## What the Trump experience demonstrates to Europe in terms of federal state construction

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by Leo Klinkers and Mauro Casarotto

European Federation. During the last four years of Donald Trump presidency, many in Europe have raised the doubt if the American Federal

The question we want to answer with this article is whether the USA federal Constitution can be taken as a model for a

Constitution is effectively an instrument to preserve democracy, representativeness and political accountability. Europeans have seen President Trump breaking the - still largely insufficient - Paris Agreement for climate change, trying

Brexit and the breakdown of the European Union in contradiction with the traditional position of friendship in the relations between the USA and the EU countries. Every day of his presidency, Trump seemed impatient to increase his personal power as much as possible, showing autocratic attitudes and ambitions. This has become evident in the last weeks when he refused to concede the victory of his opponent Biden, he postponed the transition and he dissipated not only his own but also America's time and energy in a ridiculous sequence of frivolous lawsuits. If the American political system has faced such a gangrenous situation, this might suggest that this system should not be

illogically to leave the World Health Organisation in the midst of a global pandemic that hit so much his country, supporting

taken as a model to be transposed in Europe. But let's analyze in depth the Trump situation because the attempt of a chief of government to become an autocrat can take place – and is already taking place – also in Europe, even if the result could be different. First of all we need some necessary premises.

The foundations of the American Federal Constitution of 1787 are based on a single concept: liberty. No more autocrats oppressing them, as the Americans already stated in their Declaration of Independence from the English monarchy written

run the risk of being oppressed top-down by a ruler.

an autocrat.

just a few years before, in 1776. Indeed they struggled with the fact that some form of representation of the people had to be organised anyway and that this representation had the risk of somebody taking control of everyone again. That is why they combined existing concepts of European philosophers (to quote a few Aristotle, Rousseau, Montesquieu, Althusius, Locke) in a way that had never happened before.

Federal state formation, as designed for the first time in the world by the US Constitution funding fathers, is a way of organising when a number of independent states understand that (1) they need to cooperate, but (2) still want to remain independent, (3) where a separate body takes care of common interests, (4) without those independent states wanting to

founding fathers set one anchor: all sovereignty rests with the people. In this way they designed the vertical separation of powers between the member states and a federal body. Not a transfer of powers in the sense of a loss, but the entrusting of powers from citizens and states to a body that could provide an exhaustive – but limited – set of common interests with those powers. This vertical separation of powers therefore gives rise to **shared sovereignty**, on the understanding that, in the background,

the basic principle always remained: all sovereignty rests with the people. This means that the citizens and the states will

always be able to take back the powers that they have entrusted to the federal body, in case this federal body develops as

In order to ensure that the individual states – and their citizens – could never be deprived of their powers, American

there's always a guy or a group of people looking for endless, unlimited power. So, what did the US founding fathers put in place in their federal constitution in order to prevent, as much as possible, the

raise of autocrats? They unreservedly embraced the importance of the trias politica (the correct separation of power

would bring the state apparatus to a standstill. That is what sometimes happens.

the possibility to acquire a majority in the House of Representatives.

introducing adaptions, updates and improvements. This would be insane.

emergency laws, that is the toolbox of dictators, in America and elsewhere.

independence of those member states.

the reader the answer to this question.

by a law or with a constitution.

particular interests.

model for any Federal Constitution.

separation of powers.

leading to a federal constitution.

of each European country.

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between executive, legislative and judicial branches), as developed by French philosopher Montesquieu. At federal level,

Autocracy is a risk in any kind of political regime, both federal and unitary, in a republic or in a constitutional monarchy,

but also at member states level. But far beyond the European philosophers, they designed a brilliant system of checks and balances to make the trias politica a reality. In their fundamental fear of the advent of an autocrat, the American founding fathers went so far as to give not only the representation of the people but also the leader of the executive a public mandate at both federal and member states level. They thus took the risk that the representation of the people and the executive could come to a deadlock which

winner-take-all district based electoral system. This already permitted to Donald Trump to win the 2016 elections even if Hillary Clinton gained just under 3 million votes more, due to the old-dated majoritarian system based on indirect election and the need to pass through an electoral college convention. The risks of this system are exacerbated by the frequent use of the so called 'gerrymandering' namely, the party winning

However, the cause of the stalemate is not the fact that both the legislature and the executive have a public mandate, but a

While the electoral system was already amended several times in the US Constitution (look at 12 of the total 27 amendments passed between 1787 and today) more than 30 amendments have been tabled since the 19<sup>th</sup> Century to change that system on the basis of a fully popular vote. But until now they have always been rejected.

Nevertheless this should not be considered as a trouble in the case of Europe because there is no need to uncritically

the elections, in view of the subsequent elections, redesigns the boundaries of the constituencies to its advantage, raising

copy/paste the US constitution without adapting its model to Europe and its peculiarities and to the 21st Century environment as well. US Constitution was written in 1787 without interconnection, nuclear weapons, environmental issues and other situations that emerged in the following 230 years. One thing is individuating a best practice and trying to reproduce it. This is logic. Another thing is doing that without

That is why that system of vote does not appear in the **version of federal constitution for Europe** that has been already drafted by the experts of F.A.E.F. (Federal Alliance of European Federalists). This draft also includes elements of European political tradition, like Swiss self-government forms and popular referendum.

Another very important merit of the 1787 Convention of Philadelphia that prepared the US federal constitution has been the realization that the federal constitution should not contain individual member states' interests. The constitution, and the institutions that were built up afterwards, are concerned solely with the distribution of powers and the safeguarding of

stability between the three state powers and between the federal body and the member states, with the emphasis on the

We hope to have explained why criticism of the idea of a federal Europe should not be based on Trump's unscrupulous actions in America. Constitutionally and institutionally, there are many safeguards that can prevent him from becoming an autocrat. Unless he succeeds in provoking civil war, or a foreign war, between now and January 20<sup>th</sup> the moment when Biden will effectively become the forty-sixth USA President. In case of a war, he would have the power to work with

subvert the outcome of the elections, the judiciary branch pushed the executive power that, under Trump, was trying to invade the field of another branch, again in its own field. This happened in a few days, guaranteeing the recount of the ballots where the results were very close and certifying the electoral results where it was clear who had won. Is the separation of powers in European countries enough clear and strong to prevent a government leader to subvert the

results of the elections and the executive power entering, de facto, in the field of the judicial power? This time we leave to

Anyway, however a political system is well structured and implemented with separation of powers and check and

Sadly, this is not the case of the European Union that has not a constitution and, therefore, is not a federation.

Up to that point, the separation of powers has prevented Trump from becoming an autocrat. When he attempted to

balances, at the end you cannot 100% eliminate the possibility that a madman, an autocrat or an oligarchy destroy something great. You can dramatically reduce this possibility but, after all, this is part of human nature that cannot be completely overturned

What we can say is that, if a constitution includes the statement that all sovereignty rests with the people, there is always a last legal instrument that allows citizens to take back the powers they have entrusted in their elected bodies.

as 1787-1788, they were talking about the pernicious systemic errors of a treaty as an instrument for ensuring coherence and union between states. In this context, it was the treaty under the name of the Articles of Confederation. Its purpose following the Declaration of Independence of 1776 – was to hold together the thirteen freely-fought colonies as a confederation of independent states. That did not work. There was rivalry, quarreling and even the instigation of armed

conflict between a Northern, a Southern and a Central group of those thirteen states, each one trying to pursue its own

Anyone who makes the effort to study the operation of the Philadelphia Convention will be astonished to see that, as early

The Confederal treaty could not carry out the common interests of all member states and of course England and the other European states did not hope for a more favorable situation to be able to regain control over their colonies. Note how this situation is similar to the current disintegration of the intergovernmental treaty-based European Union system. This includes Brexit, conflicts between Western and Eastern countries and between North frugal countries and South.

contemplating to carry out the task – prescribed by the legally binding mandate the representatives had – of amending it.

In a number of articles called the Federalist Papers, James Madison, Alexander Hamilton and John Jay explained to the

people of the thirteen small states why and how a treaty with its inevitable systemic flaws destroyed cooperation and

In 1787, the Philadelphia Convention put an end to the Articles of Confederation treaty within two weeks, without

The American founding fathers threw the treaty in the wastebasket and, in a few months, drafted the first federal

constitution of only seven articles. An extraordinarily fine piece of constitutional law.

already history: the United States of America became a super-power. Conclusion

The really serious flaw in the US Federation is in its outdated electoral system. We hope that, soon or later, the Americans

will have the opportunity to fix this problem in their constitution. Despite this, the American Constitution is still a formidable

cohesion between the thirteen states and why a federal constitution was what they really needed. What happened later is

Trump negative experience cannot subvert this analysis. Unless you are so naive to think that a perfect political system that can prevent anything negative to happen can come to existence, you will have to deal with the evidence that the best political system is the one that makes the emergence of unmanageable conflicts and the rule of autocrats more difficult and less probable. Up to now the best development to prevent these situations has turned out to be the trias politica /

federal state'. To become a federal state, Europe must go back to **Altiero Spinelli**. What the Philadelphia Convention was for America was Spinelli for Europe. His federal motives in 1941 were exactly the same as the federal motives of the Philadelphia

Convention of 1787: away with an autocrat, let's have a new system of states for Europe on a federal basis, just after the war.

That route traced was correct, but the necessary reconstruction of the European system of states in the federal sense must

be based on the Ventotene Manifesto. Not on yet another adaptation of the erroneous Schuman Declaration that was the

beginning of intergovernmental deviation further and further from that correct line drawn by Spinelli in his 1941 Manifesto,

For a more in-depth examination of how Europe can finally have a federal constitution and how urgent is this to prevent a

series of dramatic and disruptive conflicts in Europe, please refer to reading Leo Klinkers last essay 'in 2035 Europe is a

In his declaration, on two occasions, Schuman emphasizes the importance of a federal Europe but he immediately committed the mistake to leave the task to establish the European Federation to heads of governments that opted for a treaty-based intergovernmental cooperation. But this is not possible. It's simple basic constitutional law: a federal state is only a federal state if it contains a constitution. A treaty cannot provide for that.

the potential of soon discharge into an unmanageable crisis. In Europe, but also globally. Brexit was just a taste. But as today, if we follow the route traced by Spinelli in his Ventotene Manifesto, we stop to confuse and mix federalism with intergovernmentalism, and leave the task to draft a Federal Constitution in the hands of experts in constitutional law,

with the participation and the advise of the citizens, there is no reason to state that a European Federal Constitution

inspired by the US Constitution, would not be better than the American one. That's why the F.A.E.F – Federal Alliance of

European Federalists has already developed plans to organise a Citizens' Convention during which experts in constitutional

law and citizens can draft together a European Federal Constitution that should be presented for ratification to the citizens

After the Schuman Declaration of 1950, step to step, more and more entropical disorder was built up in Europe, which has

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Paolo Ponzano

I share your main conclusion that a federal Europe cannot be drafted by an intergovernemental method but only by an elected body which submit a constitutional text directly to the national Parliaments or in alternative way to a pan- european referendum in which the ratification is decided following a majority

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act!

rule (see my article on the European Convention : lights and shadows). I will read with great interest the Klinkers' essay.

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