



Political Integration in Europe and America

Towards a Madisonian Model for Europe

Mark C. Christie

Abstract

While integration in Europe is, in several important aspects, already more advanced than it was in America during the decades prior to the American Civil War, there are important differences that make deeper political integration comprising all members of the European Union unlikely in the near term. A smaller group of EU members, however, is likely to continue towards deeper integration, although questions of constitutional legitimacy must be confronted and resolved. European integrationists may find the federalist principles of James Madison, regarded as the father of the American Constitution, valuable both for deeper integration and wider expansion. A Madisonian federal model for Europe could prove acceptable both to many euro-federalists and euro-sceptics and thus advance the cause of European integration. Ironically, a European federal union based on Madisonian principles would be much closer to the vision of many of America's founders than the federal structure of present-day America.

Keywords:

Federalism, European federation, European Constitution, European integration, EU expansion, James Madison

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On 29 October 2004, leaders of the 25 member states of the European Union met in Rome to sign a proposed Constitution, thus beginning what promised to be a long and contentious process of ratification requiring the assent of each EU member. Recent public opinion polls and debates over the proposed Constitution in both France and the Netherlands illustrate just how contentious the ratification process has become. Whether France or the Netherlands puts a brake on ratification or gives it a grudging green light, Europeans who are debating their constitutional future would do well to consider the lessons available from the history of constitutional federalism in America. Both euro-federalists who favour an eventual, politically integrated United States of Europe and euro-sceptics who fear such a prospect would perhaps be surprised by the many similarities and the important differences between the American experience and the path Europe is on now.

It is my argument that integration in Europe along the federal model is, in several important aspects, already more advanced than it was in America during the decades prior to the American Civil War. The American evolution into a deeply integrated political structure was not inevitable, however; nor is it in Europe. On the contrary, for a variety of reasons, an even-deeper political integration comprising all members of the EU is unlikely in the near term. A smaller group of members, however, may choose to continue towards deeper integration, although questions of constitutional legitimacy must be confronted and resolved. In pursuing further integration, Europeans should consider the federal model envisioned by James Madison, regarded as the father of the American Constitution. A genuine Madisonian model could eventually prove acceptable both to euro-federalists and euro-sceptics, thereby advancing the cause of European integration. A European federal union based on Madisonian principles would, ironically, be much closer to the union envisioned by many of America's founders than is the federal structure of present-day America.

1. Questions Posed by the Proposed EU Constitution

Political integration can take two basic forms. In a federal structure the nation-state divides significant powers between the national government and sub-national, usually regional, governments. The United States of America,

Canada and Germany are well-known federal structures in which important powers are allocated to the sub-national levels of government. In contrast to federal structures are nation-states with unitary systems, in which little if any significant powers are allocated to sub-national governments. Well-known examples of unitary systems include the United Kingdom and France, although the UK under the Blair government has devolved some powers to new regional assemblies in Scotland, Wales and Northern Ireland. The contrasting systems for the distribution of governmental power have been described as 'pluricentric' and 'monocentric'.¹

The most important case study of developing federalism in today's world is the European Union, currently debating the Constitution drafted by a convention under the chairmanship of former French President Valéry Giscard d'Estaing. The use of the word 'constitution' to describe this document cannot be dismissed as of merely semantic interest. Prior to now, the EU and its predecessors have operated through treaties, from Rome to Maastricht to Nice. The difference between a constitution and a treaty is fundamental. A treaty is a pact among sovereign states. A constitution is the governing document for a sovereign political entity and, in the Western tradition of Hobbes, Locke and Rousseau, a contract between the governors and the governed. Interestingly, the EU itself refers to the proposal as a 'Constitutional Treaty'² in an apparent effort to give comfort simultaneously both to euro-federalists and euro-sceptics.

Europeans must consider a range of important questions in deciding whether to ratify the proposed Constitution: By adopting its first constitution, will the EU inevitably be headed down the road to a federal nation-state? Will it be comparable in constitutional structure to the United States of America? Will the proposed or any future EU Constitution be legitimate if it is ratified by parliaments rather than through popular referenda?

¹ Mathias Koenig-Archibugi, "Explaining Government Preferences for Institutional Change in EU Foreign and Security Policy", *International Organization* 58, Winter 2004, p. 148.

² The official name of the document is "Treaty establishing a Constitution for Europe," according to the document from the Conference of the Representatives of the Governments of the Member States, Brussels, 29 October 2004 (available at http://europa.eu.int/constitution/constitution_en.htm) (hereinafter called "EU Constitution").

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During its founding era, America's Founding Fathers drew important lessons from Europe. Now European integrationists could learn some valuable lessons from the American experience with constitutional federalism.

2. The EU Today Is More Integrated than the Early US

Today's 25-nation behemoth called the European Union began as a small organisation named the European Coal and Steel Community (ECSC) in 1951. The original members were West Germany, France, Belgium, Luxembourg, Netherlands and Italy. The Treaty of Rome in 1957 expanded the scope from coal and steel into a broader common market comprising the same six countries. The Treaty of Rome contained language that reflected its signatories' pledge to launch a process of 'ever closer union', a term that was left for future Europeans to define.

The European common market's initial economic success was stunning. Its original members, situated in the heart of continental Europe, had been devastated by World War II. By 1970, they had miraculously achieved a level of prosperity that few would have dreamed possible viewing the smoking ruins of these countries just a quarter-century earlier, on V-E Day in 1945. The prosperity of the European Economic Community, as it was then known, led other nations to seek membership. The UK, Ireland and Denmark joined in 1973, Greece in 1981, Spain and Portugal in 1986, Austria, Sweden and Finland in 1995. In 2004, the 'Big Bang' expansion took place, with ten new countries joining what was now called the European Union: Poland, Hungary, Czech Republic, Slovakia, Slovenia, Malta, Cyprus, Lithuania, Latvia and Estonia.

In anticipation of the Big Bang accession, the EU convened its first constitutional convention. The process of drafting and subsequently ratifying a constitution has forced the EU to confront the seminal question that it has deliberately managed to avoid since the Treaty of Rome in 1957: What is the ultimate goal of the process of "ever closer union" declared in the Treaty of Rome?

The EU today is clearly more than an economic alliance. While it was launched by the original six members to foster economic recovery from the wholesale devastation of the Second World War, its founders did not conceal the political dimension. Robert Schuman, the French Foreign Minister who proposed European integration on 9 May 1950, and Jean Monnet, first President of the ECSC's High Authority, believed that political integration could prevent future continental wars, which the earlier Treaties of Westphalia, Vienna and Versailles – based as they were on a system of independent and competing European states – had failed to prevent.

Some of the members who joined later, however, particularly the UK, rejected the idea that 'ever closer union' meant an inexorable journey to a European federal state. They saw the European common market as simply that: a large free-trade zone and preferably little more. The

two competing visions for the European project since the UK joined in 1973 can be characterised as the British vision of 'wider and shallower' – expanding the free-trade zone into as many countries as possible while curbing the growth of the EU as a budding superstate – versus the Franco-German vision of 'deeper and narrower' – promoting the political integration of the EU as more important than expanding the free-trade zone.

The final phase-in of the euro as the common currency in 12 of the EU's continental members, including France and Germany, on 1 January 2002 was "not only the crowning-point of economic integration, it was also a profoundly political act," according to German Foreign Minister Joschka Fischer in his speech calling for a European Federation at Humboldt University in Berlin in 2000.³ While the adoption of the euro served the Franco-German vision of deeper political integration, the accession of ten new members in 2004 served the British vision of a wider, shallower free-trade zone. It was no coincidence that France was deeply reluctant to agree to the Big Bang accession. France would probably have acted to stop or at least delay it, had not its historical partner in EU affairs, Germany, expected both economic and political benefits from EU membership for the Central and Eastern European countries on Germany's borders and split from France on this issue.

The EU that today is deciding whether to ratify its first Constitution is obviously not a United States of Europe. Yet a comparison to the American experience indicates that in many important ways the EU is already far more politically and economically integrated than the United States was in its earliest years.

Most Europeans – indeed most Americans – think of the US as a single nation-state that came into existence during the founding era that ran roughly from the Declaration of Independence on the Fourth of July in 1776 through the drafting and ratification of the Constitution in 1787-88. A BBC News correspondent recently exemplified this view of American history when he wrote that the proposed EU Constitution would not set up a United States of Europe because, in contrast to EU Constitution framers, "[t]he Americans in their Constitutional Convention in 1787 were single-mindedly determined to set up a new nation and did so".⁴ That statement, however much it reflects contemporary thought, is inaccurate on two counts: First, the framers of the American Constitution were certainly not of a single mind as to what type of federal structure they were creating, and second, it took a catastrophic civil war many decades later to transform the US into a nation state.

The 13 British colonies in North America who banded together to fight the Crown did declare themselves newly

³ Joschka Fischer, "From Confederacy to Federation – Thoughts on the Finality of European Integration", speech at the Humboldt University, Berlin, 12 May 2000.

⁴ Paul Reynolds, "Constitution a hard-won compromise," 18 June 2004, BBC News Online.

independent states in 1776. The next year the Congress of the states produced a document called the Articles of Confederation ('Articles'), which was intended to serve as an organisational plan for this new political entity called the United States of America.⁵ (The Articles, by the way, offered membership to Canada,⁶ which declined and has been emphasising its separateness from its southern neighbours ever since.) The Articles were not finally ratified by all 13 states until 1781, the year that George Washington's victory over Lord Cornwallis at Yorktown, Virginia established independence in fact as well as rhetoric.

Yet independence for the 13 states did not mean that a new nation state, federal or unitary in structure, had come into existence. On the contrary, with the British enemy withdrawn, the states immediately began quarrelling among themselves and drifting more apart than together. They continually erected protectionist barriers to trade across state lines. Pennsylvania tradesmen lobbied their legislature for protection from New York tradesmen, Virginia farmers lobbied for protection from North Carolina farmers. Debtors lobbied legislatures for protection from creditors, sometimes even resorting to violence. In one egregious episode, a former officer in the American army named Daniel Shays led an armed rebellion in Massachusetts that went on for several months in 1786. Shay's forces stormed several Massachusetts courthouses to prevent farm foreclosures and made other demands of the state government. Bowing to popular pressure, state legislatures frequently enacted laws that nullified property and contractual rights, and there was no national entity, executive or judicial, to enforce those rights against state violations of them. Individual states printed and coined their own, often worthless, money. The US under the Articles was on the verge of both commercial and even political anarchy.

In stark contrast, the EU has virtually eliminated trade barriers among its members and has adopted and enforces some common contractual, intellectual and other property rights. Within the eurozone of the EU, there is a common currency. The eurozone also has a central bank, something the US did not establish on a permanent basis until the early 20th century.

The EU is not only far more economically integrated today than the US was under the Articles, but in several important ways the EU is more politically integrated as well. The status of political integration in the early years of the US was described by Chief Justice John Marshall in the Supreme Court case of *Gibbons v. Ogden*. Marshall described the states during the Articles period as "sovereign...completely independent... connected with

each other only by a league".⁷ Under the Articles, the national government consisted primarily of a legislative branch, the Congress, and had little executive power, no judicial power and no power of taxation. While the EU today does not have the power of direct taxation, it does have a large and increasingly powerful executive bureaucracy in Brussels that issues rules and regulations that affect individual citizens and businesses in EU member states. These rules represent a plethora of environmental and social regulations, from the dimensions of workplace tools to packaged food hygiene standards. The EU today is a factor in the daily lives of its citizens to a much greater degree than the American federal government ever was during the early decades of the US.

3. Identical Issues Debated in the EU and the US

The disastrous commercial chaos under the Articles finally motivated the Virginia legislature to invite other states to join them in an effort to address that issue, and that issue *solely*. Most state legislatures that agreed to send delegates to a Convention to meet in the spring of 1787 in Philadelphia gave their delegates marching orders merely to amend the Articles to fix the commerce problem, not to write a new constitution.

The Philadelphia Convention obviously proceeded to go far beyond that limited purpose. Meeting in sessions from which the public and the press were barred and observing a pledge of secrecy, the delegates, with political leadership from Convention Chairman George Washington and intellectual leadership from James Madison of Virginia, and James Wilson and Gouverneur Morris of Pennsylvania, instead produced an entirely new plan of government for the United States, a *constitution*.

Far from a gathering of leaders united in a single-minded determination to produce a new nation, however, the Convention was rife with competing agendas and divergent visions for the union. The Convention has been called the 'miracle at Philadelphia'⁸ because the delegates even managed to agree at all on a new Constitution. While the Convention sessions were secret, James Madison kept copious notes. The debates were intense, often strident. Any number of times, the Convention was in danger of complete collapse. State delegations frequently threatened to walk out, and most of the New York delegation did walk out and refused to sign the final document. Rhode Island refused even to send a delegation. The vote to recommend the Constitution for ratification was not unanimous. The Virginia delegation was split, with Madison voting in

⁷ Supreme Court of the United States, *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824).

⁸ Catherine Drinker Bowen, *Miracle at Philadelphia: The Story of the Constitutional Convention May-September 1787*, Back Bay Books; 1st ed., 1986. This book contains an excellent and detailed account of the events and debates during the Philadelphia Convention.

⁵ *Act of Confederation of the United States of America*, Congress of the United States of America, 15 November 1777, adopting Articles of Confederation (hereinafter "Articles").

⁶ *Ibid.*, Art. XI.

favour, but George Mason and Edmund Randolph voting against. Virginian Patrick Henry, of “Give me liberty or give me death!” fame, was not a delegate and articulated his view of the Philadelphia Convention with the equally immortal words, “I smell a rat!”

Many of the most important issues that were so contentious in Philadelphia in 1787 were identical to those the EU is debating today. Two issues tower above all others: First, what shall be the formula for allocating representation (and thus influence) among member states in the new federal union, and second, what shall be the allocation of powers between the new federal government and the member state governments?

The EU has generally followed the principle of allocating member states a fixed number of votes with each member having a veto. During negotiations over the EU Constitution, proposed changes to this formula were hotly debated. Many felt that Spain and Poland, for example, had exaggerated voting rights, and France tried to maintain equal voting rights with Germany, despite Germany’s significantly larger population. In a manner similar though not identical, the US under the Articles allocated each state one fixed vote, although no state had a veto.⁹

The intensity of the EU debates over the voting formula resembles that of the Philadelphia Convention of 1787. Failure to agree on this crucial issue repeatedly threatened to destroy the effort to write an American Constitution. At the beginning of the Convention, the Virginia delegation proposed the Virginia Plan, drafted largely by James Madison. Virginia at the time had the largest population of any state and the Virginia Plan proposed a two-house legislature with representation in both houses based upon population. Through no coincidence this formula would have given Virginia the most representation – and influence – in the new federal government.

Unsurprisingly, the small states objected strenuously and threatened to scuttle the entire project if the Virginia Plan were adopted. New Jersey, then a small state, proposed its own plan. It continued the one-state, one-vote, one-house formula of the Articles. The big states refused to agree. Things were at a standstill as the stifling heat and humidity of summertime Philadelphia long before air conditioning bore down on the delegates.

Then, Roger Sherman of Connecticut proposed what was later termed the ‘Great Compromise’. It was so logical one wonders why it was not proposed sooner. He took the Virginia Plan’s two-house legislature and based representation in one house on population (with a census and reallocation of seats every ten years), but based representation in the other house on absolute equality among the states. The stalemate was broken and to this day the United States Congress consists of a House of Representatives based on population, in which California currently has 53 members and Delaware has but one, and (evoking the Roman Republic) a Senate, in which

California, Delaware, and every other state has the same number of members: two.¹⁰ Equality of representation for each state in the Senate is permanently guaranteed in the Constitution and immune from amendment.¹¹

What the Giscard Convention proposed is quite complicated and difficult for the European man in the street to understand, no small matter when the fate of the proposed Constitution is to be decided in several popular referenda.¹² Majority voting is expanded through a complex device called ‘qualified majority voting’ which does take into account somewhat the population of the voting members.¹³ Representation in the European Parliament is described as ‘degressively proportional’ with no member getting fewer than six nor more than 96 seats.¹⁴ In some ways the proposed EU Constitution moves closer to the American model in the legislative area. Most European legislation will have to be passed jointly by both the Parliament and the Council,¹⁵ which is similar to the American Constitution’s House-Senate structure, and the one-member veto is eliminated in a number of policy areas, though importantly, not from foreign policy, defence or taxation.¹⁶

The second major question the Philadelphia Convention fought over was the allocation of powers between the federal and state governments. Europeans who are dispirited at the intense disagreement within the EU over this issue should take heart. This issue was not settled in America at the Philadelphia Convention either. Certainly the 1787 Constitution greatly expanded the structure of the federal government, adding separate executive and judicial branches to the existing legislative branch. Several new and important powers were given to the federal government that

¹⁰ One commentator has pointed out that this “federal structure favors the overrepresentation of smaller territorial units”. See Sergio Fabrin, “Transatlantic constitutionalism: Comparing the United States and European Union”, *European Journal of Political Research* 43, June 2004, pp. 553-54. The Senate, however, was established not to represent the people directly or equally, but the states as quasi-sovereign political units. Fabrin accurately notes that this formula impacts substantially the election of the chief executive, the president, because each state’s number of votes in the Electoral College is the total of its representatives and senators.

¹¹ Constitution of the United States of America (hereinafter “US Constitution”), Art. V.

¹² Two commentators wrote: “A voting regime that requires recourse to calculators and multiple sources of rules is in danger of rendering the Council process even less intelligible than it is at present.” See Alan Dashwood and Angus Johnston, “The Institutions of the Enlarged EU under the Regime of the Constitutional Treaty”, 41 *Common Market Law Review* 1481, 1499-1500 (2004). I am indebted to Professor Angus Johnston for several suggestions that have assisted me in the preparation of this article.

¹³ EU Constitution, Art. I-25.

¹⁴ *Ibid.*, Art. I-20.

¹⁵ *Ibid.*, Art. I-34.

¹⁶ *Ibid.*, Arts. I-40, I-41 and I-54.

⁹ Articles, Arts. V and X.

it did not have under the Articles, including specific powers to regulate interstate and foreign commerce, to borrow money (a power well-used ever since), to tax (but not incomes), to control immigration, to establish a national currency, and to issue copyrights and patents to protect intellectual property and inventions.

On the other hand, Madison and other framers believed that all powers not specifically listed as a federal power in the American Constitution had been retained by the states, including such critically important areas of policy as education and what is called the ‘police power’. The police power covers a huge swath of laws governing human activity, from criminal laws to public morals laws such as those governing gambling and the consumption of beer, wine and liquor, to family laws governing marriage, divorce, adoption, child custody, abortion, and sexual and medical practices. A myriad of issues that affect Americans’ daily lives were assumed to have remained matters of state, not federal, authority.¹⁷

Unlike the proposed EU Constitution, which contains a detailed list of guaranteed rights in its Charter of Fundamental Rights,¹⁸ the original American Constitution contained very few guarantees of individual rights and liberties. The Bill of Rights, added to the Constitution in 1791 as the first ten amendments, did guarantee such monumental individual rights as freedom of religion, freedom of speech and expression, freedom to assemble and petition the government, and the right to trial by jury and against self-incrimination in criminal trials, but these rights of individuals were protected only against violation by the federal government, which the framers feared the most, not against violation by state governments. The protection of individual rights and liberties was largely left to state constitutions, which had been adopted following the Declaration of Independence. The fact that the 1787 Constitution gave the federal government little power to protect fundamental human rights allowed slavery to continue in the southern states, reinforced by state laws, long after northern states had abolished slavery, and thus delayed the day of reckoning over the issue that represents the worst stain on American history.

The Founding Fathers, however, did not agree on the exact contours of federal versus state powers. Two of the most important, James Madison and Alexander Hamilton, subsequently wrote one of history’s most remarkable pieces of political propaganda to persuade the public to support ratification of the proposed constitution. Labelled *The Federalist Papers*, these were opinion columns of their day and appeared in New York newspapers as New Yorkers were debating ratification. In these essays, Madison and

Hamilton separately explained the new federal structure created by the proposed Constitution. Yet in Madison’s essays the states were stronger players in the new federal structure than in Hamilton’s.¹⁹ In the years following ratification, Madison, along with political ally Thomas Jefferson, increasingly advocated preserving the powers of the states and bitterly criticised Hamilton and other advocates of strong central government.

The 1787 Constitution was ambiguous as to the nature of the federal structure it created. It certainly created a federal union more integrated than the league of sovereign states barely held together by the Articles of Confederation. Yet it did not create a nation state. Madison described the 1787 Constitution as having both federal and national characteristics, although he emphasised the “residuary and inviolable sovereignty” of the states over all matters not specifically delegated to the central government.²⁰ The word ‘nation’ does not even appear in the 1787 Constitution. Many questions as to the exact powers of the new federal government versus the existing state governments were largely left to future generations to answer. Those in the EU who question what type of entity they are creating with their proposed Constitution may well look at the American example and conclude, accurately, that it is far too soon to tell.

4. Lincoln’s Vision of an American Nation

The simple truth is that the US evolved into its modern status as nation-state primarily because of one man: Abraham Lincoln.

Lincoln single-handedly and single-mindedly, through four blood-soaked years of civil war, imposed his vision of the United States of America in place of the federal structure the 1787 Constitution had created. Lincoln’s vision was spelled out explicitly in his Gettysburg Address, delivered in November 1863 during the dedication of a cemetery for the thousands of Union soldiers who had died a few months earlier in the most important battle of the war.

In his address, Lincoln famously began, “Four score and seven years ago our fathers brought forth upon this continent a *new nation*, conceived in liberty and dedicated to the proposition that all men are created equal...”²¹ [emphasis added]

Four score and seven years prior to Lincoln’s speech at Gettysburg was 1776, the year of the Declaration of Independence. For Lincoln, that was the true founding moment of the American republic, not the Philadelphia Convention of 1787, and the Declaration of Independence was the true founding charter, not the Philadelphia Constitution. At Gettysburg Lincoln answered the decades-

¹⁷ The EU bans any member state from using the death penalty, a ban that is continued in the proposed EU Constitution in Art. II-62. EU elites are appalled that the death penalty is used in the US. However, in the American federal structure this matter, as one of criminal law, has historically been left to the states. Many states do apply the death penalty, whereas others have banned it.

¹⁸ EU Constitution, Part II.

¹⁹ See, e.g., James Madison, *The Federalist Number 46*, 29 January 1788.

²⁰ James Madison, *The Federalist Number 39*, 16 January 1788.

²¹ Abraham Lincoln, “Address Dedicating the National Military Cemetery at Gettysburg, Pennsylvania”, 19 November 1863.

old question of what was actually created at the Founding by proclaiming that it was a new *nation*, not a league of sovereign states bound only by a treaty, not a loose confederacy. Before the American Civil War, people commonly referred to ‘*these* United States’ in the plural; after the war the common term became what it is today, ‘*the* United States’, singular. Some historians have written that the triumph of Lincoln’s vision of the American republic represented a Second American Revolution.²²

The victors, of course, get to write the history, but was Lincoln’s characterisation of the original federal structure and its founding moment correct? With all due respect to Lincoln, who saved the American union, I must conclude that his description of the genesis of the republic is incorrect from both legal and historical standpoints.

Most importantly, the Declaration of Independence was not a blueprint for a new republic, so it could not have been the founding charter of the US. It declared that those British colonies in North America whose representatives in the Congress had signed the document were now independent. It stated a long list of grievances against the Crown, in the manner of a plaintiff’s bill of particulars against a defendant. It, of course, boldly declared “that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness, – That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed...”²³ This statement of the nature of legitimate government came directly from the political philosophy of the European Enlightenment, more specifically from British philosopher John Locke.²⁴ The authors of the Declaration, which included primary author Thomas Jefferson, but also included Benjamin Franklin and John Adams, were all well read in European Enlightenment political philosophy.

The Declaration of Independence was many things, but it was not a constitution for a new federal republic. By its own Lockean description of legitimate government, the Declaration could not represent the institution of a new government. The Declaration did not originate with the people. It was adopted by representatives from the state legislatures to the Congress. The fact that the colonies, now states, won the war against the King’s forces did not retroactively convert the Declaration into a blueprint for a new national government to which the American people had given their consent.

²² James M. McPherson, *Abraham Lincoln and the Second American Revolution*, Oxford University Press, 1992, and Garry Wills, *Lincoln at Gettysburg: The Words that Remade America*, Simon & Schuster, 1993. Both authors have written brilliantly of Lincoln’s transformational role in American constitutional history and I am indebted to both of them for much of the historical analysis incorporated in this paragraph.

²³ *Declaration of Independence*, Congress of the United States of America, 4 July 1776.

²⁴ John Locke, *Two Treatises of Government, The Second Treatise*, Chap. VIII.

By contrast, the 1787 Constitution *was* a blueprint for a new federal republic and it was launched with the consent of the governed. The constitution was ratified by conventions in the states elected by the people for that sole purpose. One may argue, as some do today, that the people deciding whether to ratify was limited to propertied white men. That is obviously true, but it is also true that by the standards of the world as it existed in 1787 and by the standards of world history, the process by which the American Constitution was adopted was far more democratic in nature than the institution of most previous – and many subsequent – forms of government on any continent.

Thus Lincoln was simply wrong to proclaim that 1776 was the founding moment of the American federal republic, and his characterisation of the political entity that was created at that moment as one nation was equally wrong. Lincoln’s assertion would have been vociferously challenged by many of the Founding Fathers themselves, most importantly by Thomas Jefferson, primary author of the document Lincoln claimed was the founding charter, and James Madison, regarded as the father of the Constitution.

On another critically important issue facing the young republic, however, Lincoln was most assuredly correct. He believed that the American union was perpetual and that withdrawal from that union by an individual state was impermissible under the Constitution.

While the Articles described the states as retaining their sovereignty and independence, it also described the union of those states as ‘perpetual’.²⁵ The 1787 Constitution did not use the word “perpetual” to describe the union, but said in its preamble that among its purposes was to “form a more perfect union” and the framers were clearly aware that the union they were perfecting was declared to be perpetual in the Articles. The Constitution contains no provision by which the union could dissolve itself, buttressing the idea that it was perpetual. While it contains specific mechanisms for new states to join the union or to be created from within existing ones,²⁶ there has never been any provision for an individual state to secede from the union. We can only conclude that the framers, who intensely disagreed on many details of the new government’s powers, did share a consensus that once a state’s citizens had ratified the Constitution, secession by that state from the union was not allowable.

While Lincoln and Madison would have disagreed about the proper allocation of powers between the federal and state governments, Lincoln’s view on secession was consistent with Madison’s description of America as a “compound republic”, consisting of two separate and equally legitimate levels of government, federal and state, both of which drew their powers directly from the consent

²⁵ Articles, Preamble and Art. XIII (“... the Union shall be perpetual...”).

²⁶ US Constitution, Art. IV.

of the people.²⁷ Since the people had consented to be governed by *both* the state and federal governments when they ratified both state and federal Constitutions, no state government could later withdraw from the union.

Lincoln's view draws further historical support from Chief Justice John Marshall. He described the launch of the republic in the 1819 landmark case of *McCulloch v. Maryland*:

... [C]ounsel for the State of Maryland have deemed it of some importance, in the construction of the constitution, to consider that instrument not as emanating from the people, but as the act of sovereign and independent States. The powers of the general government, it has been said, are delegated by the States, who alone are truly sovereign; and must be exercised in subordination to the States, who alone possess supreme dominion.

It would be difficult to sustain this proposition. The Convention which framed the constitution was indeed elected by the State legislatures. But the instrument, when it came from their hands, was a mere proposal, without obligation or pretensions to it. It was reported to the then existing Congress of the United States, with a request that it might "be submitted to a Convention of Delegates, chosen in each State by the people thereof, under the recommendation of its Legislature, for their assent and ratification." This mode of proceeding was adopted; and by the Convention, by Congress, and by the State Legislatures, the instrument was submitted to the people. They acted upon it in the only manner in which they can act safely, effectively, and wisely, on such a subject, by assembling in Convention. It is true, they assembled in their several States – and where else should they have assembled? No political dreamer was ever wild enough to think of breaking down the lines which separate the States, and of compounding the American people into one common mass. Of consequence, when they act, they act in their States. But the measures they adopt do not, on that account, cease to be the measures of the people themselves, or become the measures of the State governments.

From these Conventions the constitution derives its whole authority. The government proceeds directly from the people; is "ordained and established" in the name of the people; and is declared to be ordained, "in order to form a more perfect union..." The assent of the States, in their sovereign capacity, is implied in calling a Convention, and thus submitting that instrument to the people. But the people were at perfect liberty to accept or reject it; and *their act was final. It required not the affirmation, and could not be negated, by the State governments. The constitution, when thus adopted, was of complete obligation, and bound the State sovereignties...*

...To the formation of a league, such as was the confederation, the State sovereignties were certainly competent. But when, "in order to form a more perfect union," it was deemed necessary to change this alliance

into an effective government, possessing great and sovereign powers, and acting directly on the people, the necessity of referring it to the people, and of *deriving its powers directly from them*, was felt and acknowledged by all.²⁸ [emphases added]

Marshall's opinion embodies Madison's view of the American compound republic. It supports Lincoln's belief that the federal government drew its powers directly from the people and thus no state government could withdraw from the constitutional union. While Marshall's opinion supports Lincoln on secession, he implicitly contradicts Lincoln's view that the Declaration of Independence was the founding charter of the American republic. It could not have been, because it was an act of the states acting in Congress and was not an act of the people themselves.

Debates over the legal and historical accuracy of Lincoln's Gettysburg Address became academic, however, with the eventual victory of Lincoln's armies in the Civil War and the subsequent adoption of the 13th, 14th and 15th amendments to the Constitution. Labelled the 'Civil War amendments', these constitutional provisions transformed the United States of America from an ambiguously defined union of quasi-sovereign states into Lincoln's vision of a single nation-state.²⁹ This radical break in the evolution of American federalism is illustrated by the fact that the first eleven amendments to the Constitution, all adopted prior to the Civil War, limited the powers of the federal government, whereas the post-war 13th through 16th amendments dramatically expanded the powers of the federal government versus the states.³⁰

Although Lincoln's vision of the union *as nation* prevailed and the antebellum republic was destroyed by civil war, the exact allocation of specific powers and roles between the federal and state governments continued – and continues to this day – to be a source of debate, political contention and litigation in America. Even Chief Justice Marshall in *McCulloch v. Maryland*, while asserting that the federal government drew its powers directly from the people and not by delegation from the states, went on to say that "... the question respecting the extent of the powers actually granted [by the Constitution to the federal government] is perpetually arising, and will probably continue to arise, as long as our system shall exist".

²⁸ Supreme Court of the United States, *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819).

²⁹ The 13th amendment abolished slavery and other forms of involuntary servitude throughout the US. The 14th amendment created American citizenship as a legal status for the first time, with its own rights and privileges; previously Americans had individual rights and privileges only through their status as citizens of their home state. The 14th amendment also guaranteed all American citizens equal protection of the laws. The 15th amendment guaranteed voting rights to freed slaves and Americans of African descent. Each amendment included a specific provision giving Congress the power to legislate to enforce these rights against violations by state governments.

³⁰ The 16th amendment, ratified in 1913, gave the federal government the power to tax incomes.

²⁷ James Madison, *The Federalist Number 51*, 6 February 1788.

5. Lessons for the EU

The American experience with federalism holds several lessons for Europeans today as they consider the proposed Constitution, and in a larger sense, the future of the EU.

First, the ambiguity surrounding the EU's goal of 'ever closer union' is unsurprising. It resembles the deep ambiguity about the nature of the American union that prevailed from the Declaration of Independence in 1776 to the Civil War and constitutional changes made in its aftermath. In one sense, both the original American Constitution and the proposed EU Constitution were and are Rorschach blots: people see in them what they want to see. Just as Alexander Hamilton, James Madison and Thomas Jefferson saw the 1787 Constitution in radically different ways, today euro-federalists and euro-sceptics can find cause for both comfort and fear in the proposed EU Constitution.

The debates are remarkably similar. Just as Alexander Hamilton advocated a unified American nation state, deeply integrated economically and politically, so did Joschka Fischer in his Humboldt University speech express the hopes of Europeans who wish for the transformation of the EU into an integrated political federation. And just as Thomas Jefferson and James Madison expressed bitter hostility towards Hamilton and other advocates of a powerful central government, so today the euro-sceptics, especially in the UK, express alarm over what they perceive as the threat to their sovereignty and liberties from Brussels bureaucrats.

Second, whether the EU will eventually become an American-style federal union is not pre-ordained, regardless of what is written on paper. While the EU already has some of the accoutrements of the nation state, including a flag, an anthem, a motto and a 'national day',³¹ and while it is already far more integrated than the American states were in the years immediately following independence from Great Britain, there are several obstacles to even deeper integration that differentiate the EU today from the US during its founding era.

While each of the 13 original American states had its own cherished independence, sovereign government and unique political culture, they all shared a common language (English), a common religion and culture influenced by that religion (Protestant Christianity³²), common legal principles based on English law, and a common history as a people who had fought and bled together against a common enemy for independence. The last was what Abraham Lincoln invoked in his First Inaugural Address when he extolled "the mystic chords of memory, stretching from every battlefield and patriot grave to every living heart and

hearthstone all over this broad land..."³³ in a desperate final effort to dissuade secessionist southerners from taking up arms against the federal government. This shared history did not prevent civil war in 1861, but it was critically important in re-uniting Americans after 1865.

By contrast, while English is rapidly becoming the dominant language of EU commerce and higher education, at the ground level, among the many nationalities and ethnic groups of the now 25-member EU, the reality is a multiplicity of languages. The wide array of spoken and written languages among EU peoples should not be underestimated as an obstacle to the transformation of the EU into Fischer's federation.

While the EU is Christian in heritage, it is increasingly a continent of the adamantly secular with a growing Muslim minority, and it has recently begun the process of negotiating the admission of Turkey, a Muslim country. It is no coincidence that many French and Germans, who have long been among the most vocal advocates of deeper EU federalism, are also among the most reluctant to admit Turkey. They fear that the accession of Turkey could represent a huge step away from deeper political union and towards the British vision of the EU as primarily a free-trade zone.

Europeans, rather than sharing a history of bleeding and fighting together against common external enemies, have repeatedly fought and killed each other. The French and German founders of the EU predecessor organisation clearly saw it as a political tool to prevent future destructive wars between their countries, which had fought each other three times between 1870 and 1945. The Dutch, Belgians and Luxembourgers – the grass who were trampled underfoot when the German and French elephants fought – shared the same political goal for the organisation. The British, who joined much later, did not. While Britain had participated in most of Europe's major wars, protected by the Channel it never suffered invasion after 1066 and has regarded political union with the continent with scepticism, even hostility. As former British Prime Minister Margaret Thatcher once said, "In my lifetime all our problems have come from mainland Europe and all the solutions from the English-speaking nations across the world".³⁴

The EU has been fabulously successful in bringing to Europe the longest sustained period of peace and prosperity in its modern history, but that does not create the type of European national consciousness and patriotism that are necessary to build and sustain a nation state. EU citizens have never fought together *as Europeans* under a common flag against an existential threat, as Americans frequently have. Let us hope that Europeans never have to wage such a war (although many would argue Europeans face just such a threat now, from Islamic *jihadists*), but this historical factor, along with the lack of a common

³¹ EU Constitution, Art. I-8. The EU motto – 'United in diversity' – unintentionally argues for a Madisonian constitutional model for Europe.

³² The exception was Maryland, which was founded by Lord Baltimore as a haven for Roman Catholics.

³³ Abraham Lincoln, First Inaugural Address, 4 March 1861.

³⁴ Quoted in "A Survey of the European Union", *The Economist*, 25 September 2004.

language, clearly represent major obstacles to the creation of a politically integrated European federation. European elites who advocate that the EU should be a paragon of 'soft power', eschewing military force for diplomacy and non-violent persuasion, may scoff at the idea that fighting under a common flag is essential to the development of national consciousness, but they are naïve if they believe that the EU flag today represents much more to the man in the street than a symbol on automobile license plates. To Americans, the national flag represents the unique symbol of their national identity, even as they value their dual identity as citizens of individual states.

Third, while what is written on paper cannot guarantee a specific outcome for EU evolution, the importance of the specific terms of a proposed treaty or constitution should not be minimised. The provisions establish the legal framework and thus the future direction of the organisation, and so it is essential to scrutinise the provisions of the proposed EU Constitution. If you are a euro-sceptic, you should be deeply suspicious that this document is even termed a 'constitution', although the EU officially refers to it as the "Treaty establishing a Constitution for Europe". All earlier EU agreements have been labelled purely as treaties. By joining both terms in an apparent oxymoron, one can only assume that the drafters deliberately intended to confuse the issue by appealing to those who want an eventual European federal state while simultaneously seeking to assuage the fears of those who fear such a prospect.

Unlike the American Constitution and earlier EU treaties, the proposed EU Constitution directly addresses the issue over which Americans went to civil war: the secession of member states. It contains a specific provision stating that a member does have the right to leave the union, although it is less than clear as to the exact process or the consequences of secession.³⁵

While a formal secession mechanism should give comfort to euro-sceptics, the inclusion of a 'supremacy clause' should not. The language in the proposed EU Constitution reads:

The Constitution and law adopted by the institutions of the Union in exercising competences conferred on it shall have *primacy over the law of the Member States*.³⁶
[emphasis added]

This language is remarkably similar to the supremacy clause of the American Constitution:

This Constitution, and the laws of the United States which shall be made in pursuance thereof ... shall be the *supreme law of the land*; and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding.³⁷
[emphasis added]

The supremacy clause has been one of the primary sources of power for the federal government in the US vis-à-vis the states. Yet while advocates of strong state powers have often questioned its application by the courts to negate specific state laws, no one has ever questioned its legitimacy, since it embodies Madison's belief that the US is a compound republic, with both federal and state constitutions originating with the consent of the people. The proposed language in the EU Constitution may be said to simply reflect prior case law emanating from the European Court of Justice, yet including such a clause in the proposed EU Constitution makes that document more of a true constitution for a nation state than a treaty among sovereign nations. Under this clause, the EU government will have explicit constitutional authority to negate laws duly enacted by the legitimate governments of the member states. This leads to my next lesson.

Fourth, the method of adoption is crucial as to whether a document is just a treaty among sovereign nations or a true constitution. Under the Western democratic political tradition rooted in the Enlightenment, governments are legitimate only if they are instituted through the consent of the governed. As Madison wrote, "[T]he ultimate authority, wherever the derivative may be found, resides in the people alone..."³⁸ That argues that a European Constitution will only be regarded as truly legitimate if EU citizens in each member state explicitly demonstrate their consent to be governed by it, whether through referendum or elected ratification convention, as the American Constitution was ratified.

The EU has a mixed record when it comes to using referenda. The UK had a referendum in 1975 over whether to leave the European Economic Community, the EU's predecessor. The British people, surprisingly to some, voted to remain. France put the Maastricht Treaty to a popular vote and it was approved by the slimmest of margins. Despite these and a few other examples, the history of EU evolution has largely been one of European elites moving the process of political and economic integration forward without popular support, and often against public sentiment, a history that has led numerous commentators to refer to the EU's 'democratic deficit'.³⁹

It is ironic that many Europeans who favour the Treaty of Rome's goal of "ever closer union" and a stronger federal EU are reluctant to submit the proposed EU Constitution to a vote of the people. While many euro-federalists fear the outcome of popular referenda (and Germans, in particular, are fearful of referenda in principle because of the Nazi regime's misuse of them to justify expansion into the Rhineland and Austria), no constitution will ever have unquestioned legitimacy unless it can claim the consent of the European peoples. Parliaments, although elected, can

³⁸ Madison, *Federalist 46*.

³⁹ See, e.g., Lars P. Feld and Gebhard Kirchgässner, "The Role of Direct Democracy in the European Union", CESifo Working Paper No. 1083, November 2003 ("The democratic deficit of the EU is legendary among legal scholars and political scientists.").

³⁵ EU Constitution, Art. I-60.

³⁶ *Ibid.*, Art. I-6.

³⁷ US Constitution, Art. VI.

only exercise the powers delegated to them by the governed in the basic law, the constitution. Parliamentary powers cannot legitimately include instituting a new form of government without popular consent. “Since the constitution provides the rules of the political game, it is too dangerous to enable representatives to determine the constitution without the explicit consent of the citizens.”⁴⁰

On the other hand, it is doubly ironic that many euro-sceptics, particularly in the UK, advocate the use of a referendum to ratify the proposed Constitution. Obviously they hope a referendum will produce a negative outcome, but if the outcome is positive, as it was in 1975, they will be barred in future from claims that the EU Constitution and government operate without the consent of the British people and are therefore illegitimate.

6. Towards a Madisonian Model for Europe

It is not my purpose in this article to recommend to Europeans whether they should approve or reject the proposed EU Constitution. I have simply attempted to point out historical similarities and differences between the American and European experiences with federalism, and to raise some important issues that Europeans should consider, whether they wish for an eventual United States of Europe or loathe such a prospect.

Nevertheless, I will venture some predictions and suggestions, as follows.

The requirement that all 25 EU members have to approve the proposed Constitution will prove extremely difficult to meet. Given the apparently rising anti-Brussels undercurrent in Europe today, evidenced by the surprising strength of anti-EU parties in the most recent European Parliament elections, achieving the unanimous approval of all member states may prove to be several bridges too far. Ratification referenda may be lost not only in the UK in 2006, but perhaps in other countries as well, if recent polls are accurate predictors. If that happens, the process of ‘ever closer union’ set in motion a half-century ago will not come to a halt, but will instead take a logical turn towards the ‘two-speed’ Europe that has been frequently discussed over the years as the EU has suffered the growing pains of expanded membership. In fact, a two-speed Europe already exists, consisting of those members in the eurozone and those outside. Whether the proposed EU Constitution is ratified or blocked, a core group of EU members, most likely from within the eurozone, will attempt to develop a Constitution for a federal union much more integrated than currently proposed.

In doing so, European integrationists will – and should – consider the lessons from American Constitutional history, and look to features of the Philadelphia Constitution as they frame their next proposed constitution. In particular, they

should consider the relevance to future European integration of the federalist principles of James Madison.

While the EU today is already more integrated in several aspects than the US was during its founding era, further European political integration is problematic given the obstacles discussed above. Even though the US did not face those same obstacles (lack of common language, religion, legal system, history and national identity), the evolution of the US into a deeply integrated federal union only took place because of a horrific civil war. The prospect of such a method integrating Europe today is, thankfully, inconceivable. Nor does any state in contemporary Europe tolerate the crime of slavery, the eradication of which made the American Civil War unavoidable.⁴¹

Since further political integration in Europe must be peaceful and voluntary, the Madisonian federal model is one that the framers of the next European Constitution may find useful. Madison believed in the need for a federal government with the power to prevent the commercial anarchy caused by the self-interested protectionism of state governments. He also believed that the federal government was the most suitable, for reasons of efficiency and resources, to provide a common defence and foreign policy for the union. Beyond that, though, the states should be free to establish laws and policies favoured by their citizens, which presumed a wide diversity of domestic policies from state to state. Madison succinctly described the federal structure that he intended the 1787 Constitution to establish:

The powers delegated by the proposed Constitution to the Federal Government, are few and defined. Those which are to remain in the State Governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will for the most part be connected. The powers reserved to the several States will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties and properties of the people; and the internal order, improvement, and prosperity of the State.⁴²

The EU has already done much to solve the internal trade problem which prompted the Philadelphia Convention. Agreeing to give a European federal government the power to pursue a common foreign and defence policy will be much tougher and more controversial, for reasons related to

⁴¹ The existence of slavery in the southern states during the antebellum republic should not be seen as a product of the 1787 constitutional system. As Deudney points out, “Slavery was not simply a regional variation within the liberal social order, but a relic of preliberal society, and thus the Civil War completed the social revolution that had begun in England and deepened in the struggle for American independence.” Daniel H. Deudney, “The Philadelphian system: Sovereignty, arms control, and balance of power in the American states-union, circa 1787-1861”, *International Organization* 49, Spring 1995.

⁴² James Madison, *The Federalist Number 45*, 26 January 1788.

⁴⁰ *Ibid.*, p. 5. The authors propose a mandatory referendum for any total or partial revisions of the European constitution.

different beliefs about the nature of sovereignty and the various ‘constitutional cultures’ of EU member states.⁴³ Yet within what Joschka Fischer called the ‘avant-garde’⁴⁴ – the core group – that goal should be possible to achieve even in the near term.

A Madisonian Constitution for Europe would shift the power to conduct defence and foreign policy from member states to the federal government, but it would dramatically reduce the power of the federal government in social and domestic issues. It would have no direct taxation power, nor power to enforce tax harmonisation, as advocated by the Schröder government in Germany. Issues such as education, criminal justice, adultery (source of a recent controversy over Turkish law) and gay unions would be matters left to the people of the member states. The Madisonian view of federalism holds that most decisions that affect people in their daily lives should be made at the sub-national levels of government closest to them, where the diversity of the people in a large federal union can express itself peacefully and democratically.

The fundamental human rights of EU citizens could be protected from federal violation through constitutional provisions, just as Madison himself authored the Bill of Rights that was added to the American Constitution as the first ten amendments. The protection of fundamental rights from violation by member state governments could be achieved through denial of membership to applicants or expulsion of member states who engaged in such practices.

European federalists who draft the next Constitution should also look to the Philadelphia Convention for a ratification process. The 1787 Constitution did not require unanimity; only nine of the 13 states needed to ratify for it to go into effect among the states so ratifying.⁴⁵ No single state was given veto power, as each EU member has today.⁴⁶

⁴³ Koenig-Archibugi, 2004.

⁴⁴ Fischer, 2000.

⁴⁵ US Constitution, Art. VII. This was another contentious issue surrounding the launch of the new republic. The explicit directive to most delegations at the Philadelphia Convention from their state legislatures had been to revise the Articles of Confederation and nothing more. The method for revising the Articles consisted of approval in the Congress and the approval of every state legislature (Arts., Art. XIII). By choosing to submit ratification of the Constitution to conventions of the people, and by requiring only nine of the thirteen states to ratify it, the framers finally revealed that their project was not merely a revision of the Articles, but a new Constitution for a federal republic, a goal they had managed to conceal throughout the convention summer of 1787.

⁴⁶ Had the Constitution required the unanimous approval of all thirteen states, the new federal union would have died at birth. North Carolina initially voted against ratification. Rhode Island put the matter to a popular referendum, where the vote was overwhelmingly against ratification. Rhode Island only joined the constitutional union two years after it had begun operations when the new national government began to apply the same tariffs to products from Rhode Island that it applied to imports from a foreign country.

A Madisonian Constitution for Europe that gives the federal government the power to enforce freedom of commerce across state borders, to establish a common currency to ensure economic integration, to conduct a common defence and foreign policy, but which otherwise leaves issues affecting what Madison called the “lives, liberties and properties of the people” to the member states, would, I predict, be far more comprehensible in its simplicity and appealing to the people of Europe than the currently proposed EU Constitution.

A Madisonian federal model could also make additional EU expansion more palatable to both old and new members, even into countries such as Bulgaria, Romania, Turkey and Ukraine, which are very different socially and culturally from the original EU base in Western Europe. The pre-civil war American republic expanded rapidly through a process in which new states *voluntarily* agreed to join the federal system established by the 1787 Constitution, rather than form independent states or alliances with outside powers:

In 1787 the thirteen American states were located only upon the Atlantic coast, but by 1861 Union territory stretched to the Pacific, covering an area nearly five times as large, and the number of states in the Union had nearly tripled ... In the annals of *realpolitik*, it is often forgotten that the Philadelphian union absorbed peacefully Utah and Vermont, two quasi-independent states, and California and Texas, which were independent and recognized as such by both the United States and the European powers... In part, their vigorous pursuit of Anschluss can be attributed to the fact that they were not fully extinguished as states by joining the union but rather were preserved as semiautonomous units within it and shared in union government in proportion to their population.⁴⁷

Madison predicted that a large and extended republic was more likely to protect individual liberties than a small republic, because the larger the republic the less likely that individual special interest groups, which he called ‘factions’, could dominate and violate minority rights.⁴⁸ Madison also realised that the more diverse the republic, the more that governmental power over people’s daily lives must not be concentrated at the centre, but should be devolved to lower levels of government to reflect the people’s diversity. One might even say that Madison was the first ‘multiculturalist’ because he believed that the individual cultures of sub-national political units should not be smothered by rules and laws dictated from a central government. He described the 1787 Constitution as forming “a happy combination” with “the great and aggregate interests being referred to the national, the local and particular, to the state legislatures.”⁴⁹ Applying Madison’s insight will foster EU expansion by protecting self-

⁴⁷ Deudney, 1995.

⁴⁸ James Madison, *The Federalist Number 10*, 22 November 1787, see also *Federalist 51*.

⁴⁹ ———, *Federalist 10*.

government in each member state from interference from an EU federal government.

A Madisonian Constitution could perhaps even close the wide chasm between many euro-federalists and euro-sceptics, because the federalists would get a European government with the power to conduct a common defence and foreign policy, an essential attribute of any national government, while the sceptics would be reassured that such a government would not be a threat to individual and economic liberties and would leave the people of Britain, just to choose a random example, free to establish their own domestic and social policies, without interference from Brussels.

Moreover, such an outcome would ironically be far closer to the federalist vision of many of America's own founders, including James Madison and Thomas Jefferson, than the present-day US with its ever-expanding national government voraciously intruding into more and more areas historically reserved to the states, such as education, criminal and family law.

7. Conclusion

Europeans who favour the creation of an American-style federal union and those who fear such a prospect would both benefit from the lessons of American constitutional history. Whether the proposed EU Constitution is ratified or fails, European federalists should consider developing a true constitution for a European federal union along the model that James Madison, Thomas Jefferson and other American federalists envisioned at the founding of the American federal republic. A Madisonian Constitution for Europe may even prove acceptable both to many euro-federalists and euro-sceptics, and thus advance the cause of European integration.

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