British Resistance to European Integration: An Historical and Legal Analysis with an Examination of the United Kingdom's Recent Entry into the European Monetary System

Allen Neely
British Resistance to European Integration: An Historical and Legal Analysis with an Examination of the United Kingdom's Recent Entry into the European Monetary System

Political Unity (in Europe), right or wrong, is incompatible with national independence; and the will to bring Britain into the Community is the will to give that national independence up. On this each one of us must take his own resolve. I can say only what is mine. I do not believe that this nation, which has maintained and defended its independence for a thousand years, will now submit to see it merged or lost; nor did I become a member of our sovereign Parliament in order to consent to that sovereignty being abated or transferred. Come what may, I cannot and I will not.

-Enoch Powell, Member of Parliament, 1971.¹

(A)s the enlargement of the Community makes clear beyond doubt, we have all come to recognize our common European heritage, our mutual interests and our European destiny. Britain, with her Commonwealth links, has also much to contribute to the universal nature of Europe's responsibilities.

-Prime Minister Edward Heath, 1972.²

I. Introduction

As the artificial cold war era alliances of Eastern Europe splinter in favor of ethnic and regional self-determination, the nations of Western Europe continue to strive toward greater unity. The European Economic Community (EEC) is an “outgrowth of the European movement, a complex composite of political, social, and economic forces which have come to the fore in strength since World War II.”³ In response to centuries of devastating conflict and tumul-

---

². This is a excerpt from Heath's speech made after the signing of the Treaty of Accession to the Community on January 22, 1972. F. Nicholson & R. East, From the Six to the Twelve 296-297 (1987) [hereinafter EAST].
³. E. Stein, P. Hay, and M. Waelbroeck, European Community Law and Institutions in Perspective 1 (3d. ed. 1976) [hereinafter Stein]. The European Economic Community is now commonly referred to as the European Community, the Community, or simply the
tuous political upheaval, the EEC Treaty created a consensual organization of European nations in which “unity is to be achieved not by might but by an intellectual, a cultural force: law.”

What is presently known as the European Economic Community or European Community (EC), actually began in 1951 as the European Coal and Steel Community. It is somewhat ironic that Britain did not join the EC until 1972 in light of the fact that one of Britain’s greatest statesmen is credited with having launched the movement toward unity. In a speech delivered at Zurich University in 1946, Winston Churchill stated that he had a “vision of a unified and democratic ‘greater Europe,’ organized in a Council of Europe with an assembly of elected people’s representatives as the central policy-making institution.” Although Churchill eventually opposed any hasty efforts to unify Europe, he has been widely recognized as being one of the first to call for a “United States of Europe.”

Britain’s perception of the evolving European Community was obscured by a “Channel fog” between the years 1945 and 1961. Britain first applied for EC membership in 1962, broke off negotiations the following year, and debated the matter intensely for nearly a decade before finally reapplying. After more than seventeen years of membership, Britain continues to be the major opponent to a strong federalist Europe. The British fear of eroding national sovereignty was fostered by Margaret Thatcher’s well reported disputes with the EC as well as her repeated assurances that “[w]e stay British.” Despite Prime Minister John Major’s more conciliatory ap-

---

5. W. Hallstein, Europe in the Making 30 (1972). The current members of the European Communities include Belgium, Denmark, France, Germany, Greece, Holland, Ireland, Italy, Luxembourg, Portugal, Spain, and the United Kingdom.
6. Stein, supra note 3, at 2. The European Coal and Steel Community came into being in 1951. This first successful communal institution served to place coal and steel production under the control of a supranational authority and, thus, limit German war-making potential, to rebuild steel production facilities, and to provide a basis for future efforts toward a unified Europe. The Treaty of Rome, signed in 1957, established the European Economic Community and the European Atomic Energy Community. In 1968 the “Merger Treaty,” established a single Council and Commission to serve the three Communities. The original six members were Belgium, France, Italy, Luxembourg, the Netherlands, and West Germany.
7. The United Kingdom includes England, Northern Ireland, Scotland, and Wales, but is commonly referred to as Britain or Great Britain; as it will be referred to in this Comment. See O.H. Phillips, Constitutional and Administrative Law 19 (5th ed. 1973).
8. Stein, supra note 3, at 1.
10. Id. at II. The author asserts that numerous historical and cultural factors created this “channel fog” which prevented a realistic appraisal of the potential benefits of Community membership. See infra p. 4-8.
proach toward the European Community and his insistence that Britain’s place is “at the very heart of Europe,” Major continues Thatcher’s opposition to rapid economic and political union.13

The traditional British opinion of Europe has been stated by one observer as “a place for holidaying, not for politics.”14 The British have been known for more than indifference, but often “positive hostility towards the idea of political, or any other sort of union among the European states.”15 The reasons behind British foot-dragging in becoming a member state of the EC are numerous. The European Community initiatives that have encountered the most obstinacy have been those initiatives that critics fear would result in an erosion of sovereignty. Sovereignty has been defined as:

The supreme, absolute, and uncontrollable power by which any independent state is governed; supreme political authority; paramount control of the constitution and frame of government and its administration; the self-sufficient source of political power, from which all specific political powers are derived; the international independence of a state, combined with the right and power of regulating its internal affairs without foreign dictation; also a political society, or state, which is sovereign and independent.16

This Comment will explore the historical and cultural forces that have caused the delay of European integration with an emphasis upon several sovereignty-sensitive legal impediments to integration. In addition, the evolution of the European Monetary System will be examined in light of Britain’s recent decision to join. Beyond the more obvious economic consequences, this decision may give some indication of future relations between Britain and the European Community.

II. Historical and Cultural Factors

A. Geography

To begin with the obvious, Britain is an island. Nearly four centuries ago, Francis Bacon, the English essayist and philosopher, celebrated the isolation that the sea had imposed upon the British Isles: “And now last, this most happy and glorious event, that this island of Britain, divided from all the world, should be united in itself.”17 Although air and sea travel have allowed convenient access to the

14. EAST, supra note 2, at 15.
15. Id. at 16.
17. F. BACON, ADVANCEMENT OF LEARNING Bk. ii. (1605).
continent and a tunnel soon will unite England with France, many British subjects harbor isolationist sentiment to this day. The CBS news program, "Sixty-Minutes," investigated English reaction to the nearly complete trans-channel tunnel. An English Reverend informed reporter Steve Kroft that England was "no more in Europe than Canada is in the United States." The British have long preferred to see their home as "a small island anchored off a politically turbulent continent."

The easy access to the sea which the British Isles affords led naturally to a national preoccupation with conquering the sea. Britain, "with its vast scattered Empire and innumerable Imperial Outposts and its unchallenged naval might, virtually policed the world for half a century or more." Winston Churchill said that if given a choice "between the European continent and the open sea, they must always come down on the side of the latter: that was where their empire and trade lay." While the British economy flourished upon the spoils of colonization and their naval might remained sufficient to protect the Kingdom, there was little incentive to pursue ties with the continent.

B. Ancient History Meets the Modern Era

The independent spirit of the British is to be expected in light of their great economic, military, and political successes of the past several centuries. While maintaining a far-reaching colonial empire, the United Kingdom (UK) was at the forefront of the industrial and agricultural revolutions of the eighteenth and nineteenth centuries. Even after the economic chaos wrought upon Britain by both world wars, the British were spared the wholesale devastation that occurred on the continent and emerged proud and victorious. British politicians had difficulty accepting that Britain, "in all its wartime glory, should stoop to join forces with such down-and-outs." The allied victory gave Britain "a sense of national achievement and cohesion and an illusion of power."
Traditionally, the British mind-set has been one of organizing “international coalitions against the most threatening state of the day, the France of Louis XIV and Napoleon, the Germany of the Kaiser and Hitler.”\(^\text{25}\) France’s role in being a major proponent and initiator of European unity plans has been significant in Britain’s lack of enthusiasm. Anglo-French relations have been marred by actual conflict and “psychological and cultural differences” for centuries.\(^\text{26}\) In the words of a Kent “pub customer”, many British subjects “just do not like the French people.”\(^\text{27}\) As recently as November of 1990, *The Sun*, Britain’s largest-circulation tabloid invited, “all true Brits to face France and yell ‘up Yours Delors’” in response to EC president Jacques Delors’ federalist plans.\(^\text{28}\) Regardless of the possible benefits, this attitude has made less appealing to the British public any alliance involving France. Additionally, anti-German sentiment was prevalent for many years following World War II and served as a significant impediment.

Yet another consequence of the War was the deepening “special relationship” between Britain and the United States.\(^\text{29}\) Britain did not feel the need to look to Europe for friends when she was the “close ally and associate of her great comrade-in-arms, America.”\(^\text{30}\) The British felt that their most important alliance already had been “forged in blood and sealed with victory.”\(^\text{31}\) The United States did not share these sentiments entirely, and favored early attempts at European integration.\(^\text{32}\) The significance of this factor waned with the weakening of Anglo-American ties in the early 1960s.\(^\text{33}\)

Despite Britain’s fiercely independent tradition, the economic realities of the late Twentieth Century soon mandated compromise. The economic motives that were advanced in support of Britain’s joining the European Community included the efficiency which would result from the greater division of labor in the enlarged industrial region, the broader access to markets for British companies, and the increased necessity of keeping equal conditions with continental competitors.\(^\text{34}\) Britain realized the need to be included in the EC

---

\(^{25}\) Northedge, *supra* note 19, at 20-1.

\(^{26}\) *Id.* at 22. Northedge remarks that it is not an exaggeration to say that the only issue which allowed British and French politicians to overcome their mutual dislike was their common fear of Germany.

\(^{27}\) *The Chunnel, supra* note 18. The term “chunnel” is a combination of “channel” and “tunnel.”


\(^{29}\) BAMFORD, *supra* note 20, at 25.

\(^{30}\) SHANKS, *supra* note 9, at 14.

\(^{31}\) *Id.*

\(^{32}\) M. CAMPS, *supra* note 24, at 2.

\(^{33}\) Northedge, *supra* note 19, at 27.

rather than competing with it. British negotiators then, as now, often find themselves in the difficult position of being directed to secure the economic benefits that the Community offers without yielding too much national sovereignty.

C. Sovereignty

Concern for erosion of sovereignty has been most significant and pervasive in slowing the process of binding Britain with the European Community. The concern for maintaining control over internal affairs has been both a cause of British reluctance to integrate and a symptom of the high priority that they place upon independence. This anxiety has been demonstrated by other members of the EC, but seldom as adamantly as by Britain.35

In 1962 as his country underwent their first round of negotiations with the European Community, Hugh Gaitskell of the British Labour Party expressed his opinion that if Britain abandoned any part of her sovereignty, it would mean “the end of Britain as an independent European state. . .the end of a thousand years of history.”36 More recently, Prime Minister Thatcher issued “dire warnings of the dilution of national identity, the sharing of political power and the emergence of a Brussels “superstate.”37 Since the EC is a federation of states based upon common consent to Community law, the fears of those opposed to integration stem primarily from the real or imagined effects that EC laws have had upon Britain. The actual relationship between British and European Community law will be addressed in the following sections.

III. Community Institutions and the Nature of Community Law

The Treaty of Rome (Treaty) acts as the constitution of the Community. The following is a brief introduction to the basic structure of the Community as provided for in the Treaty. The objectives of the Treaty are stated as follows: to establish a common market, to promote economic development, and to promote “closer relations between the States belonging to it.”38 The Treaty sets forth the government bodies that are to carry out its objectives.39

The European Parliament, or the Assembly, consists of Member

---

35. Northedge, supra note 19, at 22. Northedge states that “(t)he British have found it harder than most people to accept the idea of the divisibility of sovereignty, parts of it remaining at home, parts being signed away to other authorities in Brussels or elsewhere.” Id. at 23.
36. Id. at 24.
37. Why Thatcher's Outbursts Are Tamer Than They Seem, supra note 12. The European Commission is located in Brussels, Belgium.
38. Treaty of Rome, supra note 4, art. 2.
39. Treaty of Rome, supra note 4, art 4. Articles 137-44 relate to the Assembly; arts. 145-53, the Council; arts. 154-55, the Commission; and arts. 164-188, the European Court of Justice.
States represented by delegates, varying in number according to each state's population. Members are to represent the citizens of the Community in advising and supervising the other Community bodies.\textsuperscript{40} The Commission serves as the executive branch and has the power to initiate legislation.\textsuperscript{41} The Council of Ministers (Council) is the paramount institution, although it has no power to initiate legislation,\textsuperscript{42} the Council acts upon Commission proposals and enforces Treaty provisions through the Council's issuance of four legal acts delineated in article 189.\textsuperscript{44} These four acts have varying implications. Regulations have general application and are binding and directly applicable to all Member States. Directives are binding only as to result, not to means. While decisions are binding in entirety upon those to whom they are addressed, recommendations, and opinions have no binding force.

The European Court of Justice is the sole court of the European Community. It ensures compliance with all treaties and subsequent acts.\textsuperscript{44} The Court settles controversies among member states.\textsuperscript{45} The Court issues judgments on complaints against a member for failure to comply with treaty obligations.\textsuperscript{46} Finally, the Court rules on the legality of actions by Community institutions.\textsuperscript{47}

The Community laws are derived from the various EC treaties, are voluntarily agreed to by each member, and are intended to supercede conflicting national law. Although this point is not specified in the Treaty, it may be inferred through two articles. First, Article 5 requires Member States to:

\begin{quote}
\textbf{take all appropriate measures, whether general or particular, to ensure fulfillment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Commu-}
\end{quote}

\textsuperscript{40} Although it has been called a "phantom parliament" because of its lack of real law-making power, the European Parliament's influence has been greater than one might expect from its largely consultive role. \textit{See} SHANKS, supra note 9, at 48-49.

\textsuperscript{41} The government of each member State appoints one Commissioner to a four-year renewable term. The Treaty directs the Commissioners to act "in the general interest of the Community" and specifically prohibits their national governments from trying to influence them. For a discussion of the role of the Community's institutional framework, \textit{See} SHANKS, supra note 9, at 43-55.

\textsuperscript{42} STEIN, supra note 3, at 34. This body, which is made up of members subject to national government control, was given principal decision-making power rather than the independent Commission.

\textsuperscript{43} Treaty of Rome, supra note 4, at Art. 189.

\textsuperscript{44} The European Court of Justice is also referred to as "the Court of Justice" or "the European Court". There are currently thirteen justices, one for each Member State. STEIN, supra note 3, at 33.

\textsuperscript{45} STEIN, supra note 3, at 134.

\textsuperscript{46} \textit{Id.}

\textsuperscript{47} \textit{Id.} The Court also provides two more functions which are less applicable to this discussion. The Court may issue preliminary rulings on the request of a court of a member state regarding treaty interpretations. In addition; if the Court chooses, it may issue opinions, proposals, or advice on matters which the Court deems relevant.
nity. They shall facilitate the achievement of the Community's tasks. They shall abstain from any measure which could jeopardize the attainment of the objectives of this Treaty.48

Second, the conflict of laws issue has come before the European Court by reference to Article 177 of the Treaty of Rome.49 The key language is in paragraph three, which grants the European Court jurisdiction where "there is no judicial remedy under national law."50

The Court of Justice first dealt squarely with the conflict of laws issue in N.V. Algemene Transport-En Expeditie Onderneming Van Gend & Loos v. Netherlands Inland Reveue.51 The Court referred to the creation of a "new legal order of international law for the benefit of which the states have limited their sovereign rights" and concluded that: "[i]ndependently of the legislation of member states, Community law . . . not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage."52 Thus, the Court stated explicitly that some treaty provisions are enforceable by or against an individual and implied that Community law prevails over national law.53 Costa v. Ente nazionale Energia elettrica impresa gia della Edison Volta presented the Court with a similar conflict.54 In this landmark case, the issue was whether the Italian government could nationalize an electric utility in contravention of Community Law. The Court used language similar to that used in Van Gend en Loos in stating:

The integration into the laws of each member state of provisions which derive from the Community, and more generally the terms and the spirit of the Treaty, make it impossible for the

---

48. Treaty of Rome, supra note 4, at art. 5.
49. Treaty of Rome, supra note 4, at art. 177. This article grants the Court jurisdiction to give preliminary rulings concerning:
   (a) the interpretation of this Treaty; (b) the validity and interpretation of acts of the institutions of the Community; (c) the interpretation of the statutes of bodies established by an act of the Council. Where any such question is raised in a case pending before a court or tribunal of a Member State, against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.
50. Treaty of Rome, supra note 4, at art. 177.
51. N.V. Algemene Transport-en Expeditie Onderneming van Gend & Loos v. Netherlands Fiscal Administration, 1963 E. COMM. CT. J. REP. 1, COMMON MKT. REP. (CCH) 8008 (1963) [hereinafter Van Gend en Loos]. The Court was asked to decide whether nationals of Member States could assert rights raised by Community law in attempting to overcome national law.
states, as a corollary, to accord precedence to a unilateral and subsequent measure over a legal system accepted by them on a basis of reciprocity. . . . The precedence of Community law is confirmed by Article 189, whereby a regulation 'shall be binding' and 'directly applicable in all member states'. . . . The transfer by the states from their domestic legal system to the Community legal system of the rights and obligations arising under the Treaty carries with it a permanent limitation of their sovereign rights, against which a subsequent unilateral act incompatible with the concept of the Community cannot prevail (emphasis added).56

This decision stressed the restriction of sovereign rights and the creation of a new body of law applicable to individuals, not just member states.56 Treaty provisions enforceable by individuals are said to have “direct effect,” not to be confused with the “directly applicable” provision of article 189 of the Treaty of Rome.67 Article 189 specifies that Community regulations are “directly applicable” and, therefore, are binding upon all member states.68 It would be inconsistent with the above assertions to allow member states to create legislation contrary to Treaty obligations to which they had voluntarily bound themselves.

There have been several other celebrated cases handed down by the Court of Justice on the subject of primacy of Community law.69 For the purposes of this Comment, it is sufficient to recognize that Community law prevails in all direct confrontations with national law.60

IV. British Constitutional Law and Parliamentary Supremacy

The British government is highly centralized. The government’s power over legislation is not granted by modern era law, but rather

---

58. Id.
59. See Eunomia di Porto v. Ministry of Education, 1971 E. COMM. CT. J. REP. 811, COMMON MKT. REP. (CCH) 4 (1972) (holding that Italy had to repay taxes collected in contradiction of Art. 16); Leonesio v. Italian Ministry of Agriculture & Forestry, 1972 E. COMM. CT. J. REP. 287, COMMON MKT. REP. (CCH) 287 (1973) (upholding regulations directly conferring rights upon individuals which national courts must safeguard); Internationale Handelsgesellschaft v. Einfuhr- und Vorratsstelle für Getreide, 1970 E. COMM. CT. J. REP. 1125, COMMON MKT. REP. (CCH) 255 (1972) (supremacy of Community law asserted over constitutional law of Member States); and Simmenthal v. Italian Minister of Finance, 1976 E. COMM. CT. J. REP. 1871, COMMON MKT. REP. (CCH) 1 (1977) (holding that directly applicable regulations take precedence over both prior and subsequent national legislation and thus, courts must set aside national law which conflicts and uphold individuals rights).
60. W. HALLSTEIN, supra note 5, at 34-5. Although it is true that deference paid to Community law is by consent of the members, continued membership is contingent upon obeying that law and thus, it may be said that Community law is supreme.
is inherited from the absolute monarchs of the past. The United Kingdom has no comprehensive written constitution. In British constitutional practice, power lies with the monarchy who is advised by ministers and is responsible to Parliament. The government can "virtually do what it likes" with very few constitutional limitations and without beholding to a supreme court. There is no judicial review of Parliamentary decisions beyond mere interpretation.

Given the freedom which Parliament maintained for centuries, some members are disquieted by the usurpation of Parliamentary sovereignty. Even after Britain's accession to the Community, the effect of Community law was in question. To give effect to the Treaty of Rome within the United Kingdom, an act of Parliament was required. Lord Denning of the British Court of Appeal stated the situation as follows:

> Even though the Treaty of Rome has been signed, it has no effect, so far as these Courts are concerned, until it is made an Act of Parliament. Once it is implemented by an Act of Parliament, these Courts must go by the Act of Parliament. Until that day comes, we take no notice of it.

With the European Communities Act of 1972, Parliament provided for the incorporation of Community law into the law of the United Kingdom. In doing so, Parliament did not take any revolutionary steps or renounce its legal sovereignty. In fact, the Act is expressive on the subject of the Parliamentary sovereignty and allows Parliament to amend or repeal the Act at any time. The key provisions of the Act read as follows:

(1) those rights and duties which are, as a matter of Community law, directly applicable or effective are to be given legal effect in the United Kingdom (s 2(1));
(2) the executive is given power to make orders and regulations to give effect both to obligations of the United Kingdom and to deal with any incidental problems arising from those rights and duties which are directly applicable or effective (s 2(2));
(3) there are limitations on the power of delegated legislation

---

61. Northedge, supra note 19, at 23.
62. LANE, Legal Implications of British Entry into the Common Market, 37 LAW AND CONTEMP. PROBS. 359 (1972).
63. Northedge, supra note 19, at 23.
64. Id.
67. Id.
68. L. COLLINS, supra note 56 at 21-3.
69. Id., at 23.
conferred by the Act, most notably that the power does not include powers (a) to tax, (b) to legislate retrospectively, or (c) to subdelegate (s 2(2) and Sch 2). . .and the orders and regulations may include any provision as might be made by Act of Parliament, and any existing or future enactments may be altered by Parliament (s 2(4));

(4) any question as to the meaning or effect of the treaties is to be treated as a question of law to be determined in accordance with Community law, or which judicial notice is to be taken (s 3(1) and (2));

(5) specific alterations are made to existing law (statute and common law) to take account of specific Community obligations, especially in the area of customs, duties, agriculture, company law and restrictive practices (ss 4-10).70

Presently, British constitutional law is “the orthodox one,” therefore, courts will give effect to subsequently enacted United Kingdom law even if inconsistent with Community law.71 Article 189 states that only regulations are directly applicable to Member states. Community law that is not directly applicable will not have force in Britain until that Community law is enacted by Parliament.72 Directly applicable legislation will be given effect, notwithstanding any prior conflicting legislation.73 Shortly after Britain joined the Community, author Gerhard Bebr described the process conformed to by British courts: “the critical examination of the national case law. . .reflects a gradual, sometimes slow, but nevertheless definite impact of the [Community] Court’s case law. The reluctance and resistance of municipal courts are gradually making room to an acceptance of the progressive case law of the court.”74 This process continues today.

V. Legal Issues and Regulatory Areas Affecting Sovereignty

After British law was adjusted to accommodate the Community system, British Courts were left with the tasks of interpreting and applying Community law. Contention and complication has arisen in numerous areas, including: anti-trust law, trademark and patent law, company law, trade regulation, taxation, political union, and environmental law. The remainder of this Comment will examine the application of treaties and secondary legislation to three fields traditionally deemed to be within the sovereign’s exclusive control: agri-

70. Id. at 22.
71. Id. at 30.
72. Id.
73. Id.
culture, immigration, and monetary policy. These areas have caused considerable strife between Britain and the Community since the early negotiations, and they remain obstacles to integration.

A. Common Agricultural Policy

Matters of agricultural trade among members of the Community are regulated by the Common Agricultural Policy (CAP). Because of the importance of agricultural matters in the economies and lifestyles of Western Europe, the drafting of the CAP has been characterized as the most significant and difficult achievement of the Community during the 1960s. Others have regarded the CAP more cynically. John Marsh, a British professor of agricultural economics, has called the CAP “a symbol of the divisiveness, inefficiency and collective stupidity of the Community.” In addition, Marsh has stated that: “(f)ar from being an integrating device, it promises to prove the explosive which finally wrecks all hope of European unity.”

Since it was such a “thorny problem,” the Treaty negotiators did not lay out an intricately detailed agricultural policy. Rather, Community founders merely stated that there should be a policy to increase productivity and to maintain both supply and a fair standard of living for farmers. The CAP as first delineated in 1962 and as it exists today, has attempted to achieve the above goals by pegging prices, removing barriers to trade, and allocating various types of crop subsidies. The CAP has not been defined in any Commu-
nity treaties, but rather has evolved gradually through policies of the Council and Commission.

Britain's first application for membership in the European Community was being evaluated simultaneously with the Community's implementation of the CAP in the early 1960s. British negotiators named agriculture as one of the three major problem areas confronting them. In particular, the negotiations addressed the stability of consumer prices in Britain, living standards for British farmers, and the removal of British tariffs. The first ascension negotiations failed out of contention over these and other concerns. Agricultural matters again became significant in Britain's second application.

In a debate before the House of Commons, Foreign Secretary George Brown named agriculture as the first in a series of "broad areas of policy which seemed likely to cause the most difficulty" between Britain and the European Community. Other matters that caused concern during the second application process included the likely affect upon food prices, the ability of British farmers to compete, and assessing the cost of the CAP. The price and competition issues caused minimal discord, but the CAP's affect upon the EC budget presented an issue that is still debated today. Since financing the CAP requires approximately three-quarters of the Community budget, CAP expenditures figure prominently in budget debates. In the 1987-88 fiscal year, eighty percent of Britain's EC contributions went toward farm support.

Almost from her inception as a Community Member, Britain pressed for a renegotiation of her budget contribution assessment. The 1975 Dublin Summit resulted in a modification of the British budgetary contribution, much to the irritation of the remainder of the EC who felt it a bit "perfidious" of the UK to demand changes so shortly after joining. However, Britain was still unhappy with the amount of its contribution.

It is not surprising that Britain has protested the significant allocation of British revenues to a system in which only Germany and the UK were net contributors in the 1980s and all other members

---

82. Id. at 18-20.
83. East, supra note 2, at 44.
85. B. Hill, supra note 80, at 84.
86. Mrs. Thatcher Eats Her Words, But Nobody Eats the Surpluses, The Economist, June 22, 1985, at 53.
87. B. Hill, supra note 80, at 46.
88. Id.
89. Id. at 47.
benefited. The enormous cost and relatively small achievement of the CAP has caused "an annual battle between the UK and the other members over a budget refund." In 1982 EC farm ministers overrode British objections to a farm price settlement that continued the unfavorable situation. This vote was reported to "(f)uel . . . the far from dormant embers of anti-common-market sentiment in Britain" and cause Prime Minister Thatcher to "boil . . . over with rage." In 1984 the British again fought for protection from payment levels that they believed unfair. In 1987 the budget battles and a strained Community financial picture provided impetus for a major CAP cost reduction effort that had little long-term benefits.

Despite regular promises of reform, the CAP remains a staggeringly expensive and controversial program. In 1990 the EC's total subsidy to farmers was eighty-one billion dollars. Subsidies make up an average of 48% of individual farm incomes in the Community. In July 1991 the Community held unsold stockpiles of "20 million tons of cereals, 750,000 tons of beef, and 900,000 tons of milk and butter."

Such enormous expenditures were a primary cause of the breakdown of last year's talks on the Uruguay Round of General Agreement on Tariffs and Trade (GATT). According to The Economist, the protectionist CAP acts as a barrier to a new world trade agreement, an impediment to aiding Eastern Europe by excluding their agricultural products, and costs the average British family of four 730 pounds per year in higher prices.

The latest CAP reformation plan was unveiled in July by agriculture commissioner Ray MacSharry. The most significant new proposal would cut prices guaranteed to farmers through subsidies, but make up the difference through direct cash grants to farmers. This move would shift only the cost of rigged food prices to the EC budget.

90. Id. at 137.
91. Id. at 158.
93. Id.
94. After the Milk Mountain, Can the Summit Be Reached?, THE ECONOMIST, March 17, 1984, at 44.
97. Id.
99. Id.
101. Agricultural Subsidies, supra note 96, at 56.
102. Id.
103. Id.
As of late September 1991 debate continues over the latest CAP reform effort. British negotiators claim to have "fundamental differences" with recent proposals and fear the creation of a "permanent system of social security for unviable farmers." David Curry, the junior agriculture minister, said that Britain wants a "significant price cut" and a compensation system that must be "limited in time and gradually declining."  

Despite the apparent need for change, the Torry Party receives a great deal of support from farmers and is not likely to fully embrace free trade principles. Of course, any victory for Community farmers is a defeat for Community consumers. The wide range of internal and international divergent interests that seek to influence CAP decisions undoubtedly will be an area of continued dispute.

B. Immigration

The power to control which persons may enter a country and what business they may conduct is both a major component of integration and an important element of national security and sovereignty. Community Commission President Jacques Delors has referred to the removal of restrictions upon free movement of EC citizens across national borders as "the most visible and tangible proof of the reality of a unified Community."  

The Treaty of Rome affected Britain's immigration law and continues to be an issue of contention. The British have been concerned primarily with effects that liberalized immigration will have upon the employment market and national security. Article 48(1) of the Treaty provides for free movement of workers within the Community. Paragraph 2 explains that this necessitates the abolition of any employment discrimination based upon nationality. In sharp contrast, Britain's 1971 Immigration Act allows the government to exclude or deport any non-citizen whenever such an action is "deemed conducive to the public good." However, since joining the EC, Britain has allowed nationals of other Community Member States to enter and reside in the country subject only to concerns for public health, public security, and public policy. European Community Council Directive 64/221 (Directive) provides certain proce-
dural safeguards for Community migrants. That Directive guarantees due process to persons challenging immigration decisions and specifically forbids rejection on economic grounds or on the sole basis of a criminal record.

The European Court of Justice first interpreted the aforementioned Directive in Van Duyn v. Home Office. Van Duyn, a Dutch scientologist, challenged her exclusion from the UK because she, as a scientologist, was a member of a disfavored group. The Court emphasized that public policy decisions had to be made in the context of Community and not national law. However, the Court did allow some discretion on the part of the member states and found that Van Duyn’s membership in a group considered to be against public policy was a valid reason to exclude her.

Subsequent decisions by the European Court of Justice have limited the scope of what constitutes valid public policy. In R. v. Bouchereau, a Frenchman convicted of drug possession, invoked Community law to oppose a British court’s decision to deport him. A British Magistrates Court asked the European Court of Justice what weight a criminal conviction should be given when contemplating deportation. The Court responded that a previous criminal conviction could be taken into account as evidence of a present threat. Regarding interpretation of the term “public policy” used in article 48(3) of the Treaty of Rome, the Court stated that this concept requires “the existence, in addition to the perturbation of the social order which any infringement of the law involves, of a genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society.” Faced with this narrow interpretation, the magistrate fined Mr. Bouchereau rather than deporting him.

The extent of the Community’s influence on immigration law was further illustrated in R. v. The Secretary of State for Home Affairs, ex parte Santillo. Mr. Santillo, an Italian national, was charged with burglary and rape. At his sentencing, his deportation was recommended. This recommendation was acted upon when Mr. Santillo was released from prison. The Court of Justice was asked to

2. EVANS, supra note 109, at 498.
6. Id. at 2014.
rule upon Mr. Santillo's contention that the individual rights conferred upon him by Article 9(1) of Directive 64/221 had been breached. This article deals with the right of appeal and the proper authority for ordering expulsion. The Court indicated that the decision made on review ordering Mr. Santillo's expulsion must be "sufficiently proximate in time" to the original recommendation and that "a lapse of time amounting to several years between the recommendation for deportation and the decision by the administration is liable to deprive the recommendation of its function as an opinion within the meaning of Article 9." The British Divisional Court allowed deportation upon finding that the four and a half years served by Mr. Santillo was sufficiently proximate in time to conclude that the status of the risk had not changed.120

Since the Treaty is concerned predominantly with the economic consequences of immigration, Article 48 applies to the free movement of "workers."121 In administrating her own immigration law, Britain had to determine who qualified as a worker. In 1974 in R. v. Secchi, a British magistrate held that an Italian student who traveled and worked intermittently across Europe did not qualify as a worker and could be deported for indecent exposure and shoplifting.122

In 1981 the Court formally addressed the question of who qualifies as a worker. The Court reiterated a prior holding that "worker" was a Community concept that could not be defined by national law. The Court further stated that one need have only a job to qualify as a worker.123 There has been no criteria as to hours worked or salary, but the work has to be more than a "marginal."124

There has been considerable debate regarding whether tourists may qualify as workers. The European Court has stated that the individual's motive is to be considered.125 The national's prime motivation for emigrating must be to provide services as a worker or to receive the services of another, such as medical treatment.126 In this context, it is doubtful that one who is merely passing through would qualify as a worker.

The above deportation remedies are reasonably effective when there has already been a conviction. Deportation proceedings do

---

119. Id. at 1600.
120. Santillo, supra note 118, at 1593.
121. Treaty of Rome, supra note 4, at art. 48.
124. Id. at 1038, 34 COMM. MKT. L.R. at 467.
125. Id.
126. Id. at 1053, 34 COMM. MKT. L.R. at 470.
127. Id.
nothing to regulate the flow of Community nationals who are allowed to move about freely. This has led to concerns in Britain over the number of immigrants that may be attracted as well as the ease with which drug smugglers, terrorists, or other criminals may enter and move about the community. This fear has developed into one of the formidable obstacles toward the economic integration that is to be completed in 1992.

C. Monetary Policy

The progression toward complete European integration has been described as a three stage rocket: customs union, economic union, and political union. While much attention has been directed toward the mandated 1992 completion of the customs union, the monetary union is making significant progress.

The Treaty of Rome makes no mention of economic policy coordination except to state that cooperation should be sufficient to ensure the maintenance of each member's balance of payments to the Community. The concept naturally evolved following the efforts toward political integration and free trade. Like the establishment of political and trade agreements, the effort to centralize monetary policy has been marred by political battles. Many of the arguments regarding Britain's participation in a monetary union parallel earlier discussions regarding Britain's participation in the European Economic Community. Opponents echo familiar cries that such a move would intolerably erode national sovereignty. The debate generally focuses upon the extent to which national monetary systems should be integrated. The staunchest advocates of British nationalism fear that a true monetary union could give the Community enough control over national monetary policy effectively to yield London's spending power to the European Commission in Brussels.

The general concept of a monetary union was tossed about since the Community's inception in 1958. The necessity for a European monetary union became more urgent after Richard Nixon discontinued the gold standard in 1971. That action ended the Bretton Woods system of fixed exchange rates which linked other currencies

128. Nelson, supra note 107, at R37, col. 3-4.
129. Hallstein, supra note 5, at 102.
130. Treaty of Rome, supra note 4, at art. 104.
132. Id. at 132.
134. A Brief History of Funny Money, The Economist, Jan. 6, 1990, at 21. Because world currencies were no longer linked to the value of a real commodity, the value of money was left to the discretion of the issuing governments.
to the dollar.\(^{188}\)

The first practical efforts to coordinate Community monetary policy began in 1969 at a meeting of Community heads of state at the Hague.\(^{138}\) Several different approaches were taken during the 1970s with only limited success.\(^ {137}\) In 1970 the Werner Committee stated the goals of Community monetary union to be: “the total and irreversible convertability of currencies, the elimination of margins of fluctuation in rates of exchange and the irrevocable fixing of parity ratios.”\(^ {138}\) It was presumed that the “irreversibility” that was called for could be accomplished only by amalgamating the Community currencies into a single currency managed by a single bank.\(^ {139}\) The plans which emerged during the 1970s were often criticized and not very effective.

The presently existing European Monetary System (EMS) is the result of a reform of the previous system of exchange rate control. In a parallel to how Winston Churchill provided the stimulus for the Community itself; it was Roy Jenkins, the English Commission President, whose call for re-examination of the old system launched the current EMS which his country would long oppose.\(^ {140}\) In assessing the poor economic period of the late seventies, Mr. Jenkins felt that the member states “had gone too much their own way” and that a new system could be instituted to “provide the central theme of our economic policies in the period ahead.”\(^ {141}\) The British press gave Mr. Jenkins’ plan little hope of political success and found it ironic that one of their own was playing the role of federalist.\(^ {142}\) As the reformulation gained momentum, German Chancellor Schmidt and French President M. Giscard d’Estaing became the major patrons of the EMS.

The current version of the EMS is a compromise between fixed and floating exchange rates.\(^ {143}\) Exchange-rates are pegged through a “parity grid” system that uses a measure called an European Currency Unit (ECU).\(^ {144}\) A mutually agreed upon schedule of exchange rates among all the member currencies is used to measure a particu-

\(^{135}\) P. LUDLOW, supra note 133, at 2.

\(^{136}\) Id.

\(^{137}\) See id. at 2-12.

\(^{138}\) P. OPPENHEIMER, The Problem of Monetary Union, in BRITAIN IN THE EEC 99 (1973). The Werner Committee was charged by the Commission to give substance to the broad principles agreed upon at the Hague summit.

\(^{139}\) Id.

\(^{140}\) P. LUDLOW, supra note 133, at 37.

\(^{141}\) Id. at 39.

\(^{142}\) Id. at 55. A “federalist” is one who favors a strong central government.

\(^{143}\) Flexing the EMS, The Economist, December 2, 1989, at 14. [hereinafter Flexing the EMS].

\(^{144}\) G.E. WOOD, supra note 131, at 132. An ECU is derived from a weighted average of all the member countries’ currencies.
lar currency’s divergence from this specified rate. Any divergence is measured in ECU’s. When a currency varies a certain amount, the country which issued that currency is expected to buy or sell their own currency in order to adjust the rate accordingly.

The EMS provides for a system of credit facilities which will loan funds to Member States in order to allow them to engage in exchange rate intervention. The EMS also maintains the European Monetary Fund (EMF). This fund receives currency deposits from members and issues ECU’s in return for the purpose of settling intra-community debt.

Britain’s political climate of the late 1970s provided for a rather hasty dismissal of the EMS. In addition to the overriding advancement of unity disapproval, there were many more specific criticisms of entry. Initial resistance was mainly political. Prime Minister Callaghan and his Labour Party did not want to embark upon consideration of the EMS right before an election. Critics disliked the fact that the system was based upon the Deutschmark instead of the pound. Some were distrustful because the two primary architects of the plan were a Frenchman and a German, and that they had sprung the plan upon the Community with little outside input. There was even a theory that the whole proposal was part of a “Machiavellian German plot to boost their exports and ruin the United Kingdom’s.”

There were also numerous economic arguments against joining. A Treasury report found that because membership would deprive the British government of the ability depreciate the pound, the exchange rate would be kept artificially high. While the Treasury accepted the goal of greater monetary stability, there was disapproval over the vague terms and lack of detail with which the initial plan was laid out. The effects of this were to be a drop in gross national product and consequently higher unemployment. Because “compromise offends the purist,” some economists disliked the system’s compromise between fixing exchange rates and letting them float. The EMS was not without supporters in Britain. In fact, several highly esteemed businessmen and a few respected publications favored en-

145. Id.
146. Id.
147. Id.
148. Id. at 133.
149. P. LUDLOW, supra note 133, at 108.
150. Id. at 110.
151. Id. at 112.
152. Id. at 111.
153. Id.
154. Id. at 112-3.
155. Id.
156. Flexing the EMS, supra note 143.
Despite this support, the British government initially refused to join. Since then, however, times and circumstances have changed. Members of the EMS include France, Germany, Italy, Denmark, the Netherlands, Ireland, Belgium, Luxembourg, Spain, and, as of October 8, 1990; Britain. Greece and Portugal are the only two Community members who are not in the EMS, and that is because their inflation rates are currently too high. There has been speculation that Sweden, Norway, Finland, Austria, and Switzerland may be considered for future EMS membership. With the decision to join the Community and not to join the EMS initially, Britain’s recent entrance was based upon economic as well as political reasons.

Contrary to many initial expectations, over a decade later the system has succeeded in stabilizing member currencies and holding inflation at low German levels. That triumph over inflation has made it more difficult for non-members to achieve “anti-inflationary credibility.” Mrs. Thatcher was forced into assenting to the EMS earlier than planned by weak economic conditions in Britain and an eight year high inflation rate of 10.9%. As contrasted with the success of the system, Britain’s poor economic conditions created a situation in which Mrs. Thatcher “took advantage of an excellent opportunity of monetary conditions coming within their limits.” EMS membership has quickly benefited Britain. The inflation rate for August 1991 was a low 4.7%.

The decision was hailed by many as a “clear sign of Britain’s growing commitment to European integration, both monetary and political.” However, that may have been a premature appraisal. To the contrary, it has been suggested that Mrs. Thatcher intended to use membership and direct participation to slow the pace of integration. In actuality, all that Britain really has committed to is a system of controlling exchange rates. That in itself is not alarming, except to the most avid anti-federalists. Membership in the EMS is, however, a necessary step toward complete monetary union, a com-

157. P. LUDLOW, supra note 133, at 222.
160. Id. Austria and Norway have submitted applications to join the Community.
161. Flexing the EMS, supra note 143.
162. Who’s Next, supra note 159.
166. EC Hails a Wider Commitment to Europe, The Times, Oct. 6, 1990, at 2, col. 3.
mon currency, and perhaps even the “United States of Europe” long ago envisioned by Churchill.

Commission President Jacques Delors is the major proponent and engineer behind complete monetary union. He has developed a three stage plan.\textsuperscript{168} Stage one involves the free movement of capital and some coordination of monetary policies, began in July 1990.\textsuperscript{169} Stage two calls for the creation of a European central bank reminiscent of the American federal reserve.\textsuperscript{170} This “Eurofed” would control exchange rates and further coordinate monetary policies.\textsuperscript{171} The final stage allows the “Eurofed” to run completely each member nation’s monetary policies and permanently fix exchange rates.\textsuperscript{172} The Commission wants to start stage two in January 1993 and follow “soon after” with stage three.\textsuperscript{173}

The scene is set for another trans-channel showdown. Although John Major has improved Britain’s relations with the Community since succeeding Mrs. Thatcher in November 1990, he shares her opposition to a single currency.\textsuperscript{174} Britain is the only EC country to reject the goal of common currency.\textsuperscript{175}

Progress toward monetary union increasingly seems inevitable. For a short period of time, it appeared that Germany would support Britain’s “go slow” rhetoric.\textsuperscript{176} However, German Chancellor Helmut Kohl recently joined with France, Italy, and Belgium in calling for the speedy creation of a monetary union.\textsuperscript{177} In May 1991 Jacques Delors said that “[i]f at the end of 1991 the British still do not want a single currency, we will find a formula.”\textsuperscript{178}

Pressure at home is also rising. Mrs. Thatcher’s fierce opposition to European federalism has caused a split within her own Conservative Party which continues to this day.\textsuperscript{179} The decision to join the EMS was seen by many as an effort to bolster the Conservative’s standing as they lose position in the polls to the Labour Party.\textsuperscript{180} In 1989 elections, Labour used growing dissatisfaction with the Prime Minister’s anti-EC stance to hand the Conservatives their first major

\begin{footnotesize}
\begin{itemize}
\item 168. Flirting with the Hard ECU, THE ECONOMIST, Sept. 15, 1990 at 62.
\item 169. Id.
\item 170. Id.
\item 171. Id.
\item 172. Id.
\item 173. Id.
\item 175. Id.
\item 177. Id.
\item 178. Britain balks, supra note 174.
\item 179. C. Whitney, supra note 28.
\item 180. S. Prokesch, supra note 158
\end{itemize}
\end{footnotesize}
defeat since 1979. Should Labour gain power, the pace of integration would undoubtedly quicken. The Labour Party recently completed a resolution endorsing further movement toward economic and monetary union and criticizing the Conservatives for lagging behind events. The resolution stated: "The direction is set. National policy towards the EC . . . must firmly relate to that reality." The history of begrudging British submission and the future of economic interdependence make it seem inevitable that Britain will eventually fall in line with whatever form the monetary union may eventually take.

VI. Conclusion and Update

Britain sat out the first twenty years of European federation building. Despite well-founded arguments that the British form of government could not be compromised or adapted to yield sovereignty to a continental body, Britain joined the European Community. Following ascension, many viewed the imposing task of modifying the British legal system to accommodate Community law to be a crippling impediment to integration. However, compromise has yielded workable solutions in the areas of anti-trust law, trademark and patent law, company law, trade regulation, taxation policy, environmental law, and immigration law. Britain went as far as threatening to withhold budget contributions or even leave the community when outrage flared over CAP contributions. Again, a compromise was reached. After joining the EMS, Mrs. Thatcher was widely quoted as telling the House of Commons: "In my view, we have surrendered enough."

It seems certain that Britain, under the direction of John Major or the Labour Party, shall surrender even more. Not only do economic circumstances demand this outcome, but it seems that political opinion in Britain is becoming more supportive of increased European involvement.

Mr. Major and his Conservative government have continued Mrs. Thatcher's opposition to political and defense union. Following the Community's weak response to recent events in the Persian Gulf, Mr. Delors has called for a policy of common defense. Britain, as the Gulf war showed, is more likely to look to the United States for

183. Id.
defense. Regardless of Britain's long-standing objection to political union, the UK's participation in EC-sponsored efforts to aid Eastern Europe and to broker a settlement to the conflict in Yugoslavia reveal how events have outpaced principles.

One observer commented upon former Prime Minister Thatcher's style of Euro-diplomacy: "Mrs. Thatcher shouts and waves her famous handbag at scheming Europeans, but in the end she always grits her teeth and signs." Although he has improved British-EC relations, Mr. Major recently told the House of Commons that a "European 'superstate'" would be unacceptable to him and to Britain. Douglas Herd, the foreign secretary, has balked at the use of the word "federal" in a newly proposed treaty and warned EC negotiators that talks would collapse if they pushed the pace of inter-governmental integration. In a move partially motivated by a desire to slow the federalism process, Mr. Major has fashioned himself as a "widener," who favors opening the Community to Eastern Europe and other nations. French President Mitterrand leads the "deepeners," who seek closer integration inside Western Europe. Mr. Major, like Mrs. Thatcher, will inevitably be forced into further European integration.

The acceleration of integration and the growing interdependence between national economies make it clear that Britain will be swept up in any and all future federalizing measures, including monetary and political union. Sovereignty shall be compromised further. Such a sacrifice is essential in order to ensure that Britain remains one of the economic and political leaders of Europe and the world.

Allen Neely