

**Sovereignty, democracy and constitutions:  
finding the right formula**

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I come from a country with no written constitution, representing a union with no explicit constitution. It would be the height of temerity for me to lecture on this subject a nation celebrating the centenary of its own constitution. So I won't. Instead, I'd like to turn the situation around.

As the EU increases its fields of action, and asserts itself more on the global stage, it is fuelling an increasing amount of soul-searching and debate in Europe. Does the EU suffer from a democratic deficit? What are the implications for national sovereignty? Will a written constitution bestow greater popular legitimacy? These are serious questions, and the answers may have even more serious implications. My own view, as I shall argue later, is that Europe can learn lessons from Australia's own growing pains. After all, you tackled more than a century ago many of the debates that we in Europe are launching today.

The question of sovereignty, and how it is gained or lost, can often seem the slipperiest of them all.

### **Ideas of sovereignty**

Up until the Middle Ages, things were much simpler. God was sovereign, and that was all you needed to know. Biblical passages like Psalm 24 (*'the Earth is the Lord's and everything in it, the whole world and all who live in it'*) offered soothingly emphatic confirmation of this. Few temporal leaders would dare usurp God's position at the top of the body politic. This gave the Church a central place and enormous influence in affairs of state.

Later, God was good enough to delegate. He kept things simple by investing sovereignty in monarchs. Now they, and they alone, had absolute power within their territories. And they were at pains to stress that this monopoly of sovereignty was a 'divine right'. Laws may now have flowed from human words and deeds, but for any pretender thinking of causing trouble, such laws were still seen to be the expression of God's will.

As the Enlightenment swept through Europe, the world of absolutes began to slip away. The concept of sovereignty started to mutate and become more complex. Ideas of popular will, individual rights and 'parliamentary sovereignty' slowly gained a foothold across Europe. Things were no longer so simple.

One early trailblazer of the new thinking was that famous son of a West Country tax collector, John Locke, who said: 'The only way by which anyone divests himself of his natural liberty and puts on the bonds of civil society is by agreeing with other men to join and unite into a Community'. When Locke said this, I am reasonably sure he did not have in mind a Community which will eventually stretch from Dublin to Tallinn, and from Malaga to Ankara.

But I **am** sure that he was recognising an essential truth about sovereignty, and the way in which it is bestowed on other people and institutions. What is implicit in Locke's words are the ideas developed later by his spiritual successor, Jean-Jacques Rousseau. **People willingly give up their natural liberty in order to create a wider sovereignty capable of delivering real benefits in return for that sacrifice.** It's the celebrated social contract. A straight swap between natural liberty and civil liberty. Between a pre-civilised world where one's actions are only limited by one's strength relative to others,

and a civilised world, where action is reined in by the consideration of the common good and the general will.

To put it another way, there is a difference between *de jure* sovereignty and *de facto* sovereignty. And yet despite that difference, these two terms are often mistaken for each other, which causes much of the confusion that laces any debate on the subject. So what do I mean by them?

***De jure* sovereignty** is supreme, unchallenged, legal authority. It's a nice idea in theory, but the difficulties start when people fail to imagine there is any other sort.

The problem is, there has never been any such thing as absolute sovereignty. Even in the days of all-powerful monarchs, there by divine right, there were limits to what they could do in practice. They had to keep their barons in check, they had to stay on the right side of the Church, on rare occasions they even had to spare a thought for the peasants. Very basic transport and communication technology also placed natural limits on what they were capable of doing.

What was true then was doubly true during the Enlightenment, and became blindingly obvious during the growth of democracy and then globalisation. Sovereignty in the sense of unfettered freedom of action is a nonsense. States cannot possibly hope to do everything alone, in glorious isolation. If the state concentrates its efforts on preserving absolute freedom of action and yet is unable to deliver on the things that matter, then its actions are not only futile, it is betraying the bargain it has entered into with its own people.

***De facto* sovereignty**, on the other hand, is altogether more practical. It is about taking control of events, inducing men to take a desired course of action hopefully for the benefit of all. I think Locke was recognising that *de jure* sovereignty must, to a greater or lesser degree, be shared in order to ensure effective, *de facto* sovereignty. Put simply, people can achieve more together than they can alone.

## **The Schuman contribution**

As we shall see, Schuman also recognised this. So I would like now to focus some attention on the man whom this lecture honours, and on his extraordinary, revolutionary plan to solve the problems of the post-War period in Europe.

Schuman was born in a part of France which at the time was a part of Germany. He studied in Germany and became a French minister. He spoke French, but with a German accent. He quite literally personified the Franco-German reconciliation which his plan, to pool coal and steel production, was designed to secure. And his crucial insight was that France and Germany, and any other country which signed up to this plan, would have to be treated as *equal* partners if the more peaceful Europe he hoped to create was to have any chance of enduring.

Let us not ignore the significance of this. The attitude of some countries after World War I, including France, was to place severe restrictions on Germany's sovereignty and take full, vengeful advantage of the unequal power balance which resulted. It is easy to talk with hindsight, but few would disagree that this was a serious mistake. It directly contributed to the factors which led to the outbreak of the Second World War, and many

more lives were subsequently lost, including Australian ones. Incredibly, when it was all over, some politicians showed every sign of wanting to repeat the same mistakes, for example during the debate over the future of the Saarland.

In effect, Schuman had recognised that there were limits, sometimes dangerous limits, to attempts by nation states to preserve an inviolate, *de jure* sovereignty. And he was prepared to risk the wrath of his colleagues and the end of his political career to turn this insight into action.

Just as Locke's 'anyone' and 'other men' had compromised their own absolute sovereignty to form communities and nations, so Schuman, with brilliant foresight, recognised that the moment had arrived for nations themselves to enter into a new social contract. Not just one-off deals, or temporary alliances of convenience, which had existed for a long time already. He wanted to see a 'locking-in' of states into a comprehensive, legal and institutional framework which would alter their relationship forever. It was time for those nations to share their sovereignty on a permanent basis, in equal partnership, in return for real benefits.

At the time, those benefits were peace and stability. They still are. The formula has already worked its magic over the central and eastern European countries that are lining up to join the EU. With a bit of luck and plenty of hard work, we hope to spread the effect over the Balkans in the coming years, through the Stabilisation and Association Agreements that we have started to negotiate with them.

But the mechanism has also proved its flexibility, because today, as well as establishing the EU as a beacon of stability, it is also helping Member States to face up to the new challenges thrown up by globalisation. Challenges like drug and people trafficking, global epidemics, environmental problems - things that no single nation can hope to solve alone. *De facto* sovereignty, gained by sharing *de jure* sovereignty, is restoring to our institutions the ability to deliver on their side of the social contract. To make Europe safer, healthier, more secure and prosperous for its people.

Of course there are those, more than 50 years on, who have still not caught up with Schuman's vision. Who still think that sovereignty is all or nothing, something to be locked up and stowed away in a dark cellar lest it be violated by barbarian hordes of constitutional lawyers.

This is silly, and I suspect that deep down, many of those whose views are based on such a premise know it. One of the more famous British Prime Ministers of the post-war period said quite emphatically during Britain's 1975 referendum on Europe: '*Almost every major nation has been obliged by the pressures of the post-war world to pool significant areas of sovereignty so as to create more effective political units.*'

Times move on, and you may now be surprised to learn which Prime Minister uttered this perceptive observation, so I won't spoil it by telling you her name.

But this is not just about the EU. Everywhere you look today, nations are willingly taking on commitments and obligations which limit their freedom of manoeuvre.

This is not some sinister scheme to be resisted. For the most part such obligations spring from very sensible agreements that deliver clear and quantifiable benefits in return. The

WTO and its GATT predecessor, for example, have provided a framework of legal certainty which has allowed world trade and prosperity to balloon.

The United Nations commits all its members to the values of human rights and democracy through the Universal Declaration of Human Rights an important reminder that these are not just western values. It does this with mixed results, admittedly. But it has at least created a certain dynamic which has often curbed the worst excesses of those who measure their sovereignty in blood and suffering.

And membership of NATO is perhaps one of the most extreme examples of sovereignty compromised for the greater good. Nineteen nations are committed to collective defence, under a US commander, if one of them is attacked. The ability to decide when and against whom you go to war, and to command your own troops, strikes at the heart of what it means to be a sovereign nation. But the incalculable benefit of this unusual pact has been more than 50 years of peace and security.

But when it comes to Europe, Britain in particular often seems to be peculiarly sensitive to compromising its *de jure* sovereignty by pooling it with its neighbours to greater *de facto* effect. And if you travel back to the origins of the EU, it is clear that British scepticism was there from the start. The British never thought the Founding Fathers would reach agreement, and once they did they never thought it would work.

Some still persist, against the evidence. For example, many opponents of the EU like to highlight the example of Norway and Switzerland as evidence that the UK could survive and even prosper if it decided to go it alone. But that misses the point. Of course the UK would survive, perhaps it might even prosper (although much of Norway and Switzerland's prosperity can be traced to unique circumstances which do not exist in the UK). Those who bandy around scare stories about economic meltdown and catastrophic decline exaggerate, and in the process harm their case.

In the event of British withdrawal, there might be a modest increase in unemployment, interest rates may have to go up, hitting families with mortgages, and inward investment could dip. Hardly reasons for taking to the nuclear bunkers.

No. That is not the point. Instead EU opponents should step back and ask themselves with a cool head: 'By seeking to preserve our *de jure* sovereignty, will we maximise our *de facto* sovereignty? Will we have greater control over our own destiny?'

The answer, undoubtedly, is no. Let's take a closer look at the countries I just mentioned. The Swiss government's membership application is technically still on the table. The Norwegian government has twice negotiated to join the EU. Why, if the grass is so much greener on their side of the EU fence?

A common thread links them both. It's the same thread which once linked Britain, Portugal, Austria, Sweden, Finland and Denmark, who all jumped ship from the much less sovereignty-hungry European Free Trade Association, to join the EU. Quite simply, Europe's political centre of gravity had shifted. They were all, and in the case of Norway and Switzerland still are, frustrated at having to follow laws and regulations they had no role in shaping and no possibility of blocking.

The unpalatable but unavoidable truth for opponents of the EU is that there is little point in battling hard to preserve theoretical sovereignty whilst losing much of the real thing.

## **Problems of legitimacy**

And yet despite the advantages of sharing sovereignty within the EU, it is obvious that many people still feel somewhat sullen about the whole project. And the problem could be getting worse. There is a perception that Europe is less and less connected to the people it serves, and this is beginning to manifest itself in increasingly worrying ways.

When elections were first held for the European Parliament in 1979, overall voter turnout stood at 63%. Since then it has steadily and constantly declined, culminating in the last election two years ago when turnout dipped marginally below the psychologically important 50% line.

By voting no in referenda on further integration, the Danes have twice struck blows against their leaders who were unable to carry public opinion with them. Even in some candidate countries, particularly the Baltic States, support for membership of the EU has been falling recently.

There are many reasons for this trend, some of them justified, some less so.

First of all, the factor which has the most corrosive effect on people's perception of the EU is what one might call the 'blame Brussels' syndrome.

From the beginning, and despite the constantly growing importance of the European Parliament, the Council of Ministers has been the principal legislature of the EU. As you know, it is where most of the decisions are taken and most of the bargains are made. For decades, it has suited national ministers who meet in the Council to claim personal credit for all that is good, and blame 'Brussels' for anything likely to receive less than universal applause once they return home to their national capitals.

As a politician myself, I understand the temptation. But we must recognise the dangerous, long-term effect of making Brussels a dirty word. Of painting it as the root of all evil, as something out of ministers' control, as 'them', not 'us'.

A second reason for public alienation is the feeling that the EU often fails to deliver. It seems perverse that one day the EU can be painted as a sinister, all-knowing, organisation meddling in every sphere of life and systematically destroying all national differences while the next day it is a bungling, amateurish outfit which can't do anything right.

But the fact is the EU can count some failures among its undeniable successes. It failed to stop the Balkans sliding into anarchy and war during the ill-fated 'hour of Europe'. And although it accounts for more than half of all official international development assistance and some 66% of all grant aid, its record on timely delivery of that assistance leaves much room for improvement

There has been improvement. External assistance is now one of my responsibilities, and my staff and I have invested a lot of energy into overhauling the whole management and delivery of the aid program. The changes now in place are already beginning to bear fruit.

The rapid progress the EU has made in the field of security and defence also bears witness to our determination to do things differently when Europe's next hour comes along, as come along it will.

But it is human nature to feel closer to your national government, and more indulgent of its occasional failings, than to an institution based many miles away in a foreign country.

Which leads me neatly to the third, and for me the most intriguing and challenging reason, for most people's lukewarm attitude towards this grand experiment in sovereignty sharing. There is clearly a lack of emotional commitment to the EU.

It is hard for some to believe, but there was a time when the United Kingdom was a grand experiment in sovereignty sharing. It was created by an Act of Parliament exactly 200 years ago. We can go back even further to a time when those ancient nation states of Europe, England and France, did not exist in a unified form.

And yet people learned to develop intense affection and loyalty to these political units and their symbols. Hearts swell at the sight of their flags and lips quiver at the rousing strains of their national anthems in a way they never will at the sight of the Treaty on European Union, or the latest fishing quotas.

So what caused these emotional attachments to develop? Can politicians reproduce those processes today to connect people's hearts and minds to the supranational EU?

Sadly, I don't think so. In centuries past, a part of national unity in many countries was forged in the furnace of shared suffering and wars against common enemies. Jingoism and propaganda provided irrational spice to the heady, emotional brew. No one would want to recreate those conditions today.

Geography also plays a part, and language and culture do, too. It is only natural that people find it easier to form attachments at a local level - to family, friends, villages and towns. It is much harder to form attachments to larger groupings. And with the advent of globalisation, more and more international organisations are finding themselves faced with this same problem. For all the good and essential work they do, there will never be a WTO football team, cheered on by thousands of fans in the World Cup. The first nation to win the race to put humans on Mars is unlikely to insist that the UN flag be planted into the alien, red soil. And I don't recall a team proudly representing the IMF at the Sydney Olympics.

Many commentators have said that people could learn to love the EU if it had greater democratic legitimacy. This is not a new idea, and to an extent I am sure they are right. People must have a say at every level of government, and feel that they have a say. Otherwise the day may come when they look at Brussels and decide that this particular social contract is more trouble than it is worth, and break it.

The question is, how do you inject greater democracy and legitimacy into an organisation that has no natural 'demos', in the sense of a cohesive grouping of people?

And let's not forget that there is unquestionably much democracy already there. The European Parliament is the only directly elected multi-national assembly in the world. The Council is filled with elected ministers, and Commissioners are chosen by elected governments and then approved by the Parliament. At every level, our programs and decisions are subject to scrutiny, which is as it should be.

Going further than this, for example by drawing Commissioners and the Commission President from the ranks of elected members of the European Parliament, would ironically horrify many of those who are most vocal in their criticism of the so-called 'democratic deficit'. So the problem remains.

### **The Australian example**

The danger of the 'demos' not having an emotional commitment to any constitutional settlement was one the Founding Fathers of Australia fully understood.

First, there were lengthy debates about how to assure the legitimacy of any constitution. Some thought the people should have the primary role in deciding what sort of constitution they want. Others were convinced that the colonial legislatures should make all the decisions on the people's behalf. Not one, but several conventions were held, culminating in the Adelaide Convention in 1897. And unlike previous ones, this convention consisted of delegates elected directly by the people.

And the care taken by people like Alfred Deakin to secure the hearts and minds of the emerging Australian people did not end there. For the next two years, referenda were held across the colonies. Once accepted, Deakin even led a delegation to London to have the Commonwealth Bill enacted by Westminster. He was determined to ensure that the new constitution was infused not just with democracy, but also with the legitimacy bestowed by sovereignty stretching back for centuries. Thus, in his own words, by 'a series of miracles', six colonies became a federation.

I am ill-qualified to turn this into an Australian history lesson, especially in such illustrious company. But the point I am trying to make is that we Europeans can draw lessons from Deakin and his colleagues. They made sure all Australia's people had an emotional bond to the constitution and government. And they clearly succeeded despite it being a new entity, and almost 2.5 times bigger than the EU today.

I am not saying that Europeans should follow this road map exactly. After all, we are not trying to build a nation or, to borrow the Europhobic jargon, a "Superstate". Even talk of a constitution is perhaps premature. But 50 years after Schuman's famous declaration, it is time to think about how to control and legitimise the structures we have. To connect national political institutions to supranational ones. To win over the hearts and minds of those alienated by the whole process.

### **New developments in Nice**

The European Council in Nice last December finally recognised the importance and scale of this task, and made concrete decisions to turn ideas into reality. It called for an intergovernmental conference in 2004 which will make decisions in four key areas.



First, the EU Treaties will be simplified to make them more easily understood. This is a common sense measure. After all, people will feel more involved in a process which they understand. Governments will also consider the status of the recently adopted Charter of Fundamental Rights.

Much will be done to clarify the role of national parliaments in the EU structure, and this is something I have advocated for a long time. British Prime Minister Tony Blair and Czech President Václav Havel have suggested setting up a second chamber of the European Parliament, consisting of national MPs, and the idea is worth pursuing. This 'Senate' could inject extra legitimacy into what is done in Europe's name, and deny Ministers the easy 'blame Brussels' escape route from difficult decisions.

Finally, governments will be expected to define how power will be shared between Union, national and regional authorities. Setting out the competencies of the Community is absolutely fundamental, and subsidiarity should be our watchword here.

Some think subsidiarity is a vague or complicated concept. It isn't. It is simply the application of gravity to political decision-making. The fact is, it is easier for people to connect and feel attached to their political system if decisions are always taken at the lowest appropriate level.

We have to move away from the idea that the only measure of pro-Europeanness is the number of new powers and responsibilities one tries to bolt onto the EU. In fact, the EU's long-term survival may depend on all of us recognising that it should only ever do what strictly must be done at that level, and on developing a sound mechanism for ensuring it stays that way. A second chamber of national MPs could play an important role here.

So what can we conclude from all this? What is the right formula for building lasting and stable institutions which will preserve Schuman's legacy? I would suggest that the important things are democratic legitimacy, securing the emotional commitment of those being asked to enter into the social contract, and being able to reward that commitment by wielding effective, *de facto* sovereignty.

This triumvirate will always trump desperate, and ultimately futile, attempts to preserve an inviolate, *de jure* sovereignty.

But, as ever in politics, the analysis is easier than implementation. The challenge for Europe's leaders is to solve what I believe to be the most interesting of all problems of contemporary political science: how to increase the legitimacy and credibility of the institutions of governance. Difficult, certainly. Yet seeing how far we've come in fifty years in making a reality of Schuman's vision, the task at the beginning of a new century should not be beyond us.