

*William Thompson Working Papers, 16*  
*ISSN: 1649-9743<sup>i</sup>*

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*Peter Herrmann: The Lisbon Treaty, the New Irish Referendum  
and the Search for the Real Issues<sup>ii</sup>*

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**The Lisbon Treaty, the New Irish Referendum and the Search for the Real Issues** <sup>iv</sup>

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**Abstract**

It had been clear from the beginning: after the Irish people decided in the referendum against the Lisbon Treaty it had been clear that they would return sooner or later to the poll stations, being asked to give another time their vote. But it is really about this: giving a vote rather than making their opinion heard and relevant. It would be another

question to look at the real meaning of ‘new governance’, possible ways for a discursive democracy and their actual limitations. Such question would definitely have to look not simply at the power in an institutionalist perspective but more importantly at the hegemonic power relationships. Rather than investigating this issue in a direct way, the present text will look at some issues that are standing in the background of the decision which the Irish people are taking and which in other countries other people decided for them.

Though the essay is dealing with issues around the recent renegotiations of the Lisbon Treaty for Ireland and contemporary debates that emerge in this context (from general questions of governance to abortion, the role of the family, and some social policy issues) it proposes that the decision is concerned with more fundamental issues, in particular the question of the further loss of the social.

### **Introduction: Lisbon – On the Meaning of the Treaty**

The proposed new Treaty of Lisbon is already at the first glance of special interest. Being not more than any Treaty before – complicated and even for lawyers difficult to handle, inscrutable –, it marks a change inasmuch as it claims to move at least into the direction of a constitution. Looking at the term of a constitution, it has intuitively two meanings. The one is concerned with providing a foundational structure, the agreed framework of the relationships which can be seen as social contract (if we do not link this closely with the contractualist traditions as they mark traditional theories of the state, linked with names as Rousseau, Hobbes, Locke etc.). The other is concerned with processes, the constitution as a founding act, providing not an ultimate structure but instead a framework for human action. The concrete and the – seemingly – abstract come together: the fundamentals of (a) the human being as social being and (b) as a being that is social by acting. We can say as well: the human as interacting being that creates her/himself and his/her social and physical environment in interaction. The interacting being is, then, interacting with her/himself, being part of his/her environment and thus deciding not primarily on the Treaty as a legal institution but on the sociability of people. – Sure, the decision-making power is limited by powerful institutions. And it is limited by hegemonies that are not afraid to use even some kind of mental censorship. But does this mean: No we can’t! It definitely means that we cannot as long as we do not try to dismantle the actual power

structures and processes – trying to reach nudity to the largest extent, rather than being satisfied by looking at the nude as statue, still being covered, perhaps not by the clothes of the tailor, but by the glamour with which the sculptor covered the rugged edges of contradictory movements. We have to avoid analysing the current debate by way of following in another instance the American model:

*In the 21st Century Pentagon, this belief in miracles has been formally structured into VISIONS produced on complex PowerPoint Slides, which create a substitute for reality (viewed epistemologically, one is tempted to call the pervasive phenomenon of ‘power-point induced reality’ an outward manifestation of an evolving post-modern, neo-Kantian, anti-mind).  
(Spinney, 2001)*

### **Why a New Referendum**

Beginning by repeating the words from Enda Kenny, Fine Gael Leader, quoted by Deaglán de Bréadún in the Irish Times on Saturday, 20th in his article ‘*Kenny seeks united front for Yes vote*’ is not about taking one or another position in party politics. It is just one of the many feel-good statements we can hear these days:

*This is a fundamental question for the future of Ireland, where we want our country to be at the heart of a Europe that is accountable, that is democratic and that is transparent.  
(de Bréadún, 2009)*

Well, then. Of course, the decision had never been simply. On the one hand, being deeply involved in the respective debates can well put one off. Much window-dressing, and being strongly involved in EU policy-making and having been closely involved in its drafting gives opens up for two perspectives. On the one hand one gets extremely critical about things and non-things – being able to open draw the curtains to the side does not necessarily guarantee a nice view. However, on the other hand it is exactly some bleak insight that allows one to be kind of grateful for the small steps forward. If you look at what ‘we had been offered’ in the first instance – the drafts in their multilingual babble of compromises and partnership – the treaty (at one stage offered as Constitutional Treaty, after they had to step back from calling it a Constitution) in its current form could be seen as ...., well: as the lesser evil. Though

still, a cascade for lawyers who would earn a fortune by trying to make sense of it - simply in legal terms, in terms of clarifying issues – a quarry due to the lack of understanding, any many misunderstandings and different or misinterpretations. Though still, a maelstrom, at least opening the doors for deregulators, followed by new regulators who then try to control the process of deregulation and its consequences. Though, still, a sandbox for political power battles, carried out behind the back of the building lot of a global capitalist world. Though still an illusionary battleground for playing the card of corporate social responsibility rather than looking into the eyes of contradictions within power systems amongst those with unequal power. – And nevertheless possibly the lesser evil if compared with the situation without the new Treaty. – Surely, everything contestable, not least as no lawyer can provide a firm statement for the one or the other answer.

Having all this in mind, and usually not pleading for the lesser evil, the draft may still force to follow the *‘Principle of Hope’*, moving on from the category of the *possible* to the actual meaning of the ‘little daydreams’ to practice. Referring here already to Ernst Bloch, he may well be quoted – showing one of the real meaning of these ‘Dreams of a Better Life’ (the original title under which Bloch wrote the book)

*Die dialektisch-historische Tendenzwissenschaft Marxismus ist derart die vermittelte Zukunftswissenschaft der Wirklichkeit plus der objektiv-realen Möglichkeit in ihr; all das zum Zweck der Handlung.<sup>1</sup>*

*(Bloch, 1838-1947: passim)*

And finally it may be even correct what José Manuel Barroso said? – finally he had been once ‘one of us’, claiming to fight for a real change. And according to him – quoted in the same newspaper, here the article by Jamie Smyth and Stephen Collins, titled: *‘New Lisbon referendum in October as EU gives guarantees’* we, and here in particular the Irish people can see that democracy works:

*This gives me confidence we will have a Yes vote in Ireland . . . the Irish Government got everything it was asking from colleagues.*

*(Smyth/Collins, 2009)*

But then we read in the Presidency Conclusions from the Brussels European Council, held on 18th/19th of June, 2009:

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<sup>1</sup> The dialectical-historical biased science of Marxism is in this way a mediated science of the future of reality and of the objectively real possibilities this reality entails; all this with the aim of action.

*...the Protocol will in no way alter the relationship between the EU and its Member States. The sole purpose of the Protocol will be to give full Treaty status to the clarifications set out in the Decision to meet the concerns of the Irish people. Its status will be no different from similar clarifications in Protocols obtained by other Member States. The Protocol will clarify but not change either the content or the application of the Treaty of Lisbon.*

*(Council, 2009 a)*

It may be correct, but it may well be incorrect and a sign of political ignorance – democracy is at least not getting clear if we bring together what just had been said – on the one hand by Mr. B, on the other hand by the heads of state.

### **Reviewing the Irish Referendum ...**

Surely, some difficulties remain with the entire debate with particular re-view of/on the referendum in Ireland:

- \* What the Irish people voted for is not easy to determine. But it is easy to say that the overall critique of the Treaty - here and in other countries – had been going far beyond some issues that can be rectified by some minor changes.
- \* Which role EU-policies played on the move into the current – indeed global – crisis is not easy to determine and without doubt the politics and policies of the global economic players and the role of the political forces from across the Atlantic had been pushing much stronger towards the current constellation. Still, it is easy to say that the draft of the Treaty – before or after changes – is geared to the very same basic pattern that tends to undermine democracy, establish a quasi-feudal system in which governance emerges as system of government by vassals – now defined as stakeholders, experts and consultants (and surely, the jester always ready to join with contributions of some wisdom, though being afraid that the rogue of the masquerade may turn into at some point into the red of his/her blood, escaping the veins due to a stab, as soon as the friendly and amused guffaw is coming to a halt because the mirror he holds is turned against the audience in the angle that their own faces are visible to them).
- \* It is surely difficult as well to argue against occasional involvement into the democratic process – hearings, consultations etc. are more frequent than ever and as

well the often-praised voluntary and community sector is invited. But it is simple to see that with the invitation comes a protocol – a rigid framework requiring a rigidly constrained thinking: the thoughts may actually be free, being accepted, however, requiring as well the friendly clapping of the peers – and entering the stage of power changes the peers: now seemingly the ‘people’ are those who are performers on the same stage as the governors. The other people – the actual people, those who are left behind on the streets, may be consulted but not heard.

### **... and the question of transparency**

So, what is the transparency – mentioned in the beginning – actually about?

For instance, we find transparency in announcing a new referendum and revealing at and for more or less the same time a new public consultation on the revision of the Lisbon process in September/October 2009 to be supplemented by several conferences and hearings.

In June during a meeting with Vladimír Špidla (Commissioner for Employment, Social Affairs and Equal Opportunities) and NGOs engaged in social policies it could be learned that the crisis had been unforeseen and we (mind: we!!) would now have to make sure that it would not develop into a political crisis. I dared to say that this crisis had been actually predicted already since some time – and funnily he agreed: ‘Yes, we as experts had been aware of it’. But why is then, despite the self-commitment of listening during hearings and consultations to experts nothing happening.

It is worthwhile to note en passant that we can definitely congratulate the people – travelling occasionally to other countries and speaking as well sometimes to the people: definitely many knew and know more as those experts in the political headquarters. Sure, they don’t do much about it, knowing too well about the fate of the jester. As Mephisto asserts

*To nonsense reason turns, and benefit to worry.*

*Woe unto you that you’re a grandchild, woe!*

*For of the law that was born with us, no!*

*Of that, alas! there never is a query.*

*(Goethe, 1806)*

But back to the point: deciding on the document that waits for ratification: Is it transparency if a Treaty is concluded that is already at the date of its ratification so complex that it needs protocols to clarify specific points?

Another issue: Is it transparency if it is not possible to agree on a framework into which all join - and mind: the Irish people could have their say. And as problematic as this may be in some respect of giving voice to freedom under the name of Libertas, it is not less problematic if even the basic rules in this united Europe are so far away from each other that ratification – supposedly a matter of democracy – is based on so different rules in the member states.

Furthermore, is it transparency if we can note the acknowledgement of the voluntary and community sector, being granted a European Year of Volunteering (*see Council, 2009 b*) and then ... – well, I had been recently talking about this sector, first being surprised by some critical remarks of my discussion partner from the ministry on volunteering: a field for the middle class, not reaching out to young people ... . After discussing some points on how to reach out, how underline the importance of volunteering for the functioning of society there had been a short sentence, making me think (if I wouldn't be reasonably hard-build over the years, I could have stopped to breath): 'This is how we get them'.

When will all this talk about transparency, democracy, acting in the interest of the people and setting up a 'plan D' (*e.g. European Commission, 2005; as well [http://europa.eu/debateeurope/index\\_en.htm](http://europa.eu/debateeurope/index_en.htm)*) bring politicians – locally nationally, internationally, supranationally – to the insight that it is not about 'how to get them', i.e. how to get the people. And it is not about securing the functioning of society. It is about being appropriate to the people. Probably we have to wait until the point in history when politicians and politics (in governments and in the economy) are appropriated by the people.

Coming back to the beginning, the question for Ireland is not really a question for Ireland. It is a question for all of us in Europe.

### **Excursus: The Employment Question**

It appears to be a good thing, doesn't it? The Heads of State or Government of the 27 Member States of the European Union who met recently in Brussels are aware of the situation:

*The economic crisis remains of paramount importance to citizens. The significant measures taken so far in support of the banking sector and the wider real economy have been successful in preventing financial meltdown and in beginning to restore the prospects for real growth. The European Council took a number of decisions intended to lead to the creation of a new financial supervisory architecture with the aim of protecting the European financial system from future risks and ensuring that the mistakes of the past can never be repeated. Top priority must be given to tackling the effects of the crisis on employment by helping people stay in work or find new jobs.*

*(Council, 2009)*

And of course, the employment question is a complex one as it had been recently coming to the fore in a study by the European Foundation on the Improvement for Living and Working Conditions in Dublin.

Job losses are predominant – and a recent study from Eurofound (*see ERM quarterly*) definitely confirms this:

*The latest ERM quarterly shows that in the first quarter of 2009, cases of job loss outnumbered those of job creation by five to one. In total, 609 cases of announced job loss were recorded, involving around 220,000 jobs. By contrast, only around 130 cases of job creation were recorded, with around 9,000 new jobs announced.*

*(European Foundation for the Improvement of Living and Working Conditions, 2009: 1)*

Still, there are new jobs - no: not the expected boom for educational services and not the boom some people expect for social work either (and surely the latter would be a questionable success). McDonald's, fast-food outlet is planning 12,000 jobs across Europe. 240 new restaurants are opened (*see ibid.*)

Good news then? The question mark stands for working conditions which had been some time back sufficient reason for revolts and boycotts in France, pointing on the fact that this employer profits in particular from the lack of protection of young workers, forcing them into precarity? The question mark stands for quality of the food which some people call junk food: cheap – but you get for what you pay. And the price of the crisis may be another time the lack of healthy food for those who are

living on tight budgets. But what is new? Didn't we all know that people who are poor have to face death earlier - starving to death or nutrition to cause ill health. – But may be somebody can inform me of something better: excellent cheap and health meals, offered by people who like their job and enjoy excellent working conditions. I wouldn't mind to learn something like this (*Further reading: <http://www.eurofound.europa.eu/press/eurofoundnews/2009/may/newsletter2.htm>; <http://www.eurofound.europa.eu/emcc/erm/index.php?template=quarterly>; both date 10/07/2009 8:00 p.m.*)

### **EU – Claiming acting in the General Interest Does Not Create a General Interest**

Instead of giving in, being satisfied with such qualitatively questionable development, the heads of states still strive further.

For instance Cristina Husmark Pehrsson, Swedish Minister for Social Security avows in connection with the recent social affairs ministers in Jönköping, Sweden:

*An important condition for success is that we promote more active social security and labour market policies. These policies will favour those people who are in a position outside the labour market, regardless of whether it is a time of recession or of economic upswing. I am convinced that no country wants to see people prevented from participating in working life simply because we have not done our best to fulfil their wish to contribute to society.*

*(Husmark Pehrsson, 2009)*

And in a background paper we read

*An active social security policy that operates in tandem with an active and inclusive labour market policy is crucial to limit the negative impact of rising unemployment and to promote access to employment. A decisive element of an active social security policy is to provide an adequate safety net with the potential to become a springboard to enter and re-enter the labour market. Inclusive labour market policies and active social security policies in line with the Common Principles of Flexicurity and the active inclusion strategy are therefore important tools to support the individual and the recovery of the economy.*

*(Swedish Presidency of the European Union, 2009)*

– By the way it is interesting to look at the background paper – it looks a little bit like a background paper as we may know it from public conferences: a gloss with some general information. And thus it probably shows another policy shift as we see from the practice:

*On Wednesday, Richard Freeman, one of the world's leading labour market economists and Professor of Economics at Harvard University, delivered a lecture for the labour market and social affairs ministers in Jönköping.*

*([http://www.se2009.eu/en/meetings\\_news/2009/7/8/leading\\_economist\\_held\\_lecture\\_for\\_ministers](http://www.se2009.eu/en/meetings_news/2009/7/8/leading_economist_held_lecture_for_ministers); 7/11/09 11:52 AM)*

If you know Richard Freeman, if you know such public conferences and if you know about processes of governing, this kind of governance may have something clownesque.

Anyway, hearing all the noise, we may forget something that throws an interesting light on an easily overlooked facet – a point of the true ideology of this system.

For clarifying this, we have to make one step back. The commonly emphasised gist, brought forward in the debate on the values of the EU and the Treaty and also underlined as driving force when looking at service delivery in many areas is the claimed ‘general interest’. Sure, we can barely expect the reading of Marx’ ‘On the Jewish Question’ (*Marx, 1843*) or his ‘Contribution to the Critique of Hegel’s Philosophy of Right’ (*Marx, 1843/44*) is paramount for the politicians and their advisors here and there. If it would be, they would be well aware of the fact that there is no such thing as general interest. As said, they may prefer to read other literature, e.g. Tocqueville’s dream stories of Democracy in America (*Tocqueville, 1835/1840*) or they follow Putnam, the poor fellow who is ‘Bowling Alone’ (*Putnam, 1995*), all of these apparently able to convince politicians of different colour that there is ‘no such thing as society’ (*see Margaret Thatcher, 1987*). But still, it is striking that they stumble upon their own shadow.

While still frequently claiming the general interest, proclaiming the Rousseauian social contract (*which is actually following a highly individualist pattern of thinking [see Herrmann, 2007]*) they make a tiny mistake in the formulation. A sentence as ‘*The economic crisis remains of paramount importance to citizens*’ implies an actual confrontation between economy and peoples’ [and people’s] interest. The reason is

not that people lost control over a development: the crisis is now directly showing effects. The reason is that the formulation from the Presidency's Conclusion implies that the economic process itself is something that is outside of the overall social relationships and structure of society. The formulation suggests that the economic crisis – and thus the economic process itself – is something that is separated from the people and their action. And it is, indeed: Inequality of power, profit before social relations, the getting independent of production and employment from the actual end: production and reproduction of life, living conditions and relations, alienation to an extent at which even an artist, academic, and parent has not more than a 'job' – the one of parents in many cases being paraphrased as 'the taxi-driver of my kids'. The general interest, if it then exists in some form, is a compromise that comes across as Leviathan, at its best wearing the clothes of a prince or a global artist, trying to do good by presenting his idol-ness as being good and in a next step as being-godlike. At its worst this Leviathan comes along as lady who is as soft as cast-iron, in her iron cage forging the instruments of torture that replace any notion of rights by selfishness and charity – paradoxically a well-matching couple for life. If the market, driven by an invisible hand, would really be the all-healing power, 'the creation of a new financial supervisory architecture' would not make much sense either. Neeli Kroes, European Commissioner for Competition Policies, made this clear in a recent interview with the NRC Handelsblad

*Bij banken is men vaak meer met zichzelf bezig dan met het oplossen van het probleem.*

***Met zichzelf?***

*Ja. Het bredere plaatje interesseert ze minder. Er zijn initiatieven voor bad banks, maar het duurt een tijd eer dat zijn beslag krijgt.*

*(de Gruyter, Caroline: Recessie Eurocommissaris Neelie Kroes over staatssteun, Europa, politiek populisme en haar baan. 'Wij moeten ongelooflijk op the bok zitten', in: NRC Handelsblad; July 10th, 2009; 39/237: 13)*

– The saying is well known: 'Giving with one hand what is taken with the other.' Cum grano salis it can be translated: New regulations and intransparent governance with their lack of accountability regulating are asked for in order to deal with what is being destroyed with the broad brush of a Treaty that has at its utmost core: Freedom for property-building and accumulation of capital. – It is a little bit like the low-fare

airlines: book a flight for one cent – and pay with all fees, taxes, costs for luggage and priority booking and bus transfers and ..., well pay 100 Euro and more – or just stay put as in the ‘good old times’.

### **Between National, International and Supranational or: Why Striving for EU-Positions Does Not Overcome Nationalism**

Anyway, Ireland can be seemingly happy now, after obtaining all what we supposedly wanted. We will even have OUR Commissioner. – The National Interest seems to prevail, being more important although Commissioners are according to the Treaty a kind of ‘non-nationals’, asked to act in the general, supranational interest rather than representing their country.

En passant, sorry, fellow Europeans, we will try to get somebody who does not have similar parliamentary affairs as good old Padraig F.; and we will try to get somebody how does a better job than Bolkestein-successor power-greedy McCreevy. And as we most likely will have this Portuguese president of the Commission again as puppet of the national governments, we may have even a complete Muppet show.

Well, there is much that can be said on power – do not forget, we are still dealing with the Treaty; and we are dealing with a new referendum; and we are told that we are dealing with a democratic, transparent process.

To avoid making democracy intransparent, we avoid further discussion, hoping that We, The People Of Ireland will now vote in favour – the rest of Europe did not have to swallow another time our NO; they will now have to swallow the price for the hoped for YES: changes for them will not need a new ratification from their side. As the Presidency conclusions state on page three, dealing with ‘Ireland and the Treaty of Lisbon’ under the *Heading Institutional Issues*:

*5 (ii) its content is fully compatible with the Treaty of Lisbon and will not necessitate any re-ratification of that Treaty.*

*(Counci, 2009 a, op.cit.: 3)*

So what? It appears to be strange that we succeeded completely with all the demands that came up and then we learn that nothing has been really changed.

## The Functioning of the Market

Well, before looking a little bit further at issues of Emerald Island, there is another remarkable issue coming up in the conclusions. On page 10 under the heading Strengthening Efforts to Support Employment we read

*In the current situation, 'flexicurity' is an important means to modernise and foster the adaptability of labour markets. Priority should be given to preparing labour markets for future recovery: creating a friendly environment for entrepreneurship and job creation, investing in a skilled, adaptable and motivated labour force and transforming Europe into a competitive, knowledge-based, inclusive, innovative and eco-efficient economy. Social protection systems and social inclusion policies play their role as automatic economic stabilisers and as effective mechanisms for cushioning the social impact of the downturn and for helping people back to the labour market. Particular attention must also be given to the most vulnerable and to new risks of exclusion.*

*(ibid.: 25)*

A social policy student who would dare to write this in an essay would get in serious danger to fail.

Let us have a look at the contradictions: First we prepare 'labour markets for future recovery' – for the time being we can leave aside if 'creating a friendly environment for entrepreneurship' through employment can only be found in places where employment is recognisable as beneficial, depending on the productive sphere, the process of accumulation ..., rather than being stuck in supposed overregulated employment systems. But coming to the core: a sentence as '*Social protection systems and social inclusion policies play their role as automatic economic stabilisers and as effective mechanisms for cushioning the social impact of the downturn and for helping people back to the labour market*' is simply not understandable after reading before about '*creating a friendly environment for entrepreneurship and job creation, investing in a skilled, adaptable and motivated labour force and transforming Europe into a competitive, knowledge-based, inclusive, innovative and eco-efficient economy.*' If taken in a serious way, such an economy and such a labour force would not need 'cushioning'. Instead, such an economy would be driven by power relations

that do not allow over-accumulation of profit and overproduction of goods. The most ‘productive’ societies are those that have a solid, regulated distribution embedded in the overall process of production and reproduction – to be aware of it, one does not have to be engaged in social policy. Every first year student in economy knows it; every classical economist knows it – and Adam Smith would surely turn around in his coffin if he would hear what people say and do with reference to his work.<sup>2</sup>

However, one further point should be made on this topic, just in time – writing while holidays are coming up for many, people possibly travelling abroad. We hear again and again that the market is actually the perfect means – and colleagues as Amartya Sen and Joseph Stiglitz point on the predominance of information and the lack thereof as a main issue for ‘failing markets’. Given free information, the market will draw attention to the point of an optimum of the price, beneficial for everybody rather than leaning towards of a price that is defined as maximum of profit-seeking entrepreneurs – this is at least what we are told to believe. So, the matter is simple: if you will be travelling during the coming weeks somewhere in Europe, seeing the petrol being cheaper than in your country: make sure that you fill the tank of your car before you travel home. If you see books being cheaper in another country: lerne die Sprache, um sie lesen zu koennen – imparare la lingua per essere in grado di leggere – apprendre la langue afin de pouvoir lire – leren de taal te kunnen lezen ... (now, just learn the language to be able to read them). If you see fridges being cheaper somewhere, make sure that the boot of your car is large enough (and that they have the correct plug for the power socket in your home-country). And if you see the big burgers in a ‘restaurant’ with a large yellow M somewhere abroad, especially cheap, just eat and eat and eat – you may never get them again for so little money.

### **Services versus Social Responsibility**

Services as European issue deserve at least a brief look especially in this context as European Commissioners played twice a humiliating role in this context. First it had been Pádraig Flynn, member of the Delors cabinet who played at least in hindsight a role in determining which question should be asked. With the Green and then the White Paper he initialised two important steps: first, and following the logic of the

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<sup>2</sup> mind, this sentence does not suggest that Smith had been right; not least his paradigm of value of labour is as questionable as Ricardo’s and as questionable as Keynesian proposals of ‘simple state intervention’

time, he put social policy on the agenda. It had been for the first time that social policy issues had been raised to the extent as it had been the case under the Delors Commission. However, second, he delinked social policy to some extent and established it with two distinct characteristics; we may even say that he inscribed the mark of Cain into European social policy: it had been defined in the tradition of welfare policies, flanking the malevolent developments of capitalism rather than allowing the search an understanding of social policy as means of socialisation (*see in this context Herrmann, Peter Social Policy in Context [working title]; forthcoming*). And he consequently established a civil dialogue, set apart from the social dialogue. The problematique cannot be discussed (*see Herrmann, 1998; Herrmann, 2009*). For the attentive observer it had been getting clear that this orientation was the foundation stone for the emerging ‘service debate’ – and in actual fact this debate began in the mid-1990s, though the service providers refrained from thoroughly recognising the issue, thinking it might be better to let sleeping dogs lie. Much later it had been again an Irish Commissioner who plaid an inglorious role: Charlie McCreevy is one of the torch bearers, opening the final door for privatisation policies in the social service sector.

Looking again at the Conclusions of the summit meeting – here the Annex 2: the Solemn Declaration of Workers’ Rights, Social Policy and Other issues – and having the reality in mind, it is interesting that any public service obligation is based on values. When it comes to real experiences, these are not even recognised and in tendency even censored. Of course, dealing with these values is difficult and it is then easy to state that one finds research that is undertaken ‘inaccurate’ and therefore not suitable for the public. If the institutions would apply the same standards to their own statements, at least a sentence as the following from the Conclusions would definitely fall under equal censorship. There we read that the Council

*recalls that the Treaties as modified by the Treaty of Lisbon:*

- *establish an internal market and aim at working for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment*

*(Council, 2009 a; op.cit., 20)*

This is just a door opener for contradictions – making transparency a farce. If something like would be written in an application letter, it should surely be not be sent. In actual fact, and reading that it is an

- *aim to combat social exclusion and discrimination, and to promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child*

*(ibid.: 21)*

reminds – if taken against the background of actual de- und re-regulation policies – at the charitable approach which had been obviously characterising feudal systems and the early capitalism, sought to be overcome by rights orientation of social policy.

– So, coming back than to possible suffering from overeating under the large yellow M there may be a more sensible thing to do: chocolate is excellent in Belgium, they have most gorgeous cheeses in France; ever tried the sundried tomatoes in Greece, the olive oil in the Austrian Styria, the Turkish coffee in the small shop, a little bit of the main street in Ankara, the Paprika that refine so many Hungarian dishes (though of course not the local Lángos), the delicious Pizza in one of the back streets of Florence and the Dutch Jenever, the Bramboráky in Prague ... – well, there will be a reason for people coming to your own country wherever you live. Another kind of sustainability – and at the end it is a question how much we loose. Sure: not a question that can be answered by more information on the regulations that are necessary to repair the loss of previous regulations. And a means of keeping markets where they may be suitable and maintaining strict public responsibility for areas that require intervention in the name of social justice, solidarity, democratically based citizenship and human dignity. NB: It seems that if you want to be advisor of such EU-governors, you should not study social policy – knowledge from there is apparently not being applied; study gardening so that you did at least once in your life-time something meaningful – and something that gives you more and honest feedback: the plants you mistreat will not show any mercy – they grow the way in which they are treated – the underlying Treaty of gardening will surely show the results set out in its preamble: only TLC (Tender Loving Care) will be able to stand against BNI (Brutish Neglect of Interest). And in policy development it is about Thoroughly Lead Consideration against Blunt Neglect and Ignorance.

## **The time machine: A step forward the past – The Individualisation of Rights**

In some respect it is amazing: during the recent re-negotiations on the Lisbon Treaty the Irish government, or even: the Taoiseach finally managed to achieve a renewal of the commitment to articles 40.3.1., 40.3.2., 40.3.3., articles 41 and 42 and not least 44.2.4. and 44.2.5. of the Irish constitution (*below reference is made to and quotes are taken from the internet edition: Department of the Taoiseach, 2004*). As we can read in the Conclusions of the Brussels Summit:

*Nothing in the Treaty of Lisbon attributing legal status to the Charter of Fundamental Rights of the European Union, or in the provisions of that Treaty in the area of Freedom, Security and Justice affects in any way the scope and applicability of the protection of the right to life in Article 40.3.1, 40.3.2 and 40.3.3, the protection of the family in Article 41 and the protection of the rights in respect of education in Articles 42 and 44.2.4 and 44.2.5 provided by the Constitution of Ireland.*

*(Council, 2009 a)*

Sure, this is of national concern – and sure, nobody would oppose in general terms: Fundamental Rights is the heading of article 40 and there is definitely too much talk and too little action about them.

And if it is about chasing the nobility away (article 40.2.1. f), Ireland could be a forerunner – in the meantime, those who can cope with sad ends of novels may amuse themselves over the reading of Sue Townsend's *The Queen and I* (*Townsend, 1992*).

But leaving this aside (finally article 40.2. had not been subject to debate) the entire debate on fundamental rights has an even more fundamental flaw: any one of these rights is genuinely concerned with individuals.

Of course, anybody studying economy and even those who study social policy know about the difficulty to grasp the genuinely social character of such rights. Humans seem to be fundamentally individuals. While walking upright on two legs, they made the transition from the animality into the realm of humanity as supposedly highest being, reaching the peak of development seemingly in personal perfection – a pattern we know for instance from Christianity and Buddhism alike: the Christian monk, supposedly finding the highest perfection in the encapsulation with god, ideally the self-mortification of the body and renunciation of the spirit by its acceptance in the

‘Empire of the Lord’; the Buddhist monk, also in the final renunciation of worldly matters, finding the promised unity with nature, being finally ‘self’, the final stage of self being the selflessness – the less of the self or the loss of the self as it is dissolved through the various fights between good and evil, overcome in the final rebirth – the reincarnation in a kind of Śūnyatā, the supposedly highest degree of purity. However, this perfection is not pure reason or practical reason of engagement – not even such reason lived by the individual. Instead, it is the purity of individualism (*see on the latter: Herrmann/Dorrity, forthcoming*).

Anyway, it is not the place here to get carried away by philosophical thoughts on religion. Fact is that we are usually confronted with this extreme individualism – going so far that even solidarity is captured in it – in Hebrew terms: vaahawtem et haGer – the love of the stranger.

Now: You shall love your neighbour as you love yourself then – if anything is individualist, it is such interpretation of solidarity. In this light Cartesian idealism seems to be less dangerous than this extreme individualism, only giving us an opportunity as long as we are not living in the anomic society of suicides as Durkheim was looking at.

### **On Abortion**

Coming back to the concrete debate now, abortion – and this is what we are looking at in article 40.3. of the Irish Constitution – gains a special meaning from the perspective developed before, a perspective that comes on top of the political question as it is rightly brought forward by feminism. The additional notion is that this article 40.3. is simply the highest and purest expression of the same individualism which had been explored before.

It is not about convincing anybody of abortion being something that is easily undertaken or should be ‘promoted’ – not least: many aspects of the debate are not least dealing with respectful relationships between the sexes. But leaving details of the debate about gender relationships, abortion, and even moral and ethical aspects aside, it is important to recall a lengthy section from a text which shows the actual question, pointing on the fact of human beings only manifesting themselves as social being:

*Individuals producing in a society, and hence the socially determined production of individuals, is of course the point of departure. The solitary and isolated hunter or fisherman, who serves Adam Smith and Ricardo as a starting point, is one of the unimaginative fantasies of eighteenth-century romances a la Robinson Crusoe; and despite the assertions of social historians, these by no means signify simply a reaction against over-refinement and reversion to a misconceived natural life. No more is Rousseau's contrat social, which by means of a contract establishes a relationship and connection between subjects that are by nature independent, based on this kind of naturalism. This is an illusion and nothing but the aesthetic illusion of the small and big Robinsonades. It is, on the contrary, the anticipation of 'bourgeois society,' which began to evolve in the sixteenth century and in the eighteenth century made giant strides towards maturity. The individual in this society of free competition seems to be rid of natural ties, etc., which made him an appurtenance of a particular, limited aggregation of human beings in previous historical epochs. The prophets of the eighteenth century, on whose shoulders Adam Smith and Ricardo were still wholly standing, envisaged this 18th-century individual – a product of the dissolution of feudal society on the one hand and of the new productive forces evolved since the sixteenth century on the other – as an ideal whose existence belonged to the past. They saw this individual not as an historical result, but as the starting point of history; not as something evolving in the course of history, but posited by nature, because for them this individual was in conformity with nature, in keeping with their idea of human nature. This delusion has been characteristic of every new epoch hitherto. Steuart, who in some respect was in opposition to the eighteenth century and as an aristocrat tended rather to regard things from an historical standpoint, avoided this naive view.*

*(Marx, 1857)*

From here I suppose that the real 'success' of defending article 40.3. is not the simple defence of a central pattern of a patriarchal society – this would be already a matter of

leaving a serious social offense without the moral condemnation it deserves. The additional defence is that it lays the firm, in the double sense of the word concrete ground for individualism. A defeat for social law; and a triumph for the contractualisation of social relationships – appreciated even by many of those who claim being combatants of ‘just’ social policies. Paradoxically, the protection of the supposedly ‘weak, as unborn life’ opens in the formulation of article 40.3.3. the door for some kind of trafficking – finally we are talking about personal rights and ‘the equal right to life for the mother’. – Sure, positive law would not be positive law, if it would go beyond contractual relationships when talking about the definition of social relationships. It is admittedly a little bit tricky. The slightly simplified expression may go as follows: human relationships, if expressed in simple contracts, reduced on exchange, are destined to be dead relationships and will lead to the death of societies. The crux is, if we allow iron-armed individualists to deny the social, if we allow that real relationships are conjured away and reduced on acts of exchange, their ‘analysis’ will be at some stage soon a self-fulfilling prophecy. The analysis at this later stage is only the peer-reviewed confirmation of the death of the patient.

### **On the Family – [Die VerHERRlichung der Gesellschaft]**

Leaving space for the one comfort: the family, now as well confirmed in the interpretation of the Irish constitution, which is the official interpretation for the Irish people and people of Ireland and now indirectly for EUrope: the family as it is dealt with in article 41 of the *Bunreacht Na hÉirann* as reductionist meaning of the social.

Again, something that needs not to be discussed here in many respects: There cannot be any doubt that families are important as everybody knows: people living happily in and with a family, people who are suffering from family relationships, people who do not have a ‘normal active family’, still being obliged and perhaps feeling obliged to look after their relatives and other people who are in one or another way adopted by others.

Anyway, the niceties and tortures of family life seem to be widely spread: known, criticised and criticised. It is amazing if one is travelling, looking around – much more obvious than looking at the results of surveys: in so many places the one thing of utmost importance is some kind of family – differently defined, differently organised but commonly understood as ...

– ... well, now we are coming to the small print, and here only the Irish situation and its implication for social policy of interest is.

The Irish constitution defines in sentence 1 of article 41.1.

*The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.*

And it continues in 41.1.2.

*The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.*

Let us read little bit further, looking at 41.2., we take sentence one and two subsequently.

*In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.*

*... The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.*

What does this actually mean for the role of women? To be sure: I definitely do not want to say that working, i.e. being employed in a capitalist environment or in so-called post-modern precarity offers the most satisfactory perspective for life. And I surely do not want to deny the social work homemakers undertake. But be that as it is, it is definitely not more satisfying to have only one option – though this option actually follows the structure of the law and deserves as well two sentences: sentence one: your work is homemaker; sentence two: the likelihood of living in poverty is for you much higher that it is for men and should be accepted without mourning (the good thing: statistically women can enjoy life for a little longer as the average life expectancy for women is higher; the bad thing: if you are poor the likelihood of dying in younger years is higher – sorry, things are never as clear as a mathematician suggests while teaching first class students).

Well, back to the wider meaning – as Ireland can now be happy that a legislation that should belong into the century before the last (to be sure, I am talking about the 1800s) is secured. And Europe? And European social policy? Sure, when it comes to

concrete measures, things look slightly different and occasionally may give space for hope – sometimes and at least in projects and academic books (some people say that this is in particular the case if peer reviewed; some people are afraid that peering may be the academic version of what had been mentioned elsewhere: a quasi-feudal system in which governance emerges as system of government by vassals – here appearing as peers on stage). The actual problem, however, remains – again to be formulated in two sentences, following the pattern we find in many articles of the constitution. Sentence one: there is no right to change roles: by law, the breadwinner is the father and the mother is providing TLC (Tender Loving Care). Possible consequence, though not constitutionally defined: At the end this may well mean that the father is caught in another form of BNI (Brutish Neglect of Interest) – this part of life, namely caring, seems to be inaccessible, or at least requires crossing those borders that are once again confirmed with the latest decisions in Brussels.

Sentence two: it is the family that is supported, in particular the mother. And it is with this a very specific form of socialisation: the individualist-individualising pattern of the fifth commandment (*fourth commandment in Catholic and Lutheran teaching*).

The complete reference text from the Exodus reads as follows:

*Honor your father and your mother, so that your days may be long  
in the land that the Lord your God is giving you.*

*(Exodus, 20.12)*

Well, who can be surprised if people, who are socialised in this spirit (mind: I am referring especially on the second part of the sentence), are later going to court to sue their parents or claiming their ‘right’ to have assessments by their lecturers changed by court order.

Actually, with all this we are already back to step one: the individual being centre stage, easily translated into the clientelist politics and managerialist welfarism. With this ‘success’ following the negotiations after the Irish referendum’ the soft and nevertheless reactionary ideology that can be suggested as ‘humanist’, charitable cushion for the Lady’s Iron arm is finally confirmed; and that may soften the bunt of the wagons that had been steered a third way, not being able to stop anymore when its drivers possibly saw that they would crash against a wall of global giants.

Let us forget about the unsocial Article 42 – without any further comment there will be ‘social entrepreneurs’, founding schools and universities, following examples from abroad. One thing only: the entrepreneurs that are already in the system are not much

better as their big brothers in spirit, leading them. And let us not talk much about articles 44.2.4. and 44.2.5. – though French is or had been the main foreign language taught at Irish schools, the lightest breeze of *liberté*, *égalité* and *fraternité* had been quenched in the bad breath of heated priests. And it seems that article 44 is now interpreted in this perverse way that the state pays their bill.

### **Outlook – Loosing Hopes**

We should come back to the beginning where – with reference to Ernst Bloch – the principal of hope had been mentioned:

- \* the formally possible – that what is possible according to the rules of logic
- \* the objectively possible – that what we can assume as being possible on grounds of epistemologically based knowledge
- \* the objectively possible – that what is possible by following the rules of the matter, the options inherently given by the object
- \* the objectively real possible – that what is possible as it follows latency and tendency of the object.

Looking from this perspective at what had been developed we see again the old rule of making one step forward and two steps back. The actual problem is that the progress we see and we are supposed to buy into is based on a fundamental process of individualisation, the disentanglement of the individual from his/her social relationships. Hope turns over, fear evolves: It seems to be possible that we reach happiness at least of many, but it is then likely that this happiness is based on the price of the loss of humanity. Above two fundamentals had been proposed: the one of the human being a social being and the other seeing this as a being that is social by acting. We supposed the human as interacting being that creates her/himself and his/her social and physical environment in interaction. If the current path is consequently followed the emerging feature is then about happiness without humanity.

*Sir, my need is sore.*

*Spirits that I've cited*

*My commands ignore.*

*To the lonely*

*Corner, broom!*

*Hear your doom.*

*As a spirit*

*When he wills, your master only*

*Calls you, then 'tis time to hear it.*

*(Goethe, 1779)*

To turn fear into hope again something else is needed than misunderstood neutrality. The current version – in military respect – allows in Ireland the landing of military aircrafts for refuelling again something that is reaffirmed in the Conclusions (*op.cit.*: 18); the current version of neutrality – in economic and societal policy – allows the emergence of social Darwinism, a system that is based on utilitarianism and which the social degenerates to ‘socially just calculated relationships’. Hence, it is necessary not to look at the contractualising Treaty but at a practice that changes the foundations.

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*Editorial Note*

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- i The William-Thompson-Working-Paper-Series is edited by the European Social Organisational and Science Consultancy for University of Cork, Department of Applied Social Studies and meant to offer a space for publications of occasional documents. One aim amongst others is to offer a space for publication of work by colleagues of the Department of Applied Social Studies at University of Cork.  
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- ii © for this edition: Peter Herrmann, 2009
- iii Herrmann, Peter; dr. phil (Bremen, Germany). Studies in Sociology (Bielefeld, Germany), Economics (Hamburg), Political Science (Berlin) and Social Policy and Philosophy (Bremen). Had been teaching at several Third Level Institutions across the EU; currently correspondent to the Max Planck Institute for Foreign and International Social Law (Munich, Germany), senior advisor to the European Foundation on Social Quality (Amsterdam, Netherlands) and Director of the Independent Research Institute European Social, Organisational and Science Consultancy (Aghabullogue, Ireland) and teaching at the University College of Cork, Department of Applied Social Studies, (Cork, Ireland), where he holds the position of an adjunct senior lecturer and Kuopion Yliopisto, Yhteiskuntatieteellinen tiedekunta. Sosiaalipolitiikan ja sosiaalipsykologian laitos (Kuopio, Finland), where he is adjunct professor. He held various positions as visiting professor and is currently in this position at the Corvinus University in Budapest. Member of the Administrative Board of the European Social Action Network (ESAN), representing this in the Platform of Social NGOs.  
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- iv The present text goes back to earlier considerations, more or less spontaneous contemplations after the Brussels summit meeting accepted the results of the negotiations on (some of) the concerns resulting from the Irish referendum on the Lisbon Treaty. The present document provides an edited form of notes I made and combines polemical contemplation and the effort to highlight some very principal issues on ‘where we are going’ – we not being the Irish but at least the European people.