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The Convention on the Future of Europe: Transatlantic Perspectives

IN JUNE 2003, THE CONVENTION on the Future of Europe delivered its project for a draft Constitution to the European Council as a basis for negotiations during the 2003-2004 Intergovernmental Conference. Although it is too early to tell how different the final outcome will be from the Convention draft, it is time to reflect on the Convention as process, and situate this EU experiment in deliberative negotiating. In this *EUSA Review* Forum, three authors look back at the work of the Convention and analyze it in a historical and transatlantic light.

— *Virginie Guiraudon, Forum Editor*

Deliberating under the Shadow of the Veto Paul Magnette

THE INK IS SCARCELY DRY on the “constitutional treaty” written by the Convention on the Future of Europe. Yet, controversies about the meaning of this experience have already begun. Some, adopting a “realistic” point of view, see it as a classic form of intergovernmental bargaining that does not alter the Union structure significantly. Others, however, emphasise the novelty of the method and the importance of the proposed legal changes. These two lines of analysis are not necessarily contradictory. It is difficult to deny that the Convention was merely a new bargain between member states, governed by classic forms of mutual concessions and log-rolling. Yet, the deliberative nature of the process should not be neglected. To a certain extent, the “deliberative constraint” that the process put on the actors partly explains the outcome of the Convention.

Given the vagueness of the Laeken mandate, some initially believed that the Convention would reach a consensual agreement that would profoundly transform the Union and that the governments would be forced to ratify. It was, however, naive to think that the Convention could be “Europe’s Philadelphia.” Nothing, in the present European situation could create a pressure comparable to the military, commercial, political, moral and religious crises that had led to the Philadelphia process. A realistic assessment of the nature of the EU, of the international context and of member state preferences raised doubts on the Convention’s margin of manoeuvre.

The *conventionnels* did not initially restrict their horizons. The classic dichotomy opposing “bargaining,” based on a narrow defence of stable preferences, and “deliberation” defined as a rational exchange of arguments aimed at reaching the “common good,” seems to have structured the *conventionnels*’ image of their own role. The Chairman of the Convention, former French President Valéry Giscard d’Estaing, often echoed this ambition. A priori, the Convention fulfilled some of the key conditions of a fair deliberative process. It was a specially convened assembly, representing a very large array of interests and ideologies. It was formally independent from its creator and free to determine its own procedures. This gave the *conventionnels* the opportunity not to reproduce the logic of former intergovernmental conferences (IGCs). Given the presence of members who were not the representatives of the governments, they could have examined a larger set of possible options, and could have formed more fluid compromises.

The paradox of this Convention is that, although its members adopted a deliberative style, their attitudes actually remained crudely utilitarian. In most cases, the *conventionnels* played the game of honest deliberation, presenting their interests as impartial views seeking a compromise. In spite of this original and largely autonomous process, they proved unable to overcome classic divisions. In this mix of arguing and bargaining, the latter soon dominated. The members never forgot that they were just a preparatory body, and that their compromise would be renegotiated by the governments in the next IGC. Deliberation took place under the shadow of the veto.

This explains why the notion of “simplification” soon became the label of the minimum compromise that members could reach, and the conceptual tool used to forge it. In spite of all their divisions, all groups in the Convention shared an awareness of the Union’s complexity, a desire to make it simpler and the belief that this would make it more acceptable. Federalists and Euro-sceptic members disagreed on everything, except on that.

The emphasis put on the objective of simplification played a double role. Negatively, it helped preclude the creation of new institutions, on the ground that this would make the EU more complicated. On the other hand, this argument justified the reduction of the number and variety of norms and procedures. This implied extending co-decision and qualified majority voting (QMV) to many fields from which they had been deliberately excluded in the past. The rationale for this change was not that QMV would be more efficient, or that the European Parliament might improve the quality of the decisions, but the quest for simp-

Fifteen Years of Information and Ideas on the European Union

lification. Here, arguing clearly counter-balanced bargaining.

This type of formal reasoning was not, however, an uncontroversial strategy. Many members, aware of the impact such a quest for simplification might have on their interest, soon criticised this form of argumentation. Some emphasised that complexity was often needed in terms of efficiency; others added that complexity is often the price to be paid for democracy. This revealed the limit of the rhetoric of simplification. It offered a minimum consensus on the diagnosis, and provided the members with a “noble task” when the risk of failure was high. Still, its practical impact remained limited. The fusion of the treaties, the suppression of the pillars, the generalisation of co-decision and QMV in legislative matters, the incorporation of the Charter of Rights, are indeed important legal and symbolic changes, especially given the intensity of the conflicts over these issues in the past. It should not be forgotten, however, that these elements of simplification have only been possible because the Praesidium carefully listened to some members’ critics and accepted many exceptions. More importantly, the rhetoric of simplification has not significantly fostered other crucial reforms, i.e., the distribution of competencies or the institutional framework.

The argument of those who, like Giscard and many others, state that the Union will per se be more democratic, because its “constitution” will be simpler and clearer, so that students and people in the street will read it, is obviously overstated. Should we then conclude that “simplification” is an argument found by people who have spent hundreds of hours deliberating about the EU’s future and who, because they realised they could not overcome their divisions, presented “simplification” as a noble task so as to preserve their self-esteem? Perhaps. Notwithstanding, we should not neglect the importance of forms and processes when we think about the EU’s legitimacy. First, form matters in Western civic cultures. A simpler treaty, which looks like a constitution and uses terms that are part of the citizen’s usual political language, might be better accepted. Secondly, and more importantly, we should not underestimate the importance of confirming a constitutional agreement. The Convention has not altered the Union’s structure significantly. But representatives of its member states, of the EU institutions and of the candidate countries, (some federalists, others euro-sceptics, some leftists, others conservatives) have deliberated on all issues related to the EU, examined all possible reforms, expressed in public the largest spectrum of arguments ever made about the EU. This confirmation changes the nature of the agreement, even if it does not alter its content. Those who, in the past, criticised the EU because it had been built behind closed doors, have lost their argument. Those who criticised it on the ground that they had had to, at the time of adhering, take the whole package without having the opportunity to renegotiate the *acquis*, have also lost a key argument. The reassertion and confirmation of the “constitutional compact” by the Convention has not altered the compromise, but it has strengthened its foundations. In the long term, this might prove equally important.

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The Draft Constitution: American Interest Desmond Dinan

IF IMITATION IS THE HIGHEST form of flattery, then the EU is flattering the U.S. outrageously. First, at the 2000 Lisbon Summit, the EU set itself the ambitious goal of becoming, by 2010, “the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs.” The United States, with the most competitive economy and a spectacular record of job creation in the 1990s, was the obvious point of reference, although European leaders were too savvy to say so. After all, praising the United States is not particularly popular in Europe.

Moreover, in an implicit swipe at the Americans, the EU stressed not only that it wanted to create “better” jobs, but also that the Lisbon goal included “greater social cohesion.” By emphasizing social cohesion, a concept unheard of in the United States, the EU signaled its unwillingness to imitate the United States wholeheartedly. Many observers would say that American-style economic modernization and greater social cohesion are incompatible objectives.

Constitutionally, however, the United States is the shining city on the hill, at least according to the rhetoric of Valéry Giscard d’Estaing, chairman of the Convention on the Future of Europe. Giscard rarely misses an opportunity to compare the Brussels convention to the Philadelphia convention of 1787. It is trendy for European pundits, who otherwise dismiss most things American, to express an interest in U.S. constitutional history and to claim to have read the *Federalist Papers*. By implication, the EU wants to constitute itself like the United States of America. Giscard even wanted to rename the EU the “United States of Europe.”

Of course Giscard and others are quick to point out the unique nature of European integration and that, regardless of what it called itself, the EU could never be a full-fledged federation along American lines. Comparisons with Philadelphia may be intended to legitimize the Brussels convention, although few Europeans followed the Convention closely and even fewer know much about what happened in Philadelphia over two hundred years ago. Perhaps the main reason for the comparison is to interest Americans in the Convention, by appealing to their historical knowledge and pride. Given that the number of Americans aware of the Brussels convention is so small as to be insignificant, the comparison with Philadelphia is clearly aimed at Americans who follow European affairs, notably policy-makers and policy-shapers in Washington, D.C.

Indeed, Giscard made a quasi-state visit to Washington in February 2003 to trumpet the Convention. In a lecture at the Library of Congress, he harped on the Philadelphia connection (Giscard 2003). Giscard’s lecture was reminiscent of Walter Hallstein’s at Columbia University in 1963, subsequently published in the *Political Science Quarterly* (Hallstein, 1963). Hallstein began with the requisite historical comparison, starting with the Albany Congress of 1754. He famously described the European Community as “a federation in the making,” and the Rome Treaty as “a veritable constitution.” According to Hallstein,

“History is on our side.” One can imagine French President Charles de Gaulle’s apoplexy upon hearing about Hallstein’s lecture, which mentioned the evils on the national veto and anticipated its replacement by qualified majority voting for trade policy in 1966. De Gaulle, who understood history differently, threw Hallstein’s historical trajectory off course when he precipitated the Empty Chair Crisis in July 1965, ostensibly over budgetary proposals but really over the introduction of majority voting in additional policy areas. Thereafter Hallstein’s days as Commission president were numbered.

Giscard is not Hallstein. Nor is he de Gaulle. He is a moderate (some might say lapsed) intergovernmentalist. The EU today is not the EC of the early 1960s, which seemed to be soaring ever upward, toward ever-closer union. The EU has a far broader policy remit, has a large and growing membership of extremely diverse countries, has endured many crises, and is much more complex than the original EC. Having compared the Brussels and Philadelphia conventions, Giscard elaborated in his Library of Congress lecture upon the political and constitutional differences between the United States and the EU, and explained why the EU could never really be like the United States

Yet, like Hallstein before him, Giscard claimed that European political integration was good for the United States. According to Hallstein, European integration sought to replace “a system which harnesses one giant with a number of comparative dwarfs [with] a new system, which joins in partnership...twin units which today are already comparable and which one day will be equal.” Giscard put it more delicately, claiming that a stronger EU would be “a much more valuable and trustworthy partner for the United States,” allowing for “better organized and more productive dialogue on global strategic issues.” Giscard made another reference to Philadelphia, this time to President John F. Kennedy’s famous Independence Day speech there. “We do not regard a strong and united Europe as a rival,” Giscard quoted Kennedy as saying, “but as a partner.”

A lot of water passed under the transatlantic bridge since the 1960s. European integration excited Americans then; it bores them now. George Ball, the influential Undersecretary of State in the early 1960s, was an old friend of Jean Monnet’s and a fanatical supporter of the European Community. There is nobody remotely like Ball in Washington today. The curse of the Common Agricultural Policy, the end of the Cold War, the fall-out from the Balkan wars, and the Iraq debacle put paid to American enthusiasm for the EU.

William Kristol, editor of the *Weekly Standard* and a more influential Washington insider than Ball, does not think highly of the EU. “As to whether a united Europe is better or worse for America,” Kristol says, “It all depends on what the character of that Europe is. It all depends on the concrete understanding of how to deal with issues in the real world ... In 1991 [during the Gulf War], Europe was much less united and we had much more support ... Now, Europe is much more [united, but it isn’t] clear to me that the greater integration of Europe has been helpful to U.S. foreign policy in the last couple of years ... a Europe whole, at peace, and free is fine: a Europe divided, at peace, and free is perfectly acceptable to me, and I don’t believe that the wholeness

or the unity is required to be at peace or free” (Kristol 2003). To paraphrase Kennedy, the prevailing attitude in Washington is that, “We regard a strong and united Europe (should it ever happen) as at least a nuisance; at worst a disaster.”

The EU is out of fashion in the United States. This makes it difficult to generate much interest in the Convention which, because it took so long and produced such an outcome, is a Godsend to EU-bashers. At a time when Washington faces urgent international problems, and would welcome European support (but only on its terms), the Convention looks like an exercise in navel-gazing. As Kristol put it, “if you have the attitude of the Bush Administration that we have extremely urgent threats out there, and that five or ten years from now the world is either going to be a world of rogue states with weapons of mass destruction ...destabilizing other regimes nearby, or we have a chance to really, at this pivotal moment, make a fundamental difference and begin to create a safer world ...[then] you can’t wait ...[for] endless discussions [in a] constitutional convention ...about a common foreign [and] defense policy, greater defense spending, and all that.”

Little wonder that Giscard’s visit to Washington, which included a courtesy call on the Administration, attracted relatively little attention. As the Convention came to a close, the *New York Times* and the *Washington Post* ran lengthy, informative articles. Other media outlets were less kind. *Fox News*, a cheering gallery for the Administration, interviewed Charles Kupchan, of the Council on Foreign Relations, about the Convention, and warned its viewers that something sinister was afoot:

Interviewer (John Gibson): “Charles Kupchan, we have to keep an eye on these guys...so I hope you are coming back.”

Kupchan: “They’re coming up. We have got to keep looking over the shoulder, John.” (*Fox News* 2003).

Coincidentally, just before the Convention ended, the Europe Subcommittee of the House of Representatives’ Committee on International Relations held hearings on the future of transatlantic relations. Surely that was an ideal opportunity for friends of the EU to make a case for the draft constitutional treaty. Yet no one dwelt on the Convention in their prepared statements (U.S. House of Representatives 2003).

With the political tide in Washington turning against the EU, it is just as well that the Convention received little attention. The Administration may not have a policy of deliberately undermining the EU, but it is happy to watch the EU stumble and to play member states off against each other. If they think about the EU at all, senior American officials want to know what it does, not what it is or could become. Inclined to act rather than philosophize, their interest in the EU is essentially utilitarian. Even on that score the results of the Convention are hardly reassuring. Two indirectly elected presidents, from the Commission and the European Council, vying to represent the EU internationally, is not an ideal outcome. Nor does combining in the EU foreign minister the offices of High Representative for the Common Foreign and Security Policy and commissioner for external relations mean that leading member states will streamline foreign policy making in Brussels.

In truth, the Administration thinks that the EU is incapable

of “getting its act together,” and that the consequences of doing so, were it ever to happen, would not really benefit the United States. Testifying before Congress in June, John Hulsman of the Heritage Foundation explained that the “European Gaullists ... pushing for the creation of a more centralized, federal, coherent European Union political construct do so by increasingly defining themselves through their differences with Americans.” They are “European Lilliputians [who], given their strategic weakness, want to constrain the American Gulliver” (Hulsman 2003). Could the Europeans really unite? The Administration and its friends think not. As one of them recently put it: “Europe is in long-term decline, economically, militarily, and demographically, while the United States continues to grow” (Max Boot, 2003). So much, as far as the United States is concerned, for the Lisbon strategy and the draft constitutional treaty.

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“We the States”: Why the Anti-Federalists Have Won **Renaud Dehousse**

REFERENCES TO THE PHILADELPHIA CONVENTION and to the making of the U.S. Constitution were plentiful in and around the European convention. To be sure, much of this is rhetorical. In reality, the U.S. Constitution is seen by many Europeans as having given birth to a political system that is too centralized to provide a useful model for the EU—hence, *inter alia*, the widespread opposition of the concept of “United States of Europe.” However, American constitutional history provides useful yardsticks to make sense of what the EU convention has achieved.

Why a constitution?

There are obvious analogies between the motives underpinning the two conventional processes. Unavoidably, the issues were different, as one would expect given the overall context in which each of them took place. Yet in both cases, the pressure for change was prompted by discontent with the existing confederal structures.

In post-revolutionary America, the Articles of confederation had been the focus of much criticism since the Continental Congress could not respond to the necessities of the time. The mushrooming of barriers to trade among the thirteen States, the incapacity of state governments to respond to social unrest and threats to private property, the fear of excessive foreign (read : European) influence were among the main concerns of the states delegates in Philadelphia (Lacorne, 1989). On the European side, since its establishment by the Maastricht Treaty, the Union has been faced with recurrent criticism because of its alleged failure to meet democratic standards. Moreover, as the prospect of enlargement drew near, it appeared clearly that the institutional architecture, initially conceived for a Community of six, and which was already giving clear signs of weaknesses in a Union of 15, would be severely crippled by the adhesion of another ten countries. The problem was addressed in the Amsterdam and Nice intergovernmental conferences, but, by general admission,

failed to receive a convincing answer. The deal struck in Nice left a number of outstanding issues: the division of labour between the EU and the member states, the status of the Charter of Fundamental Rights, the role of national parliaments, etc. The scars generated by the negotiation in several countries generated a willingness to reopen the debate even before the Treaty was ratified.

Also noteworthy is the way in which both conventional bodies went beyond their initial brief. When recommending to the Continental Congress to convene delegates from all thirteen states in Philadelphia, the Annapolis Commission had only mentioned the need to discuss trade and commerce issues, and Congress had insisted that the Convention was summoned “for the sole and express purpose of revising the Articles of confederation,” which implied that the outcome of the proceedings was to be ratified by all States. No mention was made of a constitution. Similarly, in the European case, the Laeken declaration had merely invited the Convention to address a long list of issues and to “draw up a final document which may comprise either different options ... or recommendations if consensus is achieved.” The adoption of a constitutional text was contemplated, but only as a possibility in the long run, and the Convention was merely invited to consider the pros and cons of this prospect.

As is known, both conventions ended up adopting a draft constitution. Yet, the analogy stops there.

How much has been achieved?

Three features are worth recalling here about the document adopted in Philadelphia. First, it was adopted in the name of the American people, and came into force without having been ratified by all states. One of the most populous, New York, narrowly approved the new constitution only afterwards. Secondly, the U.S. Constitution gave birth to a strong national government, the authority of which was not directly dependent on the will of the states (even though the system of check and balances compelled it to take into consideration their views and interests), and the powers of which have dramatically increased in the twentieth century. Thirdly, the constitution contained several key political innovations. One was the invention of federalism, i.e., a *tertium genus* between unitary arrangements and the loose confederal structures discussed in the Enlightenment literature (Beer, 1993). At the heart of the system stood a bicameral legislature, product of a “grand compromise” between those who advocated the necessity to retain a principle of equal representation of states and supporters of a system in which seats would be apportioned to the population of each state. Underlying this arrangement was a new conception of representation and legitimacy. James Madison’s often quoted remarks (in No.10 of the *Federalist Papers*) on the necessity to “extend the sphere” in order to prevent the capture of states’ governments by factions are still viewed today as a manifesto for the pluralist model of democracy.

All these elements stand in sharp contrast with the European Constitution. While ostensibly coined in constitutional language, this latter text is essentially a consolidated version of earlier treaties. The reference to a constitution is a pure *trompe l’œil* for, pursuant to the Laeken roadmap, it will now be reviewed by an old-style IGC, and will not come into force until it is ratified

by all member countries, newcomers included. The states, and not the people(s), will remain the masters of that treaty.

As regards its content, the draft constitution is dominated by states' fears to see their influence diluted in the European system. Large states were concerned to avoid the emergence of strong European institutions, while smaller countries were afraid by the prospect of a domination by "big" member states.

These fears are apparent in the institutional structure designed by the convention. Thus, it was felt necessary to reassert that the political leadership of the EU rests with the European Council. To consolidate that leadership, an office of President of the European Council has been established, while the responsibility for policy initiation, coordination and control of the implementation still rests with the Commission. To compensate for what was perceived as a victory of the big member states, equality has been the motto as regards the composition of the Commission: though the number of fully fledged commissioners will be inferior to the number of member states in the longer term, each country will be entitled to its own Commissioner every two terms. This is likely to undermine the Commission's representativeness of by preventing large countries from having "their" commissioner in each executive, as common sense would dictate.

A similar conservatism is apparent in the provisions on foreign policy. The Constitution has institutionalized competition between three poles for the leadership of EU external relations: the new foreign minister, the President of the European Council and the Commission, which will retain responsibility for a wide range of "soft policy" instruments: trade, development policy, etc. The discussions at the convention on the status of the EU diplomatic service outside of the Commission does not augur well of the way this odd *ménage à trois* will function. Moreover, the large member states have made it very clear that they were not willing to relinquish their autonomy in the field of foreign policy—hence, inter alia, their refusal to accept more QMV in that area. The Foreign Minister will certainly have to struggle to establish his/her authority.

States' individual concerns thus appear to have prevailed over the interest of all in devising an efficient system of government. Moreover, innovations were actually rather scarce. The novel features of the constitution are hardly new ideas: the necessity of a stable President had been advocated by Giscard d'Estaing a decade ago, the streamlining of legislative instruments had been suggested by the Commission during the Maastricht IGC, while the dismantling of the pillar structure was initiated in Amsterdam. Ironically, the only unquestionable elements of consolidation of the "central" institutions (the extension of QMV and of co-decision) are strikingly similar to those of the last intergovernmental conferences.

Debates in the convention had confirmed the existence of two camps: on the one hand, the Federalists, who militated in favor of stronger European executive, legitimated by universal suffrage; on the other hand, the supporters of an intergovernmental system, in which legitimacy is primarily derived from national governments. Despite months of hard work, the convention was unable to hammer out an innovative compromise between the two. The so-called "European constitution" displays more

elements of continuity than elements of rupture with the past. To the extent changes were introduced, they were primarily motivated by the desire to prevent the emergence of a stronger central government. In other words, to use U.S. constitutional terminology, the Anti-federalists, supporters of states' rights, have had the upper hand.

Why have the anti-federalists prevailed?

Several reasons come to mind to explain this outcome. Anti-federalist feelings have been gathering strength in the last decade. Since the Delors Commission, national governments have come to learn that their freedom of maneuver can at times be severely limited by European constraints. Preserving their autonomy against encroachments by European institutions has become a regular concern in several countries. Many political innovations of the past decade (from the High Representative for Foreign Policy to the OMC) bear evidence of this concern, which was also quite apparent in the Laeken agenda.

The absence of a clearly identified political project was also felt. Europe has always been a project-based polity, in which transfers of powers to supranational institutions were accepted mainly because they were necessary to achieve common objectives. The common management of coal and steel policies, the common market, the 1992 program or the single currency rallied broad support, which made it easier to agree on important institutional innovations. In contrast, the agenda of the convention was confined to institutional issues. Problems were approached in an abstract fashion, which created an artificial divide between larger and smaller countries, and ultimately weakened the pro-integration camp.

But the way the reform process was designed also had strong implications: national governments, many of which were far from enthusiastic about the convention, had indicated that its results would have to be assessed by an IGC. This forced convention members to take into consideration the views put forward and the warnings of governments' delegates. Convention President Valéry Giscard d'Estaing repeatedly came under fire for spending more time negotiating with national governments than deliberating with his fellow convention members. Last but not least, governments played an active role on the floor of the convention. Several of them decided to send in political heavyweights (generally their foreign minister), which transformed the last months' discussions into a kind of intergovernmental negotiation. The main problem was no longer to identify the best response to be given to common problems, but rather the concessions needed to appease one government or the other.

Together, these elements explain why the individual concerns of the states prevailed over common ambitions. As a result, the eventual compromise does not differ substantially from that of earlier institutional reforms. Hence this paradox: whereas the U.S. constitution was largely drafted by supporters of a stronger national government, for whom federalism was only an acceptable compromise, the European Constitution rather reflects the views of Anti-Federalists who hid their desire to preserve the status quo behind a pro-European discourse.

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