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Matthew J. Eshelman

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The Maastricht Train: Slowing Down for Sharp Curves

I. Introduction

Referendums rest at the heart of a democratic philosophy. They entail a submission of law to the direct vote of the people. Democracy, in combination with free-market economics, has become the predominant basis of political institutions in the world today. Capitalistic Democracies recognize the efficiency of economies of scale available through modern technology and economic cooperation. In seeking to attain the prosperity, growth, and the derivative security inherent in economies of scale, many nations have banded together to form multilateral regional organizations.¹

Among the largest regional organizations, the European Community (EC) has achieved the greatest level of integration.² Lessons from the European experience are studied by all other institutions seeking prosperity through unification. For the EC, the next step toward unification is ratification of the Maastricht Treaty. Maastricht attempts to go beyond the present Common Market by harmonizing economic, social, and political laws. In an effort to ratify the Maastricht Treaty, one of the EC's largest member-states, France, held a referendum. On September 20, 1992, French voters were asked, "Do you approve the draft law put to the French people by the president of the republic authorizing ratification of the Treaty on European Union?"³

This Comment will focus on the legal ramifications to individuals and institutions, throughout France, Europe and the world caused by the use of this most basic democratic tool — the referendum. Sections II and III will briefly describe the history and aims of

1. Because the scope of this Comment is concerned with modern developments in the laws of nations, the historic unification of federal nation-states is not included here. Modern communications and transport have greatly increased the ability of sovereigns to transact. These developments have altered the complexity and nature of integration. However, the lessons of history should not be forgotten. See, e.g., 24 FUNK & WAGNALLS NEW ENCYCLOPEDIA 96-97 (1975) (United States 1776-89), and 11 FUNK & WAGNALLS NEW ENCYCLOPEDIA 178 (1975) (Germany 1834-71).

2. The twelve Member-States of the EC are: Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom.

3. *French Voters Narrowly Back 'Maastricht' Treaty on Closer European Unity*, FACTS ON FILE WORLD NEWS DIG., Sept. 24, 1992, at 705-A1 [hereinafter FACTS ON FILE] available in LEXIS, Nexis Library, Facts File.

the European Community and of the Treaty of Maastricht. Sections IV, V, and VI will discuss the potential consequences of the referendum as predicted by supporters and opponents of the Treaty before the ballots were cast. By detailing the response of the leaders of the EC, this Comment will focus, in sections VII and VIII, on the referendum's effects upon the individual, with particular attention to the principle of subsidiarity. Sections IX and X will view the effects of the referendum upon institutions in France, the Community, and the world.

II. The European Community

The drive to integrate the European economies began over forty years ago when the nations of Belgium, France, Germany, Italy, Luxembourg, and the Netherlands established the European Coal and Steel Community (ECSC).⁴ The intent of the ECSC was to create a common market for coal and steel commodities.⁵ As a result of the ECSC's success, the same six nations later joined to form the European Economic Community (EEC) with the Treaty of Rome in 1957.⁶ The purpose of forming this "ever closer union"⁷ was to avoid Franco-German conflict by replacing nationalism with prosperity.⁸ The treaty proposed to create a free trade area by removing all tariffs and quotas by 1968.⁹ In order to accomplish this goal, the Treaty sought to insure the so-called "four freedoms": freedom of movement of goods, persons, services, and capital.¹⁰

A similar market was formed when the same six nations signed the Euratom Treaty concurrently with the EEC Treaty. The Euratom Treaty purported to regulate the production and develop-

4. TREATY ESTABLISHING THE EUROPEAN COAL AND STEEL COMMUNITY [ECSC TREATY] pmbi. Because of the vast amount of legal material already written on the EC, its history is only briefly summarized here. See generally OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUR. COMMUNITIES: LUX., *THE ABC OF COMMUNITY LAW* (3d ed. 1991) (introductory materials on the creation and interpretation of EC law), and EMILE NOEL, OFFICE FOR OFFICIAL PUBLICATION OF THE EUR. COMMUNITIES: LUX., *WORKING TOGETHER - THE INSTITUTIONS OF THE EUROPEAN COMMUNITY* (1991).

5. John Daly & Barbara Wickens, *Continental Divide: The EC Stumble on the Path to Unity*, MACLEAN'S, Sept. 28, 1992, at 38, 40.

6. Terry R. Broderick and Arnold B. Calmann, *Introduction to a New Europe: A Primer for 1992*, INT'L BUS. LAW., Jan. 1992, at 9.

7. TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY [EEC TREATY] pmbi.

8. *Morning Edition* (National Public Radio broadcast, Sept. 18, 1992) (Deborah Amos reporting) available in LEXIS, Nexis Library, NPR File [hereinafter *Morning Edition* (Sept. 18)]. Transcripts are available from NPR, 2025 M Street NW, Washington, D.C. 20036 transcript inquiries at (202) 822-2323.

9. For a general discussion of the evolution of regional organizations from a free trade area, through a customs union, single market and monetary union, to a political union see, Louis F. Del Duca, *Lessons for Developing Regional Organizations — the European Community Experience — an Anatomy for Regional Organizations*, 11 DICK. J. INT'L L. (forthcoming August 1993).

10. EEC TREATY art. 3.

ment of nuclear energy.¹¹ From their inception, the EEC, the ECSC, and Euratom shared common judicial and legislative institutions: the Court of Justice of the European Communities and the European Parliament. In 1968, the Communities merged their executive institutions to form a single European Council and a single European Commission.¹² The Communities are now collectively referred to as the EC, but each of the original Treaties remain in force. With the success of the EC, other countries requested, and were granted, accession: first Denmark, Ireland, and the United Kingdom (U.K.) in 1973; then Greece in 1981; and, most recently, Portugal and Spain in 1986.¹³

A multitude of non-tariff barriers, however, remained to restrict the free movement of resources.¹⁴ In June 1985, the Commission of the EC submitted the *White Paper*,¹⁵ which included some 300 legislative proposals to eliminate those fiscal, physical, and technical non-tariff barriers.¹⁶ In February of 1986, the 12 member-states unanimously signed the Single European Act (SEA), approving the *White Paper's* timetables to significantly amend the Treaty of Rome.¹⁷ The majority of the *White Paper's* proposals contained in the SEA have already been implemented, and the remainder will automatically go into effect January 1, 1993.¹⁸

The SEA created a single market, the so-called Common Market, of 342 million residents and a 4.04 trillion dollar gross national product.¹⁹ Leaders of the Member-States continued the process toward economic unification by signing the Treaty of Maastricht in December 1991.²⁰ The EC leaders intended Maastricht to go into effect with the 1993 automatic implementation of the SEA, however ratification of the controversial Treaty was held up by the parliaments of several Member-States.²¹

11. TREATY ESTABLISHING THE EUROPEAN ATOMIC ENERGY COMMUNITY [EURATOM TREATY] pmbl.

12. TREATY ESTABLISHING A SINGLE COUNCIL AND A SINGLE COMMISSION OF THE EUROPEAN COMMUNITIES [MERGER TREATY].

13. JANET S. ZAGORIN, BAKER & MCKENZIE, EUROPE 1992: NAVIGATING NEW WATERS § I (1990).

14. *Id.* § VI(A).

15. Completing the Internal Market: White Paper from the Commission to the European Council, COM(85)310 final.

16. Daly & Wickens, *supra* note 5, at 40.

17. Zagorin, *supra* note 13, § VI(A).

18. Alan Riding, *Europe Awaits Verdict on Treaty by French Voters*, N.Y. TIMES, Sept. 20, 1992, at A1 [hereinafter Riding, *Europe*].

19. Daly & Wickens, *supra* note 5, at 44. Gross national product is a measure of all goods and services produced within an area, plus the value of that area's net exports.

20. *Id.* at 40.

21. The terms of the Maastricht summit require ratification by all 12 Member-States. *European Community, French Voters Approve Unity Treaty But 'Hurdles Still Remain,' Official Says*, 1992 Daily Rep. for Executives (BNA) No. 184, at D-3 (Sept. 22, 1992) available in LEXIS, Nexis Library, DREXEC File [hereinafter *Hurdles*]. Denmark and Ireland were

III. The Treaty of Maastricht

In December 1991, the leaders of the twelve EC Member-States met in the Dutch town of Maastricht to travel further down the track toward economic and monetary union.²² The Treaty of Maastricht aims to form closer economic, social, and political ties. The Treaty covers a broad range of economic provisions, including a single European currency, coordinated fiscal policies and a central bank.²³ Maastricht expressly recognizes EC competence to legislate in social areas such as education, the environment and scientific research and development.²⁴ The Treaty also outlines provisions for determining a common security policy that might eventually lead to a common European defense.²⁵

In order for Maastricht to become law, it requires ratification by all twelve Member-States.²⁶ With the approval of the British House of Commons and the passage of a second Danish referendum on ratification in May 1993, all twelve EC nations have effectively ratified the Treaty.²⁷ However, first referendum on ratification nearly derailed the Treaty when it failed in June 1992 by the narrow margin of 50.66% against further integration.²⁸ The Danish rejection of Maastricht in June 1992 led French President Francois Mitterand to call a referendum in order to help get Maastricht back on track.²⁹ At the time, a referendum seemed a politically safe decision, because opinion polls in France showed as much as a seventy percent majority in favor of Maastricht.³⁰ Between the President's June 4, 1992 announcement and the September 20, 1992 referendum, however, debate closed that gap considerably.³¹ The referendum passed by only the narrowest of margins.³² Passage of the French referen-

required by domestic law to ratify by referendum. For the other 10, parliamentary ratification was either sufficient or, as in Germany, constitutionally required. Riding, *Europe*, *supra* note 14 at A12.

22. Daly & Wickens, *supra* note 5, at 40. The denomination of the European Community would thus become the European Union.

23. *Id.* These provisions are intended to allow the EC to move from the present single market to a monetary union. Del Duca, *supra* note 9, (manuscript at 4-6).

24. Andrew Marshall, *The Treaty of Maastricht*, THE INDEPENDENT, at 102, arts. III-IV (Oct. 11, 1992) (an annotated version of the Treaty, with an admittedly British slant, but translated into layman's terms) available in LEXIS, Nexis Library, INDPNT File.

25. *Id.* art. VI.

26. Riding, *Europe*, *supra* note 18, at A12.

27. *All Things Considered* (National Public Radio broadcast, May 20, 1993) (Robert Siegel reporting) available in LEXIS, Nexis Library, NPR File [hereinafter *All Things Considered* (May 20)].

28. Del Duca, *supra* note 9.

29. George F. Will, *European Union Idea Losing its Luster*, HOUSTON CHRON., Sept. 17, 1992, at C18.

30. *Morning Edition* (Sept. 18), *supra* note 8.

31. Will, *supra* note 29.

32. Results ranged from 51.05% (Daly & Wickens, *supra* note 5, at 40) to as narrow as 50.66% in favor of the Treaty, with a turnout of approximately 70%, French radio reported that the difference between those in favor and those against the Treaty was a mere 540,000 in

dum was considered "critical" to the success of the Treaty.³³ Although ratification in France was achieved, the narrow margin of the vote leaves many questions unanswered regarding the next stage in the process of integration.

IV. Consequences of a "No" Vote

Most analysts agree that, if the French voters had voted *no* to the Treaty of Maastricht, the Treaty would almost certainly have never gained legal status. Otherwise, there are almost as many differing opinions of the consequences of a *no* vote as there are analysts. Common themes range from the opinion that rejection of the Treaty "would slow but not end European integration"³⁴ to the belief that "four decades of work probably would have fallen to pieces with irreparable damage."³⁵

Others believed a *no* vote would have "wave[d] goodbye to the Maastricht treaty and quite possibly the exchange rate mechanism too."³⁶ Supporters of European unity, such as German Chancellor Helmut Kohl, disagreed at least as to the impact a *no* vote would have had on existing institutions like the exchange rate mechanism (ERM).³⁷ A *no* vote, however, would certainly have come at an inopportune time for the governments of Western Europe, especially France, Germany, Italy, Spain, and the U.K. which are facing recession and growing unpopularity at home.³⁸

V. Consequences of a "Yes" Vote

The consequences of passage brought no less diverse opinions. Those who thought a *no* vote would encourage currency speculation (and hence a breakdown of the ERM) naturally thought a *yes* would serve to stabilize the markets.³⁹ Some believed a *yes* vote would serve as a political weapon with which the EC Trade Commissioner could make another attempt at reaching a global solution to the problems of the Uruguay Round.⁴⁰ A *yes* vote would restore a mea-

a nation of over 80 million people. *Hurdles*, *supra* note 21.

33. *Morning Edition* (Sept. 18), *supra* note 8.

34. *Rejection of Maastricht by France Would Not End Integration in Europe*, 1992 Daily Rep. for Executives (BNA) 173-D3 (Sept. 22, 1992) available in LEXIS, Nexis Library, DREXEC File (quoting John Yochelson of the Center for Strategic and International Studies).

35. *Close Call for European Unity*, PATRIOT-NEWS (Harrisburg, Pa.), Sept. 22, 1992, at A8 (quoting Italian Prime Minister Giuliano Amato).

36. See *infra* note 37 and accompanying text.

37. Daly & Wickens, *supra* note 5, at 39. The ERM is a set of rules promulgated by the EC Monetary Committee to collectively protect the currency values of the Member-States.

38. Riding, *Europe*, *supra* note 18 [32].

39. *Hurdles*, *supra* note 21.

40. *Id.* See also *infra* notes 138-40 and accompanying text.

sure of the Community's shattered confidence in the ERM.⁴¹ A *yes* would also lend renewed strength, as President Mitterand had originally anticipated, toward overcoming the remaining obstacles to Maastricht.⁴²

Others believed passage could bring about violent results. Because economic integration entails a surrender of the French franc to a European bureaucracy, some said the people of Paris would storm the Banc Nationale du Paris.⁴³ Some analysts predicted that currency speculators might face a similar fate to that of their predecessors who were beheaded for speculating against the value of the franc.⁴⁴

VI. The Debate

The debate leading up to the referendum caused much confusion because the same arguments were often used both for and against the Treaty.⁴⁵ For instance, the speculators' run on the currency markets was used to show both the need for a unified currency and that Maastricht could not assure stability.⁴⁶ Moreover, each side exaggerated arguments, resorted to fear tactics,⁴⁷ and skewed the focus of the question before the voters.⁴⁸

The focus of the referendum changed from Maastricht to a vote on France itself. Concern over the slumping French economy, rising unemployment, and the President's close association with Maastricht changed the focus of the referendum by creating a referendum on Mitterand rather than ratification.⁴⁹ The civil war in the Balkans, violence in Germany toward foreigners, and unstable currencies were the pigments of a dark portrayal used by the *yes* camp.⁵⁰ The *no* camp countered by arguing that the EC had already shown it was incapable of handling these problems.⁵¹ Proponents of the referendum argued that Maastricht would serve to tie a reunified Germany to Europe.⁵² Opponents responded that Maastricht would only

41. *French Hunters, Fishers Set to Vote "No" to Maastricht*, REUTERS, Sept. 1, 1992, available in LEXIS, Nexis Library, LBYRPT File [hereinafter *French Hunters*].

42. FACTS ON FILE, *supra* note 3.

43. The Banc Nationale happens to be located in the Place de la Bastille — the birthplace of the French Revolution. *All Things Considered* (National Public Radio broadcast, Sept. 18, 1992) (Alice Furlaud reporting) available in LEXIS, Nexis Library, NPR File.

44. FACTS ON FILE, *supra* note 3.

45. Riding, *Europe*, *supra* note 18, at A12. Cf. Marc Fisher, *Denmark Approves European Unity Treaty by 57 Percent Vote*, WASH. POST, May 19, 1993, at A21.

46. Riding, *Europe*, *supra* note 18, at A12.

47. *Id.*

48. See Daly & Wickens, *supra* note 5, at 42.

49. FACTS ON FILE, *supra* note 3.

50. Riding, *Europe*, *supra* note 18, at A12.

51. *Id.*

52. Will, *supra* note 29.

anchor Europe to Germany.⁵³

Yet more substantive concerns did remain central to the debate. Fears of relinquishing economic and political sovereignty to anonymous 'Eurocrats' in Brussels⁵⁴ lay behind questions of unemployment, crime, and immigration policy.⁵⁵ On the other hand, many supported the proposition that greater unification would contribute to bring about economic prosperity. That prosperity would, in turn, supplant the violence of political nationalism.⁵⁶

Moreover, bringing Europe's best minds together in Brussels could assist in solving internal problems. Because national boundaries can aggravate certain social problems by their very existence,⁵⁷ specialists centered in Brussels with the power to work above national boundaries, could better address such problems.⁵⁸

VII. EC Leaders Respond

A. *Germany Cut Interest Rates to Support the Referendum*

The substantive arguments that Maastricht is a solution to the problems of war, economic strife, and unemployment eventually prevailed, but in the last days before the vote, many people were not certain the referendum would pass. Traders⁵⁹ and financial institutions⁶⁰ passively awaited the outcome. The economic climate surrounding German interest rates made many investors cautious. The German central bank, or Bundesbank, had been steadily raising interest rates as a result of the high costs of German re-unification.⁶¹ But high German interest rates affect interest rates around the world; slowing economic growth by increasing the cost of borrowing for capital investment and by undermining investors' confidence in other European currencies.⁶²

On September 14, 1992, the German central bank cut its interest rates after five years of continual increase.⁶³ Occurring just one

53. *Id.*

54. Brussels, Belgium is the legislative headquarters of the EC, and as such, is often seen as the capitol of Europe and symbol of its bureaucracy.

55. *French Hunters*, *supra* note 41.

56. Even the most ardent supporters of unification agree that care must be taken to preserve national cultural independence.

57. For instance, consumer protection and criminal extradition, because defective products and dangerous criminals easily cross national boundaries, but their victims may not.

58. *See generally*, Del Duca, *supra* note 9 (manuscript at 6-47) (describing the EC's approach to solving problems of harmonization).

59. *Morning Edition* (Sept. 18), *supra* note 8.

60. *London Stocks Close Firmer but Below Highs*, REUTERS, Aug. 19, 1992, available in LEXIS, Nexis Library, FINRPT File.

61. Daly & Wickens, *supra* note 5, at 38.

62. *Id.*

63. *Morning Edition* (National Public Radio broadcast, Sept. 14, 1992) (Bob Edwards reporting) available in LEXIS, Nexis Library, NPR File.

week before the French referendum, this extraordinary move was intended to make the German mark less attractive to foreign investors, thereby bolstering other European currencies.⁶⁴ Many analysts felt that the Bundesbank was attempting to strengthen French support for the Treaty.⁶⁵ The close ties and active communications between French President Mitterand and German Chancellor Helmut Kohl preceding the decrease in interest rates support this theory.

B. Italy, Spain, and U.K. Forced to Devalue Currency

What German leaders intended as a gesture of conciliation and support, however, backfired spectacularly.⁶⁶ Currency traders took the rate cut as a sign of weakness and attacked.⁶⁷ The traders sought to invest in the strongest currency, betting against the weaker European currencies, such as the Italian lira and the Spanish peseta, and buying more Deutschmarks.⁶⁸ The European central banks attempted to halt the currency market's tailspin by buying up their own currencies and selling marks.⁶⁹ But compared to the estimated 800 million dollars of foreign currency exchanged per day, even the combined efforts of the central banks were but a drop in the bucket.⁷⁰ The European banks' efforts to shore up their currencies proved futile, as the actions of the central banks and finance ministers were quickly overwhelmed.⁷¹

Leaders in Italy and the U.K. decided to drop from the ERM, exchanging collective security for the freedom to take stronger emergency measures.⁷² Spain, too, devalued its currency in an effort to curtail negative speculation, but remained within the limits of the ERM.⁷³

The devaluations gave rise to several effects, and while they are of little legal consequence, the causal factors are direct enough to note their impact.⁷⁴ In countries that devalue their currencies effec-

64. *Id.* Conventional market theories predict that such a move should encourage speculators to move away from a downward moving currency and to invest in other markets where the prospect for earning greater interest exists. However, currency traders' pessimism regarding the prospects for long-term economic growth remained. Daly & Wickens, *supra* note 5, at 39.

65. *Morning Edition* (Sept. 14), *supra* note 63.

66. Daly & Wickens, *supra* note 5, at 38.

67. *Id.*

68. *Id.* at 39.

69. An action that was required by the rules of membership in the ERM. *Morning Edition* (National Public Radio broadcast, Sept. 17, 1992) (Deborah Amos reporting) available in LEXIS, Nexis Library, NPR File [hereinafter *Morning Edition* (Sept. 17)].

70. Daly & Wickens, *supra* note 5, at 39.

71. *Id.* at 38.

72. *See supra* note 37.

73. FACTS ON FILE, *supra* note 3.

74. The upcoming referendum convinced Germany to lower its interest rates, which led to massive currency speculation and sent the market into a tailspin. This forced the central banks to devalue their currencies. Many analysts agreed that the currency turmoil reflected

tively, the industrial sectors can generally expect good returns.⁷⁵ Devaluation of currency causes the value of export goods to rise, and the price of competing import goods to increase. Therefore, manufacturers in those countries should be more profitable, and the nations themselves should become more competitive on the international markets. Consumers in those countries, however, are disadvantaged by devaluation: the increased cost of imported goods and the inflation caused by devaluing currency. Yet, on the whole, analysts believe devaluation is good for economic growth.⁷⁶

In the United States, European currency devaluation would disadvantage producers, just as it benefitted manufacturers in the devalued countries. Devaluation of the average European currency would strengthen the U.S. dollar in comparison. Therefore, the relative cost of U.S. goods imported into the EC would rise, making them less attractive to the European consumer.⁷⁷

Instead of deciding to break away and devalue its own currency, France paid a very high price for remaining in the ERM. Facing high inflation and rising unemployment, Paris could have chosen to help French industry. Instead, the government chose not to, because abandoning the ERM might have harmed chances of passing the referendum.⁷⁸

Across the Channel, the U.K. announced it would refuse to rejoin the ERM until changes were made in Germany's economic policy.⁷⁹ At minimum, Britain would await the outcome of the French referendum before deciding whether to return the pound to the ERM.⁸⁰

Even after devaluation, the pound was down less than five percent, but the damage was more than economic.⁸¹ Robin Oakley of

the market's doubts about French ratification of the Treaty. *Hurdles*, *supra*, note 21. See also, *Get Europe to Work*, FIN. TIMES, May 20, 1993, at 19.

75. FACTS ON FILE, *supra* note 3.

76. *Morning Edition* (Sept. 17), *supra* note 69, (Renee Montagne reporting).

77. *Id.* As a hypothetical example, consider a widget which costs \$20 to produce in the U.S. that is normally bought by a French retailer for 80 French francs (fr) assuming a 4 to 1 exchange rate. If the franc is devalued, it will adjust the exchange rate to, say, 5 to 1. Now the same product, which still costs \$20 to produce in the U.S., costs the French retailer 100 fr. The French retailer must pass the increased cost of the imported widgets on to the consumer. The French consumer, in turn, will be more likely to buy a French widget which has not gone through the exchange rate conversion. The price of French widgets have remained the same while the American product's cost has increased. The French consumer is disadvantaged if there is not an acceptable French widget on the market.

78. *Id.*; see also *supra* note 41 and accompanying text.

79. Germany had resisted worldwide demands to lower its interest rates further. *Morning Edition* (Sept. 18), *supra* note 8, (Bob Edwards reporting).

80. *Morning Edition* (Sept. 17), *supra* note 71. British Prime Minister John Major announced in May 1993 that England would not rejoin the ERM for the foreseeable future. Boris Johnson, *Major Seeks to Reassure Tory Rebels*, DAILY TELEGRAPH, May 20, 1993, p. 11.

81. *Morning Edition* (Sept. 18), *supra* note 8, (Bob Edwards reporting).

The Times in London said it was "the biggest economic crisis in Britain for twenty-five years, and it severely undermine[d] the authority not only of the chancellor [of the exchequer], Norman Lamont, but of John Major as Prime Minister [as well]."⁸² By October, John Major's approval rating had plummeted to sixteen percent, the lowest since the British began taking opinion polls.⁸³ Not only had the political reputations of Major and Lamont suffered, but the idea of integration was also damaged politically in the U.K.⁸⁴

Ironically, the inability of the ERM to protect the pound from massive speculation is also a very strong argument in favor of Maas-tricht's economic integration. The Treaty provides for a single European currency which would put an end to intra-European currency speculation.⁸⁵

C. *The U.K. Calls for an Emergency Summit*

At the time, the U.K. held the rotating Presidency of the European Community.⁸⁶ In that capacity, Prime Minister Major called an emergency summit of the EC leaders for October 16, 1992 in Birmingham, England.⁸⁷ The announced purpose of the special summit was to resolve doubts held by the ruling Conservative Party and the British citizenry concerning unification.⁸⁸ British ratification of the Treaty seemed uncertain otherwise. But the results of the French referendum changed the focus of the meeting toward addressing public concerns.⁸⁹ The twelve EC leaders recognized the growing need for public relations because so many Europeans are concerned about a union created "in smoke-filled rooms, rather than people-filled plazas."⁹⁰

As a result, the twelve agreed to emphasize the policy of subsidiarity.⁹¹ Many Europeans worry about relinquishing sovereignty to distant politicians in Brussels.⁹² By stressing institutions of a more democratic nature, and by defining the principle of subsidiarity, the EC leaders hoped to reassure the populus that Maas-

82. *Id.* (Michael Goldfarb reporting).

83. *Major: In the Pits*, NEWSWEEK, Nov. 2, 1992, at 67.

84. *Morning Edition* (Sept. 18), *supra* note 8, (Bob Edwards reporting).

85. *Hurdles*, *supra* note 21.

86. Wang Shengliang, *No High Hopes for EC Birmingham Summit*, XINHUA GEN. NEWS SERVICE, Oct. 15, 1992, available in LEXIS, Nexis Library, Xinhua File.

87. *FACTS ON FILE*, *supra* note 3.

88. Shengliang, *supra* note 86.

89. Also influencing the outcome of the summit was the announcement on October 15 of the shutdown of most of the state-run British coal industry, eliminating 30,000 jobs. *Weekend Edition* (National Public Radio broadcast, Oct. 17, 1992) (Deborah Amos reporting) available in LEXIS, Nexis Library, NPR File.

90. *Id.*

91. *Id.* See *infra* notes 94-111 and accompanying text (defining the principle of subsidiarity in depth).

92. *French Hunters*, *supra* note 41.

tricht accounts for both individuals and national tradition as it chugs along the track toward closer unification.⁹³

VIII. Effects of Referendum on the Individual.

The referendum affects the individual primarily by forcing existing EC institutions to act more in accord with the provisions of the unratified agreement.⁹⁴ As a result, the EC could allay fears concerning Maastricht through example. To quote Competition and Financial Services Commissioner Leon Brittan: "There were several lessons to learn from the vote and that the [EC] must now show that it is capable of responding to the concerns underlying the no votes."⁹⁵ In particular, the outcome of the referendum caused EC leaders to emphasize the principle of subsidiarity.⁹⁶

The principle of subsidiarity affects every citizen in the Community because it restricts otherwise ubiquitous EC law. While subsidiarity as a legal principle is difficult to explicitly define, it essentially means that the central institutions should not take action on any issue where it would be more appropriate for the Member-States to act.⁹⁷ Conversely stated, the Community should only act where Member-States have made an express delegation of sovereignty, and then only when it is necessary to do so.⁹⁸

Since, however, the Member-States have made such broad delegations of power,⁹⁹ opponents of the Treaty say the principle does not sufficiently restrict the EC's expansion.¹⁰⁰ For example, article 39 of the Treaty of Rome grants the EC the power to control agricultural labor regulation.¹⁰¹ Opponents would argue that subsidiarity

93. *Weekend Edition*, *supra* note 89, (EC President John Major reading from the final declaration of the summit).

94. Proposed legislation for an EC professional card, identifying the qualifications of workers like a driver's license, has already been set aside; so have plans to harmonize small business regulations. *Dictionary Time*, *THE ECONOMIST*, Dec. 9, 1989, at 52.

95. *Hurdles*, *supra* note 21.

96. *Weekend Edition*, *supra* note 89.

97. Article 3b of the Maastricht Treaty provides:

Art.3b: "The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein. In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, *only if and in so far as the objectives of the proposed action CANNOT be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.* Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty." (emphasis added).

EEC TREATY art. 3b (as proposed for amendment 1992).

98. *Weekend Edition*, *supra* note 89.

99. For example, one such area of exclusive EC competence can be summed up succinctly as Agriculture. EEC TREATY arts. 38-47 (collectively entitled: Part II, Foundations of the Community; Title II, Agriculture).

100. Marshall, *supra* note 24.

101. EEC TREATY art. 39.

is not specific enough to explain whether the EC could legitimately prescribe uniform wage compensation for the agricultural work force, or whether the different cost of living expenses in each Member State would trigger subsidiarity.

Subsidiarity in the EC is a recent development. The Christian Democrats in the European Parliament borrowed the term from Pope Pius XI's 1931 encyclical "Quadragesimo Anno." The Vatican used the concept to describe its pre-World War II policy of taking decisions that affect people's lives as far down the chain of command as possible.¹⁰²

The idea came to be used officially in the EC as early as 1982,¹⁰³ and was later incorporated into the Treaty of Maastricht.¹⁰⁴ Proponents of the Treaty have already cited subsidiarity on several occasions to counter doubts raised by anti-unionists concerning the relinquishment of sovereignty to Brussels.¹⁰⁵ But, the results of the French referendum will transform this relatively obscure term into one of the guiding principles of European integration.¹⁰⁶

The aim of subsidiarity is to balance the competing interests of preserving local sovereignty and furthering central unification.¹⁰⁷ Member-States relinquished to the EC certain areas of exclusive competence to act which are strictly subject to the primacy of EC law.¹⁰⁸ In those areas not delegated to the EC, such as defense policy, the Member-States have retained exclusive control.

However, there are certain areas of EC competence which have not been expressly delineated or in which the EC has not acted. Member-States govern these areas under the principle of mutual recognition.¹⁰⁹ Should the EC decide to legislate in these areas, how-

102. *Dictionary Time*, *supra* note 96.

103. A specific word search on LEXIS shows the earliest official mention of subsidiarity to be July of 1982. Search of LEXIS, Inlaw Library, ECLAW File (Nov. 15, 1992) (search for records containing the term "subsidiarity" having a document-date before 1983). The ECLAW File dates back to June 1979. While this is not conclusive of the date of introduction, updating the document-date exclusion segment one year at a time does give an idea of how the word subsidiarity has come into common official usage only recently. The same search, modified to "before 1990" retrieves only two cases. "Before 1991" pulls up five; 1992, a total of ten; and a search without a date restriction retrieves 15 official records. A search of the CURRNT File, using just the term "subsidiarity" as a search parameter, will be stopped because it will retrieve more than one thousand records. Search of LEXIS, Nexis Library, CURRNT File, Nov. 15, 1992).

104. Marshall, *supra* note 24.

105. Del Duca, *supra* note 9 (manuscript at 16).

106. Despite its increasing usage, "subsidiarity" is not yet found in any dictionary. *Dictionary Time*, *supra* note 96. See also, Lucy Halloway, *Eurospeak Leaves Even the Brussels Bureaucrats Tongue-Tied*, FIN. TIMES, Dec. 30, 1989, at 2 (spelling out some of the problems of interpreting Europe's "ugliest and most baffling language").

107. Shengliang, *supra* note 86.

108. Case 6/64 Costa v. E.N.I.L., 1964 E.C.R. 585 (establishing the supremacy of EC law); see, e.g. Del Duca, *supra* note 9, (manuscript at 43).

109. Under this principle, recognition must be granted to the national legislation of other Member-States in the absence of domestic imperatives of health, safety, or consumer

ever, EC regulation will preempt national law. It is in these areas of concurrent jurisdiction where problems arise.¹¹⁰

In theory, the principle of subsidiarity should determine which law will govern, with a presumption in favor of national legislation. Unfortunately, the vague nature of the principle leaves open many possible interpretations.¹¹¹ Under a ratified Maastricht Treaty, the job of delineating subsidiarity would fall to the Court of Justice of the European Communities.¹¹² However, public pressure is on the EC leaders to develop a more specific definition in order to address public concern with Maastricht.¹¹³ Individuals should have the right to know under which law they are governed, and most prefer their own nation's laws.¹¹⁴

Ratification of the Treaty of Maastricht would also affect the individual by granting nationals of all Member-States dual citizenship.¹¹⁵ Under Maastricht, they would retain their national identities, but in addition, would be given European citizenship. The Treaty would grant European citizens diplomatic and consular protection in any Member-State's embassy outside of the EC.¹¹⁶ European citizenship would entail the rights to reside, vote, and run for political office in any Member-State. This would ensure free movement of labor and people, but would also entail giving 'foreigners' the right to vote in municipal elections. This issue is particularly sensitive in France, because France's representative democracy relies heavily upon regional officials.¹¹⁷

Maastricht itself would also result in a more direct representation of the individual in Brussels. The European Parliament is the only directly elected, representative institution of the EC. At present, the Parliament is largely an advisory body with no direct legislative powers.¹¹⁸ Maastricht would give the Parliament the power to amend

protection. Del Duca, *supra* note 9, (manuscript at 16).

110. For a precognitive discussion of some of the problems, see J.P. Warner, *The Relationship Between European Community Law and the National Laws of the Member States*, 93 L.Q. REV. 349 (1977).

111. The positions of the Member-States on subsidiarity are as follows. Denmark and the United Kingdom are its strongest advocates, convincing Italy to support them. But the other, poorer Member-States of Ireland, Greece, Portugal and Spain fear the loss of influence and financial support if subsidiarity should weaken the EC Commission. Belgium, Luxembourg, and the Netherlands worry that it might be used to make Maastricht less effective as a tool of integration. And while Germany subscribes to the principle because of domestic pressures, France simply acknowledges its existence. Shengliang, *supra* note 86.

112. Just as the European Court of Justice defined the principles of the supremacy of EC law and of mutual recognition. See *supra* notes 110-11 and accompanying text.

113. *Hurdles*, *supra* note 21.

114. See *supra* note 55 and accompanying text.

115. Marshall, *supra* note 22, art. III.

116. Del Duca, *supra* note 9, (manuscript at 24).

117. Daly & Wickens, *supra* note 5, at 42.

118. See Marshall, *supra* note 24, art. II (describing the new powers of Parliament under Maastricht). Cf. Zagorin, *supra* note 13, at III(B).

and even veto legislation in specific areas.¹¹⁹

Several provisions of Maastricht will affect entire groups of individuals. For example, the Treaty's environmental requirements would constrain French hunters, fishers, and farmers.¹²⁰ In addition, the entire telecommunications industry would fall within the purview of Maastricht's regulations.¹²¹

More directly, the referendum itself had several effects upon the individual which may serve as lessons for future national referendums.¹²² National referendums are necessarily of a political nature, requiring concessions to individual factions. For example, in order to bolster support for the referendum from France's powerful farming lobby, the EC Commission drew up a special aid package.¹²³ In Denmark and Germany, growing disillusionment with unification may require similar measures as well.¹²⁴

Analysts believed that truckers, unhappy with the vote's outcome because of increasing Community regulation of the transportation industry, may decide to blockade crucial highways.¹²⁵ There is certainly precedent of similar action by the EC truckers on which to base such a prediction.¹²⁶ One analyst even suggested that French Camembert makers would dump EC hygiene inspectors into the cheese vats if they made inspections shortly after the referendum.¹²⁷ Although such descriptions seem as exaggerated as the suggestion that currency speculators will be beheaded in the Place de la Bastille by consumers who support the French franc, they are indicative of the growing public opposition to Maastricht. Each citizen, acting independently, can contribute to a collective, negative reaction to the

119. Marshall, *supra* note 24, art. III.

120. *French Hunters*, *supra* note 41.

121. Hilary Clarke, *Survey of International Telecommunications*, FIN. TIMES, Oct. 15, 1992, at III.

122. Examples of such national referendums include the Italian attempt to change their proportional governmental system in April of 1993. *See, e.g., All Things Considered* (National Public Radio broadcast, April 18, 1993) (Deborah Amos reporting) available in LEXIS, Nexis Library, NPR File. Another attempt at such democratic national reform was the Russian referendum, also in April of 1993. *See, e.g., All Things Considered* (National Public Radio broadcast, April 13, 1993) (Mike Shuster reporting) available in LEXIS, Nexis Library, NPR File. Each presented issues that became confused as the debate led up to the vote. *Id.* And while many differences exist between the complexities of such issues and the French referendum on Maastricht, many similarities may be drawn.

123. Scott Sullivan, *Oh, for la Vie Paysanne: French Farmers Hand Mitterand a Hot Potato*, NEWSWEEK, Dec. 7, 1992, at 36.

124. *See* Tyler Marshall and Joel Havemann, *ECU, Brute!*, L.A. TIMES, June 9, 1992, at H1.

125. *All Things Considered*, *supra* note 43. *See also* *Rioters, Police Clash After Danes OK European Unity*, CHI. TRIB., May 20, 1993, at 6.

126. Alan Riding, *Vote on Unity Clouding Mitterand's Vacation*, N.Y. TIMES, Aug. 16, 1992, at A9 [hereinafter Riding, *Vacation*]; *cf. Morning Edition* (National Public Radio broadcast, March 30, 1993) (Lynn Terry reporting) available in LEXIS, Nexis Library, NPR File.

127. *All Things Considered*, *supra* note 43.

referendum. Nearly fifty percent of the voters in France are likely to be resentful of the outcome of the referendum, if for no other reason than that they voted against it.

IX. The Effects of the Referendum upon Institutions

Institutions have felt the direct impact of the referendum itself more than the individual. Michael Cadmessus of the International Monetary Fund said passage of the referendum "is good for France, for Europe, and for the world."¹²⁸ He based this statement on the assumption that passage of the referendum would strengthen European monetary cooperation. In turn, such cooperation would lead to stronger economies in Europe. Greater economic strength in Europe would allow for more investment funds, and an increased willingness to provide these funds, for developing countries around the globe.¹²⁹

A. *Model for the World*

Not only would a stronger European economy help the global economy, but it would help world leaders determine how to best strengthen their own national economies. As one of the oldest and most integrated of the modern regional organizations, less developed associations will look to the EC experience before taking their own steps toward integration.¹³⁰ Free trade pacts in Latin America,¹³¹ Southeast Asia,¹³² North America,¹³³ and Europe¹³⁴ have all followed at least some of the examples set by the EC. Furthermore, national legal systems commonly make use of foreign solutions in domestic problems.¹³⁵

International organizations will also utilize foreign solutions. For instance, the Group of Seven industrial nations (G-7) is presently facing similar problems to those before the EC in its efforts to promote a stronger global economy.¹³⁶ In its economic declaration of

128. *Hurdles*, *supra* note 21; *Contra* Robert J. Samuelson, *Europe, Our Former Ally*, NEWSWEEK, Nov. 23, 1992, at 52 (standing for the position that such "foolish ambitions are bad for Europe, bad for the United States and bad for the world").

129. See *Economic Declaration Issued by Group of Seven Industrial Nations at the Conclusion of Their Economic Summit in Houston July 11, 1990*, 1990 Int'l. Trade Rep. (BNA) para. 36 (July 18, 1990) available in LEXIS, Nexis Library, INTRAD File [hereinafter *Economic Declaration*].

130. See Del Duca, *supra* note 9 (manuscript at 2).

131. Julia Michaels, *Latin Free Trade Pacts Proliferate*, CHR. SCI. MON., Mar. 18, 1992, at 11.

132. Clayton Jones, *Asia-Pacific Group Calls for Open Trade*, CHR. SCI. MON., Nov. 15, 1991, at 1.

133. See Frank Rutter, *Clinton's Big But Could See the U.S. Backing out of NAFTA*, VANCOUVER SUN, Oct. 7, 1992, at A10.

134. WEST PUBLISHING COMPANY. CLASS ACTIONS 4 (Lisa DelFiacco ed., 1992).

135. See, e.g. *Greenspan v. Slate*, 97 A.2d 390 (N.J., 1953) (utilizing the comparative method to apply foreign solutions to domestic law).

136. The G-7 is comprised of the world's seven largest industrial democracies: Canada,

1990, the G-7 nations specifically recognized the accomplishments of the EC in nurturing self-sustained growth based on market principles in Eastern Europe.¹³⁷

Parties to the negotiations on the General Agreement on Tariffs and Trade (GATT) hold the same goal as the G-7, but on a much larger scale.¹³⁸ Participants in the GATT negotiations decided to await the results of the French referendum out of deference to the EC's agricultural policies.¹³⁹ France is the EC's largest agricultural producer.¹⁴⁰ If the referendum had failed, the EC's economic unity would have weakened. The EC's bargaining position would have changed because its unified front of twelve nations voting as a bloc would have been broken.

The European Economic Area (EEA) is a more specific example of a regional organization taking the lessons of the French referendum into account. The EEA is an attempt to allow the free movement of capital, labor, goods, and services between the EC and the seven nations of EFTA.¹⁴¹ In order to ratify the EEA Treaty, the EFTA nation of Switzerland is constitutionally required to pass a national referendum.¹⁴² Comparisons to the EC experience are sure to follow. Switzerland's position is perhaps more akin to that of Denmark than of France in its strong currency, relative size, and history of independence. However, the extensive coverage of the debate prior to the French referendum and the existence of a common language will cause Switzerland to look to neighboring France as well.

B. *Effects upon EC Institutions*

Fear of failure in subsequent ratifications caused the EC to make concessions to England and Denmark. These concessions watered down the Treaty considerably by derogations, or opt-out

France, Germany, Italy, Japan, the U.K. and the U.S. Such problems include unemployment, inflation and contributing to developing countries. *Economic Declaration*, *supra* note 129, at para. 5-6.

137. *Id.* at para. 36.

138. GATT is an attempt to further liberalize trade in goods and services by reaching a worldwide consensus to reduce tariffs and other fiscal barriers to trade. *Hurdles*, *supra* note 21. It is widely viewed as important to growth in the global economy. Presently, talks are delayed by policy differences between the EC and the United States regarding farming subsidies. Adrian Croft, *GATT's Dunkel Sees Window of Opportunity for World Trade Talks*, REUTERS, Sept. 25, 1992, available in LEXIS, Nexis Library, LBYRPT File.

139. *Id.*

140. *France Readies Last GATT Stand as Veto Calls Mount*, REUTERS, Nov. 18, 1992, available in LEXIS, Nexis Library, LBYRPT File. Popular agricultural subsidies from the French government nearly led to a trade war with the U.S. when France threatened to veto a tariff agreement between the EC and the U.S. See, e.g., Sullivan, *supra* note 122.

141. EFTA (the European Free Trade Area) comprises the nations of Austria, Finland, Iceland, Lichtenstein, Norway, Sweden, and Switzerland. WEST PUBLISHING CO., *supra* note 134.

142. *Id.*

clauses.¹⁴³

The narrow margin of the vote has encouraged the EC to proceed cautiously in its undertakings. As such, it has slowed the process of introducing new members into the Community.¹⁴⁴ The caution engendered by the referendum also slowed the process of ratification itself. Several Member-States' national parliaments decided to await the outcome of the vote before acting on the Treaty.¹⁴⁵ While Belgium and Italy moved ahead with the ratification process,¹⁴⁶ the other nations did not. The U.K. even went so far as to declare that it would not consider ratification until the Danish veto was resolved.¹⁴⁷

The Danish Constitution, like that of Switzerland, required ratification by popular referendum.¹⁴⁸ However, in June, 1992, the Danes narrowly rejected a referendum on Maastricht, which in theory should have killed any chance for unanimous ratification.¹⁴⁹ Denmark is prohibited by law from resubmitting the same treaty to a new vote.¹⁵⁰ Possibly, however, a re-interpretation of the Treaty would have sufficed to meet this requirement.¹⁵¹ In either event, the Danish voters remained a major obstacle to ratification.

Deciding they would find a solution to the Danish veto later, the other Member-States pressed on throughout the Summer of 1992 with the ratification process.¹⁵² The results of the French referendum, however, left EC foreign ministers at odds over how to solve

143. See Andres Wolberg-Stok, *Danes' "Yes" Frees EC to Resume Debate on Way Ahead*, REUTERS, May 19, 1993, available in LEXIS, Nexis Library, LBYRPT File; Boris Johnson, *The Danes Have Set Us on the Road to a Showdown*, DAILY TELEGRAPH, May 19, 1993, at 16; and Lionel Barber, *EC Must Now Make the Treaty Work*, FIN. TIMES, May 20, 1993, at 2.

144. Cf., *Hurdles*, *supra* note 21 (standing for the proposition that the process of accession of new members has been altered, rather than slowed down, by the results of the referendum).

145. Riding, *Europe*, *supra* note 18.

146. The Belgian Chamber of Representatives approved ratification 146 to 33. The Senate had yet to consider the Treaty by the time of the referendum. FACTS ON FILE, *supra* note 3. The Italian Senate passed the measure 176 to 16. The Chamber of Deputies was expected to announce its decision by the end of October 1992. *Id.*

147. British law requires a line-by-line consideration of the proposals to bring its constitution in line with the requirements of the Maastricht Treaty. The process is made even more difficult by the fact that Britain's Parliament is the most skeptic in the Community toward unification. *Morning Edition* (Sept. 18), *supra* note 8, (Michael Goldfarb reporting); see also Russell Watson, *In Europe, Three's a Crowd*, NEWSWEEK, Oct. 5, 1992, at 54.

148. Marshall and Havemann, *supra* note 124.

149. Riding, *Europe*, *supra* note 18, at A1. The referendum was held June 6, 1992 and failed, with a majority of 50.7% against the Treaty. Shengliang, *supra* note 86. Such opposition to the Treaty came as something of a surprise, because a large portion of the Danish government had until that time been very supportive of European Union. Additional problems face the Community in Denmark now that Premier Poul Schlouter, the EC's main supporter there, has resigned from office due to an unrelated scandal. See, e.g., *Morning Edition* (National Public Radio broadcast, Jan. 15, 1993) available in LEXIS, Nexis Library, NPR File.

150. Riding, *Europe*, *supra* note 18, at A12.

151. See *infra* note 155 and accompanying text.

152. Riding, *Europe*, *supra* note 18, at A12.

problems of interest rates, currency levels, deadlines, and public relations.¹⁵³ The foreign ministers did agree that there would not be a re-negotiation of the Maastricht Treaty.¹⁵⁴ This decision would not, however, preclude the possibility of a re-interpretation of the Treaty. Denmark felt that a much expanded definition of subsidiarity, greater emphasis on the Treaty's environmental protections, and a strong affirmation of continuing national sovereignty regarding foreign policy might give Danish voters reason to reconsider.¹⁵⁵

On September 22, 1992, Denmark announced that a second referendum on Maastricht would be held in mid-1993.¹⁵⁶ The Danish government would promote a re-interpretation of Maastricht based on a national policy of qualified support for integration within the confines of the Union.¹⁵⁷

While this does sound propagandistic — like the Danish government was trying to fool its electorate by putting new wine in an old bottle — it does make sense. Maastricht does not automatically provide for a common defense, which was one of the Danes' largest worries about the Treaty. Maastricht simply sets common defense as a goal to be achieved sometime in the future by the Member-States.¹⁵⁸ By ratifying Maastricht and working within the European Union, Denmark could seek to slow integration by advocating caution as a matter of policy. The Danish government could promise to represent such policies in the Union in exchange for ratification by the voters in the second referendum.

In order to communicate such a message, however, supporters of the Treaty within the Danish government should look to the lessons of the French referendum. For example, the French government has been accused of waiting too long before distributing hastily prepared copies of the Treaty.¹⁵⁹ Moreover, the months of debate between supporters and detractors of the Treaty shifted the focus of the referendum.¹⁶⁰ A referendum on France, rather than the EC, undermined support for the Treaty. Therefore, Danish leaders needed to make an effort to keep the focus of the second referendum on the Treaty itself.

153. *Moneyline* (CNN television broadcast, Sept. 21, 1992) available in LEXIS, Nexis Library, CNN File.

154. *Id.* In fact, most EC leaders are adamant in this position. Shengliang, *supra* note 86.

155. Michael Binyan & Peter Riddell, *Ministers Tread Path Strewn with Hurdles*, THE TIMES (London), Oct. 15, 1992, available on LEXIS, Nexis Library, TTIMES File.

156. FACTS ON FILE, *supra* note 3.

157. *Id.* For explanation of European Union, see *supra* note 22 and accompanying text.

158. Marshall, *supra* note 24 art. VI.

159. See Will, *supra* note 29.

160. See *supra* notes 48-49 and accompanying text.

C. *Effects in France*

The idea of a two-speed Europe resulted from the Danish rejection of Maastricht and from the British, Italian, and Spanish currency devaluations. A two-speed Europe describes the notion that France and Germany might integrate their currencies ahead of the rest, leaving the other, more recalcitrant Member-States to climb aboard further down the track. However the narrow margin of the referendum showed a reluctance on the part of the French people toward immediate unification. That reluctance forced French and German leaders to set the idea of a two-speed Europe aside, at least temporarily.¹⁶¹

Rather than joining their currencies ahead of the other Member-States, French and German leaders have instead decided to promote social unity. French President Mitterand and his cultural minister, Jack Lang, are currently promoting the idea of ARTE-TV.¹⁶² Based on the idea that a shared experience will promote cultural understanding, ARTE is an attempt to simultaneously broadcast the same television programs, in both France and Germany, in each country's respective language.¹⁶³ French and German leaders hope to produce results like that of America's cable revolution, where nationwide television broadcasts created a collective social consciousness.¹⁶⁴ Following France and Germany, the Belgians are expected to begin airing ARTE broadcasts sometime in the near future.¹⁶⁵

X. Conclusion: The Maastricht Train

The effects of the French referendum approving ratification of the Maastricht Treaty have been felt worldwide both economically and as a lesson to other regional organizations which may choose to submit their ideas to the direct vote of the people.¹⁶⁶ The results of the referendum have had a more direct impact within the European Community. The narrow margin of the vote has alerted leaders in France and throughout the EC to the concerns of the public regard-

161. See Watson, *supra* note 147. Compare *The Danes Got it Right Twice*, INT'L HEARLD TRIB., May 21, 1993 available in LEXIS, Nexis Library, CURRNT File.

162. *Morning Edition* (National Public Radio broadcast, Oct. 13, 1992) (Deborah Amos reporting) available in LEXIS, Nexis Library, NPR File.

163. *Id.*

164. A collective consciousness is based upon the pervasive social influence of television and the shared, common experience over its viewing area. See generally, GEORGE COMSTOCK, TELEVISION IN AMERICA 123-49 (1980).

165. *Franco-German TV Provides Dead Parrots Perch*, THE TIMES (London), Sept. 29, 1992, (Overseas News), available in LEXIS, Nexis Library, TTIMES File.

166. Instead of other regional associations looking to the EC experience, perhaps the EC should take time to learn from others. In particular, the nations of Latin America have placed an almost singular emphasis on creating and establishing stable money. Their success has turned their economies almost completely around. David Malpass, *Europeans Should Look West for Advice on Sound Money*, WALL ST. J., Sept. 25, 1992, at A9.

ing European unification.¹⁶⁷ The vote has also resulted in greater emphasis of the legal principle of subsidiarity. This emphasis will result in a slower, more cautious journey toward integration.

The outcome of the French vote encourages better public relations between the EC and its citizens. Brussels will be more likely to open up its doors to interested parties before enacting legislation, and then use more easily understood language in its enactment. While this may slow the legislative process, greater care should result in a more democratic EC with well-considered, and fewer, rules.

Many obstacles remain to ratification. The Danish veto and a hostile British Parliament have been overcome before Maastricht can take effect. However, the dissatisfaction with integration expressed by the French referendum may only be a symptom of a growing sentiment throughout Europe.¹⁶⁸ Rising unemployment and protectionism throughout Europe, and the questions of Eastern European accession to the EC remain problematic. A catalyst is required to stimulate the perception of the need for further integration. The interests of politicians, lobbyists, and academicians in unification are not enough to galvanize the European public into action.¹⁶⁹

When the nations of Belgium, France, Germany, Italy, Luxembourg, and the Netherlands decided to begin their journey toward integration, it was a direct result of the ravages of war in Europe. War, economic strife, and unacceptable standards of living are all present as they were when the ECSC Treaty was put into effect. However, the civil war in the east, the poverty of the south, and the rising unemployment in the north may appear marginal, or distant, to the voters in France. It remains for the EC leaders to convince their public that these problems are real and that Maastricht is the best solution.¹⁷⁰

Yet, even should a catalyst stimulating the progress of the EC toward greater unity fail to appear, the present state of affairs is a remarkable achievement. The Common Market has produced tangible benefits for Europeans in the freedom of movement of goods, services, capital and people; and, the EC has produced a better standard of living for all Europeans. Moreover, the Member-States' governments have benefitted from the reduced threat of war and social strife, while other regional organizations have received the bene-

167. Some may say the rejection of the Danish referendum served the same purpose. But Denmark's relatively small size and history of independence are vastly different from France's size and position as a founding member and strong proponent of integration.

168. See Marshall & Havemann, *supra* note 124.

169. See generally, LAURA TALLIAN, *DIRECT DEMOCRACY* (1977) (describing the history and need for referendums).

170. *Close Call for European Unity*, *PATRIOT-NEWS* (Harrisburg, Pa.), Sept. 22, 1992, at A8.

fits of Europe's experience in cooperative integration.

The present Common Market can be described as a train traveling down the track toward integration. The locomotives of this train are France and Germany. The economic size and strength of these two founding members of the Community make them the largest contributors to the EC.¹⁷¹ France and Germany are the strongest advocates of unification, contemplating a two-speed Europe and promoting innovative ideas such as ARTE-TV.

Another original member of the EC, Belgium, can also be considered an engine in the Maastricht train. Belgium's planned participation in ARTE, its strong economy, and its decision to continue the ratification process rather than await the outcome of the referendum show Belgium's enthusiasm for unification.

Like their more enthusiastic neighbor, Luxembourg and the Netherlands were founding members of the Community. Their relative wealth, and their concern that too much emphasis on subsidiarity might weaken the Treaty, place them near the head of the train.

The remaining original member, Italy, is in the middle of the train. Italy's membership in the G-7 ranks it as one of the world's leading industrial powers, yet the ambivalent nation dropped from the ERM and devalued its lira during the currency crisis. While it continued the ratification process, instead of waiting for the results of the French referendum, Italy was more supportive of the retention of sovereignty inherent in the principle of subsidiarity.

The poorer states of Ireland, Greece, Portugal, and Spain strongly support the progress toward integration because it brings them financial support and prosperity. This support for integration is reflected in their positions regarding subsidiarity; all are concerned that it might weaken the EC Commission, which might in turn lessen their influence in and support from the Community. Yet, it is that same economic backwardness which slows the Maastricht train and places them figuratively toward the rear. The wealthier nations are forced to pull them along in their development. Their financial need saps enthusiasm from nations such as France, and gives Denmark and the U.K. another reason to resist unification.

As the caboose of the Maastricht train, Britain and Denmark are the least enthusiastic members of the EC regarding the prospects of integration. The Danish rejection of the Treaty and the hostility in British parliamentary ratification sidetracked the Maastricht train for nearly one year. Once those obstacles were overcome, there was still no guarantee that the course would be a downhill track from

171. Marshall & Havemann, *supra* note 124.

there.¹⁷²

A slower advance toward European unity does face the threat of stagnation. But even if the train stalls, the present Common Market is a remarkable achievement. The presence of war, economic strife, and unacceptable standards of living in Europe, however, suggest that the train will continue, whether by way of Maastricht or some other track. All the essential ingredients are present. What remains is to convince the public of their existence, and that further integration is a solution. Conversely, a too rapid advance causes much upheaval of the status quo and in the people who have vested interests in the Community. The currency crisis and the need to placate French farmers and truckers are examples of this upheaval. Such a train is in greater jeopardy of derailing than of losing momentum. After all, a train hurtling down the track is less likely to stall going up a hill, but more likely to derail when it hits a sharp curve.

Matthew J. Eshelman

172.

[I]f Britain and the Danes had baled out, there would have been a move towards a much greater federal system, I think, by the French and the Germans, perhaps the Italians . . . In the long run, we'll probably be dead grateful to the Danes for having made everybody in Europe stop and think exactly what kind of Europe are we getting [in] for. Is it a creation of bureaucrats in Brussels, or does it have organic support on the part of the people?

All Things Considered (May 20), *supra* note 27. See also *supra* note 161 and accompanying text.