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# ‘Democracy and the Rule of Law in Europe since the Fall of the Wall’

When the Wall fell and the Soviet Union and Eastern bloc disintegrated this was hailed as a victory for democracy and the rule of law. Francis Fukuyama, the conservative American historian and political thinker, even proclaimed the end of history, the final victory of liberal democracy.

But how justified is such optimism. The West is quick to invade other countries, meddle in their internal affairs, impose sanctions or condemn racism, corruption and human rights abuses outside the EU and the U.S, but how well do western- and central-European countries do in terms of democracy and the rule of law?

Well, the experience of the last quarter of a century is not very encouraging.

To illustrate this, I shall look at two areas of major policy-making in Europe where neither the results nor the ways in which they are achieved have anything to do with democratic decision-making, nor do they observe the basic principles of the rule of the law.

First, I wish to look at the euro debt crisis.

The euro currency union, many of you will know, was agreed in the Treaty of Maastricht of 1992. The single currency was finally introduced and replaced national currencies in 1999. It is now generally agreed that the driving force behind the currency union were the EU Commission and the French government which wanted Germany to abandon its strong national currency as a price for German reunification. Why there had to be price for German reunification, and why the German government should agree to pay it, are a mystery but the German politicians, always eager to please their foreign masters, were willing to pay it. France got its common currency, although she did not get the Germans to agree to full economic union. If any member of the euro zone got into financial difficulties, the Maastricht Treaty made clear, it could not rely on financial assistance from others. Crucially, the German government prevailed over France when it insisted that the new ECB should be committed as its primary objective to price stability, i.e., the fight against inflation.

All this changed in 2010 with the outbreak of the euro debt crisis. Some Member States had accumulated excessive public debt levels, the financial markets lost confidence and borrowing costs for these countries were soaring. In these circumstances, the so-called ‘no bail-out clause’ (Art. 125 AEUV) prevented the stronger euro countries from assisting the more heavily indebted ones.

**Art. 125 provides as follows:**

‘The Union shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project. **A Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of another Member State,** without prejudice to mutual financial guarantees for the joint execution of a specific project.’

The euro member states nevertheless and in express defiance of the wording of the no bail-out clause set up a mutual assistance fund, the so-called ESM.

Unsurprisingly, the establishment of this fund was challenged before the European Court of Justice. What did they Court decide? Well it did as it was supposed to do and decided that words do not mean what they say.

In Pringle C 370/12 the Court ruled that

* ‘the granting of financial assistance by one or more Member States to a Member State… [leaves that Member State] responsible for its commitments to its creditors provided that the conditions attached to such assistance are such as to prompt that Member State to implement a sound budgetary policy.’
* It followed, the Court maintained, that ‘the ESM will not act as guarantor of the debts of the recipient Member State [as] the latter will remain responsible to its creditors for its financial commitments.’ Furthermore, ‘the granting of financial assistance to an ESM Member in the form of a credit line, …, or in the form of loans, …, in no way implies that the ESM will assume the debts of the recipient Member State.’

[Case C‑370/12 *Thomas Pringle v Government of Ireland, Ireland, The Attorney General*, para 137.]

The treaty text was clear: there was to be no mutual financial assistance. The Court turned this provision on its head and said that the no bail-out clause was in fact a pro bail-out clause provided those receiving help were subjected to far-reaching supervision of their budgetary polices.

So what does this tell us about the state of the rule of law in Europe? European governments no more observe clear treaty rules and the rule of law than do governments elsewhere. And where does this leave democracy? The majority of Germans never wanted to abolish their own currency in the early 1990s, and there is widespread dissatisfaction with the euro rescue policies in almost every member state. The currency union was originally established without a referendum either throughout the EU or in individual member states. Where a referendum subsequently took place, as in Sweden, the population voted ‘no’.

The case involving the ESM is no isolated incident. There is practically no policy measure adopted in the euro crisis, and not a single thing done by the ECB, which does not violate existing treaties. And yet the European Court of Justice has upheld each and every one of them. The Court has even held that, despite the EU’s commitment to transparency and openness, the public or journalists have no right of access to internal documents of the ECB which could substantiate charges of abuse of office and serious conflicts of interests involving its current President, Mario Draghi, on the grounds that this could destabilise the markets, and despite an overwhelming public interest in their disclosure.

I could provide more details or talk *ad nauseam* about the numerous other cases where national and European courts have twisted and perverted the wording of treaty and constitutional provisions to promote politically correct or convenient cases. But I think since most of you are not lawyers, you probably lack the very high boredom threshold necessary to be thrilled by such an exercise.

I would, therefore, and secondly, like to say something about the state of our democracy in Europe; not just about the democratic deficit in the EU, but also in its nation-states.

Study after study has revealed that during the financial crisis the rich got even richer and that economic inequality has reached levels unprecedented at least since the Second World War and probably since the nineteenth century. This trend is rising, and year on year the gap widens.

And so-called socialist and social-democratic parties everywhere are pursuing policies that are indistinguishable from neo-liberal governments. Under Labour in this country, from 1997 to 2010, inequality rose faster than in previous decades. Even during the height of the financial crisis from 2007 financial institutions in London which were loss-making and on the verge of insolvency could make annual tax-free six- and seven-figure bonus payments to their employees. If the normal rules of taxation and off-shore tax loopholes were closed, the UK Treasury could probably increase its tax revenue by at least 15 to 20 billion pounds every year by cracking down on bankers’ and executives’ bonuses.

Analogously, multi-national companies throughout the EU are able to save dozens of billions of pounds in tax by shifting profits, through license agreements between their subsidiaries, to those states with the lowest corporate tax rates, especially Luxembourg, Ireland and the Netherlands. Nothing is done to stop this. Instead Europe’s social-democratic parties talk about gay and transgender rights, minority quotas and the dangers of xenophobia and populism, or about equality of respect instead of economic equality and greater social justice.

And just as parties of the left abandoned their original economic agenda, even conservative governments are now promoting the legalisation of homosexual marriage and less Eurocentric educational curricula. Meanwhile, once liberal political parties which used to be concerned about data protection and government surveillance of civil society, seem untroubled by government access to private information on social media, by email and phone surveillance by intelligence agencies and by ever-increasing government intrusions into people’s private lives. In London it is now practically impossible to walk through the centre without being filmed on CCTV most of the way. Our political parties have become virtually indistinguishable and they offer virtually identical policy packages, none of which addresses the real issues of the day.

So there is an obvious problem with our democracy. When people vote in general elections, they are usually given a choice between parties that differ only on the margins, how they put the dot on the ‘i’, and no more. And when so-called populist parties emerge, like UKIP in this country, they are decried as xenophobic and anti-foreign because they talk about immigration and its impact on national culture and welfare provision when all other politicians argue nothing can or should be done. They are denounced by the media and academe and by think tanks which are either government-funded or financed by private entrepreneurs often resident abroad.

Two hundred and fifty years ago the Swiss-French political thinker Jean-Jacques Rousseau wrily observed that, when they vote, ‘the English are free only once every five years whereupon they are enslaved again’. This is true of all European nations where every four or five years people are given a choice between virtually identical options to elect a government that for the next parliament will do virtually nothing the majority of their electors wants. The only exception is Switzerland where in six months people are able to vote on specific issues more often than most other Europeans in their whole lives.

Not all is well, therefore, with democracy and the rule of law in Europe. Our governments address none of the long-term issues that will determine widespread prosperity and social stability, and the courts and governments are busy criticising foreign governments for disregarding principles of democracy and human rights, while disregarding the law and clear treaty rules at home when it suits them and the interests of the financial and business sectors. And they promote minority rights and all sorts of sexual rights, not so much because they are incensed by discrimination but because these rights are ‘cheap and cheerful’ causes to embrace which cost little and do not address the real problems of inequality. For this reason they arouse no objection from finance and business, on which most political parties depend as donors and which usually provide lucrative post-retirement jobs for former politicians and top officials.

Of course, dissenters in western- and central-Europe today are not usually imprisoned or deported, they are simply side-lined and quietened by the *bien pensant* and right-thinking media. No more is done because no more is necessary.

The English poet John Dryden once wrote that ‘by victory even victors are undone’. It seems he, and not Fukuyama, may have been right. For the very victory of liberal democracy over the authoritarian socialist states of the Soviet Union and Eastern Europe twenty-five years ago may have accelerated the degenerative forces within liberal democracy itself and so propelled its rapid decay. For today the states we live in are not real, but rather oligarchic, democracies.