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# THE DILEMMA OF THE EUROPEAN UNION: BALANCING THE POWER OF THE SUPRANATIONAL EU ENTITY AGAINST THE SOVEREIGNTY OF ITS INDEPENDENT MEMBER NATIONS

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## INTRODUCTION

The European Union (EU)<sup>1</sup> has a legal and political structure unique in the world because it is composed of fifteen sovereign nations<sup>2</sup> bound together by a series of treaties<sup>3</sup> into a

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<sup>1</sup> The term "European Union" has political significance, the exact scope of which is not yet fully determined. The nationals of the Member States are now citizens of the Union. See P.F.R.F. MATHIJSEN, *A GUIDE TO EUROPEAN UNION LAW* 3-7 (6<sup>th</sup> ed. 1995). "European Union" has been used after implementation of the Maastricht Treaty on November 1, 1993. Treaty on European Union, Feb. 7, 1992, *Official Journal of the European Communities* No. C 224/79 (official English text), 31 I.L.M. 247 (entered into force Nov. 1, 1993), commonly referred to as the Maastricht Treaty [hereinafter Maastricht Treaty].

<sup>2</sup> Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and the United Kingdom.

<sup>3</sup> The first treaty was the Treaty Establishing the European Economic Community [hereinafter EEC Treaty]. The EEC Treaty, also commonly referred to as the Treaty of Rome, has been amended several times including various acts of accession admitting new Member States to the EU; the Treaty Establishing a Single Council and a Single Commission of the European Communities, Apr. 8, 1965 (entered into force July 1, 1967), commonly referred to as the Merger Treaty [hereinafter Merger Treaty]; the Single European Act (SEA), Feb. 12, 1986 (entered into force July 1, 1987) [hereinafter Single European Act]; and the Maastricht Treaty,

supranational entity.<sup>4</sup> The EU can establish itself as a formidable global force,<sup>5</sup> with its population of over 370 million people,<sup>6</sup> if it is able to control the nationalistic and introspective mood of its independent Member States. At issue is whether a United States of Europe has a reasonable prospect of becoming a reality.

The willingness to relinquish certain aspects of national sovereignty to a supranational entity was a direct result of World War II.<sup>7</sup> In the aftermath of this war, Europe had to look to transnational and international cooperation as a solution to the continued prospect of conflict.<sup>8</sup> The initial development of a structure, which would unify Europe, began in 1952 when six

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*supra* note 1. See Trevor C. Hartley, *Constitutional and Institutional Aspects of the Maastricht Agreement*, 42 INT'L & COMP. L.Q. 213 (1993); Heinrich Kirschner, *The Framework of the European Union Under the Treaty of Maastricht*, 13 J.L. & COM. 233 (1994).

<sup>4</sup> The term supranational entity is aptly applied to the EU because of this unique political structure. A supranational entity has the power to make decisions that are binding on member states and citizens in those member states even if those member states disagree. See BRUCE RUSSETT & HARVEY STARR, *WORLD POLITICS: THE MENU FOR CHOICE* 57 (1989).

<sup>5</sup> The EU is already asserting itself as the sole authority in Europe to speak for its Member States. For example, in March, 1996, leaders of the EU met in Bangkok with leaders of various East Asian countries for a summit focusing on economic cooperation. Dan Biers, *Asian European Leaders Meet to Foster New Economic Ties*, ASIAN WALL ST. J. WKLY., Mar. 11, 1996, at 5. The EU also routinely sends a representative to the annual economic summit of the Group of Seven (G7) even though France, Germany, Italy, and the United Kingdom are members in their own right of the G7. See *In the Management of EU Affairs, the Commission has developed dynamic relations with the other institutions* <<http://europa.eu.int/en/comm/c9500/relation.html>>.

<sup>6</sup> The EU's combined population of over 370 million is especially significant when compared with the United States (265 million) and Japan (125 million). THE WORLD ALMANAC AND BOOK OF FACTS 1997 741, 744, 758, 767, 769, 776, 786, 787, 794, 802, 810, 819, 821, 829, 831 (1996). Trade with the EU is very important to the United States. See INTERNATIONAL TRADE ADMIN., U.S. DEPT OF COMMERCE, U.S. FOREIGN TRADE HIGHLIGHTS 1995 (1996). The fifteen member EU annually purchases more than 21% of total U.S. exports compared with only 11% for Japan. INTERNATIONAL TRADE ADMIN., U.S. DEPT OF COMMERCE, U.S. FOREIGN TRADE HIGHLIGHTS 1995 17-18 (1996). By contrast, 17.7% of U.S. imports come from the EU compared with about the same percentage (16.6%) from Japan. INTERNATIONAL TRADE ADMIN., U.S. DEPT OF COMMERCE, U.S. FOREIGN TRADE HIGHLIGHTS 1995 21-22 (1996).

<sup>7</sup> DEREK W. URWIN, *THE COMMUNITY OF EUROPE: A HISTORY OF EUROPEAN INTEGRATION SINCE 1945* 7 (2d ed. 1995).

<sup>8</sup> DAVID FREESTONE & J.S. DAVIDSON, *THE INSTITUTIONAL FRAMEWORK OF THE EUROPEAN COMMUNITIES*, 2-3 (1988).

countries<sup>9</sup> joined together as members of the European Coal and Steel Community (ECSC).<sup>10</sup> The progress toward unity was further achieved with creation of the European Atomic Energy Community (Euratom)<sup>11</sup> and the European Economic Community (EEC)<sup>12</sup> in 1958 by the same six countries.<sup>13</sup> Between 1958 and 1992 six new countries<sup>14</sup> were added to the three coexisting Communities. In 1986, the enlarged Communities furthered the unification process with approval of the Single European Act (SEA).<sup>15</sup> In 1992, the pivotal Treaty on European Union (Maastricht Treaty)<sup>16</sup> was signed in which there was an attempt to fully integrate the political, social, and economic institutions of the EU.<sup>17</sup> In 1995, the EU expanded by three more Member States<sup>18</sup> to its current membership of fifteen.<sup>19</sup> An additional twelve countries, many of them in the former Commu-

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<sup>9</sup> The original six Member States were Belgium, France, (West) Germany, Italy, Luxembourg and the Netherlands. 4 ENCYCLOPEDIA BRITANNICA 606 (1992).

<sup>10</sup> TREATY ESTABLISHING THE EUROPEAN COAL AND STEEL COMMUNITY [hereinafter ECSC Treaty]. See RAY AUGUST, PUBLIC INTERNATIONAL LAW 175 (1975).

<sup>11</sup> TREATY ESTABLISHING THE EUROPEAN ATOMIC ENERGY COMMUNITY [hereinafter EURATOM Treaty].

<sup>12</sup> EEC Treaty, *supra* note 3.

<sup>13</sup> For a list of the six countries, see *supra* note 9.

<sup>14</sup> Denmark, Ireland, the United Kingdom in 1973; Greece in 1981; and Portugal and Spain in 1986. EU BASICS: WHAT COUNTRIES ARE MEMBERS OF THE EU? (Visited March 10, 1997) <<http://eubasics.allmansland.com/general.html#xtocid266093>>.

<sup>15</sup> The Single European Act, *supra* note 3.

<sup>16</sup> Maastricht Treaty, *supra* note 1.

<sup>17</sup> The German Federal Constitutional Court stated in October, 1993 that "the [Maastricht] Treaty establishes an association of states for creating an ever-closer union among the peoples organized into states of Europe, not a state based upon a 'single' European nation." See 2 BVerfGE 2134/92 u.a., in EUROPAISCHE GRUNDRICHTE ZEITSCHRIFT [egz] 439 (1993); Kirschner, *supra* note 3.

<sup>18</sup> The three member states are Austria, Finland and Sweden. EU BASICS, *supra* note 14.

<sup>19</sup> Norway considered membership in the EU, but the voters of Norway rejected EU membership by a nation-wide vote in 1995. Hugh Carnegy, *Norway rules out EU entry*, FIN. TIMES, Nov. 29, 1995. This was the second time that Norway rejected EU membership, the first coming in 1972. *Norway thriving one year after rejecting EU membership*, AGENCE-FRANCE-PRESSE, Nov. 28, 1995.

nist Eastern Europe, are currently seeking EU membership.<sup>20</sup> Other countries are close to seeking EU membership.<sup>21</sup>

This article discusses the struggle between the integrationists, who argue that there should be a more federal form of government, and the nationalists who seek to insulate their countries from a supranational entity.<sup>22</sup> This article also examines the historical background of the European Union and the difficulties it encountered in its attempt to strike a balance between the sovereignty of its independent Member States and the sovereignty of the supranational entity. The authors compare the stages of development of the EU from 1952 to the present with the development of two federal systems, Germany and the United States. Germany is used as an example because of its experience in unifying independent states under one federal form of government, thus, making it an EU Member State, based on its history, that would understand and, therefore, most likely accept a united Europe. By contrast, the United States is used as an example for the purpose of showing the comparison between its 1774 to 1787 progression to a federal form of government with the events of the EU from 1952 to the present.

## II. ISSUES OF FEDERALISM: INTEGRATIONISTS VS. NATIONALISTS

### A. *The Early Years*

A federalist approach in the EU would mean the adoption of a form of political organization<sup>23</sup> in which the exercise of power is divided between the central government and Member State governments, each having the use of those powers as a

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<sup>20</sup> The twelve countries are Bulgaria, Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Romania and Turkey. THE EUROPEAN COMMISSION, EUROPEAN UNION, EUROCOM 3 (Feb. 1996).

<sup>21</sup> For example, Slovenia is close to signing an association agreement with the EU. John Reed, *Slovenia Nears Pact to Initiate EU Membership*, WALL ST. J., May 29, 1996, at A14.

<sup>22</sup> RUSSETT & STARR, *supra* note 4.

<sup>23</sup> The framers of the Treaty of Rome in the 1950s restricted the original European Economic Community to economic activities. EEC TREATY, *supra* note 3. By 1992, the Maastricht Treaty included language dealing with "common foreign and security policy" and "a citizenship of the Union." Maastricht Treaty, *supra* note 1, tit. I, art. B. These terms would have been unacceptable in the 1950s, but in the 1990s, these terms show a willingness on the part of the Europeans to consider greater integration in the EU.

matter of right, and each acting on the same citizen body.<sup>24</sup> It is no easy task for proudly independent European nations to agree to give up fundamental rights to form a more powerful central government.<sup>25</sup>

The strongest historical support for unity emerged from the Resistance movements of war-torn Europe in the 1940s.<sup>26</sup> The Resistance fighters put aside their national and ideological conflicts to fight for a common objective.<sup>27</sup> One ardent proponent of a united Europe was the Italian Resistance fighter Altiero Spinelli.<sup>28</sup> In a paper that was generated at a conference in Geneva in July 1944, Mr. Spinelli argued "for a federal Europe with a written constitution, a supranational government directly responsible to the people of Europe and not national governments, along with an army under its control, with no other military forces being permitted."<sup>29</sup>

When World War II was over, several developments caused general support for a United States of Europe to diminish.<sup>30</sup> Exiled or imprisoned political leaders re-emerged in their respective countries.<sup>31</sup> Ideological and traditional divisions between socialists, communists and conservatives came back to the surface.<sup>32</sup> These political disputes had been put aside during the Resistance movement because of the common cause.<sup>33</sup>

Following the end of World War II, there were many who envisioned a unified Europe.<sup>34</sup> For them unity meant strength and the path to world power.<sup>35</sup> As early as 1946, Sir Winston Churchill referred to the creation of "a kind of United States of Europe."<sup>36</sup> The Cold War made federalism, as viewed by the

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<sup>24</sup> See generally Paul J. Scudiere, "In Order to Form a More Perfect Union" *The United States, 1774-1791*, in *THE CONSTITUTION AND THE STATES: THE ROLE OF THE ORIGINAL THIRTEEN IN THE FRAMING AND ADOPTION OF THE FEDERAL CONSTITUTION* 3 (Patrick T. Conley & John P. Kaminsky eds., 1988).

<sup>25</sup> STARR & RUSSETT, *supra* note 4, at 416.

<sup>26</sup> URWIN, *supra* note 7, at 7.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 8.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 10-11.

<sup>31</sup> URWIN, *supra* note 7, at 10.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> STARR & RUSSETT, *supra* note 4, at 415.

<sup>36</sup> URWIN, *supra* note 7, at 29.

Resistance leaders, no longer possible.<sup>37</sup> Many commentators of the 1960s and early 1970s were adamant in their insistence that the EEC, one of the communities that would become what is now the EU, was not a federation.<sup>38</sup> It was described in a somewhat negative light as a “mistrustful, egotistical formula which foresees failure in due course,” as opposed to the federation which is favorably compared to a marriage in which partners are committed “without limits of interest or of time.”<sup>39</sup> Writings on the subject during the 1960s generally deny that the EEC incorporated any federal characteristics and found that its field of competence was strictly limited to economic issues.<sup>40</sup> There were statements like: “[t]he Member States, remaining fully sovereign in the political field, have transferred limited powers only in the field of economy, in order to achieve specified objectives with well-defined means”<sup>41</sup> and “[c]ontrary to what would happen in a federal system, the institutions of the Community have no general competence to take whatever measures would prove necessary to reach the assigned objective in the field of economy.”<sup>42</sup>

### B. *The Necessity of a Constitution*

There are academic arguments over the issue of the EU not having a federalist direction because it does not have the necessary prerequisite of a constitution. A series of treaties, such as those governing the EU, have not been accepted as a formal constitutional basis for a federation.<sup>43</sup> After the American Revolution the concept of a constitution developed as an essential governmental instrument, one in which the fixed principles

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<sup>37</sup> STARR & RUSSETT, *supra* note 4, at 416.

<sup>38</sup> THE STATE OF THE EUROPEAN UNION 91 (Denis de Rougement ed., V. Ionescu trans., 1979) [hereinafter de Rougement].

<sup>39</sup> *Id.*

<sup>40</sup> Michael Gaudet, *The Legal Framework of the Community*, in LEGAL PROBLEMS OF THE EUROPEAN ECONOMIC COMMUNITY AND THE EUROPEAN FREE TRADE ASSOCIATION 8, 9-10 (1961).

<sup>41</sup> *Id.* at 9-10.

<sup>42</sup> *Id.* at 10.

<sup>43</sup> See *Survey: European Union*, THE ECONOMIST, May 31, 1997, at 18.

of reason and the fixed objects of the public good are stated specifically in a formal basic document.<sup>44</sup>

In the Treaty of Rome,<sup>45</sup> the Member States<sup>46</sup> agreed to “take all appropriate measures, whether general or particular, to ensure fulfillment of the obligations arising out of [the] Treaty or resulting from action taken by the institutions of the Community.”<sup>47</sup> In addition, they professed to “abstain from any measures which could jeopardize the attainment of the objectives of [the] Treaty.”<sup>48</sup> In other words, the Member States’ motivations in forming the union in the first place ensure general acceptance of its institutions.<sup>49</sup> As experts have pointed out, possible open conflict can be resolved only by two options: “either to bring [the Member States’] constitutions in accord with the Treaty or to revoke the Treaty.”<sup>50</sup>

Any ambiguity of the EU’s legal and political order does not automatically disqualify EU institutions.<sup>51</sup> However, the existing uncertainty could lead to a loss of authority or bring about its eventual disintegration without the stabilizing influence of a constitution.<sup>52</sup> By contrast, the weakness in an international organization such as the United Nations, which in the absence of any constitutional framework depends on the good will of the members, becomes obvious in view of the situation in the former Yugoslavia.<sup>53</sup> Although the UN has passed resolutions and the governments of the various countries in the region have at times committed themselves to compliance, the resolutions cannot be enforced.<sup>54</sup>

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<sup>44</sup> John Murrin, *A Roof without Walls, The Dilemma of American National Identity*, in *BEYOND CONFEDERATION, ORIGINS OF THE CONSTITUTION AND AMERICAN NATIONAL IDENTITY* 333 (Richard Beeman et al. eds., 1987).

<sup>45</sup> EEC TREATY, *supra* note 3.

<sup>46</sup> The provisions of the Treaty of Rome apply to each newly admitted Member State. EEC TREATY, *supra* note 3, art. 227.

<sup>47</sup> EEC TREATY, *supra* note 3, at. 5.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> CLARENCE J. MANN, *THE FUNCTION OF JUDICIAL DECISION IN EUROPEAN ECONOMIC INTEGRATION* 36 (1972).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> For a discussion of the UN’s nonbinding resolutions, see RAY AUGUST, *PUBLIC INTERNATIONAL LAW*, 162-63 (1995).

In view of this legalistic and intellectual debate, many scholars find that “the EU as a supranational organization does not possess any qualities of a state.”<sup>55</sup> Furthermore, they conclude that the treaties of the EU do not coincide with the meaning of the word “constitution” as used in the national sense.<sup>56</sup> Therefore, the EU should be categorized as a fourth entity, not a state, not a federation, not simply an international organization, but an entity in its own right that takes on some of the characteristics of the others.<sup>57</sup>

### C. *The Necessity of an Institutional Structure*

The institutional structure necessary for the EU to function as a supranational entity is already in place. The EU is governed by a quadripartite institutional system.<sup>58</sup> This system includes the Commission,<sup>59</sup> the Council of Ministers,<sup>60</sup> the European Parliament,<sup>61</sup> and the Court of Justice.<sup>62</sup> Although this structure exists, the system does not fully operate as a true federal government.<sup>63</sup> For example, the Presidency of the EU Council rotates on a six-month basis among Member States.<sup>64</sup> The duties of the office of the Presidency include the important function of setting agenda items for the EU to consider. Pursu-

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<sup>55</sup> ROLAND BIEBER & JURGEN SCHWARZE, VERFASSUNGSENTWICKLUNG IN DER EUROPÄISCHEN GEMEINSCHAFT 20 (1984). (Dass die Europäische Gemeinschaft als supranationale Organisation keine staatsqualität besitzt).

<sup>56</sup> See *Id.* (Im nationalen Verfassungsrecht überwiegend gebräuchlichen unterscheidung von Verfassung im formellen und materiellen sinne anknüpfen).

<sup>57</sup> The term supranational entity is aptly applied to the EU because of this unique political structure. See *supra* note 4.

<sup>58</sup> See EEC TREATY, *supra* note 3, art. 4; see also THE EUROPEAN COMMUNITY IN THE NINETIES 5 (Jonathan Davidson, ed., 1992); LASOK & J.W. BRIDGE, LAW AND INSTITUTIONS OF THE EUROPEAN COMMUNITY 33-34 (5th ed., 1991); DAVID FREESTONE & J.S. DAVIDSON, *supra* note 8, at 66.

<sup>59</sup> EEC TREATY, *supra* note 3, pt. 5, tit. I, ch. 1, § 3.

<sup>60</sup> See *id.*, § 2.

<sup>61</sup> See *id.*, § 1.

<sup>62</sup> See *id.*, § 4.

<sup>63</sup> FREESTONE & DAVIDSON, *supra* note 8, at 66.

<sup>64</sup> FREESTONE & DAVIDSON, *supra* note 8, at 66. The holders of the EU Council Presidency for the next few years are: 1996 second half: Ireland; 1997 first half: Netherlands; 1997 second half: Luxembourg; 1998 first half: United Kingdom; 1998 second half: Austria; 1999 first half: Germany; 1999 second half: Finland; 2000 first half: Portugal; 2000 second half: France; 2001 first half: Sweden; 2001 second half: Belgium. THE EUROPEAN COMMISSION, EUROPEAN UNION, EUROCOM 3 (Nov. 1995).

ant to provisions in the Maastricht Treaty, the holder of the Presidency now has the obligation to represent the EU in matters of "foreign and security policy."<sup>65</sup>

### 1. *The Commission*

The Commission is the executive arm of the EU and is responsible for putting EU policy into effect.<sup>66</sup> It is often called the "Guardian of the Treaty,"<sup>67</sup> referring to the Commission's responsibility to ensure proper implementation of the Treaty of Rome.<sup>68</sup> The members of the Commission, which must be nationals of Member States, are obligated to exercise independence in the performance of their duties.<sup>69</sup> As such, the members of the Commission "shall neither seek nor take instruction from any Government or from any other body."<sup>70</sup> The Commission's tasks include working closely with the Council and Parliament in the legislative process.<sup>71</sup> Several ways exist by which the institutions of the EU are able to change or influence the law in the Member States.<sup>72</sup> Legislation in the EU generally is issued in the form of regulations and directives.<sup>73</sup> Regulations are directly applicable in all Member States.<sup>74</sup> Directives are binding on Member States, but the choice of form and method of implementation of the directive is left to each Member State.<sup>75</sup> Directives have been much more commonly used because they are less intrusive.<sup>76</sup> The Commission gener-

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<sup>65</sup> Maastricht Treaty, *supra* note 1, art. J.5(1).

<sup>66</sup> EEC TREATY, *supra* note 3, art. 155.

<sup>67</sup> EMILY NOEL, WORKING TOGETHER THE INSTITUTIONS OF THE EUROPEAN COMMUNITY 15 (1991).

<sup>68</sup> EEC TREATY, *supra* note 3.

<sup>69</sup> EEC TREATY, *supra* note 3, art. 157 (2).

<sup>70</sup> *Id.*

<sup>71</sup> LASOK & BRIDGES, *supra* note 58, at 34.

<sup>72</sup> DICK LEONARD, THE ECONOMIST POCKET GUIDE TO THE EUROPEAN UNION 31 (1988).

<sup>73</sup> EEC TREATY, *supra* note 3, art. 189.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Directives have been used in areas such as the Product Liability Directive 28 O.J. EUR. COMM. (No. L 210) 29 (1985) and the Machinery Directive, 28 O.J. EUR. COMM. (No. L 183) (1989).

ally has the responsibility for initiation of regulations and directives.<sup>77</sup>

## 2. *The Council*

The Council is the main policy-setting arm of the EU.<sup>78</sup> The legislative role in the EU is performed by ministers representing the governments<sup>79</sup> of the Member States and conducts its business with limited public access.<sup>80</sup> The Council is obligated to “ensure coordination of the general economic policies of the Member States.”<sup>81</sup> In doing so, the Council must confer with the Commission in implementation of rules set forth by the Council.<sup>82</sup> The Council generally acts on majority weighted voting where the larger Member States have their votes weighted more heavily.<sup>83</sup> When the prime ministers or other heads of state and government meet, the Council is called the European Council.<sup>84</sup>

## 3. *The European Parliament*

The European Parliament was initially formed as an appointed “advisory” body.<sup>85</sup> The first time Parliament convened as a directly elected body was 1979.<sup>86</sup> Only in the Maastricht Treaty<sup>87</sup> was European Parliament given a substantial participatory role in the legislative process.<sup>88</sup> Specifically, in terms of foreign and security policy, the Presidency of the Council is

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<sup>77</sup> For a discussion of the EU legislative process generally, see LEONARD, *supra* note 72.

<sup>78</sup> LEONARD, *supra* note 72.

<sup>79</sup> EEC TREATY, *supra* note 3, art. 146.

<sup>80</sup> It has been reported that the British newspaper, THE GUARDIAN (London), has instituted legal action to annul Council decisions that denied one of its reporters access to minutes of debates and to reports submitted to the Council. See *Paper Challenges Secrecy at EU in Making Laws*, INT'L HERALD TRIB., July 6, 1995, at 5.

<sup>81</sup> EEC TREATY, *supra* note 3, art. 145.

<sup>82</sup> *Id.*

<sup>83</sup> EEC TREATY, *supra* note 3, art. 148(2).

<sup>84</sup> For a discussion of the European Council, see LEONARD, *supra* note 72, at 38-39.

<sup>85</sup> LASOK & BRIDGES, *supra* note 58, at 34.

<sup>86</sup> FREESTONE & DAVIDSON, *supra* note 8, at 72.

<sup>87</sup> Maastricht Treaty, *supra* note 1.

<sup>88</sup> FREESTONE & DAVIDSON, *supra* note 8, at 71-73.

now obligated to “consult” the European Parliament<sup>89</sup> and to ensure the views of the European Parliament “are duly taken into consideration.”<sup>90</sup> Members of the European Parliament are elected by a direct vote of the people.<sup>91</sup> When seated, members are seated by party affiliation<sup>92</sup> and not by country.

#### 4. *The Court of Justice*

The Court of Justice of the European Union, located in Luxembourg, functions as the primary judicial arm of the EU.<sup>93</sup> The Court of Justice is charged with ensuring that the law is observed in the interpretation and application of the Treaty of Rome.<sup>94</sup> It is the EU’s counterpart to the U.S. Supreme Court from the standpoint that there is no appeal from its decisions.<sup>95</sup> The difference is that the U.S. Supreme Court is at the apex of a structure of federal and state courts, while the European Court of Justice has no hierarchical relationship to courts of the Member States.<sup>96</sup> A lower court was established by the Single European Act, called the Court of First Instance.<sup>97</sup> That court came into operation in 1989 because of the increasingly heavy case load of the Court of Justice.<sup>98</sup>

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<sup>89</sup> Maastricht Treaty, *supra* note 1, art. J.7.

<sup>90</sup> *Id.*

<sup>91</sup> EEC TREATY, *supra* note 3, art. 138(1).

<sup>92</sup> There were eight parties represented in the European Parliament in February 1994. STATISTICAL OFFICE OF THE EUROPEAN COMMUNITIES, FACTS THROUGH FIGURES 27 (1994). The two parties with the most representation were the Group of the Party of European Socialists and the Group of European People’s Party. *Id.*

<sup>93</sup> In general, the types of cases that come before the European Court of Justice include: 1) disputes between Member States, 2) disputes between the EU and Member States, 3) disputes between the EU entities, 4) disputes between individuals or corporate bodies and the EU, 5) opinions on international agreements and 6) preliminary rulings on cases referred by national courts. See LEONARD, *supra* note 73, at 47.

<sup>94</sup> EEC TREATY, *supra* note 3, art. 164.

<sup>95</sup> See Davidson, *supra* note 58, at 9.

<sup>96</sup> The Court of Justice has jurisdiction only over European matters. Unlike the U.S. Supreme Court, the Court of Justice can not hear cases involving matters of purely national law. For a discussion of the Court of Justice, see Davidson, *supra* note 58, at 9.

<sup>97</sup> EEC TREATY, *supra* note 3, art. 168a.

<sup>98</sup> The Court of Justice averaged 46 rulings yearly between 1953 and 1978. From 1978 to 1991, it averaged 186 rulings a year and in each of the last three years it has issued more than 200 judgments. Patrick Oster, *Court of Justice Becomes Europe’s ‘Supreme Court,’* NAT’L L. J., Oct. 24, 1994, at A1.

#### D. *Present Status*

Even though the intent of the 1992 Maastricht Treaty<sup>99</sup> was to create a politically integrated Europe, events subsequent to its effective date show opposition in some Member States. Inherently the idea of integration carries with it notions of federalism and a strong central government. Thus, the concept of an integrated Europe raises the specter of loss of sovereignty and arouses old fears and rivalries. For example, British conservatives view European federal ideas as tantamount to dismantling their monarchy. They believe the sovereign nation-state is the natural and proper unit of political life and that the EU must limit itself to commercial concerns. On the other hand, Germany and France have traditionally had more proponents of greater European integration. Unfortunately for the integrationists, their cause has suffered from the EU's inability to implement a European policy capable of European-wide tasks such as ending the war in Bosnia.<sup>100</sup> In order to achieve a true federal Europe, there must be a central institutional structure, common defense and foreign policy, monetary union, and massive EU investment in a pan-European infrastructure.

Arguments raised at the EU's June 1995, Intergovernmental Conference in Cannes, France, made it clear that the Member States are reluctant to give up their sovereignty and that the ultimate creation of a federalist Europe may prove to be elusive. One major ongoing issue is the establishment of a monetary union.<sup>101</sup> The leaders at the 1995 Intergovernmental Conference conceded that they could not achieve a single currency in 1997 and established 1999 as the new deadline.<sup>102</sup> At the EU's Summit held in Madrid in December 1995, it was decided to set the inauguration for the European currency, named euro, as a banking unit for January 1, 1999.<sup>103</sup> Three and one-half years later, on July 1, 2002, the euro will replace those national currencies which had qualified for the Economic and Monetary Union (EMU) and the former national currencies will

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<sup>99</sup> Maastricht Treaty, *supra* note 1.

<sup>100</sup> *Europe's Changing Union*, INT'L HERALD TRIB., Sept. 27, 1994, at 8.

<sup>101</sup> *Single-Currency Minded: European Union*, THE ECONOMIST, Dec. 23, 1995, at 61.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

cease to be legal tender.<sup>104</sup> In order to qualify their currencies for the EMU acceptance, Member States will have to meet strict requirements that include low inflation rates, low debt levels and two years of consistently stable exchange rates.<sup>105</sup> Germany has indicated that it will be unable to meet the allowed debt level.<sup>106</sup>

The intrusion of federalism into the EU structure is apparent in provisions in the treaties which create the EU.<sup>107</sup> A significant aspect of the Single European Act of 1986<sup>108</sup> is that it expanded the goals of the EU from the perspective of creating a free internal market for goods, labor, services and capital<sup>109</sup> to achieving a truly unified Europe in economic and monetary policy, social policy, research and technology, and the environment.<sup>110</sup> This Act renewed the commitment to transform relations among the Member States into a European Union.<sup>111</sup> One writer contends that although the EU shuns federal terminology, the creation of a single market program essentially converts the EU from a customs union into a quasi-federal body.<sup>112</sup>

In legislative matters, the EU takes a distinctly federal approach through the principle of subsidiary, in which the EU is granted jurisdiction for those policies that cannot be effectively handled at the domestic level of government.<sup>113</sup> For example, the Treaty of Rome<sup>114</sup> mandates that in "areas which do not fall within [the EU's] exclusive competence, [the EU] shall take ac-

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<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> Matt Marshall, *Germany Won't Meet EU Debt Target, Imperiling Schedule for Single Currency*, WALL ST. J., June 13, 1996, at A10.

<sup>107</sup> For a list of the treaties, see *supra* note 3 and accompanying text.

<sup>108</sup> Single European Act, *supra* note 3.

<sup>109</sup> The EEC TREATY speaks of free movement of goods (EEC TREATY, *supra* note 3, pt. 3, tit. I) and free movement of persons, services and capital (EEC TREATY, *supra* note 3, pt. 3, tit. III).

<sup>110</sup> Davidson, *supra* note 58, at 11-12.

<sup>111</sup> *See id.* at 12.

<sup>112</sup> Donald C. Dowling, *EC Employment Law After Maastricht: "Continental Social Europe,"* 27 INT'L LAW. 1 (1993).

<sup>113</sup> *See generally* George B. Hefferan, III & Joanne Katsantonis, *Movement Towards an Internal Market in 1993: An Overview of Current Legal Developments in the European Community*, 3 DUKE J. COMP. & INT'L L. 4-5 (1992).

<sup>114</sup> Compare this provision of the Treaty of Rome with the Tenth Amendment to the Constitution of the United States which provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. CONST. amend. X.

tion, 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, . . . be better achieved by the [EU]."<sup>115</sup>

There are cultural obstacles to greater European integration which may prove to be even more of a challenge.<sup>116</sup> Europeans continue to define themselves almost exclusively in terms of their own nationhood.<sup>117</sup> There are eleven official languages among the Member States and as many types of currencies as there are EU nations.<sup>118</sup> Although the EU has a well developed quadripartite,<sup>119</sup> institutional system,<sup>120</sup> structure alone does not invoke a sense of European patriotism. Even though there is an EU anthem,<sup>121</sup> an EU flag, and an EU passport, these symbols fail to rally a united patriotic European spirit. It has been noted that perhaps this attitude results from the fact that there have been no crucial European defining moments which would serve to engage ordinary people; no wars or charismatic heroes to inspire the kind of supranational patriotism or loyalty that can bind diverse peoples together.<sup>122</sup> Even efforts of the EU Education Ministries to develop a European component in their various school systems, such as a common European history text that promotes a common European heritage, have had questionable results due to local resistance.<sup>123</sup> This resistance is complicated by the political dilemma of what

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<sup>115</sup> EEC TREATY, *supra* note 3, art. 3(b).

<sup>116</sup> See Tyler Marshall, *The United States of Europe*, L.A. TIMES, May 20, 1996, at A1.

<sup>117</sup> See Tyler Marshall, *Citizens Immune to Euro-Fever*, L.A. TIMES, Apr. 24, 1995, at A1.

<sup>118</sup> The eleven languages are English, French, German, Italian, Dutch, Danish, Greek, Spanish, Portuguese, Swedish and Finnish. Office for Official Publications of the European Communities (1996). Each member nation has its own currency. THE WORLD ALMANAC AND BOOK OF FACTS 1997 741, 744, 759, 767, 769, 776, 786, 794, 802, 810, 819, 821, 829 (1996).

<sup>119</sup> EEC TREATY, *supra* note 3, art. 4.

<sup>120</sup> See generally LASOK & BRIDGE and FREESTONE & DAVIDSON, *supra* note 58.

<sup>121</sup> LUDWIG VON BEETHOVEN, *Ode to Joy*. EUROPEAN UNION, EUROPEAN COMMISSION 23 (1994).

<sup>122</sup> See Marshall, *supra* note 116.

<sup>123</sup> A European history book was developed by an international team of historians for use in EU Member States. ILLUSTRATED HISTORY OF EUROPE. A UNIQUE PORTRAIT OF EUROPE'S COMMON HISTORY (Frederic Delouche ed., U.S. ed. 1992).

constitutes common European history and whose perspective is to be followed.<sup>124</sup>

### III. HISTORICAL BACKGROUND OF THE UNIFICATION OF EUROPE

It is necessary to examine the political history of Europe in order to understand the dilemma of the EU in dealing with independent member nations which must relinquish certain sovereign powers to the supranational entity.<sup>125</sup> This examination reveals the difficulties encountered from as early as the Roman Empire in setting aside traditional notions of sovereignty to allow for the formation of a united Europe.<sup>126</sup>

#### A. *Political, Social, and Cultural History of the EU*

Throughout history, there have been dictators who desired one European nation. They were often motivated by their drive for power, not by any noble intentions of bringing peace and prosperity to the masses. The idea of a united western Europe goes back to the Roman Empire.<sup>127</sup> One could also cite the Carolingian, Napoleon's Empire, or Hitler's Third Reich, as attempts aimed at the forceful unification of Europe.<sup>128</sup> These empires were created through wars, ruled by despots and relied on coercion for unity.<sup>129</sup> Once the rulers lost strength, the empires fell.<sup>130</sup>

Europe was populated by different tribes that were unique and not interested in uniting with other tribes.<sup>131</sup> Later regional differences traditionally prevented Europe from becoming

<sup>124</sup> *Id.*

<sup>125</sup> MICHAEL BURGESS, *FEDERALISM AND EUROPEAN UNION: POLITICAL IDEAS, INFLUENCES, AND STRATEGIES IN THE EUROPEAN COMMUNITY 1972-1987* 11 (1989).

<sup>126</sup> *Id.* at 26.

<sup>127</sup> See generally YANN LE BOHEC, *THE IMPERIAL ROMAN ARMY 148-50* (1994).

<sup>128</sup> 6 *THE CAMBRIDGE MEDIEVAL HISTORY IX* (J.R. Tanner ed., 1964). See also 4 *THE NEW CAMBRIDGE MODERN HISTORY* 308-09 (C.W. Crawley ed., 1965); 12 *THE NEW CAMBRIDGE MODERN HISTORY* 799 (C.L. Mowat ed., 1968) [hereinafter Mowat].

<sup>129</sup> 6 *THE CAMBRIDGE MEDIEVAL HISTORY IX* (J.R. Tanner ed., 1964).

<sup>130</sup> History in general has shown that attempts at global domination always ultimately fail: the Roman Empire, the Church under Charlemagne and his successors, Napoleon and Hitler are examples. See generally references cited *supra* notes 127 and 128.

<sup>131</sup> See LE BOHEC, *supra* note 127, at 148-49.

ing a federation.<sup>132</sup> People within the region were, and still are, proud of their heritage, language, culture and traditions.<sup>133</sup> It took two devastating World Wars for Europeans to understand that a permanent peace and prosperity may best be accomplished in a voluntary and joint effort.<sup>134</sup> After World War II, the need for collective security and European reconciliation began to change the international system.<sup>135</sup> Economic and political necessity convinced European leaders that, in addition to their immediate purpose, integration and cooperation also serve to prevent war.<sup>136</sup>

### B. *Economic Circumstances and Organizational Consequences*

The widespread devastation as the result of World War II, the separation of Europe by the Iron Curtain, and the subsequent threats posed by the Soviet Union during the Cold War, forced Western European leaders to seek cooperation on economic and political issues.<sup>137</sup> Even before World War II, the fragmentation of Europe had a negative impact on each nation's foreign trade.<sup>138</sup> The war itself disrupted all European foreign trade causing capital to flow to other nations, most notably the U.S.<sup>139</sup> In turn, the U.S. felt obligated to infuse funds into Europe through the Marshall Plan in order to foster European reconstruction.<sup>140</sup> The Organization for European Economic Cooperation (OEEC)<sup>141</sup> was established in 1947 to ensure economic integration within Western Europe and to control distribution of U.S. aid from the Marshall Plan.<sup>142</sup> This task was completed by 1950, but the OEEC continued in its role of encouraging economic and trade relationships between coun-

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<sup>132</sup> *Id.* at 149.

<sup>133</sup> See BURGESS, *supra* note 125, at 15.

<sup>134</sup> *Id.* at 26.

<sup>135</sup> *Id.* at 27.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* at 26-27.

<sup>138</sup> MOWAT, *supra* note 128, at 262-64.

<sup>139</sup> *Id.* at 580-81.

<sup>140</sup> DONALD A. BALL & WENDELL H. McCULLOCH, JR., *INTERNATIONAL BUSINESS* 138 (1996).

<sup>141</sup> The Treaty of Rome mandated close cooperation between the OEEC and the EU. EEC TREATY, *supra* note 3, art. 231.

<sup>142</sup> LEONARD, *supra* note 72, at 3.

tries.<sup>143</sup> Post-war Western European integration can be traced to 1948 when three of the smallest European countries, Belgium, Luxembourg and the Netherlands, formed the Benelux Union<sup>144</sup> out of a conviction that “their economic futures were inextricably intertwined.”<sup>145</sup> Although the Benelux Union eventually planned to merge into a full economic union, it was merely a customs union in the beginning with reduced tariffs between these three countries and common external tariffs for the rest of the world.<sup>146</sup>

A third organization, the Western European Union (WEU), was created in March 1948 with the Treaty of Brussels.<sup>147</sup> The WEU consisted originally of the United Kingdom, France, Belgium, the Netherlands, and Luxembourg.<sup>148</sup> It provides “for collaboration in economic, social and cultural matters and for the collective self-defense.”<sup>149</sup> This organization has been largely superseded by the creation of the North Atlantic Treaty Organization (NATO),<sup>150</sup> an alliance of the U.S., Canada and most western European nations providing military security to member nations.<sup>151</sup> France has called for a European defense force and the WEU may well serve this function.<sup>152</sup> A common military defense is one of the missing elements in forming a European federation.

The Benelux Union, the OEEC and the WEU provided a step in the direction of changing the way in which countries deal with each other. In these organizations the true power re-

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<sup>143</sup> In 1961, the OEEC became the Organization for Economic Cooperation and Development (OECD) and “widened its membership to include all the advanced industrial nations of the non-Communist world.” LEONARD, *supra* note 72, at 3. Today, the OECD has about 25 members including 15 EU Member States and the United States. Hellenic Resources Network: CIT World Factbook 1995. App C. <<http://www.hri.org/docs/CIA/Appendc.html>> (last visited Mar. 17, 1997).

<sup>144</sup> The Treaty of Rome recognized the existence of regional unions among Belgium, Luxembourg, and the Netherlands “to the extent that the objectives of these regional unions are not attained by application” of the Treaty of Rome. EEC TREATY, *supra* note 3, art. 232.

<sup>145</sup> LEONARD, *supra* note 72, at 3.

<sup>146</sup> BALL & McCULLOCH, *supra* note 140, at 740.

<sup>147</sup> LEONARD, *supra* note 72, at 3.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> LEONARD, *supra* note 72, at 4-5.

<sup>151</sup> THE NEW ENCYCLOPEDIA BRITANNICA, VOLUME 8 at 777 (15<sup>th</sup> Edition 1992).

<sup>152</sup> FREESTONE & DAVIDSON, *supra* note 8, at 3.

mains with the national governments. It appears, however, that the WEU may eventually assume a different role if it becomes the military arm of the EU.<sup>153</sup> The creation of the organizations of the OEEC, WEU and the Benelux Union resulted in national sovereignty being reduced.<sup>154</sup> Politicians came to realize that every international organization was condemned to failure in times of crisis if it did not have an institutional framework.<sup>155</sup> There was a need to have institutions that could enforce compliance if international harmony was ever to become a reality. Visionaries like Jean Monnet, Konrad Adenauer and Paul-Henry Spaak understood the importance of developing a supranational institutional structure with the potential for growth.<sup>156</sup>

Although in May 1952, a treaty was signed providing for the creation of a European Defense Community (EDC),<sup>157</sup> the notion that a supranational institution would control its member countries' militaries initially was rejected by many. The French National Assembly outright refused to give up such a substantial part of its sovereignty.<sup>158</sup> Circumstances have now changed making a European defense unit more palatable to the French and other Member States and, apparently, if there is to be a designated defense arm it most likely would be the WEU.<sup>159</sup>

### C. *The European Coal and Steel Community (ECSC)*

The first step toward unification was taken by French Foreign Minister Robert Schuman<sup>160</sup> in May 1950. He proposed to

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<sup>153</sup> LEONARD, *supra* note 72, at 169.

<sup>154</sup> LEONARD, *supra* note 72, at 3.

<sup>155</sup> URWIN, *supra* note 7, at 83.

<sup>156</sup> LEONARD, *supra* note 72, at 4-8.

<sup>157</sup> *Id.* at 6.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.* at 169.

<sup>160</sup> Mr. Schuman stated:

The French Government proposes to put the whole of the Franco-German coal and steel production under a joint High Authority, in an organization which is open for the other European countries to enter . . . It will change the destiny of these regions which for so long have been used for making weapons of war of which they have been most frequently the victims. The solidarity between the two countries established by the joint production will show that a war between France and Germany becomes not only unthinkable but materially impossible.

pool European coal and steel industries, which at that time were part of every country's war arsenal, under a common authority within an organization open to a number of European countries. The treaty establishing the European Coal and Steel Community (ECSC)<sup>161</sup> was signed in Paris on April 18, 1951, by Belgium, France, West Germany, Italy, Luxembourg and the Netherlands. This treaty went into force in 1952.

The plan was obviously to establish something more than merely a new political structure for Europe. Jean Monnet, who became the first President of the High Authority of the ECSC, commented that "prosperity and vital social development are inconceivable unless the countries of Europe form a federation or a European entity which in turn creates a common economic union."<sup>162</sup> The ECSC constituted the first step toward a European Federation and served as a practice institution which contributed to "an atmosphere of mutual confidence among its members" by forcing them to tackle problems together.<sup>163</sup>

#### D. *The Formation of the European Economic Community (EEC) in the Treaty of Rome - 1958*

Negotiations toward further economic unity continued during the decade of the 1950s.<sup>164</sup> Jean Monnet joined the Action Committee for the United States of Europe (ACUSE) which investigated the feasibility of establishing a common market.<sup>165</sup> This committee produced a report that became the basis of the Treaty of Rome,<sup>166</sup> creating the European Economic Community (EEC), which was signed on March 25, 1957,<sup>167</sup> and became effective January 1, 1958.<sup>168</sup> The objectives<sup>169</sup> of the EEC were set forth in the treaty:

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RUSSETT & STARR, *supra* note 22, at 414.

<sup>161</sup> ECSC TREATY, *supra* note 7.

<sup>162</sup> RUSSETT & STARR, *supra* note 4, at 414.

<sup>163</sup> *Id.* at 56.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> EEC TREATY, *supra* note 3.

<sup>167</sup> *Id.*

<sup>168</sup> LASOK & BRIDGE, *supra* note 58, at 17. On the same day that the EEC was created, March 25, 1957, a separate treaty was signed establishing the European Atomic Energy Community (Euratom). The purpose was to pool the six countries' resources in order to keep up with the advances in nuclear technology that the U.S. and the Soviet Union were making. *Id.*

The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing the common policies or activities referred to in [this Treaty], to promote throughout the Community a harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment, a high degree of convergence of economic performance, a high level of employment and of social protection, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.<sup>170</sup>

The Treaty of Rome<sup>171</sup> still serves as the fundamental document outlining rights and responsibilities in the EU.<sup>172</sup>

### 1. *Political Power Aspects of the Treaty of Rome*

No general consensus is apparent when it comes to the discussion of the political implications of the Treaty of Rome.<sup>173</sup> Some argue that the EEC was founded on “the idea that the factual common interests and common institutions in the economic sphere would bring about the political unity of . . . Europeans.”<sup>174</sup> Yet, Belgian Prime Minister Paul-Henry Spaak remarked that “[t]hose who drew up the Treaty of Rome . . . did not think of it as essentially economic; they thought of it as a stage on the way to political union.”<sup>175</sup> This statement implies that the negotiators of the treaty had agreed on eventually moving toward a European federation. In fact, the Common Market created by the EEC represented the fusion of two movements

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<sup>169</sup> It is interesting to compare the EU's objectives, as set forth in the Treaty of Rome, with the Preamble of the Constitution of the United States:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and out Posterity, do ordain and establish this Constitution for the United States of America.

U.S. CONST. Pmbl (spelling in original). The Preamble speaks in terms of providing for the common defense while the Treaty of Rome only speaks of economic union. It was not until the Maastricht Treaty that common defense polices were proclaimed as an objective of the EU.

<sup>170</sup> EEC TREATY, *supra* note 3, art. 2.

<sup>171</sup> EEC TREATY, *supra* note 3.

<sup>172</sup> See European Union, *supra* note 44.

<sup>173</sup> See EEC TREATY, *supra* note 3.

<sup>174</sup> de Rougemont, *supra* note 38, at 19.

<sup>175</sup> See URWIN, *supra* note 7, at 76 (ellipsis in original).

towards unity; one economic, the other, political. The first president of the Commission, Walter Hallstein, said “[we] are not integrating economies, we are integrating politics. We are not just sharing our furniture, we are jointly building a new and bigger house.”<sup>176</sup> By 1957, it became obvious through the preceding attempts at economic agreements that informal cooperation had to give way to integration.<sup>177</sup> As one author wrote: “[i]f one wishes to go all the way in abolishing customs duties and quotas, *i.e.*, in the commercial aspects of economic cooperation, one’s action cannot be limited to customs duties and quotas alone.”<sup>178</sup>

The literature on the subject generally downplays the potentially sweeping powers of the EEC institutions in regard to limiting each Member State’s national sovereignty. Most imply that the failure or limitations of previous trade agreements led EEC proponents to insist on a comprehensive treaty. Since the Treaty of Rome could not possibly include all the necessary aspects of harmonization policy,<sup>179</sup> the Member States had to commit themselves to endow institutions, the Council, the Commission, the Court of Justice and the European Parliament, with effective power.<sup>180</sup>

## 2. *Growth of the EEC*

After the EEC came into existence in 1958, some countries, which were not included, came to view the EEC as a key to economic success despite the inherent challenge to their sovereign powers. Turkey<sup>181</sup> and Greece<sup>182</sup> immediately applied for associate membership.<sup>183</sup> Other countries saw the value of eco-

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<sup>176</sup> *Id.*

<sup>177</sup> *Id.* at 75.

<sup>178</sup> Jean Deniau, *The Objectives and Constitutional Structure of the European Economic Community*, in *LEGAL PROBLEMS OF THE EUROPEAN ECONOMIC COMMUNITY AND THE EUROPEAN FREE TRADE ASSOCIATION* 1, 4-5 (1961).

<sup>179</sup> Harmonization is the process of requiring Member States to conform certain national laws to EU legislation in order to achieve uniform laws throughout the EU.

<sup>180</sup> EEC TREATY, *supra* note 3.

<sup>181</sup> Turkey applied for full membership on April 14, 1987. Its application is still pending. THE EUROPEAN COMMISSION, EUROPEAN UNION, EUROCOM 3 (Feb. 1996).

<sup>182</sup> Greece became a full member effective in 1981.

<sup>183</sup> LEONARD, *supra* note 72.

conomic integration, yet wanted a structure preserving their national sovereign powers.<sup>184</sup> Norway, Sweden, Switzerland, Denmark, Austria, Portugal and Great Britain formed the European Free Trade Association (EFTA), which stressed cooperation in matters of trade without the supranational framework.<sup>185</sup> Eventually, though, Great Britain and other countries<sup>186</sup> came to realize the value of the EEC and applied for membership. They realized that economic ties among EFTA member nations would never yield the kind of advantages that EEC membership promised.<sup>187</sup>

### E. Euratom

On the same day the Treaty of Rome<sup>188</sup> creating the EEC was signed, a second Treaty of Rome creating the European Atomic Energy Community (Euratom)<sup>189</sup> was also signed by the same six nations.<sup>190</sup> Euratom's purpose was to integrate the fledging atomic energy industries of the six nations. As the years immediately following Euratom's creation showed, however, each nation sought to develop its own atomic energy industry independent of the others. As a result, Euratom was never able fully to accomplish its mission.<sup>191</sup>

Euratom's problems underscored the futility of a sector-by-sector integration of Europe's economies.<sup>192</sup> If integration were to occur, it would have to be on a scale that could control the entire economy. This is true in all industries, but it is especially true in industries as politically sensitive as the atomic energy industry.<sup>193</sup>

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<sup>184</sup> *Id.* at 10.

<sup>185</sup> *Id.*

<sup>186</sup> Austria, Denmark, Portugal, and Sweden eventually also joined the EU. Norway and Switzerland both rejected EU membership.

<sup>187</sup> It was not until 1973, after many years of negotiations that the United Kingdom, Ireland, and Denmark were admitted to the EEC. LEONARD, *supra* note 72, at 13.

<sup>188</sup> EEC TREATY, *supra* note 3.

<sup>189</sup> EURATOM, *supra* note 11.

<sup>190</sup> URWIN, *supra* note 7, at 75.

<sup>191</sup> *See id.* at 75-77.

<sup>192</sup> *See id.* at 77.

<sup>193</sup> *See generally id.* at 77 (discussing political problems caused by Euratom).

F. *Consolidation of the Councils and Commissions of the Communities*

By the mid-1960s, it became apparent that in order to progress on integration, it would be necessary to combine the policy making authorities from the three existing communities, ECSC,<sup>194</sup> EEC<sup>195</sup> and Euratom.<sup>196</sup> In 1965 a unified executive was established in the Merger Treaty<sup>197</sup> for all three communities. After implementation of the Merger Treaty in July 1967, the three communities began operating under a unified commission and council of ministers.<sup>198</sup> The official title of the Merger Treaty uses the term European Communities, which came to be used to refer to the three communities.<sup>199</sup> Even though the Council and Commission of the three communities merged in 1967, the communities continued to exist separately. The actions of each of the communities is governed by its respective treaty.<sup>200</sup>

G. *The Single European Act – 1986*

During the 1970s and early 1980s the European Communities still had not achieved the power many had sought. It was often considered a hindrance by its Member States. At the same time Europe's power in the international system was declining. The oil crisis of the 1970s and severe unemployment slowed economic growth rates. Europe fell behind the United States and Japan. As a consequence of the relations between the superpowers, some observers called Europe the chessboard over which the American and Soviet masters made their strategic moves.

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<sup>194</sup> ECSC TREATY, *supra* note 10.

<sup>195</sup> EEC TREATY, *supra* note 3.

<sup>196</sup> EURATOM, *supra* note 11.

<sup>197</sup> Merger Treaty, *supra* note 3.

<sup>198</sup> *Id.*

<sup>199</sup> The term European Union came into use in 1993 with the Maastricht Treaty, which is officially called the Treaty on European Unity. Maastricht Treaty, *supra* note 1.

<sup>200</sup> HENRY J. STEINER ET AL., *TRANSNATIONAL LEGAL PROBLEMS* 1100 (4th ed. 1994).

In 1985, Jacques Delors, the French Minister of Finance, became President of the European Commission<sup>201</sup> and proposed significant and widespread changes. He recommended institutional reform, a common defense, monetary union and a single market. In February 1986, the Member States agreed to amend the Treaty of Rome<sup>202</sup> with the Single European Act (SEA),<sup>203</sup> which became effective July 1, 1987. That Act set in motion the formation of an economic union of EU Member States on December 31, 1992. The unification accomplished by the SEA resulted in over 370 million consumers<sup>204</sup> being able to trade freely without different technical and regulatory standards, border controls, and excise taxes. As a result, Mr. Delors' plan for a single market became a reality.

#### H. *The Effect of the Maastricht Treaty of 1992*

On November 1, 1993, the Maastricht Treaty on European Union<sup>205</sup> became effective, signaling the birth of the newly named European Union. It was signed in Maastricht, the Netherlands on February 7, 1992. The Treaty provided for potentially significant changes in the way Europe does business<sup>206</sup> and provided for a move to a single European currency.<sup>207</sup> The Treaty aimed at monetary cooperation by setting criteria for a single EU currency. It also increased the powers of the European Parliament in a number of areas, including the right of co-decision on legislation with the Council of Ministers.<sup>208</sup>

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<sup>201</sup> Mr. Delors was replaced with Jacques Santer of Luxembourg, the current President of the European Commission. European Union, *supra* note 43, at 4-5, 12.

<sup>202</sup> EEC TREATY, *supra* note 3.

<sup>203</sup> Single European Act, *supra* note 3.

<sup>204</sup> See population figures, *supra* note 6.

<sup>205</sup> Maastricht Treaty, *supra* note 1.

<sup>206</sup> The rest of the world must deal with the EU as the representative of a united Europe in economic and even political matters. *See, e.g., EU Is Rattling Its Sabers Over U.S. Anti-Cuba Law*, WALL ST. J., July 16, 1996, at A8 (EU is objecting to U.S. law targeting foreign companies doing business in Cuba).

<sup>207</sup> Maastricht Treaty, *supra* note 1, tit. I, art. B. *See Maastricht Signals the Birth of the European Union*, EUR., Dec.-Jan. 1993-94, following 24.

<sup>208</sup> Maastricht Treaty, *supra* note 1.

#### IV. EARLY EXPOSURE TO A FEDERALIST FORM OF GOVERNMENT AFFECTS GERMANY'S ATTITUDE TOWARD A UNITED EUROPE

The case of Germany is possibly the most encouraging for proponents of stronger European integration. A core member of the EU, and its most populous, with its powerful economy, it has learned to live with its nine international borders.<sup>209</sup> For many reasons, the German government has been outspoken in its commitment to ever closer political union within the EU. In the post-war era, membership in the EU served to overcome the burdens of the Nazi past.<sup>210</sup> It helped to establish a clear western orientation and a means for reconciliation with its western neighbors, particularly France, whose territory Germany had invaded three times in less than one hundred years.<sup>211</sup>

Germany relies heavily on foreign trade.<sup>212</sup> Its economic well-being and social stability largely depend on its extensive trade<sup>213</sup> with EU Member States.<sup>214</sup> Economic success under the umbrella of the EU's free trade provisions, and the rhetoric of the political leadership of all parties, have ingrained in the German public a level of acceptance of European sovereignty unmatched in any other European country. The government of Helmut Kohl assumed a leadership role in the unification of Europe.<sup>215</sup> The most compelling factor that explains the seemingly unshakable German support for European political integration is, however, Germany's long and overwhelmingly positive experience with its own federal structure.

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<sup>209</sup> Countries on which Germany borders are The Netherlands, Belgium, Luxembourg, Switzerland, Austria, Czech Republic, Poland, Denmark, and France. See THE NEW ENCYCLOPEDIA BRITANNICA, Volume 5 at 217 (15th Edition 1997); WILLIAM SPENCER, GERMANY THEN AND NOW 23 (1994).

<sup>210</sup> Chancellor Kohl has staked his political career on this issue, even in the face of enormous domestic difficulties. See Alan Cowell, *Kohl Finds Pet Project for European Currency May Prove his Undoing*, N.Y. TIMES, June, 12, 1997, at A12.

<sup>211</sup> 1870, 1914, and 1940. See also Noel Malcolm, *The Case Against Europe*, FOREIGN AFF., Mar.-Apr. 52, 54 (1995).

<sup>212</sup> FACTS ABOUT GERMANY 216-17 (Arno Kappler ed., 1995).

<sup>213</sup> In 1994, Germany's exports totaled \$437 billion with 48% of those exports going to other EU Member States. THE WORLD ALMANAC AND BOOK OF FACTS 1997 767 (1996).

<sup>214</sup> Ludger Kühnhardt, *Germany's Role in European Security*, SAIS REVIEW XV, Fall 1995, at 110.

<sup>215</sup> SPENCER, *supra* note 209, at 138.

German federal tradition is extensive and readily apparent even to the casual observer.<sup>216</sup> Life does not revolve around a single metropolitan area as it does in France and Britain.<sup>217</sup> There is no dominant political center, and it is not unusual to see a provincial Minister-President become Federal Chancellor, a career move inconceivable in most of Germany's neighboring countries.<sup>218</sup>

### A. *History*

When Germany united in 1871, the Bismarckian constitution provided a federal framework which was viewed as an appropriate successor to the particularism that had characterized the German-speaking territories for centuries, both through the loosely organized Holy Roman Empire dissolved by Napoleon in 1806 and the North German Confederation of 1867.<sup>219</sup> The diversity of its people, and their different cultural and linguistic heritage, were best served in a national community with limited centralist powers.<sup>220</sup> Unification in late nineteenth century came about under much the same circumstances that propel today's European countries toward integration.<sup>221</sup> Unification occurred, not in answer to a ground swell of popular demand, but under the leadership of a political elite recognizing pressures of international market forces, the need to increase competitiveness and productivity through standardization, and large scale investments exceeding the means of the individual states.<sup>222</sup>

When the German Empire was followed by the Weimar Republic in 1919, the states retained a substantial degree of autonomy.<sup>223</sup> Later, the twelve years of National Socialism (1933-

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<sup>216</sup> Nevil Johnson, *Territory and Power: Some Historical Determinants of the Constitutional Structure of the Federal Republic of Germany*, in GERMAN FEDERALISM TODAY 8-22 (Charles Jeffrey & Peter Savigear eds., 1991).

<sup>217</sup> *Id.*

<sup>218</sup> See generally Johnson, *supra* note 216.

<sup>219</sup> *Id.* at 11.

<sup>220</sup> *Id.* at 19.

<sup>221</sup> THE WORLD ALMANAC AND BOOK OF FACTS OF 1997 566 (1996).

<sup>222</sup> Under the constitution of 1871, twenty-five politically diverse states (*Länder*) were unified. See Johnson, *supra* note 231, at 10. These states included authoritarian monarchies such as Prussia and Bavaria, ecclesiastical states, and also the Free Imperial City of Bremen, the second oldest republic on record in Europe. *Id.*

<sup>223</sup> See WEIMAR REICHSVERFASSUNG (Weimar Constitution).

1945) and the post-war communist German Democratic Republic (1949-1990) in the eastern part (Soviet zone of occupation) represented a profound break with the German federal tradition.<sup>224</sup> In the three western zones of occupation, a new federal state was created in 1949 which again linked up with the German pattern of federalism and also met with the approval of the Western Allies who believed that a decentralized political structure would serve as a safeguard against totalitarian politics.<sup>225</sup>

### B. *Modern German Federalism*

After collapse of communism in eastern Europe, the federal nature of West Germany's constitutional structure showed itself versatile enough to incorporate the newly constituted five east German states or *Länder* through West Germany's constitution<sup>226</sup> (the Basic Law<sup>227</sup>). In 1949, the Basic Law had been specifically designed as a legal vehicle for reunification.<sup>228</sup> Significantly, the German Constitution<sup>229</sup> was redrawn in 1992 to regulate transfer of German sovereignty to the EU.<sup>230</sup>

The institutional characteristics of federalism in Germany have much in common with federations such as the United States, Switzerland, Canada and Australia,<sup>231</sup> but have certain differentiating factors.<sup>232</sup> Articles 70-82 of the Basic Law provide for a division of legislative competence between the central government (*Bund*) and the states (*Länder*).<sup>233</sup> The *Länder* are empowered to execute their own laws and also most of the federal laws.<sup>234</sup> This type of horizontal and functional federalism, which involves extensive allocation of legislative authority in

<sup>224</sup> THE WORLD ALMANAC AND BOOK OF FACTS OF 1997 767, 768 (1996).

<sup>225</sup> Johnson, *supra* note 216, at 17.

<sup>226</sup> GRUNDGESETZ [Constitution], art. 23.

<sup>227</sup> When in 1948 the Parliamentary Council was charged with the drafting of a constitution, it was called "Basic Law" to indicate its transitional nature and to avoid signaling acceptance of the permanence of Germany's division.

<sup>228</sup> See *Preamble* to the GRUNDGESETZ [Constitution].

<sup>229</sup> GRUNDGESETZ [Constitution], art. 23.

<sup>230</sup> Eckart Busch, *Der neue Artikel 23 soll Bund und Länder nach Europa führen*, DAS PARLAMENT (36), Aug. 28, 1992, at 19 (German spelling).

<sup>231</sup> Ronald L. Watts, *West German Federalism: Comparative Perspectives*, in GERMAN FEDERALISM TODAY 23-39 (Charles Jeffrey & Peter Savigear eds., 1991).

<sup>232</sup> *Id.* at 23.

<sup>233</sup> GRUNDGESETZ [Constitution], art. 70-82.

<sup>234</sup> GRUNDGESETZ [Constitution], art. 83-86.

central government, with an extensive administrative decentralization, contrasts with the vertical federal principles of the United States where a duality of jurisdictions acts directly on persons and property.<sup>235</sup> In Germany, the chamber representing the governments of the states, the *Bundesrat* (in contrast with the directly elected U.S. Senate), plays a key role in national policies through its veto right in various legislative areas and through the *Länder's* executive powers.<sup>236</sup> *Bund* and *Länder* are tied to a system of federalism by negotiation that is characterized by a multi-faceted network<sup>237</sup> resulting in accommodation and compromise.<sup>238</sup> The Federal Chancellor and the heads of government of the *Länder* confer regularly every two months, while meetings between the U.S. President and the governors take place much less frequently. Furthermore, the Chancellor's staff and corresponding colleagues in the *Länder* (chiefs of *Senatskanzleien*) prepare and coordinate these important meetings.<sup>239</sup>

There can be no doubt that federalism in Germany has undergone drastic changes over the past few decades.<sup>240</sup> The demands on the social market economy and welfare state have greatly increased and federal expenditures have invaded even areas of responsibility formerly reserved entirely for the *Länder* (e.g. higher education).<sup>241</sup> Through an Equalization Law (*Finanzausgleichgesetz*) the federal government is obliged to redistribute taxes.<sup>242</sup> The law assures that no *Land* ends up with a net tax revenue more than five per cent above or below the federal average, thereby guaranteeing economic and social cohesion.<sup>243</sup>

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<sup>235</sup> Johnson, *supra* note 216, at 9.

<sup>236</sup> Watts, *supra* note 231, at 31.

<sup>237</sup> Uwe Leonardy, *The Working Relationships Between Bund And Länder In The Federal Republic Of Germany*, in *GERMAN FEDERALISM TODAY* 40-62 (Charles Jeffrey & Peter Savigear eds., 1991).

<sup>238</sup> M. Donald Hancock, in *THE POLITICS OF DEMOCRATIC CORPORATISM* 48 et seq. (1989).

<sup>239</sup> *Id.* at 44.

<sup>240</sup> *Id.*

<sup>241</sup> Ulrich Karpen, *Federalism*, in *THE CONSTITUTION OF THE FEDERAL REPUBLIC OF GERMANY* 205-21 (Ulrich Karpen & Nomos Verlagsgesellschaft eds., 1988).

<sup>242</sup> *FINANZAUSGLEICHGESETZT* (Federal Equalization of Burdens Law). See also Watts, *supra* note 252, at 26.

<sup>243</sup> JOHN ARDAGH, *GERMANY AND THE GERMANS* 86 et seq. (1991).

### C. *Constitutional Acceptance Of The EU*

Germany appears to have fared well with its cooperative and flexible mode of operation which is demonstrated by the newly revised Articles 23 and 24 of the Basic Law:

(1) With a view to establishing a united Europe the Federal Republic of Germany shall participate in the development of the European Union, which is committed to democratic, rule-of-law, social and federal principles as well as the principle of subsidiary, and ensures protection of basic rights comparable in substance to that afforded by this Basic Law. To this end the Federation may transfer sovereign powers by law with the consent of the *Bundesrat*. . . .<sup>244</sup>

The constitution expressly secures the rights of the *Länder* in this process: "The *Bundestag* and, through the *Bundesrat*, the *Länder* shall be involved in matters concerning the European Union. The Federal Government shall inform the *Bundestag* and the *Bundesrat* comprehensively and as quickly as possible."<sup>245</sup> In certain designated areas the EU has a range of legislative powers binding on its Member States (agriculture, trade, competition, transport), which according to the constitutional distribution of power in Germany, are incumbent upon the *Länder*.<sup>246</sup> EU directives on cultural, educational, broadcasting, environmental issues and on health policy are essentially infringing on *Länder* legislative powers.<sup>247</sup> Thus, the constitution further stipulates that "[t]he *Bundesrat* shall be involved in the decision-making process of the Federation in so far as it would have to be involved in a corresponding internal measure or in so far as the *Länder* would be internally responsible."<sup>248</sup>

Besides the means of *Länder* participation through the *Bundesrat*, the *Länder* have succeeded in establishing direct political contacts with EU institutions through *Land* Information Offices in Brussels and Missions of the *Länder* in Bonn.

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<sup>244</sup> BASIC LAW FOR THE FEDERAL REPUBLIC OF GERMANY (official trans., Press and Information Office of the German Federal Republic 1994) (1994).

<sup>245</sup> GRUNDGESETZ [Constitution], art. 23(2).

<sup>246</sup> Rudolf Hrbek, *German Federalism and the Challenge of European Integration*, in GERMAN FEDERALISM TODAY 84-102 (Charles Jeffrey & Peter Savigear eds., 1991).

<sup>247</sup> *Id.* at 86.

<sup>248</sup> GRUNDGESETZ [Constitution], art. 23 (4).

Specialists in European affairs have been added to *Land* governments as EU policy coordinators and advisors. Thus, the German *Länder* have met the European challenge in two ways; through intensified, direct activities and through new statutory guarantees for their rights of participation in decision-making on EU matters.<sup>249</sup>

#### D. *The Effect of the EU*

Europe has seen significant political changes in the last few years and no other European country has been altered more than Germany. With the fall of the Iron Curtain, Germany has moved overnight from being on the periphery of western Europe to the heart of continental Europe.<sup>250</sup> Preoccupation with domestic political and economic issues have started to influence public opinion on the country's European agenda, most notably showing reservation in recent polls about EMU<sup>251</sup> and the reluctance of giving up the *Deutsche Mark (DM)*.<sup>252</sup> Unemployment and a slowdown of the economy have created second thoughts in the minds of many Germans about the price of EU membership.<sup>253</sup> The EU already costs the average German twice as much as a Dutch citizen and four times as much as a U. K. citizen.<sup>254</sup> Many people question the message of "Europe's Architect," Chancellor Helmut Kohl, who has made the widening and deepening of the EU a matter of war or peace.<sup>255</sup> There is an issue as to whether his forceful politicking is divisive.<sup>256</sup>

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<sup>249</sup> Hrbek, *supra* note 267.

<sup>250</sup> Nobert Walter, *Evolving German Economy: Unification, the Social Market, European and Global Integration*, SAIS REVIEW Fall 1995, Vol. XV, Special Issue, 55-82 (55).

<sup>251</sup> Eighty-four per cent of Germans want EMU postponed. *EMU: What the Markets Tell You*, THE ECONOMIST, Feb. 3, 1996, at 39, 39. See also *Europeans See March to New Currency Hit New Stumbling Blocks*, WALL ST. J., June 2, 1997, at A1.

<sup>252</sup> Hans-Peter Schwartz, *United Germany and European Integration*, SAIS REVIEW, Fall 1995, Vol. XV, Special Issue, 83-102 (100).

<sup>253</sup> Patricia Clough & Kristy Lang, *Self-interest Now the Common Currency*, THE SUNDAY TIMES, Oct. 1, 1995, at 5.

<sup>254</sup> *European Union Single-currency-minded*, THE ECONOMIST, Dec. 23, 1995, at 61-62.

<sup>255</sup> Iain McWhirter, *Sound of the Europhile is just a distant ecu*, THE OBSERVER, Dec. 10, 1995, at 3.

<sup>256</sup> Cowell, *supra* note 210, at A12.

The growing federal influence threatens to upset the balance between *Bund* and *Länder*. New challenges will test the strength of the *Länder*, not the least of which is Germany's membership in the EU which affects the rights of the *Länder* profoundly. Yet, the tension between centripetal and centrifugal forces is a given in any federal system.

#### V. COMPARISON OF THE EARLY U.S. EVOLUTION FROM INDEPENDENT STATES TO A FEDERALIST FORM OF GOVERNMENT

There are some parallels between the recent evolving status of federalism in the European Union in the 1940s<sup>257</sup> and the development of the federal form of government in the U.S. between 1774 and 1787.<sup>258</sup> These parallels may give insight into a possible progression toward integration and federalism by the nations of Europe. This comparison cannot be exact, but corresponding events in the early days of the establishment of a union of states in America may give an indication of the general direction in which the EU could eventually be propelled.

Any comparison does not really begin until the Second Continental Congress convened in 1775 driven by the necessities of a pending war with Great Britain.<sup>259</sup> The Second Continental Congress adopted the Declaration of Independence in 1776 and went on to make the first efforts to establish an institutional base by organizing an army and officially declaring war on Great Britain.<sup>260</sup> The efforts toward developing governmental structures grew out of a need for unity of the newly formed states<sup>261</sup> and provided, for the first time, an American institutional focus such as occurred in 1952 with the formation in Europe of the ECSC.<sup>262</sup> It is here that an important differentiating factor arises between the U.S. and EU histories because working with colonized units newly formed into states is easily distinguishable from a situation involving the EU's numerous well established national identities.

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<sup>257</sup> URWIN, *supra* note 7, at 8.

<sup>258</sup> See generally Scudiere, *supra* note 24.

<sup>259</sup> Scudiere, *supra* note 24, at 3.

<sup>260</sup> *Id.* at 4.

<sup>261</sup> See *id.*

<sup>262</sup> LEONARD, *supra* note 72, at 5-6.

The Second Continental Congress was hampered in its ability to act because it was a group without legal authority except when it acted with the consent of the states.<sup>263</sup> It was replaced with the Congress of Confederation in 1781 when the states that made up the original thirteen American colonies signed the Articles of Confederation.<sup>264</sup> Just as the sovereign nations of Europe are loath to give up their sovereignty to Brussels, the states were cautious about creating a powerful central government.<sup>265</sup>

The framers tried to prevent this by wording the document in such a way that the Articles guaranteed each state's sovereignty and independence.<sup>266</sup> Each state had one vote in Congress regardless of its size and population.<sup>267</sup> Congress could not levy taxes, regulate trade or interfere with the states or their citizens.<sup>268</sup> There was no executive branch nor system of national courts so the institutional structure was insufficient to sustain a strong nation at that point.<sup>269</sup>

In a clear departure from the current state of affairs in the EU, and resulting directly from the crisis in the newly forming nation at that time, the central government was granted the power to declare war, manage foreign relations, establish an army and navy, issue and borrow money and control Indian affairs.<sup>270</sup> Some national leaders later became dissatisfied with the Articles but were stymied in their efforts to change the document because amendments required the unanimous vote of all thirteen states.<sup>271</sup> Thus, the same issue arose with regard to the U.S. Articles of Confederation as now exists in the EU on the question of retaining the existing veto practice or changing to a majority vote.<sup>272</sup>

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<sup>263</sup> Scudiere, *supra* note 24, at 4-5.

<sup>264</sup> The Articles of Confederation were in the process of being signed while the First Continental Congress was functioning from 1777 through March 1, 1781, after the Second Continental Congress was formed. *Id.* at 4.

<sup>265</sup> Scudiere, *supra* note 24, at 5.

<sup>266</sup> *See id.*

<sup>267</sup> *See id.* at 4.

<sup>268</sup> *See id.* at 5.

<sup>269</sup> *See id.*

<sup>270</sup> Scudiere, *supra* note 24.

<sup>271</sup> *Id.* at 7-8.

<sup>272</sup> *See* LASOK & BRIDGE, *supra* note 58, at 240.

After the states won independence in the Revolutionary War which ended in 1783, they faced the problems of peacetime government which is approximately the stage in which the EU finds itself after the ending of the Cold War. The Articles of Confederation were abandoned in 1787.<sup>273</sup> The Constitution was written as the new plan of government and established not merely an assembly of representatives of thirteen independent states, but a national government that exercised its authority over all citizens.<sup>274</sup> Establishing the authority of the central government had been difficult, as demonstrated in 1819 in the controversy that led to the decision in *McCulloch v. Maryland*, in which Chief Justice Marshall used the Constitution's Supremacy Clause to find in favor of the federal government.<sup>275</sup>

The EU has been working on its organization of Member States for more than forty years culminating in the Maastricht Treaty.<sup>276</sup> The debate in Europe still continues between the integrationists and the nationalists. In the U.S. questions raised about the extent of power exercised by the central government have continued throughout the years. In 1828, John Calhoun stated that the Constitution was a compact formed by "sovereign and independent communities," an indication that he was an advocate of states' rights who remained unimpressed with power vested in a federal form of government.<sup>277</sup> Controversies based on states' rights versus federal power had to be resolved in the Civil War starting in 1861 when the southern states seceded from the Union because of their objections to the federal

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<sup>273</sup> Scudiere, *supra* note 24, at 5.

<sup>274</sup> The Constitution was ratified between the years 1787 and 1790. *Id.* at 13.

<sup>275</sup> 17 U.S. (4 Wheat.) 316 (1824). In this case the Maryland legislature levied a tax on the Bank of the United States which had been chartered by the federal government. *Id.* The cashier of the bank refused to pay the tax and was convicted of violating the law by the state courts. *Id.* Chief Justice Marshall used the reasoning of the supremacy clause to reach the conclusion in favor of the federal government that, "the constitutional laws enacted by Congress" supersede all incompatible state regulations. See C. HERMAN PRITCHETT, *THE AMERICAN CONSTITUTION*, 71 (1968).

<sup>276</sup> Maastricht Treaty, *supra* note 1.

<sup>277</sup> PRITCHETT, *supra* note 275, at 62.

rules on slavery and tariffs,<sup>278</sup> and erupted again with the civil rights movement starting in the 1950s.<sup>279</sup>

The issue of the amount of power vested in the central government is not easily settled either during the development of a federal form of government nor after its adoption.<sup>280</sup> In the U.S. there is still evidence of anti-federalist sentiments in the proliferation of militia-type organizations who continue to object to the authority of central government. Perhaps some answers for the EU can be found in the history of the U.S. and, if nothing else, there is comfort in the fact that the U.S. encountered, and continues to encounter, many of the same kinds of problems.

## VI. CONCLUSION

No structure similar to the EU exists. It is a structure that resulted from a desire on the part of sovereign European nations to avoid repeating more than a millennium of conflict. The EU has evolved from an association formed for reasons of political expediency and protection into a supranational entity involved with far-reaching economic, political, and social issues.

A major obstacle to the growth of a federal EU is the extent to which independent nations are willing to relinquish their sovereignty. The advance toward unification in subsequent years is not easy. Many citizens in the Member States are "reluctant Europeans," with the rise and fall of interest in the EU affected by the political persuasion of national leaders or the state of the economy.<sup>281</sup>

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<sup>278</sup> ISAAC KRAMNICK, *The Discourse of Politics in 1787: The Constitution and its critics on Individualism, Community, and the State*, in *TO FORM A MORE PERFECT UNION: THE CRITICAL IDEAS OF THE CONSTITUTION*, 102 (1992).

<sup>279</sup> PRITCHETT, *supra* note 275, at 81.

<sup>280</sup> No Member State of the EU has attempted to revoke its status as an EU Member State, so it is unclear what steps the EU would take to prevent departure from the EU. See URWIN, *supra* note 7, at 254. Some indication of how the EU may react may be found by examining events surrounding Greenland's departure from the EU in 1985. Greenland was a colony of Denmark at the time of Denmark's entry into the EU in 1973. As a result, Greenland became part of the EU as it was part of Denmark. In the late 1970s and early 1980s, Denmark gave Greenland home rule over certain matters. As a result, Greenland opted to leave the EU. Through a series of negotiations lasting about three years, the EU permitted Greenland to leave the EU. *Id.*

<sup>281</sup> As an example, France under former President François Mitterrand was a key promoter of the integration of Europe. See Alan Riding, *Europe Again Divides*

Outside factors, beginning in World War II, caused the first inroads toward foregoing the usual nationalistic tendencies of Europeans and to cause them to protect themselves through the creation of an institutional framework.<sup>282</sup> Europe must be prepared to meet the type of internal crisis that arose in Bosnia since NATO and the United Nations are largely ineffective in solving problems of civil warfare within the boundaries of Europe.<sup>283</sup> The new global marketplace has created the impetus for setting aside nationalistic considerations because their economic position is only enhanced by joining together in an integrated entity.

In post-Cold War Europe, the greatest task is the need to compete effectively against the United States, Japan and the growing Asian economies. Europeans are propelled toward integration because without it they cannot successfully compete on a global scale. Economic decline surely would put the social and ultimately the political peace at risk within the EU member states.

There are already alarming signs of erosion of the social solidarity which is held as a key element of contemporary Europeans. Politicians know that present governments will be judged by the electorate on their capacity to create jobs. The ongoing inter-governmental conference (IGC) seems to be the backdrop for a process of scaling back the grand vision of a federal Europe that, above all, Helmut Kohl had promoted until now.<sup>284</sup> Jacques Chirac's current formulation of an original construction based neither on a federal model, nor limited to a simple free-trade zone,<sup>285</sup> has become, at present, the operative

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*French*, INT'L HERALD TRIB., Dec. 5, 1994, at 2; William Drozdiak, *President Chirac Names Juppé as Prime Minister*, INT'L HERALD TRIB., May 18, 1995, at 1. Mr. Mitterand helped design the Maastricht Treaty and set the stage for turning the twelve-nation bloc into a federation. *Id.* Now, with the leadership of President Jacques Chirac, who was elected in the Spring of 1995, the French position is changing because Mr. Chirac comes with a reputation for favoring a looser Union and is not committed to the federal vision as are others such as Chancellor Helmut Kohl of Germany. *Id.*

<sup>282</sup> LEONARD, *supra* note 72, at 3-7.

<sup>283</sup> Europe is seeking to expand its role in NATO by embarking on military missions without full U.S participation. *Europe to Widen Its Role in NATO*, L.A. TIMES, June 4, 1996, at A1.

<sup>284</sup> Iain McWhirter, *Sound of the Europhile is just a distant ecu*, THE OBSERVER, Dec. 10, 1995, at 3.

<sup>285</sup> *The Helmut-and-Jacques Show*, THE ECONOMIST, Apr. 6, 1996, at 49.

vision for the future organization of the EU. The IGCs, since the 1980s, have become important vehicles for pushing European integration further ahead<sup>286</sup> and it is therefore to be taken as an encouraging signal that the entire year of 1996 is scheduled for IGC negotiations.

The burden is placed squarely on the Europeans. The EU, in a stronger centralized governmental form, is a solution. It is important to the welfare of all of Europe to have a strong institutional structure with the necessary political and military units. The basic judicial system already exists, as well as the skeleton for an executive and legislative arm of government. Uniting under a federal system of government is the key to survival in the global marketplace and in the new world order that has developed after the removal of the Soviet threat. The final direction will rest on whether these outside influences will force the majority of Europeans to feel that they are given little choice except to fully integrate to survive.

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<sup>286</sup> Juliet Lodge, *Towards a political union? in THE EUROPEAN COMMUNITY AND THE CHALLENGE OF THE FUTURE* 377-85 (Juliet Lodge ed., 2d ed. 1993).