

‘Courage!’ from L’Europe en Formation (2002)

Caption: In 2002, the Federalist magazine L’Europe en Formation compares the Convention on the Future of Europe with the Philadelphia Convention which, in 1787, prepared the Constitution of the United States of America.

Source: L’Europe en formation. 2002, n° 3-4. Nice. "De l'audace!", p. 5-6.

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Courage!

Editorial

The Convention on the future of the European Union's institutions will soon have completed its work. What results can we expect from it, taking as our reference point the procedure followed in the adoption of the Constitution of the United States of America, which was drawn up by the Philadelphia Convention?

There are, of course, obvious and considerable differences between the two Conventions: the members of the Philadelphia Convention spoke the same language and shared the same culture; the thirteen colonies, which were self-proclaimed sovereign states in 1776, possessed neither the antiquity nor the weight of the current Member States of the European Union; the end of the 18th century is a long way from the beginning of the twenty-first, in every respect; and so on.

However, setting aside these blatant and undeniable differences, can we not discover certain parallels and suggest certain similarities?

The revision of the European Treaties is governed by Article 48 of the Treaty on European Union. That article — unchanged since the Treaty of Rome — requires unanimity within the Intergovernmental Conference which is responsible for adopting revisions to the Treaties, and it also requires all Member States to complete national ratification formalities. The requirement for unanimity (in this case double unanimity) is in line with the principle of the sovereign equality which exists between the states. It also, as we know, curbs the ambitions of any states which want to forge ahead and is a kind of bonus given to the less vociferous Member States.

The Philadelphia Convention was intended, in principle, to revise the Articles of Confederation and, in order to do so, to seek unanimity of the delegates of the states and unanimity of the ratifications of the states, but it decided, by a sort of cameral revolution (which was to inspire the proclamation of the Estates-General as a Constituent Assembly in 1789), to abandon the Articles of Confederation and to propose a constitution for the United States. Article VII of the new text indicated that ratification by nine states would be sufficient to allow it to enter into force, at least between those states which had ratified it. The signing of the text of the Constitution, by nearly all the delegates, took place on 17 September 1787. Its ratification by nine states occurred on 21 June 1788 (though neither Virginia nor the state of New York, both large states, had yet come to a decision), and finally, on 27 May 1790, all 13 states ratified the Constitution. It was to be another three years before the Constitution was adopted unanimously by all the states. After a further year, all the states agreed to the Bill of Rights (15 December 1791).

What parallel can we draw between those events and the events surrounding the Convention and the Member States of the European Union?

The key element is the abandoning, in the Philadelphia Convention, of the requirement for unanimity in order to create the new American Constitution and the discovery that, only a short time after the Constitution's entry into force between nine states, all the states would finally come round to it. In a way, the American Convention members had just invented 'enhanced cooperation' ¹ on constitutional issues.

Close attention will therefore have to be given to the way in which the European Convention drafts the clause adopting the constitutional treaty which it will be proposing at the IGC. Inspired by Altiero Spinelli's draft Treaty establishing the European Union adopted by the European Parliament in 1984, that clause could make provision for a double majority mechanism for the entry into force of the new constitutional treaty, a majority of Member States representing a significant majority of the population of the Union. Admittedly, this would be a break with double unanimity, but it would be a significant break: it would no longer be a case of simply making amendments to the European Treaties but rather of recasting a new constitutional order of sovereign states. ² It would then be up to those states which were united by the new constitutional treaty to enter into negotiations with the others with a view to convincing them.

There will be no shortage of objections, whether political, legal or practical. However, freeing from the yoke

of unanimity and the lowest common denominator those states and those peoples which are willing and able to go faster and further in creating an effective Europe with a presence in the world is surely what the Convention already proposes, albeit too timidly at present, in Article G-3 of its draft? 'If, two years after the signature of the Treaty establishing the Constitution, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter will be referred to the European Council.' Therefore, to the members of the Convention I would say, 'A little more courage, ladies and gentlemen!'

Vlad Constantinesco.

1. For which a better name would be enhanced integration, as Robert Toulemon has proposed.
2. Professor Alan Dashwood's formula.