

Toward a European Federal Union

Timothy Spence

The Convention on the Future of Europe is in the process of drafting a constitutional framework for the European Union. The draft constitution will emerge by 2004, the same year that the 15-member Union could add 10 new states. This confluence of events is no coincidence, for the EU's current and future member states are struggling to address several challenges: democratic legitimacy, efficiency, and how to manage a diversity of governing styles and cultures while concurrently harmonizing their economies. Even though many EU leaders assiduously avoid the "f-word"—federalism—the future of the European miracle may eventually depend on a flexible federal system. This article is not about writing a constitution for Europe, but it does address a process of getting to one and a system that can help such a constitution function in the future.

In just 60 years, the European Union (EU) has grown from a six-member organization concerned with coal, steel, and atomic power into a force that in the new millennium affects most facets of life in 15 nations.¹ As its membership grows to 25 or more states, and as it becomes a model for interstate cooperation elsewhere, the EU demonstrates that, as one newspaper columnist has said, "Its virtues are contagious."² Yet the communitarian system faces challenges derived in large part from its successes. Structural weaknesses make the EU awkward in its political projection and sometimes arbitrary in its decision making. There has long been acknowledgement that reforms are needed, although efforts to date to revamp the founding treaties and institutions have been disappointing.

The Treaty of Nice can be seen as a manifestation of the need for a substantive overhaul. That accord, signed in December 2000, was designed to prepare for enlargement of the EU by improving the decision-making process and adjusting representation in the European Parliament and Commission to accommodate new member states. Almost before the ink dried on the treaty, doubters began to question whether it sufficiently addressed the Union's future, and some critics advocated abandoning the Treaty of Nice altogether.³ Reconciling these concerns about efficiency

Timothy Spence, a Washington-based journalist, is working on his Master's degree in international public policy at the Johns Hopkins School of Advanced International Studies.

and representation is why the current Convention on the Future of Europe is so important. The goal, broadly speaking, is to create a new constitutional order to delineate the missions of Europe's various institutions, and to create stronger checks and balances between the European Commission, the Council of Ministers, the Parliament, and heads of state and government.⁴

But for the Convention to succeed, it must navigate the gulf between those who advocate a more federal Union and those who want a minimalist approach of economic and political cooperation that does not dilute national sovereignty. Publicity and democratic accountability remain implicit dilemmas. The Convention's openness, through public forums, and inclusion of delegates from across Europe, mark a sharp departure from the intergovernmental preparatory groups that shaped earlier reform efforts, including the Nice treaty.⁵ Yet it confronts two inherent constraints. The first is the technocratic character of the policymaking process at the Commission-level. The second is the consensus-based process at the intergovernmental level.

In seeking to assess the ongoing constitutional process, we shall focus on the issue that was a motivating force in creating the Convention in the first place, the issue of democratic legitimacy. The goal of this article is to assess the process by which the European Convention will produce its recommendations and to understand the motivations for reform by drawing on the dynamics that have characterized European integration over the past six decades. In doing so, it also is worthwhile to consider the events that led to the drafting of the U.S. Constitution, which provides an appropriate model in terms of dynamics and reasoning, though not in outcome. The conclusion focuses on democratic accountability and whether Europe's segmented federalism is truly adequate for handling its burgeoning duties and expanding geopolitics.⁶

An Uncertain Process

The fact that the Convention is taking place is a success, in the sense that it represents a sharp departure from the past practice of change emanating from the Union's bureaucracy or intergovernmental meetings. The delegates to the Convention are representative of Europe's many, and often conflicting, interests: the European Parliament and Commission; national parliaments; the Committee of the Regions; and a secretariat staffed by experts on national interests, the Commission and European Parliament. Most notable was the inclusion of 39 delegates from the EU candidate states who have nearly equal powers as the representatives of the 15 members.⁷ Perhaps equally remarkable is the public nature of the discussion, for delegation meetings are open to the public and information is available on Internet sites. For those unable to travel to Brussels, the Internet provides a public window to the debate and meetings of both the 12-member presidium and the full delegation.⁸

What is at stake in this process? Conceivably, the future of the EU as a functional assembly, regardless of whether the Convention proposes a revamping of the current intergovernmental system based on treaties and accrued powers, or a

federal Union. Also at stake is the legitimacy of the project if its recommendations are ignored or not given a thorough public vetting. Nominally, the European Council's Laeken Declaration (the 2001 agreement creating the Convention) assigned the Convention to address three issues: the challenge of size and efficiency, the challenge of power and influence, and the challenge of democracy and legitimacy.⁹ Yet several potential constraints on this process emerge, not the least of which is the role that the heads of state and government will play in deciding how to proceed once the Convention completes its assignment.

Institutional Challenges

The first potential constraint is an innate technocratic institutionalism that may discourage novel proposals. Some EU leaders have already discouraged any endeavors that move too far afield of the current arrangement. The Nice treaty offers evidence of this in its failure to devise a system that effectively addresses representation, efficiency, and democratic accountability in the expanding Union. Rather than streamlining decision making and devising a coherent formula for dealing with post-enlargement representation, it bowed to national interests. Fraser Cameron, an adviser to the Commission, rather soberly notes that Nice "was insufficient to meet the challenges of an enlarged Union."¹⁰

Another factor that may limit novelty at the Convention is the already established acceptance of a Europe evolving at different speeds. For example, the Maastricht Treaty on European Union (the modern EU's seminal accord, signed in 1992) excludes Denmark from military and other provisions, while the euro zone does not include Denmark, Sweden, or the United Kingdom. Neutral Ireland got assurances that it would be excluded from a common defense policy before the country's second, successful plebiscite in October 2002.¹¹ In the early months of the Convention, the European Commission reportedly floated a proposal to institutionalize a two-speed system by creating a formal policymaking council representing the countries that have adopted the euro.¹² Strikingly, at a time of sweeping enlargement, this proposal risked placing the 10 states that were invited to join the EU by 2004 on separate trajectories.

These actions could create the image of an elite class of EU nations and risk opening the doors to competing alliances within the Union, jeopardizing the deepening and widening of the EU. The potential perils of special status for certain members plus continued reliance on intergovernmental cooperation in times of hardship or crisis could revive Europe's dangerous pattern of balance of powers.¹³ Juggling the inevitable conflicts between the wealthier West and the poorer East and South would be a challenge for any political assembly; doing so under a system based on technocratic prowess and political consensus may not be functionally possible in the long term.

The Challenge of Legitimacy

Another constraint on the success of the Convention arises from the prepon-

derant influence of the heads of state and government, who will consider the proposals at an intergovernmental conference (IGC) no later than 2004. Aides to Convention President Valérie Giscard d'Estaing, for example, appeared to discount any dramatic constitutional proposal, claiming that it would never get unanimous approval from the EU's governments.¹⁴ Some have suggested that only when the process is taken out of the hands of élites and deliberately politicized will there be a successful constitutionalization of Europe.¹⁵

The inclusion of delegates from the accession states and candidate countries raises another conundrum: After all their work, what happens if the IGC ignores or substantially alters the Convention proposal? Anything to shake the candidates' confidence in becoming full partners might discourage participation and lead to rejection of joining the Union. Even in EU member states, the perception of IGC meddling could raise questions about democratic legitimacy, not to mention whether the delegates can effectively draft something original. While outright rejection of the Convention proposal by the IGC is unlikely, the European Council has become more assertive in setting the EU's agenda.¹⁶

The quest for consensus, while not necessarily undesirable, could nonetheless dissuade reformers and hinder boldness of action. Disenchantment with the IGC process of European reform has proven to be historically deep and wide. Some critics of the European system suggest that even the seminal treaties of European cooperation "had been suffocated and stifled by pragmatic intergovernmental cooperation."¹⁷ A more moderate assessment of this interaction nonetheless highlights the potential weakness of the IGC process:

The difference between the concept of a federal union and that of a federal state is that the creation of a federal state would involve the transfer of all of the most important components of national sovereignty, with compulsory means of implementation at the level of central authority.... Any witness to the painfully slow progress made at Milan, Maastricht and Amsterdam would know just how idealistic such a prospect remains. But it is not unthinkable. It is even, I would venture, predictable—in the longer term.¹⁸

"Ultimate Decisions"

The democratic legitimacy of the constitutional process is also challenged by the Laeken Declaration, which reserves the duty of making "ultimate decisions" on the future of Europe to the IGC. Drawing on the Europeanist experiences in the 1970s and 1980s, the great risk of allowing the IGC to decide where the Giscard constitution goes is twofold: the lowered expectations of an original approach and the possibility that the national leaders will ignore or dilute the Convention's work.¹⁹ Some contributors to the Convention are so concerned about meddling at the IGC level that they want the IGC to work exclusively on the basis of the Convention proposal.²⁰

To avoid the perception of overt intervention in the Convention's proposals,

there are several potential alternatives to the IGC taking on the role of judge and jury. First, member states could hold a pan-European plebiscite on the constitutional proposals.²¹ There are hurdles to this approach, including the German Basic Law, which makes no provisions for popular referendums.²² But the German governing model offers an avenue for debate that is close to the people, through both state and national legislators.

Second, they could place the constitutional proposals on the ballot coinciding with European Parliament elections in each country.²³ In this case, the timing could be opportune, with the next parliamentary elections scheduled in June 2004. This has the ancillary benefit of giving greater significance to the European Parliament elections, and it offers a symbolic notion of European citizenship and civic responsibility.²⁴

Third, the most democratic of EU institutions—the Parliament—could work with committees of national parliaments to debate the Convention’s proposals, and then allow the individual states to advise the European Council or approve the document through their legislative or referendum process.²⁵

America’s constitutional experience offers a fourth approach. In the United States, the adoption process required ratification by a qualified majority rather than a unanimous vote of the 13 states and removed politicians from the process.²⁶ Without qualified majority voting, a single country—even a small one—could obstruct the entire process to the detriment of all Europe.²⁷

One can argue that the IGC and its consensus-based system will arrive at something that is acceptable to everyone. Indeed, experience shows that integrationists usually get what they want—including the direct election of Parliament, a foreign and defense policy, and the currency union. “What was yesterday’s unthinkable eccentricity is often today’s practical convention,” notes Hull University Professor Michael Burgess, adding that in EU affairs, “the past clearly has a future.”²⁸ One such event was the Single European Act (SEA) of 1986, which strengthened European cohesiveness by launching the single market and laying the foundation for economic and monetary union.²⁹

Debating the Merits of Change

The SEA marked a period of growing economic and political cooperation, but this harmony gave way to setbacks in the next decade. In 1992, the Danish defeat of the Maastricht treaty and the narrow French approval of the accord were a blow to integrationists and to the heavyweight champions of Maastricht, German Chancellor Helmut Kohl and French President François Mitterrand. Declining participation in the European legislative elections and European referendums in Denmark and Ireland also were troubling at a time of unprecedented peace and prosperity in Europe. Adding to these setbacks were the rejection of the euro currency by the Danes in 2000 and, a year later, the Nice treaty on enlargement by the normally euro-enthusiastic Irish (although the latter approved an amended treaty in 2002).³⁰ Europeans who

once embraced a wide and deep Europe now seem more cautious in assessing the benefits of a larger EU.³¹

To prevent caution from turning into opposition to enlargement, the EU's national leaders may have had little choice but to create a public assembly to address the future. The task of this Convention is all the more daunting because of concerns about legitimacy and decision making, and growing evidence that public sentiment toward expansion was on the decline after initial enthusiasm for including the former Soviet bloc nations.³²

Some see the signs of malaise as evidence of a need for institutional changes that create a more federal Europe. Consensus-based intergovernmentalism has worked well enough for 50 years—ungainly at times, but functional—however can it be counted on forever as new members and new cultures bring bolder challenges? As David P. Calleo, the director of European Studies at John Hopkins University, astutely observes, “The EU’s hybrid constitution, where differences are settled by consensus, is hardly adequate for containing several internal conflicts.”³³ Furthermore, one senior EU official told the *New York Times*, the structure “worked with six countries, worked badly with 12 countries, doesn’t work with 15 countries and will become impossible with 25.”³⁴

Given public and official concerns about the direction of the EU, it is possible to extrapolate that a more efficient, legitimate, and perhaps a more federal structure is needed. At least two areas suggest that the public is more skeptical about a listless EU than one with direction: the common currency and foreign policy. Eurobarometer polls suggest considerable support for these areas of EU competence.³⁵ Furthermore, for macroeconomic policies to work, there must be some level of political control.³⁶

If the call for a Convention were a response to a series of insufficient reforms and the growing perception that negotiations and decision making were being done without the input of the people, then greater legitimacy would need to be an integral part of any evolving constitutional framework.³⁷ In recognition of this, the European Commission itself has called for five principles—openness, participation, accountability, effectiveness, and coherence—to guide the debate on the future of Europe.³⁸

Valérie Giscard d’Estaing and his delegates have a myriad of choices. While a “United States of Europe” appears unlikely, what is possible is an amalgam of the confederation proposal made by Mitterrand in 1989 and the federal proposal made by the German Foreign Minister Joschka Fischer. Fischer attributed the Danish rejection of the euro in part to political concerns about the EU. “The best antidote against the euroskeptical way of thinking is to strengthen the EU’s ability to act and reform itself,” he said.³⁹

Moreover, carrying out Europe’s biggest enlargement to date without ancillary institutional changes could undermine economic, monetary, and political integration. Without adjustments to the decision-making process, the EU is not likely to collapse, but its authority and cohesiveness could be severely disabled.⁴⁰ The biggest

challenge may be the process itself. If the delegates to the Convention try to deviate too much from the status quo, they risk being stifled by the institutional technocracy and the intergovernmental process itself. The outcome may not be preordained, but past experience suggests that bold proposals and novel changes are not likely to go too far. If the past is prologue, then federalists are bound to be disappointed with the outcome of the Convention.

Why Fix It?

Opposing these federalists is a different school, comprised of those who want to achieve reform through treaties while eschewing a stronger role for the EU. We might call these the EU minimalists. They contend that finding a novel approach to Europe's challenges does not presume the Convention must throw out the baby with the bath water. Indeed, the past half-century shows that Europe's treaty-based intergovernmentalism has worked pretty well, particularly in areas of economic integration. It is not surprising, therefore, that the Organization of African Unity has chosen the EU as its model for reform.⁴¹ It is worth examining three reasons why Europe's system has worked and why a "minimalist" system may still benefit the Union.

First, a functional advantage of the EU has been its flexibility—one might even say creativity—to adapt. Criticism of the EU's penchant for unanimity overlooks the reality that compromise is necessary in any democratic system, not the least one that is based on shared cooperation between sovereign nations. In the EU, the fact that members have eventually ratified every treaty demonstrates the success of the current system.⁴² Thus, the EU's reliance on negotiated treaties has built-in flexibility that can be seen as a source of strength, "enabling it to adapt to frequent environmental change and perhaps even facilitating its survival."⁴³

The EU's present structure has a practical advantage over a constitutional system in that it is easier to enact or amend laws. Altering the U.S. Constitution, for example, is a tedious process involving Congress and state lawmakers and sometimes voters. The Equal Rights Amendment for women was first proposed in 1923 and it took nearly 50 years for it to clear the House and Senate. Even then, the amendment failed in the state ratification process.⁴⁴ Yet EU leaders succeeded in quickly amending the Maastricht treaty after it was turned down by the Danes and did so again with the Nice treaty after the Irish rejected it. In both cases, voters approved the amended accords through referendums.

Furthermore, critics who complain that the IGCs underscore the notion of a democratic deficit in Europe seem to overlook how democracy won the upper hand on Maastricht and Nice. Granted, these treaties were written by hierarchies and Eurocrats, but this differs little from any accord that is drafted by heads of government influenced by lawmakers and pressure groups. The initial rejection of these accords at the hands of voters in Denmark and Ireland, respectively, forced the heads of state and government to address national concerns, not ignore them. If there is a weakness in

accountability in the EU treaty system, it could be filled by giving the elected Parliament greater power over treaty reforms—perhaps by giving it the authority to reject treaties negotiated at the IGC level, a power the U.S. Senate has over international accords negotiated by the president.

Another reason favoring the current intergovernmental approach is that the system has produced mutual prosperity: Europe has enjoyed unprecedented success through its post-war cooperation. The EU's structural policy (by which the Union provides cohesion funds to reduce economic and social disparities between the richer and poorer members) has spurred the economies of the less affluent states, benefiting the wealthier ones in the form of stability, trade, and investment opportunities. This not only explains the flurry of states from the East that want to become members, but also why some of the strongest pro-EU sentiments can be found in states that have benefited greatly from the structural policy—namely Ireland, Greece, Portugal, and Spain.⁴⁵

Certainly the level of cooperation and perhaps even the interest of the candidate countries arises from the fact that the pillars of EU authority exclude facets of life that hit closest to home—language, education and social services. Such exclusions represent a further reason why a minimalist EU serves Europe well. One of the biggest challenges facing a more deeply integrated Europe would be how to address language diversity. Is there a candidate waiting in the wings who could campaign across the continent in more than a dozen languages? Even two or three languages present governance problems in some polyglot nations, with Canada and Belgium offering prime examples.⁴⁶

National characteristics are revealed not only linguistically but also institutionally. What may be more problematic for a EU with growing federal powers is how to adjust different systems of government to fit neatly into one. With its mix of constitutional monarchies, the Gaullist republic, and the German *Bundestaat*, Europe does not share a common institutional framework. This represents a significant hurdle to deeper intergovernmental cooperation.⁴⁷

Finally, Giscard makes a straightforward case for sticking with the current structure of interstate treaties and cooperation: “Europeans don't want a strong central political power. They want certain things done in common.”⁴⁸ Common action has been a hallmark of the EU since its seminal days.

Making the Convention Work

More than half a century ago, efforts to create a stronger military and political authority—the European Defense Community (EDC)—ended in defeat. The rejection of the EDC in 1954, although an opportunity lost for the post-war federal movement, did allow the six EDC partners to focus on what was politically feasible, functional economic integration.⁴⁹ Will the Convention on the Future of Europe be another great opportunity lost?

Clearly the challenges facing Europe will require some adjustments, whether

it is a conservative reshuffling of existing institutions or a move as bold as creating a *Bundestaat* (a federal state). Enlargement alone presents a dilemma, as former Commission President Jacques Delors noted: “Our historic duty is to reunify Europe and therefore open our arms to countries who are as European as we are, but as we know from the experience of previous enlargement, [we] risk diluting the project.”⁵⁰

Given contemporary challenges domestically and abroad, efficiency in a 25-member union will inevitably require more centralization in macroeconomics, immigration, intelligence gathering, foreign affairs and defense, law enforcement, and—more practically—such day-to-day essentials as air traffic control and policing.

Recent events suggest that Europe needs a stronger core to project its political and economic clout on the world stage. Indeed, one of the ironies of the EU’s slowness to develop a strong foreign and security policy despite the evident public appetite for it is that it may only strengthen the United States’ resolve to act unilaterally in areas where it has the greatest tension with its European allies—including security, trade policies, and dealings with the United Nations. A more unified position in these arenas would help EU leaders address rising anti-American views in many EU states.⁵¹

The response to these issues seems to demand something more than caution, consensus, and conciliation—the characteristics that have guided the Union in the past. Concomitant with this greater role is the need for public accountability, something that has not necessarily been a hallmark of EU integration in the past. Indeed, it is possible that the EU’s historic temptation to seek compromises frees individual politicians from having to be accountable for their actions, and it undermines efforts to create a clear system of responsibility.⁵²

Of course, compromise has a relevant role in any democratic system, although compromise inevitably leads to disappointment. Just as not all Americans were galvanized behind their constitutional proposal in 1787, the Convention on the Future of Europe is destined to disappoint. Federalists may find it too tepid; minimalists may see it as an assault on sovereign powers.

Perhaps the most important outcome, however, will be that the people of the EU and their leaders will gain important experience in citizen involvement and democratic accountability. In light of this, the Convention represents a sharp departure from past endeavors at EU reform. The inclusion of candidate countries alone is a remarkable gesture of good faith toward future EU citizens, and Internet sites and youth conventions—while of arguable benefit—indicate that European leaders are seriously concerned about the “democratic deficit.”

The next step seems to be ensuring that this momentum carries through the constitutional process and beyond. Whether it is a process that leads to novel success may depend, first of all, on its legitimacy. To this end, national leaders should deliberate the Convention’s proposal but let its fate be decided through pan-European plebiscites, through direct involvement of national the European parliamentarians, or through state

conventions—such as those held in the United States after its Constitutional Convention. The second test of success is whether the Convention produces an original framework for organizing the EU and delineating the powers of the state and the authority of the Union.

A Surplus of Apathy?

On the first point, we have noted the general dissatisfaction with the IGC process. Ireland's initial rejection of the Nice treaty might be chalked up as a fluke in such a historically pro-EU nation, but the uncharacteristically low voter turnout suggests voter malaise. However, this malaise may be directed at the system rather than the Union itself. That is, the apathy may stem from the lack of influence ordinary Europeans have in EU decision making. European citizens have no way to exercise a fundamental right of democratic expression—the ability to “throw the scoundrels out” if they do not like the policies of the European Council, Council of Ministers, or Commission.⁵³

Even though these concerns are sound, there are good arguments to be made against the notion of a democratic deficit in the EU. First, a pluralistic Europe makes it difficult to “centralize” democracy, meaning that democratic legitimacy in the EU is—as it always has been—vested in the states.⁵⁴ There are equally convincing arguments that the “deficit” is not as much a product of disillusionment in the EU and its institutions as a lack of confidence in national governments to deal with globalization, economic insecurity, and scandals involving national parties and figures.⁵⁵ Still others argue that there is not so much a democratic deficit as a “comprehension deficit” of how the EU functions.⁵⁶

These arguments do have merit, but they tend to overlook the growing power of the EU in macroeconomic policy, justice, and its potential to project its influence abroad. It may be only a matter of time before the forces of pluralism in the EU demand a direct voice in affairs, especially if they find their national governments failing to adequately address economic or other issues that fall under the purview of the Union. According to one assessment, there are real risks in not providing a way to exercise democratic privilege:

The assumption that political integration in Europe can continue to be pursued through indirect methods is a false one. It insults the instincts and intelligence of the peoples of Europe. It provokes a myriad of ill-defined and contradictory fears. It stimulates irrational opposition. It aggravates the tensions between the ties of the old political order that are under challenge and the ties of the new order of political association which have yet to be firmly established.⁵⁷

These risks are particularly worrisome at a time of expansion to include countries that have had relatively short experiences as democracies, and because Africa

and perhaps other assemblies of nations look to Europe as a model of hope, cooperation, and opportunity.

Another Philadelphia?

If the EU offers a paradigm for others, finding a paradigm for the EU is difficult because it is traveling in uncharted territory. Still, the process that led to the U.S. Constitution being drafted in Philadelphia, in the summer of 1787, offers an appropriate model in terms of dynamics and reasoning, though not in outcome.

Like the Americans who drafted the U.S. Constitution, what the Europeans are doing represents a rare act of intergovernmental cooperation with the idea that states are better off working together than being competitors on common ground. While the United States is by no means a perfect example for Europe, there are parallels between early America and modern Europe that demonstrate both the strength of a federal system with a strong constitution as an adaptable structure.

Systemic weaknesses are one example. As extraordinary as America's Articles of Confederation was as a revolutionary document, the 13 states found that progress in creating a governing structure was hobbled in three primary areas: taxation and the regulation of commerce; the lack of an executive power and judiciary; and the consensus-based system that was required to level the playing field between large and small states.⁵⁸

Certainly some of these areas do not apply to today's Europe. The modern EU began as an economic union—albeit with political objectives—and today wields enormous influence over competition, internal commerce, and on external trade at an increasing level. Its Court of Justice has become one of its most federal characteristics, with judges making decisions that affect the internal conduct of member states.

Yet in other arenas, the young United States shared the same challenges as the maturing European Union. In fact, reading the history of the 1780s produces a literature with complaints very similar to those being made in the EU. A system based on shared consensus had its limitations then as it does today. The Articles reserved so much power to the states because ex-colonies did not want to recreate a powerful central authority anything like the one they had just thrown out.

The early Congress was little more than an extension of state power. Without a chief executive, Congress appointed executive departments. There was even a "Committee of the States," not unlike the EU's Committee of Permanent Representatives, charged with keeping things running when the decision makers were not around. Just as the EU is wholly dependent on its member states for its finances, the young U.S. government was similarly reliant on the generosity of the 13 states.⁵⁹

Still, the Philadelphia Convention was about creating a state while the formation of Europe has always been concerned with the organization of power between states.⁶⁰ In the American example, "It was not so much *powers* that the Confederation wanted as *power*."⁶¹ The EU, on the other hand, has many *powers* within its

competencies, though what it lacks most is *power* for the people to have a more direct say in EU decisions.

The men gathering in Philadelphia in the summer of 1787 might easily have addressed concerns about the lack of federal power without creating a new order. Indeed, adjustments could have been made to the Articles without radically altering their character.⁶² Yet this would have ignored the underlying arguments that the Articles of Confederation functioned through the medium of state government, while the Constitution created a central government—armed with the power of taxation and the control over commerce—that dealt directly with the citizens.⁶³

If there are strains of similarity in the motivations for the American and European conventions, they diverge most notably on the process. The 55 delegates who gathered at Philadelphia conducted their business in secrecy—so much so that it was years before anything was known about the inner workings of the Convention.⁶⁴ Nor was there unanimous enthusiasm among the states for the assembly in Philadelphia. So palpable was the concern about domination by the big states that New Hampshire was tardy in sending a delegation to Philadelphia and Rhode Island declined to participate.⁶⁵

A Laudable Event

The Convention on the Future of Europe is laudable for its openness and breadth of representation and is unprecedented in this respect. It provides a forum for addressing the challenges of enlargement and democratic legitimacy in a constructive way.⁶⁶ People are invited to submit ideas, rants, and proposals to the Convention. Although this inevitably leads to repetitive and occasionally arcane proposals, the level of openness may be necessary to address one of the very concerns that prompted the Convention in the first place—democratic accountability.

In considering this process, it is important to observe that no proposal, not even a ratified one, will mark the end of the debate. A constitution is only the beginning. In America, the constant reappraisal of the founding laws is what makes the nation's democracy vibrant and is an integral part of citizen involvement, something in short supply in today's EU.

Will the Convention on the Future of Europe change that? In considering that question, it is important to note that the early American constitutional adventure, like that in Europe today, was not the destination.

Americans were not agreed about their precise destination; they were uncertain about their future. There is, then, a real danger while interpreting American state-building and national integration of reading history backwards, with the advantage of hindsight, from a national perspective. To do this is to misinterpret and misunderstand the American experience. In practice, it would lead to the over-simplification and distortion of history.⁶⁷

As this debate continues, Europeans and particularly their leaders may want to be wary of assuming the future before it happens. Early in the process, however, Giscard and others were making assumptions about the outcome of the Convention that had the potential to hamper debate and—more disparagingly—discourage novel approaches to building a European constitution.

Conclusion: A Federal Future for Europe?

While there is general acknowledgement that the EU needs a better system to help guide expansion of territory and responsibilities, there is no consensus on how to get there. As with the events at Philadelphia, there is a need to give the hub a more defined role without weakening the spokes. A stronger federal structure is one way to do this. Perhaps nowhere is this more important than in the practical growth of EU powers to accommodate 10 more states from the East and South that have less developed economies and have relatively recent experience in capitalism and democracy. These states may not be keen to surrender power to a distant authority (as they did during the Cold War as Soviet satellite states) but they certainly will want their voice heard in the decision-making. Fittingly, the leader of one of the candidates for membership, Latvian President Vaira Vike-Freiberga, told a gathering in November 2001, “The EU is and remains an organization of and between states. We’ve had to fight far too hard for our nation state to want to dispense with it now.”⁶⁸

European minimalists may balk at federalism, yet it emerges as the most practical solution to the EU’s goal of strengthening democracy, legitimacy, effectiveness and its global voice. Indeed, federalism and minimalism are not inherently antithetical. Federalism can address the challenges facing Europe while accepting—as Giscard said—that Europeans do not want “a strong central political power.” Federal governance does not mean depriving French schoolchildren of their language or Danish laborers their social protections. On the contrary, it offers an adaptable process that would seem to suit the expanding EU by providing structure and legitimacy.⁶⁹ Further, it defines what is the power of the core and what are the exclusive powers of its parts.

Rather than creating a governing monolith, as some minimalists fear, a federal EU can help define what powers the states have and what powers are instead reserved for the Union. Absent a clear delineation of authority, the EU runs the risk of reinforcing the concerns about the legitimacy of its actions without the democratic safeguards that exist in the individual nation states. In *Democracy in Europe*, Larry Siedentop contends that a EU run mostly for economic reasons creates a form of elitism not unlike communism—what he calls “economism.”⁷⁰

Based on the history of Europe since the 1950s and the shared desire to create a peaceful, stable, and mutually prosperous Europe, the Convention will suc-

ceed even as a temporary measure or as a foundation for further deliberation. But whether it generates a novel approach to address the issues in the Laeken Declaration, the desires of the Commission, the influence of the national governments, and the integrationist tendencies of the European Parliament may depend on how much of a stake the citizens of Europe have in it. The success of the Convention may also be measured by the extent to which it lays the groundwork for a federal structure.

In the end, whether the new constitution is one based on enhanced treaties, a stronger assembly of nation states or a federal Europe, the process of getting there is important. The Convention has not replaced the IGC, but the European Council could ensure the creativity and legitimacy of the process by foregoing any role in altering the final document and leaving the decision on whether to approve or reject the constitution to national parliaments, voters or through creative approaches—such as national conventions or a pan-European referendum.

Overt meddling by the national leaders in what is a truly remarkable event could prove detrimental to relations with the candidate states that participated and enhance the perception of a popular alienation from the process of building a larger, more harmonious and internationally prominent Europe. The shortcomings of the Nice treaty in addressing legitimacy and representation gave impetus to creating the Convention on the Future of Europe. The Convention offers a fresh chance to redefine Europe, but the failure to create an original proposal—one built on a federal structure—may only lead to another disappointment like Nice. Significantly enough, Europe cannot afford such a rendezvous.

NOTES

¹ Throughout this article, the current name European Union is used synonymously with its other names, including the European Community and European Economic Community.

² William Pfaff, “Europe is Good for Greece and Turkey,” *International Herald Tribune*, 22 July 2002, 8.

³ Karen Donfried, director of the German Marshall Fund of the United States, advocated the abandonment of the Nice treaty during a discussion on “The Finality Debate and Its National Dimensions” at the Center for Strategic and International Studies in Washington, D.C. on 20 May 2002.

⁴ See, for example, Pat Cox, “The Emerging New Europe: Implications for the Transatlantic Relationship” (address to the National Press Club, Washington, 10 July 2002); and Zenon Bankowski and Andrew Scott, “The European Union?” in Richard Bellamy, ed. *Constitutionalism, Democracy and Sovereignty: American and European Perspectives* (Aldershot, England: Avebury, 1996), 78.

⁵ Mariana Tsatsas, “The Convention on the Future of Europe,” European Programme Briefing Paper, No. 1 (London: The Royal Institute of International Affairs, 2002), 5.

⁶ For discussion of the use of “segmented federalism” to describe the EU, see Alberta M.

Sbragia, ed., *Euro-Politics: Institutions and Policymaking in the "New" European Community* (Washington, D.C.: The Brookings Institution, 1992), 262.

⁷ In October 2002, the EU invited Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia to negotiate membership. Three others, Bulgaria, Romania and Turkey, are still candidates for membership.

⁸ "Timetable of Meetings," from the European Convention's Web site at <http://european-convention.eu.int/calendrier.asp?lang=EN>. 20 January 2003.

⁹ Philippe de Schoutheete, "Where Is the EU Going?" (lecture to the Center for Transatlantic Relations and the American Consortium of EU Studies, Washington, D.C., 5 April, 2002). For the document itself, see "The Future of the European Union—Laeken Declaration," issued by the European Council, 15 December 2001 at http://europa.eu.int/futurum/documents/offtext/doc151201_en.htm.

¹⁰ See Fraser Cameron, "The Finality Debate—A Commission Perspective," draft report for the Project on "The Finality Debate and Its National Dimensions," 7.

¹¹ "The Irish Agree; Now Will Everyone Else Kindly Do the Same," *Economist* 26 October 2002, 46.

¹² Ed Crooks et al., "Commission Proposals Point the Way to Two-Speed Europe," *Financial Times* 18 May 2002, 6.

¹³ Svein S. Andersen and Kjell A. Eliassen, eds., *The European Union: How Democratic Is It?* (London: SAGE Publications, 1996), 225.

¹⁴ "The Tortoise is Thinking of Moving," *Economist*, 18 July 2002, 31.

¹⁵ Philippe C. Schmitter, *How to Democratize the European Union ... and Why Bother?* (Lanham, Maryland: Rowman and Middlefield Publishers Inc., 2000), 119.

¹⁶ As Fraser Cameron, an adviser to the European Commission, noted: "If anything, there has been a steady trend towards greater authority and involvement of the European Council." See Cameron, 6.

¹⁷ Michael Burgess, *Federalism and European Union: the Building of Europe, 1950-2000* (London: Routledge, 2000), 148.

¹⁸ Jacques Vandamme, "European Federalism: Opportunity or Utopia," in Martin Westlake, ed., *The European Union Beyond Amsterdam: New Concepts of European Integration* (London: Routledge, 1998), 153.

¹⁹ Burgess, 113-114.

²⁰ "The Federalist View of the Future of Europe," position paper issued by the Union of European Federalists, 21 April 2002, part III at http://www.federaleurope.org/en/campaigns/convention/convention_position_paper.html.

²¹ Jürgen Habermas, "So, Why Does Europe Need a Constitution?" trans. Michael Everson, Policy Papers on Constitutional Reform of the European Union (San Domenico di Fiesole, Italy: Robert Schuman Centre of Advanced Studies, European University Institute, 2001) at <http://www.iue.it/RSCAS/Research/Institutions/Reform.shtml>. 27 January 2003.

²² Basic Law for the Federal Republic of Germany, Berlin: Civil Administration Division, Office of the Military Government for Germany (US), 1 September 1949, VII:29:1-3.

²³ Joseph H. H. Weiler, "Legislative Ballot Initiative" in *The Constitution of Europe: Do the New Clothes Have an Emperor?* (Cambridge: Cambridge University Press, 1999), 350-351; and Schmitter, Chapter 5. For another view, see "The Federalist View of the Future of Europe."

²⁴ Weiler, 351.

- ²⁵ For a discussion of this parliamentary advisory role, see Andersen and Eliassen, 4-5.
- ²⁶ Samuel Eliot Morrison, Henry Steele Commager and William E. Leuchtenbrug, *The Growth of the American Republic*, vol. 1 (New York: Oxford University Press, 1969), 257.
- ²⁷ For a strong assessment of qualified majority voting in the Convention on the Future of Europe, see Alberto Alesina and Guido Tebellini, "Europe Could Be Split by Unanimity," *Financial Times* 29 November 2002, 11.
- ²⁸ Burgess, 151.
- ²⁹ Desmond Dinan, *Encyclopedia of the European Union* (Boulder, Colorado: Lynne Rienner Publishers Inc., 2000), 418.
- ³⁰ See John Vinocur, "In 'No' Vote, Danes Show Doubt Over EU's Course," *International Herald Tribune* October, 12 2000, 1; and Barry James, "Irish Voters Send Signal with a 'No' to EU Expansion," *International Herald Tribune* 9 June 2001, 1. In the second Irish referendum, the Nice treaty was approved 63 percent to 37 percent with a turnout of 50 percent. See "The Irish Agree; Now Will Everyone Else Kindly Do the Same?" *Economist*, 26 October 2002, 46.
- ³¹ "Is the Venture Now in Peril?" *Economist*, 8 June 2002, 45-46.
- ³² European Commission, *Eurobarometer: Public Opinion in the European Union* (Brussels: Directorate-General Press and Communication, 2002) at http://europa.eu.int/comm/public_opinion/archives/eb/eb57/eb57_en.pdf. 20 January 2003.
- ³³ David P. Calleo, *Rethinking Europe's Future* (Princeton, N.J.: Princeton University Press, 2001), 296.
- ³⁴ Steven Erlanger, "Europeans Move Cautiously on Illegal Immigration Issue," *New York Times* (June 23, 2002), A6.
- ³⁵ According to the Eurobarometer poll Number 57 (spring 2002), 71 percent of those surveyed support a common defense and security policy, 64 percent support a common foreign policy and 67 percent support the Euro. For the complete survey results, see European Commission, *Eurobarometer: Public Opinion*.
- ³⁶ See, for example, David McKay, *Federalism and European Union: A Political Economy Perspective* (Oxford: Oxford University Press, 1999), 182. Pierre Werner, the "father" of the euro, always believed that a federal Europe would follow economic and monetary integration. See "Pierre Werner," *Economist*, 4 July 2002, 85. Furthermore, Argentina's decision to peg its currency to the dollar is by no means a parallel comparison to the euro and the EU, but it does show the risk of adopting a macroeconomic policy without corresponding political clout.
- ³⁷ Tsatsas, 3. For discussion of the perceived inadequacies of Nice and other treaties, see for example, Cameron, 7.
- ³⁸ Commission of the European Communities, "European Governance: A White Paper," 25 July 2001, from the EU's Web site at http://europa.eu.int/comm/governance/white_paper/index_en.htm.
- ³⁹ Tom Buerkle, "Euro Unscathed by Danish 'No'," *International Herald Tribune* 30 September 2000, 1.
- ⁴⁰ Burgess, 278.
- ⁴¹ See "African Union Inaugural Summit Closes in South Africa," Deutsche Presse-Agentur, 10 July 2002 and "African Union Makes Headline in Brazzaville," Panafrican News Agency (PANA) Daily Newswire, 12 July 2002.
- ⁴² Westlake, 23.
- ⁴³ *Ibid.*, 25-26.

⁴⁴ Eric Foner and John A. Garraty eds., *The Reader's Companion to American History* (Boston: Houghton Mifflin Company, 1991), 356-357. The Equal Rights Amendment fell short of being ratified by 38 of the 50 states.

⁴⁵ In the candidate countries, according to Eurobarometer polling, on average, nearly 6 people in 10 (59 percent) feel that EU membership would be a "good thing" for their country while two-thirds (65 percent) of the respondents of voting age in the candidate countries declare that they would support their country's membership in the EU if a referendum were to be held on this issue. See European Commission, *Candidate Countries Eurobarometer* (Brussels: Directorate-General Press and Communication, March 2002), 3 at http://europa.eu.int/comm/public_opinion/archives/cceb/2001/cceb20011_en.pdf.

⁴⁶ Larry Siedentop, *Democracy in Europe* (London: Allen Lane, The Penguin Press, 2000), 12.

⁴⁷ For a salient discussion of the pan-European political culture, see Paul Gillespie, "Models of Integration," in Brigid Laffan, ed., *Constitution-Building in the European Union* (Dublin: Institute of European Affairs, 1996), 148 and Siedentop.

⁴⁸ "Valéry Giscard d'Estaing, Europe's Conductor," *Economist* 22 June 2002, 50.

⁴⁹ Desmond Dinan, *Ever Closer Union: An Introduction to European Integration* (Boulder, Colorado: Lynne Rienner Publishers Inc., 1999), 27-28. The six countries that formed the European Coal and Steel Community and the EDC were the same—Belgium, France, Germany, Italy, Luxembourg, and the Netherlands.

⁵⁰ Eric Le Boucher and Laurent Zecchini, "Jacques Delors critique la stratégie d'élargissement de l'Union," *Le Monde* (Paris), 19 January 2000, at http://www.lemonde.fr/recherche_resumedoc/1,9687,62509,00.html?query=Jacques+Delors+Critique+la+Strat%20E9gie+d%20Elargissement+de+1%20Union&query2=&booleen=et&num_page=1&auteur=eric.

⁵¹ Erlanger, 6.

⁵² Frank Vibert, *A Constitution for the Millennium* (Hants, England: Dartmouth Publishing Company Limited, 1995), 227.

⁵³ Weiler, 350.

⁵⁴ Andersen et al., 225. For other arguments against the notion of a "democratic deficit," see Schmitter, particularly chapter 5.

⁵⁵ Robin Niblett, "The European Disunion: Competing Visions of Integration," *The Washington Quarterly* 20, no. 1 (Winter 1997): 99-100.

⁵⁶ Rolf Gustavsson, "The European Union: 1996 and Beyond – a Personal View from the Sideline," in Andersen et al., 219.

⁵⁷ Vibert, 222.

⁵⁸ For a salient discussion of the early American experience, see Max Farrand, *The Framing of the Constitution of the United States* (New Haven, Connecticut: Yale University Press, 1913), chapters 1, 4, and 13 and Morison et al., chapters 13 and 14.

⁵⁹ Morison et al., 239.

⁶⁰ Burgess, 254.

⁶¹ Morison et al., 229.

⁶² Farrand, 209.

⁶³ *Ibid.*, 208.

⁶⁴ *Ibid.*, 56.

⁶⁵ Morison et al., 244.

⁶⁶ Desmond Dinan, "Introduction: The Convention and the Intergovernmental Conference,"

draft report for the Project on *The Finality Debate and Its National Dimensions* (Washington, D.C.: Center for Strategic and International Studies, May 2002), 16-17.

⁶⁷ Burgess, 258.

⁶⁸ Lionel Barber, "Top German Politicians Call for Radical EU Shake-Up," *Financial Times*, 19 November 2001), 12.

⁶⁹ McKay, 16.

⁷⁰ Siedentop, Chapter 2. For an alternative view, see Andrew Moravcsik, "Despotism in Brussels? Misreading the European Union," *Foreign Affairs* 80, no. 3 (May/June 2001): 123.
