

Surprising Naïveté of the British Conservative Party

Now that the Irish have let the British Conservative Party off the hook, now that a referendum on the Treaty of Lisbon is no longer possible, Mr David Cameron has had to face the question how to keep the “eurosceptic” element in his party from draining away to UKIP. His answer is (1) a bill to ensure that in future no further powers can be transferred to the European Union without a referendum, (2) another British Sovereignty bill, to declare that our final legal authority rests in the United Kingdom, and (3) some intentions of negotiating, at a leisurely pace over two parliaments, to repatriate some powers. Let us not spend time estimating the likelihood of the EU’s granting any of the last requests. The objection to the first proposed bill was immediately made at the press conference at which Mr Cameron announced the policy. Since no British parliament can bind its successor, all that would be needed to transfer further power without a referendum would be to repeal the new act first.

The objection to a British Sovereignty bill is even more obvious. Perhaps the Conservatives are uninformed, like most people, about what is actually in the Treaty of Lisbon. The Treaty (which Mr Cameron thinks is no longer a treaty because it has become law) states explicitly that “the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the laws of Member States.” (p. 207 of the text published by the European Commission in 2007) This does no more than formalise case law going back more than forty years, before, that is, British accession. If the Westminster parliament passed an act to the contrary, the lawfulness of the act would be tried by EU law, thus demonstrating the supremacy of EU law. In any case arising from this hypothetical act and coming before any court, in the UK or abroad, the British law could not have primacy as long as the Treaty of Lisbon was adhered to. Whether *in fact* the United Kingdom could assert the primacy of her own law would be a military question, not a question of law as law as now understood; but the primacy of British law could not be asserted lawfully without withdrawal from the European Union.

The interesting question is whether Mr Cameron is just being naïf, or whether he thinks the British electorate is not clever enough to follow this very simple reasoning, and his party clever enough to devise a form of words to reconcile clear contradictions. The ordinary contemporary word for the latter possibility is “spin”.

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