic and international politics. Gerry was Director of the London based Centre for Policy Studies from 1992 until '95 and head of the Institute of European Defence and Strategic Studies, which he founded in 1981. Gerald Frost has edited more than 70 books and monographs, and written widely in the international media.

He was also the editor of the Eurosceptic magazine *Eurofacts*.

Introduction

David Cameron's decision to renege on his "cast-iron" guarantee to hold a referendum on the Lisbon Treaty has evidently disappointed a great many people, but will have surprised relatively few. The way had been carefully prepared by William Hague who had conceded many months earlier that it might not be possible to hold a referendum if the treaty had passed into law by the time a Conservative government took office.

While the Cameron *volte face* probably means that the European problem has been temporarily defused, his decision to backtrack will have a number of undesirable consequences: it will add to the public's profound cynicism about politics – a subject which the Tory leader has repeatedly promised to address – and it will make the task of "renegotiation" considerably harder, perhaps even impossible, to achieve.

Cameron is not the first party leader to try to square the press ahead of an important policy reversal but reports that the Tory leader's decision followed extensive negotiations with executives of News International suggests that the stage has been set for a continuation of a style of post-democratic politics with which the Tory leader had promised to break. *The Sun*, in whose columns Cameron had originally promised to consult the people and which went on to switch its support from Labour to Conservative, was in a strong position to level charges of betrayal and dishonesty in banner headlines. Instead, after insisting that it "bowed to no one in our opposition to a European super-state," *The Sun* praised Cameron's "realism" and turned its fire on the Labour Party for its "abject act of treachery over Europe."¹ Similar views were expressed in the editorial columns of *The Times*.

This episode has inevitably reinforced the impression that on EU-related issues the British people have been effectively disenfranchised; the gulf between Britain's political elites and the electorate has consequently

1 "Traitors' fate", leader, *The Sun*, 4th November 2009.

yawned still wider. In the circumstances, the comments of the *Daily Mail* columnist Peter Osborne seem entirely apt: “This is a cop-out and a betrayal... This is exactly the kind of post-democratic politics which defined, debased, and finally destroyed, the Blair premiership. It is greatly to be feared that a pattern has been set for the future. Nevertheless, the Tory party’s alliance with the Sun means that the European problem has been shelved for the time being.”²

Cameron’s promise to Sun readers was made in September 2007 at a time when the Tory leader was trailing in the opinion polls and his hold the leadership of his party relatively weak. Recent news comment has overlooked the fact that Cameron repeated his unqualified promise of a plebiscite on the Treaty as recently as May this year. The timing of his remarks is again significant since these came just a few days before the 4th June 2009 elections to the European Parliament. In a speech about the importance of honesty and integrity in politics and of reengaging the ordinary citizen in the political process, he stated:

*“A progressive reform agenda demands that we redistribute power from the EU to Britain and from judges to the people. We will therefore hold a referendum on the Lisbon Treaty, pass a law requiring a referendum to approve any further transfers of power to the EU, negotiate the return of powers, and require far more detailed scrutiny in Parliament of EU legislation, regulation and spending.”*³

Writing on his blog the following day, Mark Mardell, then the BBC’s European Editor commented “... surely in a speech which was about the importance of honesty and transparency for politicians, Mr Cameron would not have been less than straightforward? Whether he meant it or not it is now on the record: in government the Conservatives will hold a referendum on the Lisbon Treaty, no ifs, no buts.”

2 Peter Osborne, “Cameron has only himself to blame for this mess on Europe,” *The Observer*, 2nd November 2009.

3 David Cameron, speech entitled ‘Fixing Broken Politics,’ 26th May 2009

What Cameron might have said

A decision to press ahead with plans for a referendum on Lisbon would have enabled Cameron to say:

“This referendum is taking place because I believe that the British public can no longer be excluded from discussions about Britain’s political status in Europe. I gave an unqualified promise that there would be a referendum on this matter and I am sticking to my word. A no vote will not by itself allow us to escape provisions in the treaty which we do not like. Lisbon has been ratified by Parliament and a no vote will not de-ratify the treaty. What it will do is to give the people the opportunity to say what they think of the treaty and, more generally to express a view about the on-going process of European political integration. Most importantly, a referendum will strengthen the hands of my negotiating team in seeking to take back powers which have been transferred from our national parliament to the political institutions of the European Union. I believe this factor will weigh on people’s minds when they come to vote. I am also conscious of the fact that were I to go back on my promise I would be rightly condemned for an act of cynical opportunism and this would damage my authority in Europe and more widely. I do not believe that this would be in my party’s best interests or those of the country.”

Whatever else Mr Cameron’s announcement of 4th November 2009 has achieved it has ensured that his future statements on EU matters will be treated with profound scepticism at home, while Europe’s political elites are likely to conclude that he is a flexible pragmatist of a recognisable kind.

The problem of renegotiation

In rejecting both a referendum on Lisbon and on the specific demands for a renegotiation Cameron has made the attainment of his stated goals considerably more difficult. These are the repatriation of powers in the

areas of employment and social affairs. Cameron's supporters have argued that his promise to include these in the party's general election manifesto would strengthen the hand of British negotiators in much the same way as a favourable referendum outcome. But a party manifesto which covers all policy areas is a much blunter instrument than a referendum dealing specifically with European matters. Lord Tebbit has suggested that a referendum on proposals to seek the return of specific powers might be expected to attract the support of sixty to seventy per cent of those voting. Even if Mr Cameron is swept into office with a substantial majority this would be a larger number than would have cast their vote for the Tory party in a general election. Moreover, the growing number of voters who feel strongly about the loss of national sovereignty to EU institutions will not have forgotten that all of Britain's main political parties promised referendums on the EU constitution in general election manifestos – and all have betrayed that promise. A manifesto commitment to renegotiate the terms of British EU membership would not impress them any more than it could be expected to impress those in Europe with whom ministers in a Cameron government would have to negotiate in order to claw back powers from EU institutions. Some legal experts point to the virtual impossibility of a successful renegotiation. According to Damian Chalmers, Professor of European Law at the London School of Economics: "If Britain did not have this [the support of all other members in seeking to renegotiate existing EU treaties], it would be tantamount to withdrawal."⁴ Experienced political commentators such as William Rees-Mogg have suggested that the present train of events means that this may indeed be the direction in which Britain is now heading, although it is possible that Cameron's speech may have encouraged him to change his mind.⁵ Existing treaty provisions specifically allow for renegotiation and it is not true, as Professor Chalmers suggests, that Britain must simply take or leave it. However, the process of

4 Damian Chalmers, "Only opt-out left to Tories is a farewell to Europe," *Daily Telegraph* 3rd November 2009

5 William Rees-Mogg, "Miliband for Brussels, Mandelson for Labour," *The Times*, 2nd November 2009

renegotiating an EU treaty is complex and cumbersome and the chances of success in present circumstances must be regarded as slim.

The history of the EU to date suggests that a demand for the repatriation of powers on the scale currently contemplated by the Tory leadership would be met with strong initial opposition and hostility from the Commission as well as from France and Germany, which is what indeed seems already to be happening. Opponents of the British proposals will understandably fear that to accede to these would cause the entire EU treaty system to unravel. They could also be expected to point to existing British opt-puts as evidence of their past readiness to acknowledge particular British concerns. Such resistance will provide a demanding a test of Cameron's resolve. Some support for the British position might be forthcoming from those countries which have suggested that the process of European political integration has gone too far, notably Poland, Italy and the Czech Republic, although Lord Tebbit may well be overly sanguine in supposing that this could prove to be of major assistance.

Under EU treaty law the matter would ultimately be decided in one of two ways. Under the Ordinary Revision Procedure a Convention would be convened to consider the proposed changes before they were referred to an Inter Governmental Conference (IGC) where decisions are taken by unanimity. The second approach, the inaptly named Simplified Revision Procedure, enables the European Council to adopt changes to Part Three of the Treaty on the Functioning of the European Union (TFEU) which concerns Union policy and internal measures; these would come into effect once all member states had ratified them in accordance with their constitutions. A variation on this second procedure involves the general *passarelle*⁶ clause which enables the Council to agree by a unanimous decision to change the voting system to permit majority voting on changes to the TFEU.

Whatever procedure were to be used, it is clear that Britain would need the support of all of the 26 other EU members if were to be confident of even a measure of success. At an IGC it would be open to all members to propose

6 *Passarelle* means gangway or footbridge.

changes in line with their own national interests and objectives. This process would involve complex trade-offs. Some of the proposals tabled by other members would almost certainly require the surrender of national powers in other areas. Were Cameron to overcome initial opposition to his proposals the British government could expect, at best, to achieve only some of its demands – a number of which might already have been watered down during prior political and diplomatic exchanges – without any guarantee that Britain would gain more than it lost in terms of national sovereignty.

William Hague has suggested that future changes to the treaty in line with British demands could be adopted by means of protocols attached to a future treaty of accession – in the same way that the concessions made to Ireland prior to the Irish referendum of October 2009 are to be dealt with. This would have the effect of simplifying matters in procedural terms, but such changes would still require the approval of all other members, and it is difficult to see why those who have already indicated their strong opposition to British demands, including France and Germany, should wish to accommodate Britain in this way. Indeed it seems far more likely that they would seek to maximise the practical problems that would need to be overcome if those demands were to be met, unless of course, British negotiators had already signalled their readiness to accept changes that were slight or merely cosmetic.

It also needs to be borne in mind that the matters on which Britain wishes to seek a new deal are themselves highly complicated. They involve hundreds of directives and regulations on such diverse and complex matter matters as industrial relations, citizenship, the single market, health and safety, law and justice.

Current political and economic realities suggest that while Britain's principal EU partners would dread the prospect of further negotiations arising from British demands, they would also regret the departure of Europe's second biggest paymaster. Although there is no question of EU members agreeing fully to Cameron's proposals, it is therefore possible that some concessions might be forthcoming if he is tenacious and ferociously single minded. Given

his need to maintain electoral support these would need to be sufficient to enable him to claim that he had fulfilled his manifesto pledge. Even allowing for the creation of a Downing Street spin machine comparable in ruthlessness and efficiency to that presided over by Alastair Campbell, the British public are not likely to be easily deceived. The EU looms much larger in the lives of ordinary citizens than in the mid- 1970s when Harold Wilson convinced many people that he had substantially improved the terms of British membership prior to the 1975 referendum (it subsequently became clear that the changes achieved during negotiations were very modest indeed). They have also grown wearily accustomed to being misled on all EU matters to an extent which Kenneth Minogue has described as going far beyond the normal half truths and evasions of political life.⁷ Cameron's 4th November speech will have added to their sense of wariness and distrust.

It also doubtful whether the promise not to rush matters or to start "bust ups" with our European partners will assist the prospect of a successful renegotiation. To give advance warning that Britain is not prepared to fight to regain sovereignty, combined with the decision to rule out a referendum in the foreseeable future– the one thing that, short of a decision to evoke the exit clause in the treaty would have given real authority to British demands -- is likely to be taken as evidence of naivety or weakness. In the past, ministers have been forced by circumstances to enter the negotiating chamber naked; the Conservative leadership is surely unusual in offering to do so following a voluntary striptease.

Cameron's position on Europe also reinforces the impression of him as a flexible pragmatist. What Peter Jay has referred to as the "screaming woman school of diplomacy" – a combination of obduracy, a high decibel count and bloody mindedness – has often worked in the Council of Europe when employed by the French. It was the secret of Mrs Thatcher's success in obtaining Britain's rebate. The Tory leadership has frequently referred to the rebate as evidence that determined leadership can get a better deal

7 Kenneth Minogue, Limits to Integration in Hubris: *The Tempting of Modern Conservatives* ed. Digby Anderson and Gerald Frost, Centre for Policy Studies, 1992

for Britain. It remains to be seen whether Cameron and Hague's vague, easygoing, painless, sotto voci, let's sort it out later approach will work nearly as well. However, to criticise the Tory leadership for trying to "park" the European issue is not to doubt the wisdom of concentrating on a relatively small number of priorities at a time of acute economic difficulties; rather, it is to doubt the wisdom of excluding from its priorities an issue which impinges on every policy area including our national economic well-being.

Cameron's other promises

If Cameron has failed to present a credible account of how an incoming British government would successfully repatriate powers from Brussels to Westminster, to what extent will his other commitments satisfy eurosceptic concerns?

His promise to amend the European Communities Act of 1972 to prohibit, by law, the transfer of power to the EU without a referendum is welcome – if at least twenty years late. Roger Helmer, the eurosceptic Conservative MEP has compared it to a burglar alarm which goes off a long time after the burglar has left with the silver. Given that most of the building blocks needed to create a unitary European state are now in place the description seems apt. Moreover, the recent experience of Ireland, which possesses just such "a referendum lock," demonstrates that it is not an infallible means to protect national sovereignty. Unless given determined and consistent political leadership voters may well vote against further transfers of powers only to change their minds as a result of threats and blandishments.

Mr Cameron has also promised a Sovereignty Bill "to make it clear that ultimate authority stays in this country, in our Parliament." In fact, the Lisbon Treaty, which will shortly come into force, includes a Declaration confirming the primacy of EU law over national law. Where disputes occur these will be resolved by the European Court of Justice whose obligations include the promotion of European political integration. The primacy of EU

law was established by a Court of Justice case, *Costa v. ENEL*, Case 6/64. Declaration 17, which is included as an appendix to the Lisbon text, states that while the principle that EU law should have primacy over national law is not referred to in the text, this does not affect its existence.

Anxious to demonstrate that the “final word” on our laws remains here in Britain, Mr Cameron says that a Sovereignty Bill “would simply put Britain on a par with Germany where the German Constitutional Court has consistently upheld – including most recently on the Lisbon treaty – that ultimate authority lies with the bodies established by the German Constitution.” In fact, after spending many months of examining the text of the Lisbon treaty during the course of 2009 the German Constitutional Court found no incompatibility between the treaty text and German Basic law. Its only recommendation was to suggest changes in German law to enhance the role of the German parliament in the decision-making process. The nub of its argument was that contrary to the claims of those who had petitioned the court, the EU was not a state – although the court accepted some of its institutions were “analogous to those of a state.” Rather, it was an association of states and consequently did not threaten national sovereignty. Given the existence of Declaration 17 on the primacy of EU law, it is difficult to see how the Court reached its decision. It is also difficult to see why German decision-making powers need to be strengthened if, as the court suggests, the EU is merely an association of independent states. Those reading Mr Cameron’s speech might well conclude that a Sovereignty Bill would have enabled Britain to reject the Lisbon Treaty or to force revisions to its text, but they would be wrong to do so. If constructed on similar premises to the German court it can’t be taken for granted that a British constitutional court would have raised objections to the Lisbon Treaty or that it would necessarily oppose EU treaties involving transfers of power from Britain to the EU in the future. It is worth noting that the Czech constitutional court proved as malleable as its German counterpart, thus enabling President Klaus to formally ratify the Treaty in November 2009. The historical record would seem to suggest that whenever and wherever legal impediments to European political integration have been

identified these have usually yielded to political pressure: in the EU politics customarily trumps the law, a process which is likely to continue.

Mr Cameron also sought to reassure eurosceptic opinion by promising legislation to prevent the self-amending clauses in the Lisbon treaty (the so-called *passarelle* or ratchet clauses) being used to hand over more powers from Britain to the EU. These allow the European Council to move from decision-making by unanimity to majority voting in particular areas. However, such a decision can only be made with the consent of all member states. Unless, of course, Mr Cameron envisages circumstances in which a British government would hand over powers to Brussels without parliamentary approval the safeguard which Mr Cameron seeks is unnecessary. Either Mr Cameron has not understood the treaty or he is exploiting the opaque nature of the text in order to offer an assurance which sounds good but will in fact make no difference

Conclusion

The objective of renegotiation, as described by the Conservative Party leader in his speech of 4th November 2009, will be exceptionally difficult to achieve, and will be made still more difficult by the manner in which it is to be pursued. This has confirmed the impression that Mr Cameron finds it inconvenient to think seriously about “Europe” and does not expect it among his priorities for the foreseeable future. A referendum on the Lisbon treaty would not have had the effect of exempting Britain from the treaty provisions but it would have served to strengthened the hands of the British negotiators in seeking to return powers from Brussels to Westminster; a referendum on specific proposals to renegotiate the terms of British membership would have a similar effect. Both courses of action would provide a stronger mandate made for renegotiation than a commitment made in a general election manifesto. In rejecting a referendum, Mr Cameron is perpetuating a style of politics which effectively disenfranchises the British people on EU and related issues; this will

have effect of increasing the deep mood of public cynicism with politics generally. In signalling his intention to relegate “Europe” in the priorities of an incoming Conservative Government and to avoid conflict he will have convinced European political leaders that he is a flexible pragmatist – more John Major than Margaret Thatcher. Were the British proposal for returning powers to be discussed at an IGC other states would be free to table their own proposals, some of which might very well involve losses of national sovereignty in other areas. Whether such a process would lead to a net gain or loss of sovereignty must therefore be regarded as uncertain. Mr Cameron’s proposals to prevent further transfer of powers to Brussels are unimpressive. His proposed legislation to guarantee the primacy of British law contradicts the Lisbon Treaty which confirms the primacy of European over national law; where disputes occur decision lies with the European Court of Justice. The creation of a British constitutional court offers little in the way of reassurance. While it might put Britain on a par with Germany in the way that Mr Cameron suggests the German court did not attempt to challenge the Lisbon Treaty in any respect; the Czech constitutional court proved equally supine. The promise of a referendum on further transfers of power would be welcome if it were not 20 years late: the construction of a unitary European state is now nearing completion. The guarantee that the so-called *passarelle* clauses will not be used to transfer powers by majority voting in the Council is unnecessary since it effectively duplicates existing arrangements and its inclusion in the Cameron action list may be merely be a matter of cosmetic. While Mr Cameron may have defused the European issue for the time being, he has only achieved this by storing up immense future problems. Until he, or some other political leader, can find away to reengage the electorate in the decisions over Britain’s political future and shapes policy accordingly, British politics will remain “broken.” Indeed, his present approach to the issue has rendered it further injuries.

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