

The Making of The Constitution for the Federated States of Europe

Contribution to the 'Conferencia 'Federalismo: vía de convivencia entre los pueblos', organized by the Escuela de Formación Humanística y Social de la Asociación 'Unidad de Ayuda Ciudadana' (UdAC), on 17 June 2022, by Leo Klinkers, President of the Federal Alliance of European Federalists.

1. Thinking in terms of federal organisation already began 2000 years before Christ in the Codex of King Hammurabi (c. 1755 B.C.) of the Babylonian Empire. In the following centuries, political philosophers formulated the constitutional and institutional building blocks for federal organisation step by step. The Philadelphia Convention in 1787 used them to create the world's first federal constitution. Today, 27 federal states house just over 42% of the world's population. Despite many attempts since 1787 to federalise Europe as well, this has always failed.
2. These failures all had one element in common: as soon as a social initiative to create a federal Europe reached the level of political decision-making, the initiative was killed. The leaders of those social actions always made the same mistake. They assumed that the establishment of a federal state had to take place through the use of established political institutions. No federalist initiative in Europe went back to the methodology of the Philadelphia Convention: making a federal constitution of, by and for the people, approaching the people directly and thus bypassing the political institutions, and above all ignoring the Confederal Congress, the Convention's principal.
3. The world's first concrete federal state was thus created by daring to step out of the box by first submitting the ratification of the constitution to the people of the thirteen confederate states. Only when the people had spoken did the Confederate Congress come into play. But that was only a formality because the founding fathers had decided that if the people of nine of the thirteen states had approved the constitution, then the federation as such would be established and would begin to work.
4. This is the birth certificate of the Federal Alliance of European Federalists in 2018. When, in May 2021, the EU decided to hold a conference on the future of Europe for the second time in 20 years, we decided to set up a Citizens' Convention ourselves. That resulted in 70 participants. We called it the Group 55+ by analogy with the 55 members of the Philadelphia Convention. The aim of our Convention was to improve a draft federal European constitution on scientific grounds. It has become a unique form of a six-month peer-review.
5. With the creation of this Citizens' Convention - shielded from political influence and concentrated on applied sciences - the methodology of the Philadelphia Convention was reproduced as far as possible. Additional support for this method was found in the Ventotene Manifesto of Altiero Spinelli who, as an exile of Mussolini on the island of Ventotene in WWII, wrote a blueprint for a federal Europe, based on a federal constitution of, by and for the people. So designed and ratified in the same way as the federal constitution of the Philadelphia Convention.
6. Things took a different turn in 1946, however. The Union of European Federalists (UEF), founded by Spinelli himself, did opt for the pursuit of a federal Europe, but followed the methodology of the newly founded UN, namely, working with treaties. We now know what the result of that treaty-based approach was.
7. The war in Ukraine made it clear once again that the UN has no meaning at the level of world politics. This can only improve if the UN is transformed into a World Federation. The same applies to the European Union. It too is at the end of its political life cycle and is experiencing a serious identity crisis. This means that it consumes more energy than it stores for its preservation and renewal. A renewal in the sense of complying with the evolution of the European system of states to create a federal Europe.
8. However, all leading EU politicians maintain, supported by the UEF, the position of wanting to federalise Europe through treaties. It is predictable that the EU will succumb to this methodological error in the storm of interlinked crises ravaging the world. A federal Europe based on treaties is not possible. A federal Europe is a state. And a state must be based on a constitution. With a trias politica, the rule of law and democratic political accountability to the people.
9. Thinking differently, as happened in 2003 after the first conference on the future of Europe, resulting in a 'Constitutional Treaty' is complete nonsense. It is something like a pregnant man. It is a non-existing legal concept. Acting differently is complete danger because it creates a political-administrative vacuum in which the European interests of the European Citizens are squandered for the interests of autocratic rulers who crawl into that vacuum. In order to fill this predictable political-administrative vacuum of Europe in time with a scientifically sound federal Constitution for Europe, the already mentioned Citizens' Convention has been at work for six months. I will now very briefly summarise the contents of our federal constitution for Europe.

10. It consists of a Preamble and ten Articles. Two things need to be realised at the outset. First: a Constitution for a federal state is not about the member states. Member States remain as they are, with their own political and administrative systems. They are masters of their own house and look after their own interests. They have only entrusted a federal body with the care of interests they cannot look after themselves. Secondly, the various aspects of direct democracy in this constitution are preceded by the most ultimate form of direct democracy in the sense that this Constitution is first submitted to the people of Europe for ratification. Where a majority of the people accept this constitution, only then will it be the turn of the relevant parliament. The European Union is not a party to this at all.
11. I now highlight the main points of the Constitution.
The Preamble deals with the mission of the Federation to protect values. Values such as happiness, freedom, security, fulfilment, absence of discrimination, absence of war and other violence, protection of the natural environment, humanistic, cultural and religious freedom. Values must be safeguarded by means of norms. That is what the ten articles of this constitution are about.
12. Article I establishes, inter alia, that the Federation under the name of 'The Federated States of Europe' is a democratic state, based on the rule of law, with sovereign Citizens, sovereign and democratic Member States and a Federal body which looks after common European interests. This article establishes the principle of federal statehood: anything not entrusted by the Member States to the care of the federal body remains under the authority of the Member States and the Citizens. For the protection of fundamental rights, reference is made to existing European treaties. Finally, this Article I promotes the creation of a World Federation.
13. Article II deals with the composition of the legislature, one of the three powers of the trias politica. It consists of a House of Citizens and a House of States. The first House is there to look after the interests of the Citizens. The second looks after the interests of the States. That is one of the many aspects in which this Constitution fulfils the very important aspect of checks and balances. Without these checks, one of the three state powers can overrule the others and establish an autocratic rule. This article contains some special innovations.
14. First, the choice for dynamic sizing of the House of Citizens. Based on demographic developments in Europe, the number of representatives of the people increases or decreases, on the understanding that this House will never have more than 600 delegates. Another innovation is the rule that there must be regulations regarding the requirements for the competence and suitability of those proposed by political parties as delegates to the House of Citizens. Representatives of the Citizens are required to have internalized the fundamentals of political office - the most important office in the world.
15. Also new is the requirement for this House to hold multi-day meetings with Citizens once a year to discuss improving the approach to common European interests as proposed in Article III. Our Citizens' Convention has set the voting age at 18. And for elections, the territory of the Federation is the constituency. So there will be no elections by district or state as in America because people will vote for persons who should represent European interests. Not the interests of a district or a state.
16. Article II is also about the House of the States. The parliament of each Member State will appoint nine representatives from among its members to that House. In this way, even small Member States that may have few or even no delegates to the House of the Citizens are assured of sufficient influence on overall federal decision-making. The House of States is also subject to rules governing the competence and suitability to be appointed. That House has the task of consulting panels of members of the Member State parliaments every year on how to improve the realisation of common European interests.
17. Article III deals with the powers and duties of the legislature. Both Houses of the European Congress may make laws. Only the House of Citizens is competent for tax laws. Laws must meet requirements of inclusiveness, deliberative decision-making - i.e. involving Citizens - respecting minority positions and above all avoiding oligarchic decision-making. Furthermore, Article III has a procedure for the involvement of both Houses in the decision-making process on laws. An innovation is that the executive branch has no role in the process of legislation. Article III lists Common European Interests. This is why you make a federation, namely, to take care of interests that individual states can no longer take care of. Furthermore, this Article regulates restrictions on the Member States and the Federation.

18. Article IV deals with the executive branch. A rather important innovation is that, unlike usual, the President does not operate alone but together with two Vice-Presidents. They form a Praesidium. This is to prevent the concentration of power in one person. For their election, the whole territory of the Federation will be considered a constituency. Important rules are also that they must have high integrity, that the federal government decides collegially and is therefore collectively responsible, and that it avoids extreme political deviations and undesirable influence of power groups or lobbying bodies. The civil service is immune from dismissal if the political colour of the government changes.

Furthermore, Article IV deals with the procedure for the election of the Praesidium, the taking of the oath of office, the filling of vacancies and the independent supervision of the execution of government decisions by a federal Ombudsman. Contrary to the usual practice, the Constitution grants the Ombudsman executive powers, in the sense that if the Ombudsman's advice is not followed by the government, the Ombudsman does not have to resign himself to this, but can take action to get rectified what has gone wrong in the policy implementation by the federal government.

19. Article V deals with the powers and duties of the executive branch. As is the case with the legislature, the government must make decisions with inclusiveness, deliberative decision-making and respect for minority positions. It also deals with the position of the President and the Praesidium in matters such as defence, disasters, the appointment and dismissal of staff, the making of treaties, the relationship to a World Federation, and the mandate to hold a consultative referendum once a year on the quality of implementation. Most importantly, the Praesidium has the task of ensuring that the Federation acts as a democratic state based on the rule of law.
20. Article VI deals with the judicial branch. The Constitution establishes a Federal Supreme Court of Justice. The Congress of the two Houses can install a layer of federal judges below it. Judges serve until the age of 75 and their salaries cannot be reduced. They are appointed not by the legislature or the executive branch but by a Praesidium of judges to avoid any influence from the other two branches. The judiciary's powers include reviewing all legislation and executive orders against the Constitution. The law determines the type of crime that is subject to jury trial.
21. Article VII deals with the Citizens, the States and the Federation. As far as the Citizens are concerned, this article contains far-reaching forms of influence of Citizens on decision-making. The Constitution goes further in this than any other. It is going too far to mention these subjects one by one, because it deals with the introduction of Direct Democracy. The States deal with Citizenship and the procedure for leaving the Federation. Important is the rule that acceding Member States are debt free when the Federation is established. The Federation takes over those debts. Furthermore, it is explicitly laid down - as a consequence of the rule that everything the Member States have not entrusted to the Federation - that the Federation is not competent to intervene in the internal order of the Member States. Although the Federation does monitor the democratic order of those States and their respect for the rule of law.
22. Article VIII deals with the way the Constitution can be amended. It is an obvious article.
23. Article IX is about federal loyalty. That is, anyone holding an office within the Federation is loyal to the Constitution, the laws and the executive measures.
24. Article X is the last article and deals with the procedure of ratification of the Constitution.

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