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Brian K. Kurzmann

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International Trade Section

Challenges to Monetary Unification in the European Union: Sovereignty Reigning Supreme?

BRIAN K. KURZMANN*

The effort to unify the currencies of Europe and establish a single European Central Bank has advanced for nearly twenty years. The most recent push toward monetary union,[1] embodied in the European Economic Community's Maastricht Treaty,[2] met unexpectedly acute opposition, both in European courts and from European voters. The focus of this opposition centered around concerns that currency unification and the establishment of a European Central Bank would seriously undermine the sovereignty of individual countries. Although the Maastricht Treaty has now been ratified,[3] its provisions concerning

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1. Generally, a "monetary union" is a system of money common to two or more independent countries. Such a union is characterized by a single currency issued by a single central bank. The currency is legal tender in all the countries of the union. *See* Joseph Gold, *International Monetary Fund*, *in* 8 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 403, 405 (1988).

2. Treaty on European Union, together with the Treaty Establishing the European Economic Community, Feb. 7, 1992, 31 I.L.M. 247 (1992). The twelve member States of the European Union are France, Germany, Britain, Ireland, Italy, Belgium, The Netherlands, Luxembourg, Denmark, Greece, Portugal, and Spain.

The Maastricht Treaty, agreed to in December 1991, originally provided that by 1996, member countries would determine which economies have met the criteria for unification (inflation, interest rates, deficits, and currency stability), and that on January 1, 1997, the complying countries would establish a single currency subject to a two-thirds majority vote. Nancy Louise Kessler, *Banking on Europe: 1992 and EMU*, 60 FORDHAM L. REV. S395, S424-25 (1992). A single currency would be implemented for those complying countries without a vote on Jan. 1, 1999 (the mandatory nature of Treaty). Further, it contained an opt-out clause for Britain. *Id.* at S425.

3. The Maastricht Treaty went into effect on November 1, 1993, almost a year late. National electorates and parliaments delayed ratifying the Treaty, with Germa-

monetary union remain stalled and may never be implemented as originally planned. Is monetary union in the European Union (E.U.) viewed as an undesirable threat to the sovereignty of member countries or as a necessary step to help bolster that region's economy against increasing global competition?[4]

This article examines the current monetary regime in the European Union and analyzes the effect of recent legal and political challenges to the attempt to bring about monetary union there. Part I briefly examines the state of worldwide monetary arrangements and then considers the forces that have led European nations to seek a union of their currencies and central banks. Part II explores some basic assumptions, as a matter of national and international law, underlying worldwide monetary arrangements, and reviews the recent sovereignty-centered challenges to these assumptions in Europe. Finally, Part III analyzes the effect of these challenges on Europe's effort to bring about monetary union and considers the European experience as a possible example for other monetary systems.

I. NATIONAL SOVEREIGNTY AND MONETARY INTEGRATION

A. *National Sovereignty in Worldwide Monetary Arrangments*

Every country is the sovereign of its own money.[5] There is no

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ny being the last country to accept it. Craig R. Whitney, *With European Union's Arrival, Fears on Economy Cast a Shadow*, N.Y. TIMES, Oct. 30, 1993, at A1.

4. Tremors of this new, fierce economy have unsettled some very stable currencies. In the summer of 1993, Britain and Italy felt compelled, due to speculative pressures on their currencies, to take the pound sterling and the lira out of the European Monetary System. "[A] new, brutally competitive world economic order is emerging with the demise of the cold war. The forces that are propelling this new order will persist for years and promise to make life toughter for almost everyone . . . ." Christopher Farrell, et al., *What's Wrong? Why the Industrialized Nations Are Stalled*, BUS. WK., Aug. 2, 1993, at 55. *See infra* notes 74-75 and accompanying text.

Global currency exchange arrangements play a central role. As early as 1981, French President Francois Mitterand observed that "[t]here is a currency war . . . . Today, it is every man for himself. [Maintenance of high interest rates] exacerbates already dangerous movements of capital . . . . Since each nation is undergoing a crisis, they all tend toward egotism. Each country first wants to rescue itself, whereas they will only be rescued together." Joseph Gold, *Strengthening the Soft International Law of Exchange Arrangements*, 77 AM. J. INT'L L. 443, 478 n. 98 (1981), *quoting* TIME, Oct. 19, 1981, at 57.

5. The Permanent Court of International Justice has stated that "it is indeed a generally accepted principle that a state is entitled to regulate its own currency." Serbian and Brazilian Loans Case, P.C.I.J. (ser. A) Nos. 20, 21, at 44. Furthermore, the United Nations Charter considers the governance of money to be a matter of domestic, not international, law. *See* F.A. MANN, THE LEGAL ASPECT OF MONEY 461 (5th ed. 1992). Thus, international law recognizes that it is within the sovereign power of a country to take actions such as defining its own currency, deciding whether to peg the currency to gold or some other commodity, depreciating or appre-

central authority that regulates all exchanges of currencies or imposes uniform monetary policy on all countries.[6] Yet the international community has a vital interest in maintaining a smoothly functioning currency exchange regime,[7] and in keeping stable the value of one currency against another. Thus, there is tension, inherent in the sheer multiplicity of currencies, between national sovereignty over money and international interests.[8] As B.J. Cohen said,

> [s]o long as there are politically sovereign states and formally independent national currencies, there will be international monetary problems.[9]

Over the years, various treaty arrangements have sought to relieve some of these problems. The Bretton Woods System, established in 1945, pegged currencies to one another by requiring the central banks of member countries to keep the values of their currencies within a prescribed range.[10] This system called for a voluntary transfer of a certain degree of monetary policy-making and currency exchange authority to the International Monetary Fund, the principal organization regulating exchange arrangements.[11]

In the years following the collapse of the Bretton Woods System in 1971, member countries of the International Monetary Fund were free to choose, loosely speaking, whatever exchange arrangements they

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ciating the currency's value, imposing exchange controls, and entering into treaties with other States regarding any of these questions. *Id.*

Despite "obsolete and extravagant" attempts to limit sovereignty over money, it is a firmly established principle. *Id.* at 463. One such attempt was a refusal in 1688 by the Chief Judge of England to give effect to the depreciation of the Portugese currency, on the view that the Portugese king could not diminish the value of the property of an English subject. Another attempt was a letter of protest sent in 1800 by John Marshall, then American Secretary of State, to the governement of Spain, complaining of Spain's devaluation of its currency. *See Id.* at 462.

6. *See* RALPH H. FOLSOM, MICHAEL WALLACE GORDON, JOHN A. SPANOGLE, Jr., INTERNATIONAL BUSINESS TRANSACTIONS NUTSHELL 118 (1992) [hereinafter FOLSOM].

7. *See* J.R. Artus & A.D. Crockett, *National Sovereignty and International Cooperation over Exchange Arrangements*, 12 CASE W. RES. J. INT'L L. 327, 328 (1980).

8. *Id.*

9. *Id.* at 327, *quoting* B.J. COHEN, ORGANIZING THE WORLD'S MONEY: THE POLITICAL ECONOMY OF INTERNATIONAL MONETARY RELATIONS 273 (1977).

10. The Bretton Woods system was introduced after World War II. *See* KENNETH W. DAM, THE RULES OF THE GAME: REFORM AND EVOLUTION IN THE INTERNATIONAL MONETARY SYSTEM 71, 175 (1982). Under the Articles of Agreement to the International Monetary Fund (IMF), member countries ceded a basic power to the IMF: the requirement that the IMF concur with their individual currency devaluations. *Id.* at 92. However, the IMF was limited by national sovereignty from interfering with the economic policies of member countries. *Id.* at 169.

11. The International Monetary Fund is the organization most lawyers and economists think of as the world's currency regulator. It is an international organization created by a treaty, the Articles of Agreement to the IMF. *Id.* at 71.

liked.[12] A system of free-floating exchange rates, in which the foreign exchange market was allowed to set the rates, came to predominate.[13] An important rule that continued to bind national monetary policymaking in this looser regime, however, was that members could not intervene in the foreign exchange market in order to "manipulate" the international value of their currencies.[14]

Despite this arrangement, which continues today, the sources of conflict between national monetary sovereignty and the interests of the international community persist. It is an axiom of economics that the goals of capital mobility, fixed exchange rates, and national monetary sovereignty are mutually unachievable.[15] Flexible exchange rate systems inevitably lead to the risk of volatility in exchange rates and the existence of persistent misalignments of currency values. This increases the pressure on central banks to intervene in the market to manipulate currency values for national interests.

Seeking to minimize even these problems, economic and political leaders have argued for the implementation of a monetary system involving policy coordination among the chief industrialized nations, combined with exchange rate management "of a degree that has until now proved elusive."[16] The European Union has taken steps to make this elusive goal a reality. Part II of this article further explores these steps. The following section identifies several common assumptions underlying monetary integration efforts.

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12. *Id.*

13. There are three predominant exchange rate regimes among convertible currencies: 1) pegged or quasi-pegged arrangements; 2) managed flexibility; and 3) full flexibility. Dominick Salvatore, *The International Monetary System: A Transatlantic View*, ITAL. J. 29, 29 (1990). Managed or fully-flexible systems predominate in four-fifths of the world. *Id.* at 29-30.

14. Artus & Crockett, *supra* note 7, at 332. *See generally*, Stephen Zamora, *Sir Joseph Gold and the Development of International Monetary Law*, 23 INT'L LAW. 1009, 1014-1019 (1989) (tracing the development of international monetary law after the collapse of the Bretton Woods System).

15. Tommaso Padoa-Schioppa, *Efficiency, Stability, and Equity: A Strategy for the Evolution of the Economic System of the European Community*, 1987 (report of committe chaired by the author), *cited in* JOHN B. GOODMAN, MONETARY SOVEREIGNTY: THE POLITICS OF CENTRAL BANKING IN WESTERN EUROPE 202 (1992). This observation has elsewhere been expressed as "the incompatibility of free trade, full capital mobility, fixed exchange rates, and national autonomy." Maxwell J. Fry, *Monetary Policy Implementation During Europe's Transition to a Single Currency*, *in* EUROPEAN BANKING 44, 48 (Andy Mullineux, ed., 1992) [hereinafter Mullineux], *quoting* H. Ungerer et al., *The European Monetary System: Developments and Perspectives*, *in* INTERNATIONAL MONETARY FUND, OCCASIONAL PAPER 73 (1990).

16. Salvatore, *supra* note 13, at 29.

B. *Legal and Political Assumptions Underlying Monetary Integration*

The process of monetary integration can involve either policy coordination among sovereign nations, on the one hand, or total consolidation of central banks and currencies, on the other. Whatever level of integration is sought, certain assumptions that relate to the principle of national monetary sovereignty can be identified. These premises are as follows: 1) that the setting of monetary policy should remain as independent as possible from political influences; 2) that monetary sovereignty should yield over time to centralized authority as economies become more interdependent; and 3) that there is popular support for monetary integration.

The leaders of the European Union seek to bring about total monetary union by the year 1999 through the implementation of the controversial Maastricht Treaty. The three assumptions underlying monetary union have, consequently, seen legal and political challenges in the E.U., startling many observers and perhaps even stonewalling the idea of a single European currency and central bank.

1. The Need to Keep Politics Divorced from Monetary Policy-Making

Most countries have a hierarchy of organizations that determine and implement national monetary policy. The top level is a government entity, usually a ministry of finance or treasury department, which sets the outlines of monetary policy based on political considerations. At a lower level is a central bank, usually owned and operated by the national government, that is responsible for filling in the details of monetary policy.[17] It is generally agreed that the decisions made by a central bank should be as independent as possible from political oversight.[18] The more independent the central bank, the less political factors — such as the timing of elections, the identity of the party in control of government, and pressure from interest groups — influence monetary policy.[19]

One common example of how politics influences monetary policy may be observed around election time.[20] Politicians seeking reelection may want to have interest rates lowered to please voters. To achieve this, the politicians would require their subservient central bank to

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17. FOLSOM, *supra* note 6, at 124.

18. Scholars have postulated that "economic conditions affect electoral outcomes and, therefore, that governments attempt to manipulate the economy in order to win elections. Voters are assumed to be myopic. [This gives] governments an incentive to stimulate the economy prior to an election." GOODMAN, *supra* note 15, at 212.

19. *Id.* at 3-5.

20. Aside from reelection concerns, variations in the level of influence over central bankers held by different political parties and labor militancy may also influence monetary policy-making. *Id.* at 213-14.

expand the supply of money. The voting public would enjoy the lower interest rates right up to the election. Thereafter, however, inflation, the nemesis of any central bank,[21] would set in.[22]

> [P]oliticians tend to be far less willing than central bankers to subordinate other goals, such as growth and employment, to the fight against inflation.[23]

Practical limitations are also at work. The type of currency exchange system in effect largely determines the importance of the independence of monetary policy-setting. If a country's currency is part of a pegged exchange regime, monetary policy cannot have a great impact because the exchange rate is determined by external controls, making the degree of political independence of the central bank largely irrelevant. Very generally, this was the case under the Bretton Woods System. On the other hand, if a country's currency is part of a flexible exchange regime, such as the one that currently predominates, the independence of monetary policy-making is relevant, and political independence is considered much more important.[24] Under flexible rates, central bank intervention is discretionary.[25] Thus, a flexible system places a premium on the avoidance of political entanglements.

Monetary policy-setting is never totally detached from politics,[26] and a measure of political control may even be desirable.[27] One of the best illustrations of advantageous political involvement in monetery policy-setting is the German unification. In 1989, West Germany's overriding political objective was unification with East Germany, and the first step to achieve this was the agreement allowing all East Germans to exchange their GDR marks for FRG marks, thereby establishing a common currency.[28] West (and East) German monetary policy was set by politicians. Political control is also considered desirable in

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21. Charles Goodhart, *A European Central Bank*, *in* EUROPEAN BANKING 12, 24-25 (Andy Mullineux ed., 1992).

22. This example is often cited as the most common way that the money supply is manipulated for political gain. *See, e.g.*, WILLIAM GREIDER, SECRETS OF THE TEMPLE 67 (1987) (describing the Federal Reserve's "pump priming" of the U.S. economy just prior to the re-election of President Nixon in 1972).

23. GOODMAN, *supra* note 15, at 7.

24. It is generally agreed among the two predominant schools of economics, Monetarism and Keynesianism, that monetary policy is ineffective in the long run. However, it is also agreed that it can make a difference in the short run. *Id.* at 15.

25. *Id.* at 16.

26. *See id.* at 4.

27. The prominent economist Milton Friedman has explained that a politically independent central bank, such as the U.S. Federal Reserve, is incapable of learning from its own mistakes. Deepak Lal, *Alternative Roads to Economic Integration: The Case for Currency Competition in European Integration*, 22 CASE W. RES. J. INT'L L. 299, 306 (1990).

28. Daniel J. Meandor, *Transition in the German Legal Order: East Back to West, 1990-91*, 15 B.C. INT'L & COMP. L. REV. 283, 285 (1992).

wartime, when immediate concerns over financing the victory effort by expanding the money supply take precedence over long-term inflationary concerns.[29]

While central bank independence therefore appears to be a generally desirable objective, it is largely irrelevant for countries whose currencies are pegged. Independence is also curtailed when important short-term goals must be placed ahead of long-term ones. Absent such immediate concerns, however, independence currently remains the aim among nations in the floating exchange regime.

2. The Inevitability of Diluted Monetary Sovereignty

While the politically independent policy-making is still valued, it is thought to be losing its relevance amidst an increasingly complex global economy.

> The integration of the world's capital markets, driven by a combination of technological change and financial innovation, has increasingly constrained the ability of central banks to set and implement their own monetary policies.[30]

Some observers have concluded that a critical balance has already been reached between "national sovereignty and international legal regulation" in currency exchange arrangements.[31] After the collapse of the Bretton Woods System, the United States and several other countries successfully argued that the soundness of domestic economic policies should be the main concern of governments,[32] and thus "exchange rates should be allowed to change freely to accord with changes in the international position of a country."[33] Free-floating exchange rates would provide greater opportunity for autonomous decision-making in the sphere of domestic monetary policy.[34]

As greater economic integration sweeps the world, the concern that a proliferation of currencies can lead to economic crisis has led other observers to conclude that a greater level of monetary integration is necessary.[35] As trade between economies grows, so does competition

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29. *See* GREIDER, *supra* note 22, at 98-104.
30. GOODMAN, *supra* note 15, at 5.
31. Gold, *supra* note 4, at 444. The author of this work is a former General Counsel of the International Monetary Fund.
32. *Id.* at 450.
33. *Id.* at 451.
34. *Id.* at 451. The current Articles of the International Monetary Fund contain many provisions that are not firmly binding on its members, and therefore do not demand wholesale transfers of monetary sovereignty. *Id.* at 454.
35. For example, after the American Revolution, a devaluation of state bills of credit occurred. This led to Shays' Rebellion in Massachussetts, in which debtors and farmers demanded that the state legislature print and issue more paper money than could be used to pay their existing debts. The Rebellion focused attention on the

and the desire for predictability in the value of money. To preserve stability in currency values, closer coordination between monetary policy-makers is thought necessary.[36] It is this closer coordination between countries that is seen as leading toward an inevitable deprivation of national sovereignty over money. "The transfer of functions to a monetary union involves the corresponding decline of the powers of the [countries] who become its consituent members."[37]

In other words, while the status quo may be regarded as preserving an equilibrium between monetary sovereignty and international interests, economic interdependence is increasing. An unavoidable companion of this quickening change is the weakening of national autonomy over decisions about currency exchange rates and monetary policy.

3. The Perception of Popular Support for Monetary Integration

It is sometimes claimed by political leaders that no matter what type of monetary arrangement a country utilizes, it is an arrangement that was democratically determined and enjoys broad popular support. Although this claim does not necessarily relate to monetary sovereignty *per se*, it does express an assumption of democratic values when fundamental changes in monetary arrangements, such as currency unification, are considered.

While popular support for monetary integration is impossible to quantify precisely, a rough estimate can be gained through looking at a variety of indicators: 1) electoral evidence of the level of support for monetary integration; 2) skepticism about the democratic basis of the integration efforts; and 3) current downturns in the local economy and the reemergence of nationalism. These indicators bear relevance in examining the current European effort to achieve monetary union, and will be explored below.

II. THE EFFORT TO BRING ABOUT MONETARY UNION IN EUROPE

Before exploring how the three assumptions of monetary union have come under attack in Europe, it is useful to examine the path that the European Union has taken in seeking monetary union, and to

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need for monetary uniformity in the new American republic. *State Attempts to Tax Sales of Gold Coin and Bullion in the United States: The Constitutional Implications*, 5 B.C. INT'L & COMP. L.J. 297, 302 (1982). In Federalist 44, Madison argued that without a prohibition on the issuance of state currencies, competition between state currencies would have a disuniting effect, and the new nation would lose foreign credibility. *See id.* at 304.

36. Salvatore, *supra* note 13, at 29. *See infra* notes 39-49 and accompanying text for a discussion of the importance of currency stability in a common market such as the European Union.

37. MANN, *supra* note 5, at 508-09.

look at where the E.U. is headed with the Maastricht Treaty.

A. *The European Monetary System*

Part and parcel of the European Union's establishment of a single common market[38] is its interest in maintaining currency stability among its members.[39] The European Monetary System is the institution that was designed to achieve this.[40] It is the second of three phases of monetary cooperation that have existed in Europe since the collapse of the Bretton Woods System.[41] The third and final phase, European Monetary Union, remains to be implemented pursuant to the Maastricht Treaty.

The current phase, the European Monetary System, can be technically described as "an agreement among central banks to manage intracommunity exchange rates and to finance exchange market interventions."[42] It has two independent mechanisms for maintaining currency stability: the parity grid and the divergence indicator. The parity grid measures the behavior of one member country's currency against another's. To do this, the desired exchange rate of each currency is set against every other currency by agreement. These bilateral rates serve as reference points for fluctuating daily market rates, establishing the upper and lower limits within which market rates are allowed to move. Member countries' central banks are required to intervene to keep their currencies within these pre-set bands,[43] and the countries have

38. By the mid-1980's, the member countries of the European Union considered the establishment of a new, more sweeping monetary regime essential to their national economic objectives. GOODMAN, *supra* note 15, at 182.

39. "Establishment of a common market involves removal of obstacles to the free movement of goods, persons, services and capital." DAVID M. BARNARD, *The Evolving Pace of Regulation of the Financial Services Industry in the European Community*, Jan. 14-15, 1993, § 2.1(b), INTERNATIONAL SECURITIES MARKET 1993: CORPORATE LAW AND PRACTICE HANDBOOK SERIES (1993).

> Exchange-rate instability has adverse effects on intra-European capital movements and monetary integration. If foreign exchange rates fluctuate by more than 20% or 30%, investment becomes uncertain and uncompetitive, with the adverse result of reduced output and fewer jobs in affected industries. Pressure could grow for protectionism, which would jeopardize the liberalization of trade in goods and services. Currency stability, on the other hand, fosters price stability.

John H. Works, Jr., *The European Currency Unit: The Increasing Significance of the European Monetary System's Currency Cocktail*, 41 BUS. LAW. 483 n.4 (1986).

40. *See* GOODMAN, *supra* note 15, at 183.

41. The first phase, the European Exchange Rate Agreement, existed from 1972 to 1979. *Id.* at 182.

42. *Id.* at 192.

43. To do this, the central bank whose currency is near the top of its range against another currency must sell its overvalued currency and buy the undervalued one, in order to decrease the value of its own money. The opposite is true for the central bank whose currency is near the bottom of its range; it must buy its own currency and sell the other. Works, *supra* note 39, at 493-94.

a duty to see that the parities between their currencies remain relatively fixed. The system is thus a type of pegged exchange arrangement.

The divergence indicator, on the other hand, is designed to provide a measure of the behavior of one country's currency against the weighted average of all the other currencies. This weighted average is the well-known European Currency Unit (ECU),[44] which itself is sometimes inaccurately portrayed as a currency. In fact, it is not legal tender; it is merely a unit of account "containing a specific amount of [each of] the . . . European currencies."[45] If an exchange rate imbalance shows up under the divergence indicator,

> [r]ather than two currencies being at fault, as in the grid system, one country only is to blame for the ECU divergence, and the responsibility of adjustment is place entirely on it.[46]

Participation in both the parity grid and the divergence indicator is ultimately voluntary.[47]

It is apparent that when currencies in this system are not excessively strained by market pressures, the parity grid and the divergence indicator keep monetary policies in line with E.U. goals. Yet these two devices have proven to be inadequate when overpowering market forces put the integrity of one country's currency at stake. In 1992, Britain and Italy felt compelled to remove their currencies from the European Monetary System entirely.[48] Because of the voluntariness of the current exchange regime, and the instability that it has brought, E.U. leaders have wanted to make the requirements of harmonious monetary policy-making and exchange rate stability firmly binding on all member countries.

EMS rules allow the central banks to buy or sell other European Union member currencies *before* the limits of their bilateral bands have been reached (although this action must first receive the approval of the central bank whose currecy is so affected), and intervention in non-EC currencies is always allowed without prior approval. GOODMAN, *supra* note 15, at 193.

44. "The ECU . . . is used as a benchmark against which official exchange-rate parities are set, as a measure of the overall strength or weakness of a currency against the average of the rest, and as the unit of account for interventtion, credit support, and settlement between the monetary authorities of the member states." Works, *supra* note 39, at 484.

45. *Id.* at 494.

46. *Id.* at 495.

47. So ruled the European Court of Justice in Schlüter v. Hauptzollamt Lörrach, [1973] E.C.R. 1135, 1161.

48. Emma Tucker, *Obligations of European ERM Members*, FIN. TIMES, Aug. 26, 1992, at 5.

B. *The Maastricht Treaty and the Leap Toward Monetary Union*

The treaties that created the European Union did not originally envisage a common monetary institution.[49] Yet the leaders of the E.U., in an effort to eliminate remaining transactional frictions, have sought in recent years to achieve a full unification of currencies, called European Monetary Union (EMU).[50] The last step toward this union is the monetary integration provided for in the Maastricht Treaty. Maastricht sets three goals for the establishment of a new monetary regime: 1) creation of a single European Central Bank; 2) implementation of uniform foreign exchange policies; and 3) creation of a single currency.[51] EMU would be *mandatory* for all E.U. members.

The single European Central Bank (ECB) called for in Maastricht would set monetary policy for the entire E.U., and "would be empowered to enforce binding rules on national budgets."[52] The Bank would be independent of national governments and even E.U. authorities.[53] Individual central banks would continue to exist in a European System of Central Banks, which would be comprised of the main ECB and the national central banks together.[54] Individual countries' central banks would not be eliminated, but would become subordinate to, and func-

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49. The Treaty of Rome, which established the E.U., did not create or envision a supranational monetary institution. Articles 104 and 107 of that treaty laid down the general requirement that member countries should maintain equilibrium in balance of payments and should give due regard to each others' exchange rates. Additions to the Treaty, such as the Single Euorpean Act, still did no more than set forth general policy statements to be followed. *See* MANN, *supra* note 5, at 501.

50. The stages leading to EMU are as follows: 1) Close coordination of economic policies of member states; 2) Beginning January 1, 1994, the prohibition of any restriction on the movement of capital and payments, not only among member states but also between states and third-party states, restrictions on government deficits, the gradual establishment of the independence of each state's central bank (Arts. 109b and 108 of the EC Treaty), and treatment of exchange rate policy by each state as a matter of common interest (Art. 109m, para. 1); 3) Beginning January 1, 1999, at the latest, adoption of a single monetary policy and a single exchange rate policy. *See* GOODMAN, *supra* note 15, at 202-08.

51. *Id.* at 182.

52. *Id. at 203.* Fiscal controls are thought to be a necessary part of EMU's integrated scheme because of the ripple effect that deficit spending in one country could have on the other countries. In general, a government that over-borrows to finance a budget deficit faces higher interest rates and a fall in the value of its currency. But under EMU, E.U. countries will have none of their own currencies to support. Consequently, an over-borrowing government would have no concern over the possibility of a rise in domestic interest rates. Instead, any interest rate increases from unilateral deficit spending will be spread out over the whole E.U. *See Shades of Sovereignty*, THE ECONOMIST, Dec. 15, 1990, at 69.

53. GOODMAN, *supra* note 15, at 204.

54. David Folkerts-Landau & Peter M. Garber, *The ECB: A Bank or a Monetary Policy Rule?*, *in* ESTABLISHING A CENTRAL BANK: ISSUES IN EUROPE AND LESSONS FROM THE U.S., 103 n.1 (Matthew B. Canzoneri, Vittorio Grilli & Paul R. Masson eds. 1992).

tionaries of, the central bank of the E.U.

Maastricht's single currency would be the ECU, which would evolve from its present form as a unit of account to having the full status of legal tender. The E.U.'s Council of Ministers, acting pursuant to the unanimous vote of the member countries, would be empowered to take all necessary steps to introduce the ECU as the sole currency, and would have the power to establish ECU exchange rate arrangements with other currencies.[55] At least one non-member of the European Union, Sweden, has expressed its confidence in the ECU as legal tender by pegging its currency to it.[56]

EMU is thus intended to have the practical characteristics of a single currency, brought on and maintained by common monetary and exchange rate policies set by the ECB. With national central banks giving up "their right to formulate independent national monetary policies,"[57] however, serious concerns have arisen over the priority of national economic interests and the loss of national sovereignty.[58] These concerns pattern the assumptions of monetary integration examined above.

III. LEGAL AND POLITICAL CHALLENGES TO EUROPEAN MONETARY INTEGRATION

A. *Questioning the Need to Keep Politics Divorced From Monetary Policy-Making*

After the collapse of the Bretton Woods System, the particular objective of each central bank of the European Union depended not on the goals of the E.U. but on "the relationship between the central bank and the [individual] government."[59] Some central banks are almost totally independent, while others are far more controlled. Notwithstanding the E.U.'s aim of creating a single central bank unbridled by political influences, the reality is that central bank independence has remained a contentious issue. Although the cost on a E.U. member of pursuing monetary policies divergent from those of the E.U. has risen,[60] pressures against separating politics from monetary policy have also emerged. The real question is, should the ECB remain as politically independent from the E.U. and the currencies of the member countries as the central banks of the member countries are now?

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55. Art. 9; *see* 826-27.

56. Robert Taylor, *Sweden and the EC; Sweden Comes in from the Cold*, FIN. TIMES, June 14, 1991, § 1, at 21.

57. GOODMAN, *supra* note 15, at 204, *quoting* Karl Otto Pohl, *Two Monetary Unions—the Bundesbank's View*, Speech to the Institute for Economic Affairs, London, July 2, 1990.

58. *See id.* at 219.

59. *Id.* at 2.

60. *Id.* at 183.

A paradigm for the political independence of the ECB has been the German central bank, the Bundesbank. One of the most independent central banks in the world,[61] it wields more control over its own domestic monetary policy than any other central bank in Europe.[62] The Bundesbank also exerts enormous influence on the central banks of other E.U. members.[63] With the example of the Bundesbank in mind, some central bankers have accepted that the future ECB should also be politically independent.[64] Independence from political influences has been built into the proposed statutes of the ECB,[65] and now that Frankfurt, home of the Bundesbank, has also been chosen for the home of the ECB, political independence in European monetary policymaking is virtually assured.[66]

Yet the hope for a politically independent ECB has done little to divert the attention of the existing central banks from their chief concern: their domestic economies. A recent refusal by the Bundesbank "to lower its discount rate one more time . . . underscores the unwillingness of European countries to sacrifice national economic interests for the good of all Europe."[67] When the Bundesbank has considered the monetary policy of the E.U., "it has done so largely to investigate the impact of external economic factors on German inflation."[68] The Bundesbank is not a friend of European Monetary Union:

> [It] has played the role of leading dissident over the establishment of a single European currency . . . . The Bundesbank stands to lose everything if Maastricht is implemented as planned . . . . It managed to set the admission criteria for nations wanting to join a single currency so high as to be almost impossible to fulfill.[69]

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61. *See generally id.*

62. Other important European central banks enjoy far less independence. The Banque de France, for example, is fully dependent on the government; it is effectively an agent of the French Finance Ministry. *Id.* at 104. This dependence in France prevented the emergence of a powerful internal opponent to the government's growth-oriented strategy. *Id.* at 139.

63. One economist has observed that the current European Monetary System is essentially "'an agreement by France and Italy to accept German leadership in monetary policy, imposing constraints on [their] domestic monetary and fiscal policies.'" *Id.* at 195-96.

64. *See, e.g.*, *Lamont Says UK Accepts Independent EC Central Bank*, REUTERS, Nov. 21, 1991.

65. Nieck Ammerlaan, *Frankfurt-Based EMI to Inherit Bundesbank Policies*, REUTER EUR. BUS. REP., Oct. 29, 1993.

66. *Id.*

67. Lawrence Ingrassia & Peter Gumbel, *Changing the Rules: Europe's Money Move May Pave Way to Rise in the Global Economy*, WALL ST. J., August 2, 1993, at A1.

68. Peter Gumbel, *Germany's Neighbors Are Bridling At Its Apparent Inward Turning*, WALL ST. J., Aug. 2, 1993, at A10. German inflation, brought on by the high costs of German unification, has repeatedly been cited as the single biggest factor in causing the ERM to buckle.

69. *Id.*

Top central bank officials in Europe have criticized the Maastricht Treaty on the grounds that it should do more to bring about *political* union in the E.U., ostensibly to ensure that the ECB remains independent from member country politics.[70] But political union would mean the loss of *all* national control over monetary policy. Many politicians resist giving up control over their monetary policy, because that would leave them powerless to use monetary policy to achieve domestic goals.[71] There is evidence that some politicians are happy with the status quo, or are at least retreating from full-fledged support for ceding further political controls over monetary policy to the E.U.[72] Since the choice of the currency exchange regime has great influence on whether independent monetary policy-making can have effectiveness domestically, and offers political gains, politicians have wanted to retain that choice. Politicians worry that once a single currency is established, they will lose their power to devalue their own currencies, power which has often been used to increase exports and curb trade deficits.[73]

The operation of market forces has called the value of ECB independence into question. In the wake of turmoil in the European currency markets during the summer of 1993,[74] there are renewed doubts about the effectiveness of politically independent monetary policy-making. In the 1993 devaluations, small changes in perceived exchange rate risk caused massive currency shifts, and the market response overwhelmed the ability of the central banks to intervene as required.[75] Two governments felt compelled to withdraw their currencies from the European Monetary System in an effort to reduce the strain on their central banks, which had been required to repurchase vast quantities of their own money. The biggest threat to effective ECB policy-making appears, somewhat ironically, to be the demonstrated fragility of fixed exchange rates.

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70. *Id.*

71. For a discussion of how monetary policy is ineffective in a system of fixed exchange rates, see *supra* note 24; *see also*, Goodhart, *supra* note 21, at 24-27.

72. *See infra* note 102. As to capitalizing on favorable economic conditions, European politicians do not, on one view, have a direct interest in shaping monetary policy. The "dates of elections in many European countries are not fixed, governments are able to call early elections so as to take advantage of existing economic expansions." Thus, while politicians may not care about creating monetary expansions themselves, there is still an incentive for using expansions for political gain. GOODMAN, *supra* note 15, at 212.

73. Frederick Painton, *Cold Feet on the Dance Floor: With Britain Joining Europe's Monetary Club, the Partners may Squabble even Louder about how closely to Embrace one Another*, TIME, Oct. 22, 1990, at 55.

74. The predetermined bands in which currencies were allowed to fluctuate had to be widened as a result of massive devaluations. *See* Michael Sesit, *Currency Markets Cool Despite Loosened ERM*, WALL ST. J., Aug. 2, 993, at C1.

75. Fry, *supra* note 15, at 48.

While the proposed independence of the ECB is generally endorsed by central banks, the same central banks do not have a vested interest in implementing that independence. Central banks, politicians, and even the marketplace remain focused on the performance and well-being of domestic affairs. This will make it difficult to divorce national concerns from monetary policy-making throughout the E.U. as planned under Maastricht.

B. *Legal Challenges to the Dilution of National Monetary Sovereignty*

While the issue of central bank independence at the national level centers around the question of who should control the formation of monetary policy, the same issue at the European level centers around the effort to preserve national monetary *sovereignty*.[76] Maastricht calls for an unprecedented shift of sovereignty in monetary affairs away from national central banks and even from governments.[77] How realistic is the concern that monetary union threatens the integrity of national sovereignty, and what has been the effect of this concern?

Unquestionably, members of the European Union have gradually lost their autonomy over monetary policy as the Union has grown,[78] but, as seen above, "each government has still wished to keep for itself some margin of policy flexibility."[79] Current discussions of EMU often do not characterize it as a union of money at all. EMU is described as a system of irrevocably fixed exchange rates involving a common monetary policy. The proposed common currency is said, under this characterization, not to be essential to this system, but is instead merely a natural and desirable further development. This latter explanation does not bypass concerns about the surrender of monetary sovereignty; it merely rephrases the issue.[80] The principal architect of European economic and political integration, European Union President Jacques Delors, makes no secret of his view that "[a] high degree of supra-nationality, or transfer of sovereignty to the [Union], is essential."[81]

As a consequence of the concern surrounding sovereignty loss, legal challenges have been mounted against further unification of Europe's currencies. In Germany, twenty separate lawsuits were brought to the German high court[82] by right and left wing elements of

76. GOODMAN, *supra* note 15, at 207-08.

77. *Id.* at 182-83.

78. Penny-Marie Kartos, Note, *Sweden-Application for European Community Membership-Sweden Fears Loss of Political Neutrality with Community Membership*, 22 GA. J. INT'L & COMP. L. 673 (1992).

79. GOODMAN, *supra* note 15, at 183; *see* Salvatore, *supra* note 13, at 32.

80. MANN, *supra* note 5, at 16, n.69.

81. *Quoted in* John Ardagh, *Will the New Europe Please Sit Down*, N.Y. TIMES, Nov. 10, 1991, at A42.

82. *German Supreme Court Approves Maastricht Treaty*, THE REUTER EUROPEAN

German politics. These suits claimed that Germany's constitution, which declares that all of the country's power emanates from the people, prevents the government from transferring a significant amount of monetary authority to the E.U.[83] In its decision, the court approved the German ratification of Maastricht[84] but with important reservations. According to the court, each further step toward EMU must be monitored and approved by the German government, with the court reserving for itself the right to review each step to ensure that the democratic guidelines of the German constitution are observed.[85] Most significantly, the court's decision affirmed the principle of sovereignty over the process of monetary integration, up to and including the right to withdraw from the EMU at any time.

The judgment of the German high court cuts the heart out of the effort to make monetary integration "irreversible."[86] As one prominent observer professor concluded from this decision,

> I doubt whether many of us will ever live to see the [Deutschmark] replaced by the ECU. After this decision, Europe will never become a super-state. The constitutional court will always remain our final guardian in what has turned out to be a preventive ruling.[87]

At the least, the decision places a cloud over further steps to bring Maastricht into force. At worst, it will lead to a permanent judicial veto over German accession to EMU.

Similar constitutional challenges were brought in France and Denmark. The French constitutional court decided its case by ruling that Maastricht's monetary unification provisions are contrary to the French constitution.[88] It analyzed the objective of EMU[89] and concluded that

COMMUNITY REPORT, Oct. 12, 1993.

83. Christopher Wolf & Klaus Kohler, *Currency Crisis Means New Ills for Maastricht*, NAT'L L. J., Sept. 6, 1993, at S14. The conservatives essentially argued that Maastricht would undermine German sovereignty, while the liberals claimed that the Treaty did not establish enough control over the unelected branches of the European Union, the Commission and the Council of Ministers. *Id.* For a discussion of the Democracy Deficit in the European Union, see *infra* note 115.

84. The decision was handed down on Tuesday, October 12, 1993.

85. The thrust of the argument advanced in the lawsuits was that Maastricht violated the provision in the German constitution stating that "[a]ll state power emanates from the people." Wolf & Kohler, *supra* note 83.

86. Timothy Garton Ash, *Foreign Focus: Today Even the Germans are Euroskeptical*, SUNDAY TELEGRAPH, Oct. 24, 1993, at 22.

87. *Id.*

88. *See* Juliane B. Kokott, *Treaty on European Union is contrary to French Consitution- amendments to Constitution-national sovereignty*, 86 AM. J. INT'L L. 824 (1992) (noting Decision No. 92-308 DC. 1992 Journal Officiel de la Republique Francaise 5354, Conseil constitutionnel, April 9, 1992).

89. Embodied in art. B and G of Maastricht and art. 2 of the EC Treaty.

> it follows from the provisions applicable from the start of the third stage of the economic and monetary union that the accomplishment of such an objective shall be brought about by a single monetary and a single exchange rate policy under circumstances such as to deprive a Member State of its powers in an area where the essential conditions for the exercise of national sovereignty are involved.[90]

After this decision, the French National Assembly adopted the necessary amendments to the French Constitution to remove this flaw, and ratification of Maastricht was narrowly approved.[91] A suit was filed in Denmark as well,[92] despite Danish approval of Maastricht in a second referendum after Denmark was exempted from monetary unification. This shows that the same constitutional concerns cross many borders.

Finally, Britain nearly saw its own constitutional challenge. Lord Rees-Mogg, a prominent actor in financial circles, had considered bringing a challenge against Maastricht in the Appeal Court, again on the grounds of its inconsistency with national sovereignty. He changed his mind only after the fierce currency speculation in the summer of 1993 caused the ERM to lose stability, diluting the sovereignty threats he saw.[93] The Bank of England has expressed similar doubts about the validity under the English constitution of the transfer of ownership of foreign reserve assets to the European Central Bank. The Bank of England believes it is sufficient if each central bank agrees to make available a predetermined amount of its own reserves for the disposal of the ECB, but that no further decision-making authority be transferred.[94]

Despite such challenges within their own jurisdictions, E.U. law obligates member countries to facilitate the achievement of E.U. objec-

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90. Kokott, *supra* note 88, at 827 (noting Decision No. 92-308 DC. 1992 Journal Officiel de la Republique Francaise 5354, Conseil constitutionnel, April 9, 1992). Specifically, the French court held the following provisions to be contrary to the French Constitution: Art. B of Maastricht (insofar as it provides for the establishment of an economic and monetary union); Art. G of the EC Treaty (insofar as the requirement of irrevocably fixed exchange rates is inserted into it); Arts. 105 para. 2, 105a, 107, 109 (referring to the European Central Bank and to the European Central Bank System); and Arts. 109g, 1091 para. 4 (establishing an irrevocably fixed value of the ECU and irrevocably fixing exchange rates between member countries). *See id.*

91. *Id.* at 828.

92. *See Maastricht Sail On*, THE ECONOMIST, May 22, 1993, at 15.

93. *Britain OK's European Union Treaty*, CHI. TRIB., Aug. 3, 1993, at 13. For a description of the dynamics of recent speculative attacks on the weaker currencies in the ERM, see John S. Suits, *To Save the European Union, Create New ERM, Minus Mark*, CHRISTIAN SCI. MONITOR, Aug. 6, 1993, at A18. In 1992, Britain and Italy pulled out of the EMS, also due to speculative pressures. This resulted in the margin of fluctuation in the divergence indicator being raised from 2.25 percent to 15 percent, meaning that currencies could lose as much as 15 percent of their previous value relative to the strongest currencies in the system.

94. Goodhart, *supra* note 21, at 17.

tives, including the implementation of EMU.[95] For now, the members remain free to alter their exchange rates.[96] Given the serious legal impediments to Maastricht now in place in Germany, a country that is an indispensible player in European monetary integration, it is quite likely that the legal challenges against Maastricht's monetary union provisions have put off monetary union indefinitely.

C. *Challenges to the Perception of a Popular Support for Monetary Integration*

The legal challenges to currency unification question whether there are constitutional limits on the transfer of sovereign powers of monetary decision-making. Concurrent challenges posed by shifting political attitudes question whether sovereignty should be relinquished for reasons of national pride, apprehension, or skepticism, and whether Maastricht actually represents the wishes of Europeans.

1. Electoral Evidence of the Level of Support for Monetary Union.

While the governments of most members of the European Union have officially supported the creation of a single currency,[97] many mainstream leaders, notably former British Prime Minister Margaret Thatcher,[98] Jacques Chirac in France, and the Social Democrats in Germany, have taken positions opposed to further monetary integration.[99] Even parties that previously gave their full support to mone-

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95. Article. 5, e.g. , emphasizes loyalty and solidarity among member states.

96. Cases before the European Court of Justice confirm this view. In Compagnie d'Appprovisionnement de Transport et de Credit S.A. v. Commission, Joined Cases 9 and 11/71, 1972 E.C.R. 391, 406, C.M.L.R. 529, the court held that "[i]t is clear from Article 107 that it is for each Member State to decide upon any alteration in the rate of exchange of its currency under the conditions laid down by that provision." 1972 E.C.R. at 406. *See* Works, *supra* note 39.

97. Stephen George, *European Community*, *in* THE OXFORD COMPANION TO POLITICS OF THE WORLD 285, 287 (1993).

98. Before leaving office, Thatcher denounced the "specter of a 'European superstate, exercising a new dominance from Brussels.'" GOODMAN, *supra* note 15, at 207 n.59

99. Kevin Muehring, *EMU's Bitter Medicine - Tough Rules May Discourage Membership*, INST'L INVESTOR, April 30, 1992, at 37. The Social Democrats in Germany later softened their position into an insistence for an opt-out provision similar to Britain's. Former Bundesbank President Karl Otto Poehl agreed in principle with Margaret Thatcher about the loss of sovereignty, but he did think that monetary union should be implemented when all member States in the E.U. were capable of fixing their exchange rates. Randall Mikkelsen, *Poehl Says Thatcher was Right on Monetary Union*, REUTER LIBRARY REP., Nov. 30, 1990.

Concerns of politicians about sovereignty loss in monetary policy-making have been expressed before. During negotiations of amendments to the articles of the International Monetary Fund, spokesmen for the U.S. administration said that they did not want "supranational government" running the U.S. economy, and that there

tary union have significantly toned down their enthusiasm.[100] Voters are of the opinion that if they put a different political party in office, the successor government will, at least initially, seek as much autonomy from international constraints as possible.[101]

European electorates have shown a consistent level of opposition to further monetary union. In Denmark, Maastricht was originally rejected in a referendum, a rejection viewed as the embodiment of fears over the loss of national self-determination.[102] Only after Denmark successfully negotiated exemptions from some of Maastricht's provisions, including the currency unification requirement, did Danish voters accept the Treaty in a second referendum.[103] The Danish experience brought the debate about the efficacy of monetary union to the forefront of European politics, where it has remained. Not long thereafter, French voters similarly came close to rejecting the Maastricht Treaty.[104]

To Germans, the loss of their beloved Deutschmark to the ECU implies higher inflation.[105] This feeling is a "common culture in the general orientation of the economy," said Hans Tietmeyer, now Bundesbank President, who is warmer to the idea of EMU than his predecessor Helmut Schlesinger, but who is not likely to sacrifice the stability of the mark for it.[106] The Social Democratic Party could, according to one German politician, lead the rallying cry for anti-EMU, pro-Deutschmark in the 1994 federal elections.[107] A recent poll showed that only 50% of Germans supported Maastricht, and that 70% believed that the Deutschmark cannot be replaced with the ECU.[108]

The political risks of Maastricht at the hands of voters are best exemplified in Britain. There, voters have expressed sustained criticism, even outrage, over the behavior of their political leaders toward

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should be no "substantial limitation on the sovereign right of nations to determine their policies." Gold, *supra* note 4, at 459.

100. *See, e.g.*, Tyler Marshall, *In Germany, One of Unity's Biggest Backers Backs Off*, L.A. TIMES, Sept. 11, 1993, at A3 (describing the German Christian Democratic Party's toning down of support for European integration, but adding that the party still fully supports monetary integration in principle).

101. Gold, *supra* note 4, at 478.

102. Hilary Barnes, *The Edinburgh Summit: Danish "No" Voters Start to Wobble*, FIN. TIMES, Dec. 10, 1992, at 3.

103. *See* Alan Riding, *Unity for Europe Survives Key Test as the Danes Vote*, N.Y. TIMES, May 19, 1993, at A1.

104. *See id.*

105. Muehring, *supra* note 99, at 37. A social psychologist even speculated that abandonment of the Deutschmark might deprive Germans of their identity to the degree that it would affect their behavior unpredictably. *Id.*

106. *Watcher on the Main*, THE ECONOMIST, Oct. 9, 1993, at 80.

107. *See* Ash, *supra* note 86.

108. Marcus Kabel, *German Court Approves Maastricht, Bonn Pleased*, REUTER EUROPEAN COMMUNITY REPORT, Oct. 12, 1993.

monetary union. Prime Minister John Major gambled his political career when he supported Maastricht. Continued opposition in Parliament, echoing the original concerns of Margaret Thatcher, nearly cost Major his position. More recently, the Prime Minister has significantly changed his stance on monetary union. He now believes that "the [E.U.] will remain a union of sovereign states. That is what its people want: To take decisions through their own parliaments."[109]

In France, polls show that a clear majority would now vote to reject Maastricht, and only a third of the people now believe that France can benefit further from continued European integration.[110] Insistence on monetary union is also giving pause to countries that have been considering entry into the European Union and have otherwise shown confidence in the E.U.'s goals. Austria, Sweden, Finland, and Norway began negotiating their entry into the E.U. in 1993.[111] Swedish opposition to their country's membership has grown since then. Swedes share a concern that E.U. membership will endanger their unique welfare state.[112]

The short-term political future paints an uncertain picture for the Maastricht Treaty. Voters in Europe, especially in this recession, are increasingly electing political fringes that share a resentment for further European integration. A French observer foresees an unholy alliance between the extremes of the right and left, united to oppose EMU-induced policies. "The National Front accuses the French elite of sacrificing French identity for the sake of European integration, while on the left the . . . Communists" also oppose EMU.[113] In Italy, a virtual prerequisite to EMU is massive spending cuts and privatizations of large chunks of the public sector. The government would, in doing so, quite literally be putting itself out of a job, all in the name of Maastricht and monetary union.[114]

2. Skepticism About the Democratic Basis of Maastricht

If the potential political fallout from a perceived loss of monetary sovereignty does not bode well for monetary union under Maastricht, then concerns that the Treaty lacks a democratic basis may spell certain doom for it. Students of European Union law are aware of the "Democracy Deficit" that plagues E.U. institutions.[115] With the ad-

109. *European Union: Crisis Revives Controversy Between Federalists and Unionists*, EUR. REP., Oct. 2, 1993, No. 1890.

110. *Germany, France and the Merry-Go-Round*, THE ECONOMIST, Oct. 2, 1993, at 49.

111. Riding, *supra* note 103.

112. Kartos, *supra* note 78, at 673. Possibly 45 percent of Swedes now oppose full E.U. membership, while only 14 percent opposed entry at the time Sweden's membership application was submitted. *Id.*

113. Muehring, *supra* note 99, at 37.

114. *Id.*

115. For a description of the Democracy Deficit, see J.H.H. Weiler, *The Transfor-*

vance of a politically independent ECB, this Deficit may also come to plague the ideal of E.U. level monetary policy-making.[116] Furthermore, Europeans increasingly see politicians and bureaucrats as operating on a double standard, telling their constituencies that they will not pursue monetary union if it is not in the national best interest, while pressing relentlessly for further union behind closed doors.

A stinging criticism of Maastricht is that it will add an unbearable burden to the regulations and costs of the E.U., at a time when competitiveness is declining and unemployment is rising. The Treaty does not, according to Lord Rees-Mogg, "square well with the real Europe."[117] Similar anti-EMU cries were heard from business leaders, most strikingly from ones who were pro-EMU not long ago.[118]

An even sharper criticism is that the public feels that it has been mislead over the years by politicians who made clear promises not to relinquish national monetary sovereignty, even as they were "systematically undermining it."[119] Although the process of European integration is often described as enjoying broad popular support,[120] recent

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mation of Europe, 100 YALE L.J. 2403, 2466-74 (1991). This article describes the Democracy Deficit as the ability of the unelected branches of the E.U., the Commission and the Council, to pass legislation usurping laws passed by national parliaments, as well as the comparative lack of political power in the only elected E.U. body, the European Parliament. *See also* EUROPEAN BANKING, *supra* note 15, at 1-9; John Ardagh, *Will the New Europe Please Sit Down*, N.Y. TIMES, Nov. 10, 1991, at 42 (describing the power of Jacques Delors, the unelected President of the European Commission, as "equal" to that of the twelve heads of Europe who appointed him).

116. See Mullineux, *supra* note 15, at 1-9. A second Inter-Governmental Conference was convened in December 1990 to discuss this issue, i.e., who should appoint the board of the independent ESCB and to whom it should be accountable.

117. William Rees-Mogg, *At the Unhealthy Heart of Europe*, THE TIMES (London), Monday June 14, 1993, at 16.

118. Muehring, *supra* note 99, at 37.

119. Margot Norman, *We Are Good Europeans After All*, THE TIMES (London), Sept. 21, 1993, at Features section. In Europe, there has not been any serious defense of economic nationalism since the collapse of Bretton Woods. Instead, governments, at least in Britain, have pushed constantly for integration. Bill Jamieson, *Economic Agenda: Britain: The Lesson of our History*, SUNDAY TELEGRAPH, May 23, 1993, at 40.

120. Newspapers report that at the start of 1993 there was a growing feeling that monetary union was well on course. *See, e.g.*, John Palmer, *Advocates of EMU Take Heart From Germany's Economic Problems*, GUARDIAN CITY PAGE, Jan. 28, 1993, at 13. These accounts describe statements by politicians that imply solid support for EMU. For example, Chancellor Helmut Kohl of Germany was reported as saying that an accelerated schedule for EMU "was needed in part to prevent 'any slowing down in the timetable for EMU.'" *Id.*

Commentators also described Maastricht as being well on course politically. For example, "[i]f a member state withdraws from the EMS, [it suggests] a step back from the process of European integration — a process that, by the 1980's, had acquired broad popular appeal." GOODMAN, *supra* note 15, at 200. Two economists observed that "membership in the EMS has been invested with enormous political importance at the very highest levels of government." *Id.*, *quoting* Jeffrey Sachs &

events cast serious doubt upon this view. The E.U. is now realizing that politicians have taken voter support for Maastricht for granted.[121] In Germany, for example, polls indicate that "[m]ost ordinary Germans . . . are furious at not being consulted about Maastricht in a referendum similar to the ones held in France, Denmark and Ireland. Faced with the choice, as they see it, of keeping the German economy afloat or keeping European idealism afloat, German interests clearly win out."[122]

At the extreme, this sentiment has given rise to the notion that officials and ministers in both national governments and in the E.U. actively conspired to say one thing to their people and another thing to each other.[123] "Governments in Europe are paying the price of a lack of open government and democratic debate on their European policies,"[124] seen by some as a fatal defect in Maastricht. Lord Rees-Mogg stated that "[t]he strange thing about the Maastricht treaty — and one of its greatest weaknesses — is that it will remove the control of European economic policy from the European national parliaments and transfer power to non-elected European bodies, particularly the European central bank."[125] The German high court, in allowing Germany to sign Maastricht, observed that

> [i]t is of decisive importance that the *democratic basis* of union should keep pace with integration and that a vital democracy should be maintained as the integration . . . continues.[126]

3. Current Downturns in the European Economy and the Reemergence of Nationalism.

European politicians and intellectuals who favor EMU suggest that the long period of relative prosperity during the Cold War has made Europeans unwilling to pull together and face the challenges of the future.[127] Europeans place their own well-being ahead of utopian

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Charles Wyplosz, *The Economic Consequences of President Mitterand*, *in* ECONOMIC POLICY 2, 294-95 (1986). Such descriptions cannot be viewed as embodying the sentiment of most European voters today.

121. The theme of a recent international conference held by an organization called the "Europeaum" was that "[w]ith the exception of Britain, governments and administrators of the member states, spurred on by the Commission in Brussels, have acted alone, taking for granted the commitment to Europe of their peoples." Norman, *supra* note 119 (quoting Professor Jean Charlot).

122. Gumbel, *supra* note 68, at A10.

123. "[T]he conspiracy among officials and ministers to say one thing to each other and another to their national publics was so close to second nature that the problem of public consent was taken for granted." Norman, *supra* note 119 (quoting William Wallace).

124. *Id.* (quoting Professor Jean Charlot).

125. Rees-Mogg, *supra* note 117.

126. Kabel, *supra* note 108 (emphasis added).

127. *See* Craig R. Whitney, *Western Europe's Dreams Turning to Nightmares*, N.Y.

aims, especially in this worldwide recession.

> [P]rosperity—a basic underpinning of the European [Union] since its founding in 1957 and, some believe now, the main one—is threatened in Western Europe.[128]

EMU is a receding goal, as people worry more and more about unemployment and economic uncertainty.[129]

More ominous has been the reemergence of violent extremism in Europe. Resentment against refugees pouring into Western Europe, mostly into Germany, has been part of this problem.[130] The war in the Balkans, although not directly involving the members of the E.U., has been another part. A recurring sentiment is that "Europe is dying in Sarajevo."[131] Increasingly violent nationalism in Europe is slowly dashing the dreams of a "United States of Europe" once articulated by Winston Churchill. One of the dreams, whose embers are fading fast and may never be reignited, is monetary union.

IV. CONCLUSION

It is clear that as European governments and E.U. leaders continue to push for monetary union,[132] they are meeting increasing, perhaps overwhelming, resistance from their courts and constituencies. Ideas about the degree of central bank independence in such a union remain controversial. Whether motivated by economic woes or nationalistic urges, Europeans do not have unification and integration on their minds. Their leaders have been slow in getting this message and astonished by the prevailing animosity to further union.[133] These

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TIMES, Aug. 8, 1993, at A1.

128. *Id.*

129. Ray Moseley, *Dream of European Unity Fractured by Tough Times*, CHI. TRIB., Aug. 15, 1993, at C1.

130. *See, e.g.*, Whitney, *supra* note 127. This is perhaps best exemplified by neo-Nazi violence in Germany.

131. *See, e.g.*, *id.* (reporting that these words appeared on a poster in Bonn's market square); *Thousands Demonstrate in Barcelona for Peace in Bosnia*, AGENCE FR. PRESSE, Nov. 28, 1993 (reporting that these words were on a banner carried among a group of some 14,000 protesters).

132. The European Commission last year was enthusiastic of a "fast track to EMU" idea, which was supported by the governments of Germany, Italy, Spain, Ireland, and the Benelux countries. Palmer, *supra* note 120.

133. "Former French Foreign Minister Jean Francois-Poncet calls the decision [in late summer 1993] to allow wider currency fluctuations a 'devastating' political setback to European leaders. The two men who invented the exchange-rate system back in 1979, former French President Valery Giscard d'Estaing and former West German Chancellor Helmut Schmidt, assailed the decision as "a de facto suspension" of the monetary system that 'is evidently in contradiction' with the European Union's goal of a single European currency by the end of the decade." Lawrence Ingrassia & Peter Gumbel, *Changing the Rules: Europe's Money Move May Pave Way to Rise in the Global Economy*, WALL ST. J., Aug. 2, 1993, at A1.

leaders are, accordingly, changing their expectations about the future of Maastricht.[134]

Economists and commentators had predicted a smooth ride for monetary integration. Grand ideas of a single European currency, the ECU, were popular.[135] Just prior to the current challenges to Maastricht, however, one observer ironically cautioned that "an economic recession of serious magnitude could provoke a resurgence of nationalism and, with it, a reimposition of capital and trade controls."[136] What had been forgotten or taken for granted in all of these expectations was the strain that monetary unification efforts would put on the assumptions that unification makes about national sovereignty.

There is an optimistic view that Maastricht's provisions on monetary union can be saved through revisions. One American financier sees hope in reconstituting the ERM by letting the Deutschmark float, while pegging the rest of the currencies to the franc. This would allow Germany time to bring its deficit under control and thereby control its inflation.[137] Former Bundesbank President Karl Otto Poehl said, "I continue to believe that the way to deal with actual or potential instability of exchange rates is through close co-operation between central banks."[138] The current pessimism toward monetary union could well be "the child of recession," and evaporate when times get better.[139]

Any revision to the Treaty in order to preserve its viability, however, would have to be a protocol instead of an outright amendment. "Such a protocol is now the only means of closing the gap between European elites and popular opinion."[140]Even the European Commission, whose President Jacques Delors has fervently sought monetary union, has conceded that the Maastricht timetable for EMU will be delayed.[141]

The prevailing view is not optimistic; it is instead that

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134. "British Prime Minister John Major, a critic of the exchange-rate mechanism, said the timetable for economic and monetary union now looks 'totally unrealistic.'" *Id.*

135. This attitude was captured in expressions such as this: "The ECU may soon become an international reserve currency to rival the U.S. dollar and Japanese yen." Works, *supra* note 39, at 484.

136. GOODMAN, *supra* note 15, at 222.

137. *See* Suits, *supra* note 93.

138. Speech to the Conference Board of Europe, London (Oct. 20, 1981).

139. Wilbur G. Landrey, *Maastricht Treaty May be Nothing More than a Dead Horse*, ST. PETERSBURG TIMES, Oct. 17, 1993, at 2A.

140. Graham Mather, *Protocol for Survival - The Maastricht Treaty*, GUARDIAN, Sept. 24, 1992, at 17.

141. Sarah Lambert, *EMS Crisis May Delay Maastricht*, THE INDEPENDENT, Thursday, Feb. 4, 1993, at 24.

"Maastricht is dead."[142] Britain and other Union members want a common market and little else.[143] One observer has even stated that "[t]he idea of a United States of Europe is dead, at least in this generation, and maybe forever."[144] With legal and political obstacles to Maastricht having been set, it is not clear what sort of monetary regime will emerge in Europe. It is unlikely, given its strong desire to maintain the common market, the European Union will revert back to floating exchange rates.[145] It is just as unlikely the E.U. will move beyond mere policy coordination soon, despite Maastricht.

The primacy of national monetary sovereignty, in any event, has been reaffirmed for the time being. British Chancellor of the Exchequer Kenneth Clarke said recently, "[Charles] de Gaulle has been proved right about the importance of sovereignty."[146] The idea that nations are sovereign over their money, which has until now been taken as a descriptive statement subject to revision, has taken on a distinctly normative quality in Europe's Maastricht experience.[147]

If the road toward monetary union in Europe is viewed paradigmatically, then monetary sovereignty will become, contrary to expectations, an even more important variable as the world economy continues to integrate. Other countries, even those that do not consider EMU to be an appropriate model, will not be able to ignore the events that have unfolded in the European Union.[148]

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142. *See* Kabel, note 109; *see also*, Alex Brummer, *George to Voice Doubts on European Monetary Union*, GUARDIAN CITY PAGE, Feb. 10, 1993, at 11 (reporting that Eddie George, the Governor-designate of the Bank of England, had doubts about the prospect of EMU at a speech in Germany).

"If there was anyone present at that [Europeaum] Conference who believed there was the faintest breath left in the Maastricht Treaty, I didn't hear him . . . ." Norman, *supra* note 119.

143. Charles Bremner, *Kohl Attacks Britain on Monetary Union*, THE TIMES (London), Oct. 14, 1993.

144. Landrey, *supra* note 139.

145. Lal, *supra* note 27, at 303-04.

146. *The Moral of the Story is that Clarke Should Win*, THE TIMES (London), Sept. 15, 1993.

147. *Cf.* Pete du Pont, *Federalism in the Twenty-First Century: Will States Exist?* 16 HARV. J. L. & PUB. POL'Y 137 (1993). The author discusses how slow, deliberate monetary integration in the early United States achieved success without grave political costs. The U.S. experience can be compared to the current unification process in Europe.

148. GOODMAN, *supra* note 15, at 223.