

Introduction

It is not surprising that Americans are curious about the creation of a constitutional treaty for the European Union. Constitutional developments are part of the fabric of our society. Early on we turned to written agreements to order relations. The effort “to form a more perfect Union” is not only enshrined in the opening line of the United States Constitution, but also engraved in the nation’s history.¹ In our civic life we herald the American experience of building a polity based on the oldest written constitution still in force.

Americans can appreciate Europeans’ desire to write a constitution, but wonder how a new constitution can be agreed by sovereign states in the dynamic world of the twenty-first century. Europeans have long sought to form “an ever closer union” within the European Union and its predecessors.² Can a closer union be based on the constitutional treaty signed at the June 2004 European Council summit meeting and what could it mean for Americans? This volume offers perspectives on these questions. The book will review the process by which the treaty was concluded, offer comparisons to the American constitution and perspectives on its prospects for passage. As a service to readers, the volume brings together new chapters with previously published commentaries.

The treaty was the result of an innovative multi-step process that engaged citizens and leaders alike. People across Europe participated in conferences and web-based discussions to generate and share ideas about how the structures of the Union should be reformed. Their ideas fed into the official European Convention led by former French president Valéry Giscard d’Estaing. The Convention produced a draft text in June 2003, which was considered by the Intergovernmental Conference (IGC) convened in autumn 2003. However, at their December 2003 summit meeting, European leaders failed to adopt the

¹ “Constitution of the United States,” Preamble, available at http://www.archives.gov/national_archives_experience/charters/constitution_transcript.html

² The term “ever closer union” is cited in several European Union documents including the Treaty on European Union, Article A, Available at http://europa.eu.int/eur-lex/en/treaties/dat/EU_treaty.html

treaty. The tense negotiations foundered on the debate about how to allocate decision-making power among Member States through a new voting system. The treaty was modified and adopted at the June 2004 summit meeting.

In Part One, three authors explain the important themes in the constitutional treaty. In chapter one, Professor Dr. Stefan Fröhlich examines the major themes of the European Convention and how they were realized in the constitutional treaty. He also discusses constitutional innovations, trade-offs, and as well as missed opportunities. In chapter two, United States Supreme Court Justice Stephen Breyer explains the competing models of constitutional order in the draft EU treaty and compares these to the treatment of similar issues in the U.S. constitution. Justice Breyer presented his ideas at a conference held on January 22-23, 2004, on “The New Europe: Its Constitution and World Role” cohosted by the European Studies Program and the Center for Transatlantic Relations at the Johns Hopkins University’s Paul H. Nitze School of Advanced International Studies. Chapter three reprints Robert Cottrell’s sober consideration of the treaty’s prospects for passage, which was first published by the American Enterprise Institute’s New Atlantic Initiative.

Part Two considers the constitutional treaty’s implications for transatlantic relations. If ratified, the constitutional treaty will effect the EU’s relations with the United States. In chapter four, Dr. Esther Brimmer highlights elements of the treaty that are particularly relevant for Americans. Chapter five reprints a speech by Ambassador Dr. Günter Burghardt, the EU Commission’s ambassador in Washington in which he explains to an European audience at Berlin’s Humboldt University how the development of a constitution could affect relations with the United States. In chapter six, former Italian Prime Minister Lamberto Dini offers his view on the constitution and transatlantic relations. Many senior European leaders were part of the debate on the future of Europe, the European Convention, and the Constitutional treaty. Their understanding of national politics and the responsibilities of elected office enriched their contributions to the process, and at times served as a reality check on what was really politically possible in the current European context. Mr. Dini, who is now a member of the Italian Senate, offered his thoughts in a 2003 speech

to an American audience at a conference hosted by the American Enterprise Institute's New Atlantic Initiative. As a service to readers, the Appendix reproduces a portion of the constitution treaty, "Title V: The Union's External Action."

Agreement on the treaty text is not the end of the process. The constitutional treaty must still be ratified by all Member States and the European Parliament. One effect of adopting the treaty June 2004 instead of December 2003, is that the ten countries that joined the EU on May 1, 2004, must also ratify the treaty. Therefore, agreement is required by twenty-five members, not fifteen. Ratifications conform to the different national processes. Initially many countries planned to ratify with votes by their national legislatures. Only a few countries planned to ask citizens directly through a referendum. British Prime Minister Tony Blair's decision to have a referendum in the United Kingdom changed the political equation placing pressure on other leaders. If the British Prime Minister was willing to let voters have a say despite the real possibility of defeat in his traditionally eurosceptic country, why should not other European leaders let their publics speak? Even French President Jacques Chirac has announced that his country would hold a referendum in 2005, even though bureaucratically centralized France does not have a tradition of having national referenda on EU issues. As of August 2004, nine countries had announced that they would hold national referenda.³

Ratification will not be easy, because the constitutional treaty is complex. At over three hundred pages it did not succeed in dramatically simplifying the framework of the European Union. It is possible that a member state will reject the treaty. Failure is more likely in a country that will hold a referendum than in one where the national legislature ratifies the treaty. Governments should be able to deliver a positive vote on the treaty in their national legislatures, especially in parliamentary systems, which by definition fuse the executive and the legislature.

If the constitutional treaty passes, Americans will have to contend with new structures and develop new habits of interaction. If the constitutional treaty fails, the United States will still have to deal with a

³ The countries are the Czech Republic, Denmark, France, Ireland, Luxembourg, The Netherlands, Portugal, Spain, and the United Kingdom.

new situation. The terms of the 2000 Nice treaty would prevail, but Europeans are likely to be dispirited by the failure of the constitution. Acrimonious in-fighting among Member States would distract European leaders' attention from international issues making the EU a less effective partner. Either way, Americans will be affected by the European Union's quest for "an ever closer union." The essays in this volume offer a way to begin thinking about the implications of European Union constitutional treaty.