

## The discriminatory treaty

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As it has been pointed out by Declan Ganley in an interview to the Wall Street Journal the Lisbon Treaty is profoundly and fundamentally anti-democratic, whatever your idea of democracy may be. In this article I will claim that, in addition, it is also fundamentally and profoundly discriminatory.

### *The Lisbon Treaty is anti-democratic*

First of all, let me briefly synthesize Mr. Ganley's account of why the Lisbon Treaty is anti-democratic. Before doing this, however, it is important to notice that it is so even from the point of view of those who identify democracy with that political system based on the rule of the representative majority, and not only from the point of view of those who identify democracy with that political system based on the continuous effort to reduce the application of majority rule, and therefore coercion of some by others, as much as possible.

In particular, there are at least three aspects that make the Lisbon treaty anti-democratic. The first is the so-called “passerelle-clause” (Article 48), according to which, as Mr. Ganley explains, “with just intergovernmental agreement, with no need of going back to the citizens anywhere, they [the EU politicians] can make any change to this constitutional document, adding any new powers, without having to revisit an electorate anywhere”.

The second is that, as Valery Giscard d'Estaing admits, this treaty is nothing else but the Constitution which in 2005 was rejected by the European electors who had a chance to vote it (the French and the Dutch): it is precisely “the same document in a different envelope”. And we should believe him, for he was the one who chaired the presidium that drafted the European Constitution that failed to be approved. In his “Social Contract” Rousseau claims that, if the majority approves a rule and a minority does not agree, then the minority must understand that it was simply wrong in the first place. Those who thought that it would not be possible to have a more perverted and totalitarian idea of democracy than Rousseau's have been disappointed by the Lisbon Treaty, which implies that, if a majority rejects the constitutional rules presented by a few bureaucrats, then the majority must understand that it was wrong in the first place, and therefore it should be force-fed the same soup again, until it eats it.

The third reason why the Lisbon Treaty is profoundly anti-democratic is lack of representation. The Treaty establishes two institutional figures: the president of the European Council (commonly referred to as “president of the European Union”), and the High Representative for Foreign and Security Affairs (commonly referred to as “EU Foreign Minister”). Well, European citizens will be represented by the individuals who will hold these offices even though they will not have the possibility to vote for them. As Mr. Ganley puts it, we are presented with our president.

### *The Lisbon Treaty is discriminatory*

What I would like to discuss in this article, however, is not why the Lisbon Treaty is anti-democratic, but why it is discriminatory.

Article 5b says that “In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”. Now, is not this article the proof that the Lisbon Treaty is not discriminatory? Quite the opposite.

This article does not claim to combat discrimination, but only to combat some forms of discrimination, and precisely those against a list of minorities decided by the bureaucrats who drafted the document.

This is not a detail. As Hayek said, liberty is the maximum possible reduction of coercion of some by others. Particular liberties appear only when liberty is lacking. That is, the liberty to do only the specific things the authority allows, is not liberty.

Equally, it is possible to say that the protection against particular forms of discrimination appear when the protection against discrimination is lacking. In other words, combating only the particular forms of discrimination arbitrarily decided by some bureaucrats in a room in Brussels is not a fight against discrimination, but rather its celebration: it is an expression of discrimination.

Why could not Article 5b say: “In defining and implementing its policies and activities, the Union shall aim to combat any form of discrimination”? The answer, in a nutshell, is “power”.

If that article had been formulated in that way, progressive taxation, for example, would have had to be abandoned in every European state, for it necessarily implies different forms of discrimination.

In fact, on the one hand, progressive taxation implies a form of discrimination against those individuals who are different from the majority, not in respect to a neutral criterion (say, sexual orientation or ethnicity) or a negative criterion (say, disability), but in respect to a positive criterion (say, luck, wealth or talent).

On the other hand, progressive taxation implies a form of discrimination against those individuals who have different tastes and/or different order of priorities, and consequently are prepared to make different **sacrifices** in order to satisfy them. If **Marc** is prepared to give up his free time in order to be able to buy a beautiful house and Paul is prepared to give up earning a lot of money in order to spend more time with his family, by taking proportionally more from **Marc** progressive taxation discriminates against him because he has different tastes from Paul, because he has a different order of priorities, because he has different individual characteristics and abilities, because he is prepared to make different **sacrifices** for what he aims at.

In other words, progressive taxation is a form of discrimination against those, for example, whose well-being, in comparison with that of other individuals, derives more from things which are more **closely related** with money than from things which are less **closely related** with it.

Obviously, how much well being derives from things which are more **closely related** with money is different, in every moment, for every individual: different individuals will have different characteristics, different tastes, different talents, different backgrounds, they will find themselves in different circumstances, and so on. Taking proportionally more from those who have different tastes because they have different tastes, or from those who have different individual characteristics because they have different characteristics, for example, is clearly a form of discrimination not different in principle from that based on ethnic origin or sexual orientation.

Unfortunately, however, it is a convenient one for many people. I'm not thinking of those who are not being discriminated against (those to whom it is given): as it has been shown by all liberal thinkers, without exception, and from different perspectives (economical, statistical, logical, historical, philosophical, etc.), progressive taxation is not in their own interest but precisely against it (discussing why would be beyond the scope of this article). Rather, I'm thinking of the particular interests of the bureaucrats who, in order to get power and money, manage to

convince their electors (and in some cases even themselves) that this form of discrimination is in their interest.

Progressive taxation, of course, is not the only and not even the main case in which many “laws” in Europe are discriminating against particular minorities: let us think, for example, of those who in Italy sell their house within five years from the day they purchased it (classified as “speculators”, as if this was a negative thing) and on whom the state imposes extra taxes; or of those who, again in Italy, in renting out a particular form of private property (real estate), unlike what happens for other forms of private property (say cars, or boats), cannot freely decide the duration of the contract.

I guess that, in every state of Europe, a list of arbitrary discriminations against minorities not included in the list drafted by the bureaucrats in Brussels would be embarrassing; that is why it is important for the Lisbon Treaty to combat only those particular forms of discrimination that the bureaucratic authority does not find to be in contrast with its own particular interests. Far from being a protection against discrimination, the Lisbon Treaty is an expression of it.