

Timeline federalization USA

The process of federalization from 1776-1790

July 4th 1776 Declaration of Independence

- all men are created equal;
- unalienable rights: life, liberty, pursuit of happiness;
- governments derive their powers from the governed;
- in case of destructive governments, the right of the governed to alter or abolish those governments.

1776-1789: 13 Confederal states

- *based on the treaty 'Articles of Confederation' (1777-1781);*
- *having a confederal Congress, but no real central government;*
- *no money, no army, no foreign policy;*
- *each state creating its own form of government with its own institutions;*
- *a societal process to move from colony to country;*
- *in a context of uncertain national identity;*
- *searching for basic principles and institutions of free government.*

April 16th 1787: James Madison writes George Washington

- *we need a stronger government;*
- *because there are too many flaws in the confederal treaty 'Articles of Confederation';*
- *so I have designed the 'Virginia Plan' in order to give the nation a more effective government;*

May 29th 1787-September 1787: Convention of Philadelphia

- *representatives of 12 (out of 13) Confederal states present; in total 55 Delegates;*
- *assignment: strengthen the confederal treaty 'Articles of Confederation';*
- *Disobedience 1: they dropped the confederal treaty and began working on a federal constitution; no opposition whatsoever against the idea of a federal Constitution instead of a confederal Treaty;*
- *though tough debates about basic elements such as 'what is Democracy'?*
- *they voted down the clause to give federal Congress the power to overrule 'improper' state laws;*
- *after two weeks (June 13th) the 'Virginia Plan' was largely accepted;*
- *Disobedience 2: when the draft federal constitution was ready they asked the Citizens - and not the governments - of the 13 confederal states to ratify this Constitution.*

June 15th 1787: Introduction of the 'New Jersey Plan' by opposition

- *representatives of small confederal states opposed to the ruling in the 'Virginia Plan' of representation according to the amount of the population instead of an equal vote for each state in the national legislature;*
- *'Great Compromise' on July 5th: they decided that there will be a Congress of two Houses - a lower House with representation according to the number of Citizens per state and a Senate where each state would have an equal number of representatives, irrespective the size of the state or the amount of its inhabitants.*

Convention solved basic questions in ten days (1)

- *solution of the tension between two principles of the Declaration of Independence: unalienable rights versus federal powers derived from the consent of the governed;*
- *i.e. how to prevent that these rights are submitted to the outcome of elections or of federal laws;*
- *constitutional solution: vertical division of powers by limitative enumeration of federal powers;*
- *how to organise a republican (= Democratic/representative) form of government*
- *why and how establishing a bi-cameral representation;*

Convention solved basic questions in ten days (2)

- *how to organise the vertical and horizontal division of powers;*
- *how to build in checks and balances within the trias politica and within the vertical and horizontal division of powers;*
- *how to get a President: through the legislative branch or through elections;*
- *who appoints the federal judges and what is their power;*
- *how to deal with a) slavery in the context of liberty, b) financial problems of states, c) land speculation, d) foreign affairs and commerce, e) defence and f) taxes;*
- *how to organise the ratification of the draft federal Constitution by the Citizens.*

July 26th 1787: Appointing Committee

- *establishing of a Committee to arrange and systemise the result of the decisions in the context of the 'Great Compromise';*
- *first document ready on August 6th, explicitly set up as the basis for a Constitution instead of a Treaty;*
- *very important: instead of power to the Congress to 'legislate in all cases to which separate states are incompetent' the draft came up with a limitative set of powers of the Congress;*
- *this is the vertical division of powers (nowadays referred to as the Kompetenz Katalog).*

August 7th-October 1787: Debate about first Doc and Draft Constitution

- *Debate, clause by clause, word by word;*
- *settling the dispute about slavery (for the south) and commerce;*
- *Deepening principles like the powers and the election of the President;*
- *on September 10th appointing Committee on arrangement and style, chaired by Governor Morris, to draft a final document;*
- *document signed September 17th 1787;*
- *3 delegates did not approve of the powers, given to the federal body;*
- *39 delegates approved of their own work and after some minor changes accepted it;*
- *all states present unanimously decided to submit the draft Constitution to the Confederal Congress and to the people of the 13 states, asking the Citizens to ratify the Constitution.*

October 1787-April 1788: The Federalist Papers

- Alexander Hamilton, James Madison and John Jay wrote 85 Federalist Papers under the pseudonym Publius in newspapers in New York;
- Hamilton: 51 Papers on energetic government, powers of Congress, President and Supreme Court;
- Madison: 26 papers on the nature of the federal system, the checks and balances, the operating of the two Houses of Congress;
- Jay: only 5 Papers, due to an illness;
- they provoked reactions by Cato, Brutus, The Federal Farmer, Centinel, etc., some federalists, some anti-federalists;
- clever use of perception: being federalist = progressive = good guy; being confederalist = anti-federalist = bad guy.

October 1787-May 1790: process of ratification of the Constitution

- *setting the principle of unanimity aside: the Constitution would be in working if the people of 9 states approved; thus majority voting;*
- *Delaware, New Jersey, Georgia ratified (small states content with the equality in the Senate), Connecticut, Pennsylvania ratified in 1787;*
- *Massachusetts in February 1788, Maryland in April 1788, South Carolina in May 1788, Virginia in June 1788 (9 states in, thus Constitution in working), New Hampshire in June 1788, New York in September 1788, North Carolina in November 1788, Rhode Island in May 1790.*

Why this success: they stepped out of the (confederal) box

- *the Delegates of the Convention of Philadelphia ignored three rules:*
- *1) they ignored the assignment to strengthen the 'Articles of Confederation' and created a federal Constitution;*
- *2) they ignored the unanimity rule and introduced majority voting;*
- *3) they ignored the governments of the Confederal states by asking the Citizens of those states to ratify the Constitution.*

What should we learn from this?

- *we have to step out of the EU-box in order to establish a European Federation;*
- *this implies never trying to change (again) the Treaty of Lisbon in order to get a federal Europe; that will not work; see Paper 11;*
- *this implies also asking the European Citizens (and not the governments of the member states) to ratify a federal European Constitution;*
- *if you do today the same as you have done yesterday, you will get tomorrow the same results as you have got today; if you do not like those results, then change your approach today; only then you will have other results tomorrow.*

Question

- the federal Constitution of the United States of America, as well as the 85 Federalist Papers by Hamilton, Madison and Jay, are completely based on the ideas and thoughts of European political-philosophers. From Aristotle, through Althusius to Montesquieu;
- why didn't we Europeans follow that example?