Transnational Convergence: European Union and American Federalism

Patrick R. Hugg

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Introduction

Diverse forces oppose the European Union’s (EU) historic struggle to widen and deepen the confederation. As part of the current geopolitical

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1. Wim F.V. van Thoor, European Monetary Union since 1848 xiii (1996) (providing an in-depth historical and economic examination of European monetary union efforts from 1848 to 1995).


3. Europe has been radically transformed by the evolution toward European integration. See generally J.H.H. Weiler, The Transformation of Europe, 100 Yale L.J. 2403, 2406 (1990). “The context of European law is being fundamentally transformed ... embracing the plurality of social, political, economic, and cultural settings ... becoming more pluralistic and indeed plural ... appropriate to our time ... of globalization, post-modernism and fragmentation.” Francis Snyder, Editorial, 3 Eur. L.J. 1 (1997). And all this is a part of “the world transformation occurring all around 32 Cornell Int’l L.J. 43 (1998)
trend, the EU presents today's "most advanced model of... economic internationalisation, going 'beyond trade,' even attempting to 'democratise' political space beyond nation states." The EU, however, is struggling with the concrete and conceptual re-ordering of economic autonomy and national authority. The EU must confront the political and economic evolution and the pending accession of new members. The negotiations leading to the 1997 Amsterdam Treaty amply illustrate the complexity and sensitivity of many of these issues. None has proved as troublesome or as telling as the forced march to monetary union and a common currency. 

"No other... issue in the European Union is more important than whether and how Economic and Monetary Union will be attained. Success will have great political consequences and powerfully promote further integration. Similarly, failure or protracted delays will adversely impact even the

us." Bruce Ackerman, The Rise of World Constitutionalism, 83 Va. L. Rev. 771, 774 (1997). The Maastricht Treaty "marks a watershed..."; its monetary union provisions "form the culminating point of a long and difficult road towards a monetary order for the Community." Rene Smits, The European Central Bank: Institutional Aspects, in International Banking and Finance Series 10 (1997). Professor Brigid Laffan characterized the unprecedented originality of current European integration as without historical precedent, fluid in structure and substance, hovering between politics and diplomacy, states and markets; "that rarest of all historic phenomena, a studied change of regime... It is the reverse of conquest and quite different from incremental adjustment, which is the political norm, and from revolution, which is the social equivalent of an earthquake." Brigid Laffan, The European Union: A Distinctive Model of Internationalisation?, 1 European Integration Online Papers 2, ¶ 1 (Oct. 1, 1997) <http://eiop.or.at/eiop/texte/1997018a.html> (quoting F. Duchene, Jean Monnet: The First Statesman of Interdependence 20 (1996)).

4. Laffan, supra note 3, at 2, ¶ 1 (quoting R. O'Donnell, Economic Union, in Unsettled Europe: European Integration in a Transformed World (1997)).


6. The accession of new members presents issues of national power in the institutions of the Union, such as reweighting the "qualified majority voting" in the Council and limiting the number of Commissioners. The Amsterdam Treaty "has been widely described as disappointing and... inconclusive." George A. Bermann et al., 1998 Supplement to Cases and Materials On European Community Law 10 (1998). The very architecture of the Union will continue its evolution as its numbers grow and processes are streamlined to enable effective governance. "The administration was originally designed for a community of six member states; there are now 15, and there could be 25 or more members within 10 years or less." Dick Leonard, Eye on the EU, Europe, June 1997, at 4.

present level of political and economic integration."^{8}

As the European Member States labor to harmonize their economic strengths within the narrow timetable, conflicting political, economic, cultural, and social ideologies shape the public policy debate.\(^9\) Change is the norm, as Europe's "new socio-economic and political context ... [is] characterized by the rapid transition to post-industrialism, increasing globalization, sweeping changes in demography and social relations, trends towards supranational integration and a new 'post-cold war' politics."^{10} Amplifying this change is the global restructuring movement to streamline business operations and respond to technological innovation, free trade, and heightened competition.\(^11\) In particular, balancing budgets and reducing government debt require adjustments to past spending practices in Europe, calling into question a half century of generous social welfare programs and economic policy,\(^12\) including extensive government ownership of industry and commercial entities.

Economic fitness for unified monetary control, as measured by compliance with the Treaty's convergence criteria, varies from member to member. Conflict and protest have erupted over acceptable ways to trim the often bloated and unbalanced budgets of the European social-welfare governments. As the July 1998 deadline for measuring economic health and stability approached,\(^13\) the debate sharpened over how best to meet the

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8. BERMANN ET AL., supra note 6, at 7.

9. Professor James Nafzinger recently wrote of the rapid globalization: "Forces of both integration and fragmentation have gained momentum, as have the complexities of reconciling competing values. Lawyers face critical issues, for example, at the intersections of environmental management, economics, human rights, and sovereignty." James A.R. Nafzinger, Integrating International and U.S. Law: Environmental and Related Problems, 21 VT. L. Rev. 755 (1997). He cautions that "fundamental policy and legal issues can be resolved less by 'formal choice, in which the mind is governed by appeals to consistency, than by life-style choice.'" Id. at 758 (quoting CHRISTOPHER D. STONE, THE GNAT IS OLDER THAN MAN 280 (1993)). See also Joseph H.H. Weiler, Fin-de-siècle Europe: On Ideals and Ideology in Post-Maastricht Europe, in INSTITUTIONAL DYNAMICS OF EUROPEAN INTEGRATION 23, 39 (Deirdre Curtin & Tom Heukels eds., 1994) (providing a thoughtful essay about the erosion of foundational ideals in European integration, noting that critical value choices are involved in technocratic regimes).


12. Several commentators have concluded that most EU countries will need to undertake large-scale social security reform, focusing largely on public pension and health care systems to achieve the criteria. See, e.g., George Kopits, Are Europe's Social Security Finances Compatible with EMU?: Paper on Policy Analysis and Assessment of the International Monetary Fund 22 (1997) (analyzing the social protection provisions and convergence criteria country-by-country). "Throughout Europe, the euro, like globalization, has proved unforgiving of the inefficiencies of what Germans call the Vaterstaat — the consoling Father-State ... forcing a radical reconsideration of the model of European society.... The euro is shaking Europe like a massive electric shock." ROGER COHEN, The Cries of Welfare States Under the Knife, N.Y. TIMES, Sept. 19, 1997, at A1.

13. Finance Ministers of the European Union nations met early in 1998 to review the 1997 economic data from the Member States and decide which nations have strong and stable enough economies to participate in the introduction of the single currency. The
required criteria for membership, especially in the countries that enacted generous social-welfare systems following World War II. \(^{14}\) Chronic unemployment, emerging as the most destructive economic pressure affecting economic growth and convergence, undermined much of the hoped-for progress. \(^{15}\) The new Amsterdam Treaty sought higher employment as a European Community objective, charging the Community with a heightened duty to develop a coordinated employment strategy. \(^{16}\)

Some commentators and experts strongly urge that the member states postpone the monetary union. \(^{17}\) The 1997 upset in the French election and the controversy regarding Germany's gold reserve valuation have "rekindled speculation that the single currency could be delayed for a year or two, or even scrapped." \(^{18}\) Public opinion polls vary depending on the state and existing economic trends, but many show a majority of voters

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\(^{14}\) "Social market economy" denotes a market economy in which the harsher side-effects of capitalism are tempered by a generous social safety net. See Alan Cowell, Kohl Offers Plan for Big Cuts In the German Welfare State, N.Y. TIMES, Apr. 27, 1996, at A1.

\(^{15}\) "[T]he three major European countries have suffered protracted economic weakness that has been accompanied by a dramatic rise in unemployment to postwar record levels." INTERNATIONAL MONETARY FUND, supra note 7, at 1. See also EUROPEAN MONETARY INSTITUTE, supra note 7, at 21-23, 30-34 (citing alarming unemployment and unsatisfactory budget deficits as obstacles to the required economic convergence). For example, in 1997, France and Germany had unemployment rates of 12.6\% and 11.6\%, respectively. See Cohen, supra note 12, at A12. Italy's unemployment rate is 12\%. See Italian Ousted Last Week is Restored as Leader, N.Y. TIMES, Oct. 17, 1997, at A15. In Germany, "[o]fficial statistics chronicle record unemployment above 4.4 million (more than 11 percent)." Alan Cowell, Kohl Believes Something Will Turn Up: His Ratings, N.Y. TIMES, Sept. 17, 1997, at A14. "The EU spends a staggering $240 billion a year" on unemployment benefits. Bruce Barnard, Jobs, Jobs, Jobs, Europe's Top Priority, EUROPE, Sept. 1996, at 16.

\(^{16}\) See Treaty of Amsterdam Articles, Oct. 2, 1997, 37 L.L.M. 56 (1998), at 109. High unemployment reduces tax revenue and increases social assistance outlays. The funding gap is increased further by the demographic trend of growing retirements; this causes governments to work diligently just to slow the increase in the deficits, without reducing them.

\(^{17}\) Even the criteria's staunchest proponents - German bankers and economic advisors - discuss delay. See Europe's Currency, Don't (even mention) Delay, ECONOMIST, Mar. 15-21, 1997, at 51. Some have questioned whether monetary union might run too far ahead of political union. See, e.g., Niels Thygesen, Why Is Economic and Monetary Union an Important Objective for Europe?, 14 INT'L REV. L. & ECON. 133 (1994) (discussing the benefits and disadvantages of economic and monetary union); Walter Goldstein, Europe After Maastricht, FOREIGN AFF., Winter 1992-93, at 117 (arguing that the European Union treaty was premature on conception). See also 30 YEARS OF EUROPEAN MONETARY INTEGRATION FROM THE WERNER PLAN TO EMU (Alfred Steinherr ed., 1994) [hereinafter 30 YEARS] (discussing issues related to future progress of European Monetary Union in a series of articles).

\(^{18}\) Kicking and Screaming into 1999 [hereinafter Kicking and Screaming], ECONOMIST, June 7-13, 1997, at 20. Four lawsuits have been filed with the German Constitutional Court to block Germany's participation in the monetary union. The suits allege, among other things, that the "introduction of the euro would infringe the basic German constitutional right of economic stability." Alan Cowell, 4 Quixotes Tilt at German Adoption of the Euro, N.Y. TIMES, Jan. 13, 1998, at A3.
disfavoring the euro.19

The efforts to satisfy the membership criteria prompted enormous debate across the EU, resulting in major changes in some Member States' social and economic policy. Italy, for example, implemented an aggressive deficit reduction strategy, cutting $46 billion from its budget and reducing the budget deficit in half. This brought Italy within the required range of three percent of GDP.20 In spite of the pain associated with such belt-tightening, an overwhelming consensus of Italians favors monetary union.21 Germany, Austria, France, and most other EU states22 also enacted budget reforms of varying magnitudes. Unfortunately, the political rhetoric far surpasses the actual reforms accomplished thus far.23 For example, Germany, a leading force for monetary union, must achieve over $25 billion in savings.24 In fact, "all the Member States except Luxembourg will have to exert a great deal of political willpower in order to adopt the difficult, and often unpopular, economic and monetary measures necessary to attain the Treaty on European Union's . . . mandatory convergence criteria."25 Greece has not yet qualified for the first round of monetary union and three other nations declined participation in the first round.26 For most,

19. See Kicking and Screaming, supra note 18, at 21 (describing the results of an opinion poll showing the majority of respondents in Germany, Austria, Denmark, Sweden, Britain, and Finland opposed to monetary union). One German poll shows the German population opposed to a single currency by a three to one margin. See Richard Medley, Keeping Monetary Union on Track: Time for Another 'Kohl Shock', FOREIGN AFF., Nov.-Dec. 1996, at 21. On the other hand, "Euroskepticism" is muted in less economically developed Member States, such as Portugal, which receive substantial EU contributions for development. See Samantha McArthur, Portugal's Top Priority: The Euro, EUROPE, Nov. 1997, at 8-9. Portugal receives $10 million a day for infrastructure and training. See id. at 9.

20. See Commission Puts the Brakes on Euro Aspirations of Italy and Greece, EUROWATCH, 1997, at 1. Bringing budget deficits within the required limits proved to be the most difficult of the criteria, with only five Member States satisfying them as of February 1998. See David Cameron, EMU After 1999: The Implications and Dilemmas of the Third Stage, 4 COLUM. J. EUR. L. 425, 428 (1997) (highlighting problems in Ireland, Luxembourg, Denmark, Netherlands, and Finland).

21. See Celestine Bohlen, The Magic Word for Italians: Europe (Pain and All), N.Y. TIMES, Oct. 26, 1997, at A8. The popularity in Italy of a single European currency is understandable: "As a country of small and medium-sized manufacturers that send 70% of their exports to European neighbors, it also has strong economic reasons for not wanting to be left outside of the common monetary union." Id.


23. The IMF World Economic Outlook states: "[a] wide variety of reforms have been implemented across Europe in recent years, but many have been postponed." INTERNATIONAL MONETARY FUND, supra note 7, at 12. It cautioned that the current gradual, piecemeal approach inadequately addresses the causes of the economic problems. See id.


26. Denmark opted out of participation in the monetary union when it ratified the Maastricht Treaty in 1993. British leaders have notified the Council that the United Kingdom will exercise its right to do the same, though it may participate later. See
however, inclusion by the EU in the first wave is an economic priority. In addition to anticipated financial benefits, states fear that exclusion from the monetary union would reduce their input into economic decisionmaking. Those included in the single currency are likely to dominate such decisionmaking.27

Governments reduced deficits by cutting government spending for social welfare programs and reducing governmental ownership and support of state-owned industry and commercial interests. As one commentator described it, "[t]hroughout the EU, everything from public airlines to telecommunications companies to utilities and broadcasting groups is being put on the private auction block, to trim down, rejuvenate, and ready the national economies for the new millennium."28

The United States is experiencing a similar historic dynamic of economic contraction, though for different reasons.29 The conservative "political revolution," beginning with the election of the 1994 Republican Congress, culminated in the landmark 1996 budget legislation and its vast welfare reform.30 This legislation reduced many long-standing welfare pro-
grams and other social benefits, and re-ordered federal-state relationships by channeling billions of federal welfare dollars through the states. The politically popular themes of balancing the federal budget, downsizing government, and reforming welfare united to produce this significant movement in policy and law.

In contrast to Europe, U.S. governmental spending is more conservative and less concentrated on social welfare programs, and contains more strident spending cuts in social programs. Despite the seeming ideological uproar of the 1996 Republican Congress, the demands for a balanced budget finally gave way to political expediency. "[S]even months of... stop gap spending measures and partial government shutdowns" ultimately yielded an agreement between Congress and the White House on a new budget for the 1996 fiscal year. That bill contained substantial reductions in social spending and rearranged much of the process for administering social programs. The 1997 budget bill continued the retooling, but with more compromise and some softening in cuts.

A fundamental distinction undergirds the comparative analysis: a popular election, "in which one vision for the future trumped another," triggered the welfare "reform" in the United States, while in Europe no such discreet and direct mandate initiated the deep alterations. In fact, "faceless central bankers" or "faceless unelected Eurocrats" have implemented much of the fiscal discipline behind closed doors. The elite leaders

31. For example, pursuant to the 1996 welfare reforms, the government terminated disability benefits for 95,000 mentally handicapped and otherwise disabled children. Benefit cuts averaging $436 a month per child are estimated to save $4-5 billion during the period from 1997-2002. See Robert Pear, After a Review, 95,000 Children Will Lose Cash Disability Benefits, N.Y. Times, Aug. 15, 1997, at A1.

32. See DeParle, supra note 30, at A22 (describing the channeling of approximately $16 billion to the states).

33. See Kost & Munger, supra note 29, at 88.

34. The U.S. system is unique among industrialized countries because it maintains no uniform, universal pension system, no national health care system, no universal family allowance, and the welfare programs are limited to specifically defined groups, who often receive poverty level financial assistance. The American system includes a complex assortment of Social Security, Medicare, Medicaid, Food Stamps, and unemployment insurance, which are paid for and administered by federal, state, and local governments. See id. at 12-13.

35. See id. at 10-12, 125. Interestingly, the vocal public protest demanding welfare cuts in the United States contrasts directly with European protests to preserve social spending.


40. Id. EU officials are “unelected, supercilious bureaucrats of Brussels” and Europe is a “black hole of despair,” according to one 1997 British election candidate who opposed European integration. He claimed that the EU is a German effort to take over Europe. Id. at A1.
of Europe use the “invisible hand of the euro” to promote their version of optimal policy for Europe outside traditional political processes.

Improving economies in Europe and the United States should lessen some of the impact that the politicians and economists fear by reducing some of the deep cuts. In Europe, the long-awaited recovery seems under way. Production, investment, and personal consumption are rising, inflation is declining, and European companies are improving their competitiveness. The economy in the United States is setting records, with many calling this time-period the “Clinton boom.” Nonetheless, the debates and decisions leading to these changes create an unusually focused lens, offering a rare view of public policy choices by national governments.

This Article reviews these collateral developments in Europe and the United States, searching for convergence in the evolution of the two legal systems and attempts to compare the budget cuts, innovations, and adaptations in both. First, it compares the economic and governmental

41. Francesco Papadia & Fabrizio Saccomanni, From the Werner Plan to the Maastricht Treaty: Europe’s Stubborn Quest for Monetary Union, in 30 YEARS, supra note 17, at 57, 60.
43. Commentators see the gap widening between voters and leaders over the single currency, some favoring a softer, “political” euro, others a stronger, “economic” one. See Kicking and Screaming, supra note 18, at 21. Columnist George Will terms European integration “an antidemocratic unity. Europe’s political class has arrogantly fostered unification over the heads of increasingly unpersuaded people.” George Will, A French Raspberry For the New Europe, WASH. POST, June 4, 1997, at A23.
44. See EUROPEAN MONETARY INSTITUTE, supra note 7, at xiv, 2, 17. See also INTERNATIONAL MONETARY FUND, supra note 7, at 1-16 (providing individual country summaries of economic recovery).
47. The separate evolutions may produce functionally similar legal changes. For discussion of parallel or convergent evolution, see Richard Milner, Encyclopedia of Evolution 93 (1990). See also Mauro Cappelletti, Two Main Convergences Between Europe and the United States: Constitutionalism and Federalism, 28 Rev. JUR. U.I.P.R. 521 (1994) (discussing two main legal convergences: “The adoption of binding constitutions and Bills of Rights in post-World War II Europe, and the "even more striking convergence...in the area of federalism or transnationalism, e.g. Europe becoming a United States of Europe.").
48. The comparisons are justified on many grounds: “[T]he Gross Domestic Product...of the European Union and the United States fairly compare, both approaching $7 trillion of GDP [in 1997]. Globally, however, the European Union holds 24% of the world trade, compared to the United States and Japan with 16% and 12% respectively.” Fine & Alland, supra note 45, at 282. For similar comparisons of European Union,
changes and the public policy choices reflected in the United States and Europe. Second, it seeks to ascertain whether these choices represent systemic changes in the traditional models by exploring the extent to which these economic reforms implicate political and legal reforms. A comparative review of the budget debates discloses similarities and differences in the diverse political cultures and systems. Some suggested that future restructuring and adaptations will produce new paradigms in the ordering of values and priorities. The depth and breadth of the trends and issues raised in these comparisons necessitate that this discussion serve only as a starting point for further inquiry. This Article endeavors to bring into focus these two broad continental movements, highlighting issues and stimulating future research and analysis.

I. Political Uproar in Europe

The widespread protests against the new fiscal discipline initiatives underscore Europe's time-honored commitment to social welfare, a "central strand of European idealism since the mid 19th century . . . sharing an underlying ethos of collective societal responsibility for the welfare of individuals and the community as a whole."
The European Union's Social Charter reflects this commitment to social welfare. The EU Social Charter promotes basic social provisions across the community, and is included in the Amsterdam Treaty. After witnessing first-hand both world wars, Europe embraced a model for accommodating social needs that differed from the U.S. approach. Western European countries, including Germany, France, and Italy, promulgated explicit constitutional commitments to

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49. See Joyce Mushaben, Restructuring the German Sozialstaat: Internal and External Forces for Change, COLUM. J. EUR. L. 19-24 (forthcoming) (suggesting that German reforms may have radically altered historic paradigms of the social commitment).


social welfare.\textsuperscript{52} Europe’s powerful organized labor and socialist parties advanced legislation to promote worker protection and social cohesion,\textsuperscript{53} thereby strengthening Europe’s commitment to social welfare over the past four decades.

Many Western European countries adopted these guiding principles and operational structures decades ago. Modern developments, however, require their adaptation to current economic and social conditions. Increased payroll taxes financed the many expansions of social protection in the 1970s and 1980s, however, these policies placed too heavy a burden on business.\textsuperscript{54} Countries are planning to adapt and reform their economic structures to compete effectively amid the powerful globalization and technological advances. Recent economic initiatives, perceived as threatening traditional welfare policies, generated political and labor unrest of epidemic proportions. One commentator described labor unrest in Germany and France as “rebellion . . . in Western Europe against the tyranny of the global market.”\textsuperscript{55} Governments fell and protesters filled streets from Paris to Bonn, with trucks, people, and livestock.\textsuperscript{56}

Each November since 1995, nationwide strikes by public sector work-
ers, protesting the government’s handling of economic matters, have paralyzed France. The French Government, and the government of at least three other nations, suffered political consequences after public disapproval of budget decisions. The Conservative Government suffered an unexpected defeat when the electorate rejected the conservative economic reforms. The new Socialist French Prime Minister announced the “reorientation” of EU integration plans, including a more flexible, growth oriented approach to the convergence criteria. In Italy, the coalition Government, previously hailed for its success in turning around Italy’s negative financial trends, fell in October, 1997, after a “bitter battle in Parliament over how much to cut social programs to qualify for the European common currency.” The Communists withdrew their support from the Italian coalition because the budget went too far in reducing social benefits to pensioners and the unemployed. Across the channel in Great Britain, British displeasure brought down the Major government in 1997 and installed Labour Party leader Tony Blair as Prime Minister. In Austria, the coalition government fell in 1995 as a result of its failure to reach a consensus on the budget. In April 1996, the new Austrian Finance Minister, Viktor Klima, announced his intention to make Austria’s economy viable for a single European currency.


58. In the spring of 1997, the rightist government fell “victim to a backlash against the stringent fiscal requirements for the euro.” Id. The cohabitation or power sharing between conservative President Jacques Chirac and Socialist Prime Minister Lionel Jospin began on June 5, 1997, with the announcement of plans to stimulate the economy, not to cut the budget. See Craig R. Whitney, An Uneasy First Encounter in France’s Political ‘Cohabitation,’ N.Y. Times, June 6, 1997, at A5. At the same time, the new Socialist-led government was “also marked by a strong, unequivocal commitment to European integration, including monetary union, but on the condition that it include[d] strong, equally unequivocal support for Keynesian-inspired growth and job creation.” Axel Krause, Jospin’s Socialist Team, Europe, July-Aug. 1997, at 16.


61. See id. The Communist Refounding Party subsequently reconsidered their support after enormous public outcry.

62. “The massive May vote to throw out the Conservatives after 18 years in power showed the nation was ready for change . . .” and the economy will remain the key for the Blair government. David Lennon, Tony Blair’s Government, Europe, Dec. 1997, at 9-10. “Exit polls found that a key reason voters switched to Labor was their concern about the widening gap between rich and poor . . .” Thomas L. Friedman, All About Maggie, N.Y. Times, May 5, 1997, at A15.

Public protests and strikes repeatedly pressured Western European governments and business interests from 1995 through 1997. "Strikers virtually shut down Paris for three weeks in December 1995 to protest proposed changes to social security."\(^6\) The French Government retreated.\(^6\)

In November 1996, French truckers nearly shut down the country's economy with another effective strike. Thousands of truckers, erecting over 190 road blockades, blocked access to gasoline stations, refineries, border crossings, and otherwise interfered with commerce for ten days.\(^6\) When the government announced the need to reduce public spending, minimize inefficiencies, and cut budget deficits, the truckers responded by going to the streets demanding exactly the opposite: more generous benefits and reduced working hours. The government relented, giving the drivers the right to retire at age 55 with full pensions, "with the government agreeing, despite its austerity policies, to pitch in to help the drivers and their employers pay for the early retirement plan."\(^6\) This constituted a severe blow to the conservative government's austerity efforts.\(^6\)

The unrest continued in November 1997, when French truck drivers again erected 150 barricades over key French transit routes, effectively blocking commerce on north-south European thoroughfares.\(^6\) Transit unions protested the fact that the hard-won reductions in working hours and financial bonuses negotiated in 1996 had not materialized.\(^7\) The Transport Minister announced that a government decree would impose the terms of the agreement industry-wide.\(^7\) To encourage resolution of the strike, Socialist Prime Minister Jospin offered to lower the tax on trucks by $140 per year.\(^7\) Commerce resumed after the largest union and the employers struck a new deal, raising the drivers salaries by three to six

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At the center of France's restiveness is the Government's commitment to meet a series of stiff budget and public debt targets so that France can qualify to join a single European currency in 1999. That in turn has forced the government to step up a program of privatization of public sector corporations. [M]oves . . . to cut welfare and other benefits are widely unpopular.


\(^{65}\) See Riding, supra note 64, at 7.

\(^{66}\) See Swardson, supra note 64, at 1-2.


\(^{68}\) See Riding, supra note 64, at 7. See also Barry James, French Trucker Strike Raises Specter of Chaos on Continent, Int'l. HERALD TRIB., Nov. 3, 1997, at 1.

\(^{69}\) See Whitney, French Trucker's, supra note 56, at A4.

\(^{70}\) See id. (noting that adjacent EU countries complained that the halt in transportation seriously stalled the flow of goods and services across Europe).

\(^{71}\) See John-Thor Dahlburg, French Trucks Back on Road, NEW ORLEANS TIMES-PICAYUNE, Nov. 8, 1997, at A-22.

\(^{72}\) See Barry James, War and Peace in European Labor, Int'l HERALD TRIBUNE, Nov. 3, 1997, at 1.
percent.73

The consistent opposition in France to fiscal discipline efforts, even in the face of harsh economic realities, enhanced the significance of numerous French protests. The tax concession to truckers, for example, may have helped to resolve the strike, but the reduction in tax revenues may exacerbate the deficit.

The situation is the same in other French industries. In 1996, eight French unions struck government-owned Air France, shutting it down for a day. The strike protested the decision to close down eighteen unprofitable routes and other cost-cutting measures.74 Recent political opposition to the privatization of France’s Groupe des Assurances Nationales, the unprofitable state-owned financial services company, has waned but only after the European Commission mandated reform as a condition of allowing any further subsidies.75 French voters elected a new government in 1997 based on promises of reduced economic pain, more money for social benefits, and a shorter workweek. Whether France can reasonably expect the hoped-for job growth to finance an improved national economy remains unclear.76

Concurrently, massive public challenges occurred in Germany, threatening the regime with defiance unless the social contract was maintained. In March 1997, coal miners and building workers conducted scattered strikes across Germany, and the leading trade union federation threatened mass protests if the government insisted on carrying out austerity plans to cut social spending.77 In June 1996, hundreds of thousands of Germans protested in the streets of Bonn after the government proposed austerity measures.78 Earlier in June, over 300,000 union workers demonstrated in

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73. The largest drivers’ union signed the deal on Nov. 7, 1997. See Roadblocks Lifted As French Strike Ends, N.Y. TIMES, Nov. 9, 1997, at 10.
74. See Alan Cowell, Austerity Plan For Workers is Approved for Germany, N.Y. TIMES, June 29, 1996, at 33. Another strike the following April by pilots of Air France Europe, protesting future lower salaries for new pilots, grounded all flights to and from Paris for two days. Hospital interns joined the fray and occupied railroad stations and roads, protesting government austerity measures to control health care spending, and bank employees briefly struck to show opposition to new work hour rules allowing banks to open on Saturday. See Whitney, supra note 57, at 4. This entrenched resistance to cutting deficit spending and making operations more efficient has caused concern at many levels. See id. “With government transfer payments amounting to well over 50 percent of national income, at least one person out of two is on the receiving end, directly or indirectly,” according to one French economist who favors reducing the government’s role in the economy. Id.
75. See Tom Buerkle, EU Says Paris Can Aid GAN, Then Must Sell It; Ruling Sharpens a Dilemma Over Jobs, INT’L HERALD TRIB., July 31, 1997, at 11.
76. See France: Politics Meets Mathematics, ECONOMIST, June 14, 1997, at 52. See also France Still Trapped, ECONOMIST, July 5, 1997, at 51 (explaining that Jospin cannot fulfill both campaign promises and still expect to join the single currency.).
78. See Cowell, supra note 74, at 33 (noting that Parliament had approved legislation lowering government required sick benefits, and decreasing job security by raising the number of employees needed for a company to qualify for stricter rules on employee dismissals).
Bonn, while some 200,000 from all across Germany protested prior to Parliament's vote on the reductions.\textsuperscript{79} Twenty-three thousand Daimler workers then boycotted a special weekend work shift, and Opel workers threatened to walk off the job, claiming they would rather fight than submit to what they considered inferior "American-type" benefits.\textsuperscript{80}

In November 1997, "[t]housands of students marched through central Bonn . . . in a demonstration that crowned weeks of protests" against the under-funding of the university system as part of Germany's efforts to "pare away a padded welfare state to meet . . . plans for a single currency based on fiscal restraint."\textsuperscript{81} Some 40,000 students from forty universities descended on Bonn, while students in fifty other colleges and universities boycotted classes to support the protest.\textsuperscript{82}

This widespread unrest illustrates the broader tension across Europe caused by the social and political forces of economic globalization. This is particularly true regarding the conflict between single currency policy needs for fiscal austerity and existing expectations for the maintenance of European citizens' basic social welfare. Amid this reality of institutional and philosophical stress, the January 1, 1999, single currency deadline looms large for many government leaders, as progress with structural reforms prove slow.\textsuperscript{83}

Though social policy is first a matter for each Member State, the EU institutions have debated social policy and fundamental rights. Member States agree that social progress should accompany economic advancement. Member States, however, have divergent views on how best to accomplish this broadly phrased goal, including the appropriate role for government in the process.\textsuperscript{84} Thus, "social policy has lagged well behind that of economic policy."\textsuperscript{85} Nonetheless, the European Commission, acting on its limited authority, issued social action programs and other regula-
tions to develop the social aspect of the new internal market, including health and safety measures, equal pay for men and women, and maximum working hours.\footnote{86}

The TEU emphasized social policy more than previous treaties, calling for economic and social progress, and explicitly stating the goals of "a high level of employment and social protection, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among member States."\footnote{87} Despite efforts to include the 1989 Social Charter in the TEU, Britain's refusal caused the European Commission to append it as a protocol.\footnote{88} Most recently, Britain's 1997 political transition, subsequent agreement to the Social Chapter, and its inclusion in the Amsterdam Treaty marks significant progress.\footnote{89} The TEU also adds a higher level of employment as a Community objective through the development of a coordinated employment strategy.\footnote{90} Amid the debate and improved cooperation, this difficult area of social welfare continues to present significant challenges to the Member States, as well as EU institutions.\footnote{91}


87. See Treaty Establishing the European Community, Feb. 7, 1992, art. 2, 1992 O.J. (C 224) 1, 1 C.M.L.R. 572 (1992) [hereinafter EC Treaty]. Title VIII articulates social policy, education, and related goals corresponding to these aspirations. Mainly, the Member States and the Commission are required to cooperate and coordinate with respect to the Treaty's general objectives. These objectives include social security, collective bargaining, and occupational safety and health, among others. Art. 118 and art. 118(a) call upon the Council, after consulting the Economic and Social Committee, to adopt directives establishing technical rules and minimum requirements in these areas.

88. All of the Member States, except the UK, had adopted the 1989 Social Charter, an aspirational statement of political intent, and the subsequent Protocol on Social Policy which allowed a "two speed" process on social matters without the UK. See HARDING & SHERLOCK, supra note 85, at 550-61. For description of European social policy following Maastricht, see Elaine A. Whiteford, Social Policy after Maastricht, 18 Eur. L. Rev. 202 (1993). See also Employment and Social Policy, supra note 86, at 2.


90. The Amsterdam Treaty adds employment provisions to Art. B of the TEU, and amends Articles 2 and 3 of the TEU by including a special title on employment. See Treaty of Amsterdam, supra note 89, arts. 2-3.

91. In June 1997, some 80 European scholars issued the Amsterdam Declaration on Social Quality, emphasizing the importance of social cohesion and solidarity in the advancing economic union. For an informative article summarizing arguments on all sides of the reform debate, including a six Member State survey, see Peter Taylor-Goody, European Welfare Futures, 31 Soc. Pol'y & Admin. 1, 5-16 (1997).}
II. Europe Marches to Monetary Union

In February 1992, over thirty years of efforts toward monetary cooperation climaxed in the signing of the Treaty of European Union at Maastricht (the TEU). This ambitious agreement supplanted the European Economic Community with the wider and deeper European Community and Union, re-emphasizing the goal of creating an "ever closer Union among the European peoples." While "[c]ommunity competences [were] spectacularly enlarged," including legitimizing intervention into nine new areas, the TEU especially sought to advance the strongest and most stable currency in the world. The Treaty set forth guidelines and a timetable for achieving this goal. For the first time in the history of the industrialized world, a written constitution enshrined economic policy objectives.

The event highlighted the difficult historical development leading to the accord. An economic and monetary union (EMU) represents a recurring ambition of European leaders, from Jean Monnet's original ideas of integration in the 1950s to the present. The early days illustrated the benefits of monetary cooperation and currency stability. The extreme fluctuations in the multiple currencies in Europe placed a heavy burden on


93. TEU preamble, supra note 7. The 12 nations party to the new TEU sought to build on the successes of the internal market and reach out to expanded areas of cooperation, including economic and monetary cooperation. See id. They planned to expand their role in areas such as education, public health, consumer protection, the environment, roads, and communications. The second and third "pillars" established the goals of forging a common foreign, security, and judicial policy. See id. Ninety pages of the blueprint focused on monetary union. Two Member States, Denmark and the United Kingdom, received derogations from monetary union which allowed them to decide at a later date whether to participate. See Recent Developments in European Community Law – Maastricht Treaty's Opt-Out Provisions for Denmark Keep EC Intact, 17 B.C. Int'l & Comp. L. Rev. 223, 226 (1994).


95. See Treaty Establishing the European Economic Community, supra note 92, arts. 109(j)(1), (3)-(4).


97. Though on the agenda for many years, progress proved difficult. See Smits, supra note 3, at 31-41.


99. See Smits, supra note 3, at 12-34.
Responding to the currency instability and market turbulence of the late 1960s, the European heads of State met at the Hague in December 1969 and resolved to proceed with EMU. They commissioned the Werner Group to map out a progress plan for accomplishing this goal. The Werner Report, issued in October 1970, set out a three stage process for completing EMU in ten years.

In 1971, the European governments began the first phase of the program, specifically the coordination of economic policies. By the mid-1970s, however, several factors combined to cause a failure. The dollar fell dramatically, the deutsche mark rose, the oil crisis disrupted the economy on two occasions, and national policies exhibited divergent responses. This turbulent period stimulated the need for monetary union. In December 1978, European leaders stabilized the currencies and agreed to establish the European Monetary System (EMS) to promote previous goals. They placed a stronger emphasis on controlling rising inflation. Most significantly, they created the exchange rate mechanism (ERM), wherein the Member States ceded a degree of national monetary autonomy to the Community. A central rate limited the adjustable exchange rates of the countries and prohibited fluctuations of currencies beyond a small percentage. Furthermore, the European nations established a new currency unit, the ECU (European currency unit), as a weighted average of

100. See Dyson, supra note 92, at 65-71.
101. See id. at 72-83. The Bretton Woods international monetary system, established in 1945, created the International Monetary Fund and linked world currencies closely to the U.S. dollar. The system functioned poorly as currencies began to fluctuate beyond acceptable limits. See id. at 40-46. For an additional description of this period, see Brian Kurzmann, Challenges to Monetary Unification in the European Union: Sovereignty Reigning Supreme, 23 DenV. J. Int'l. L. & Pol'y 136, 136-38; Goodman, supra note 98, at 186-87.
102. The Werner Group is named after then Luxembourg premier and finance minister Pierre Werner. See generally 30 Years, supra note 17, at 10-28 (discussing and printing the text of the Werner Report). For a detailed description of events, see also Smits, supra note 3, at 15.
103. The Report, later adopted as a resolution by the Council, advocated completing the single market, limiting the range of currency fluctuation, coordinating the members' economic policies, and establishing a Community system of cooperation for the central banks and a center for economic policy decision. The Group submitted the Werner Report on October 8, 1970. As adopted by the Council in March 1971, the plan articulated a comprehensive definition of the concept of EMU and the building blocks that would ultimately become the blueprint for the successes of EMU in the 1990s. See Resolution by the Council and the Representatives of the Governments of the Member States of March 22, 1971, 1971 O.J. (C 28) 1, reprinted in European Communities Monetary Committee, Compendium of Community Monetary Texts 33-37 (1989). See also Papadia & Saccomanni, supra note 41, at 63; Smits, supra note 3, at 15.
104. See Vanthoor, supra note 1, at 81-83 (providing a succinct general history of this period). See id. at 75-95.
105. See Resolution of the European Council on the Establishment of the European Monetary System (EMS) and Related Matters (Dec. 5, 1978), reprinted in European Communities Monetary Committee, supra note 103, at 45-49. All member countries joined except Britain. See Smits, supra note 3, at 20.
106. European leaders established narrow currency trading bands that allowed fluctuations within limits, generally within plus or minus 2.25%. See Resolution of the European Council on the Establishment of the European Monetary System and Related
member currencies.\textsuperscript{107} The launching of the EMS "gave new impetus to the movement toward monetary policy coordination."\textsuperscript{108} The EMS control techniques strongly progressed towards limiting exchange-rate variability and achieving significant reductions in inflation.\textsuperscript{109} By the mid-1980s, the rate variability decreased to half its late 1970s level.\textsuperscript{110} By 1989, rate variability decreased by half again.\textsuperscript{111} A period of economic recovery, coupled with successful efforts toward developing a truly integrated common market, created momentum in the cooperative process.\textsuperscript{112} The push to reduce intra-Community trade barriers highlighted the onerous currency and banking barriers. Thus, the 1986 Single European Act, the first major amendment to the original 1957 Treaty of Rome,\textsuperscript{113} added references of the EMS and ECU to primary Community law.\textsuperscript{114} In 1988, the European Council appointed a special Committee for the Study of Economic and Monetary Union to develop a blueprint for attaining EMU.\textsuperscript{115} The unanimous report of this committee in April 1989 "defined the monetary union objective as complete liberalization of capital movements, full integration of financial markets, total and irreversible fixing of exchange rates coupled with the elimination of margins of fluctuations, and the possible replacement of national currencies with a single currency."\textsuperscript{116} This new report followed the Werner Report's goal of monetary and economic union, as well as the three stage format for achieving the union interpretation.\textsuperscript{117}
In its June 1989 Madrid meeting, the European Council approved most of the Delors Report, setting the first stage of EMU for July 1990.\textsuperscript{118} In its December 1990 meeting in Strasbourg, the Council called for parallel inter-governmental conferences (IGCs) to work on the treaty articles and amendments necessary to complete the EMU and the political aspects of the integration.\textsuperscript{119} The 1989 fall of the Berlin Wall and the Communist regimes in Central and Eastern Europe generated calls for further political cooperation in Europe.\textsuperscript{120} Both IGCs on political and economic cooperation exhibited some compromise and agreement. Ultimately, delay became normal because the participants could not reach a consensus about a common foreign and security policy or the further development of EMU. Finally, in December 1991, after enormous preparatory work by experts and government officials, including a draft statute for the establishment of the European System of Central Banks (ESCB), the heads of State memorialized their ultimate IGC agreements in the Treaty on European Union at Maastricht.\textsuperscript{121} The overarching accomplishment of the TEU was its agreement on the single currency as a goal for the turn of the century.

In addition, the EMU would create a central European bank, independent from political influence, and set tough entry criteria for participants. The criteria included key economic factors such as exchange rate stability, inflation rates, government debt, and deficit ratios.\textsuperscript{122} The negotiation on these and numerous other issues proved complex and difficult. Ultimately, however, the Member States acquiesced and signed the Treaty.\textsuperscript{123}

Among its numerous provisions, the Treaty set forth the goals of close cooperation on economic policies by the Member States, promoting the internal and open market economy with free competition\textsuperscript{124} based on "compliance with the . . . guiding principles: stable prices, sound public finances and monetary conditions and a sustainable balance of payments."\textsuperscript{125} The Treaty articulated a timetable leading to the EMU by retroactively setting the first stage to July 1990 (noting that officially the phase

\textsuperscript{118} See George A. Bermann et al., European Community Law 17 (1993) (providing a succinct history of monetary and political union efforts).
\textsuperscript{119} See Vanthoor, supra note 1, at 97. In the June 1990 Dublin European Council meeting, the 12 Member States agreed to hold parallel IGCs to work on treaty amendments to establish a political, economic, and monetary union. An IGC is a form of constitutional drafting conference. See id. at 97-98.
\textsuperscript{120} See Smits, supra note 3, at 29. After the reunification of Germany in October 1990, the Community shared direct borders with the newly democratic Eastern European states. See id. at 29-30.
\textsuperscript{121} See generally TEU, supra note 7. See also Smits, supra note 3, at 31. The European leaders placed the common policy for foreign affairs, defense, and justice under separate pillars or jurisdictions for cooperation, outside normal Community mechanisms. See Vanthoor, supra note 1, at 101-04.
\textsuperscript{122} See Dyson, supra note 92, at 131. Rules binding national budgets necessarily impinged on national sovereignty. A key compromise between France and Germany occurred when Germany wanted tough criteria and France wanted a firm timetable. See id. at 153-57.
\textsuperscript{123} See id. at 134-58.
\textsuperscript{124} See TEU, supra note 7, art. 3(a)(1).
\textsuperscript{125} Id. art. 3(a)(3).
took effect on November 1, 1993 and ended on December 31, 1993),\textsuperscript{126} proceeding to the second stage on January 1, 1994, and on to the third stage on January 1, 1999.\textsuperscript{127} The second phase created the European Monetary Institute (EMI) to facilitate cooperation among the central banks, prepare for the single currency, and work through the convergence criteria.\textsuperscript{128} The European leaders designed the third phase to create the European Central Bank (ECB) and establish a single currency. Article 109(j) and subsequent protocols permitted Member States satisfying the convergence criteria to participate in the third stage.\textsuperscript{129}

In January 1994, the Community entered the second stage, instituting the EMI within its headquarters in Frankfurt.\textsuperscript{130} The EMI issued its first monetary report in 1995 and Community organs began "the serious coordination of economic and monetary policy."\textsuperscript{131} Since 1992, the Community weathered a crisis in the EMS, a recession, and waning enthusiasm for the integration process. The Community overcame these obstacles, ultimately gathering steam to proceed again.\textsuperscript{132}

At the 1995 Madrid Council, the heads of State confirmed that the final stage of EMU would proceed as planned on January 1, 1999. In addition, the heads of State promulgated the introduction process for the single currency, the "euro."\textsuperscript{133} The introduction of the euro was designed to proceed in three main stages.\textsuperscript{134} First, the actual launch of economic and


\textsuperscript{127} See Treaty Establishing the European Economic Community, supra note 92, arts. 109(e)(1), 109(j)(4). For detailed discussion of the specific policies of the three phases, see Snyder, supra note 96, at 87-95; Smits, supra note 3, at 41-54.

\textsuperscript{128} See Treaty Establishing the European Economic Community, supra note 92, art. 109(l). The EMI has accomplished a number of objectives in the first three years; it has "virtually finalized the conceptual preparations for the ESCB's future monetary policy." Interview with Alexandre Lamfalussy, Member State Progress Towards Convergence (last visited May 1997) <http://europa.eu.int/euro/lamfalussy/lamfal.asp>.


\textsuperscript{130} See BERMAN, supra note 25, at 243.

\textsuperscript{131} Id. at 244 (discussing the Council's adoption of regulations and decisions about excessive debt, calculation of financial resources, consultation of the EMI, and Commission review of excessive deficit levels).

\textsuperscript{132} A number of scholars discuss the causes and results of this tumultuous period of economic cooperation (or non-cooperation). See generally Pier Luigi Gilbert, Living Dangerously: The Lira and the Pound in a Floating World, in 30 YEARS, supra note 17, at 105; Patrick Artus & Henri Bourguinat, The Stability of the EMS, in 30 YEARS, supra note 17, at 143; Alberto Giovannini, The Debate in Nominal Convergence Before and After the 1992 Crisis, in 30 YEARS, supra note 17, at 184; Paul De Grauwe & Giuseppe Tullio, The Exchange Rate Changes of 1992 and Inflation Convergence in the EMS, in 30 YEARS, supra note 17, at 192.

\textsuperscript{133} Cameron, supra note 20, at 1.

\textsuperscript{134} See DIRECTORATE GENERAL XV OF THE EUROPEAN COMMISSION, ACCOUNTING FOR THE INTRODUCTION OF THE EURO 8 (1997).
monetary union began in 1998 with the selection of the six member Executive Board of the ECB. The Heads of Government met in the European Council to select the countries permitted to participate in the economic and monetary union.\textsuperscript{135} Once the membership was set, the ECB was established. The convergence criteria set forth in the Treaty and subsequent Protocols provided the measures for evaluation.\textsuperscript{136} Second, on January 1, 1999, the monetary union will effectively start and the currency exchange rates among the euro and the Member State currencies will become irrevocably fixed.\textsuperscript{137} The European Council and the ECB will begin to regulate economic issues and impose monetary constraints on national budgets.\textsuperscript{138}

Third, January 1, 2002, will mark the permanent switch to the euro.\textsuperscript{139} The new banknotes and coins will become the single currency of the participating Member States. Amounts expressed in national currencies at this time will be converted into euros at the official rates.

At the Amsterdam European Council meeting in June 1997, the heads of State agreed to reinforce the movement toward the single currency, adding the Stability and Growth Pact\textsuperscript{140} to the apparatus for achieving sustained convergence. The Pact promotes price stability and strong, sustainable growth to create jobs.\textsuperscript{141}

III. Entrance to EMU Through the Convergence Criteria

Treaty article 109(j)(1) and subsequent Protocol 6 set forth the entry conditions for the third stage of EMU: each state must achieve a "high degree of sustainable convergence,"\textsuperscript{142} as established by four criteria: 1) a "high degree of price stability" evidenced by a rate of inflation which does not exceed the inflation rates of the three best performing states by more than 1.5%; 2) currency stability, within the normal fluctuations of the ERM for

\textsuperscript{135} See id. The European Commission (Brussels) and the European Monetary Institute (Frankfurt) issued assessments to the Council of Ministers regarding the progress each Member State has achieved in satisfying the criteria for economic union.

\textsuperscript{136} See Treaty Establishing the European Economic Community, supra note 92, art. 109(j).

\textsuperscript{137} See id.

\textsuperscript{138} See Treaty Establishing the European Economic Community, supra note 92, arts. 109(j)(3)-(4). The euro will become a currency in its own right and the ECB will become operational. See id. In addition, stock markets will use the euro. See id. Banks and other institutions will fashion accounts in both euro and national currencies, in preparation for the transition and the gradual introduction of dual pricing of goods and services. See id. For detailed discussion of ECB role and recommended role, see Christos Hadjiemmanuil, European Monetary Union, The European System of Central Banks, and Banking Supervision: A Neglected Aspect of the Maastricht Treaty, 5 TULANE J. INT'L & COMP. L. 105 (1997).

\textsuperscript{139} See DIRECTORATE GENERAL XV OF THE EUROPEAN COMMISSION, supra note 134, at 8.

\textsuperscript{140} "The pact consists of two European Council regulations . . . which have the force of law, and a European Council resolution, which gives guidance to the Commission, the Council, and member states in applying the pact." INTERNATIONAL MONETARY FUND, supra note 7, at 58, 57-60.

\textsuperscript{141} See id. at 58-59.

\textsuperscript{142} Treaty Establishing the European Economic Community, supra note 92, art. 109(j)(1).
at least two years; 3) stability of the government's "financial position," meaning that the Council has not declared the state's deficit excessive; and 4) interest rates which do not exceed by more than two percent the rates of the best performing states in terms of price stability.143

The Treaty also instructs the European Commission to evaluate the country's deficit. If the country's deficit is excessive, the European Commission must report to the European Council, which must then ultimately judge the excessive debt issue. The Council must then take into account the reports of the Commission and the EMI, the opinions of the European Parliament, and the Council of Ministers.144

Some uncertainty exists about how strictly the Council must follow the convergence criteria. European politics and the overall economic convergence will, of course, play a role.145 Budget figures may well be manipulated within a "politically acceptable grey zone," depending on the issues and states involved.146 In its January 1997 assessment to the Council, the Commission reported that "[s]ubstantial progress towards the achievement of a high degree of sustainable convergence has been made in all Member States since the beginning of the second stage of EMU. This progress . . . gathered greater momentum during 1996 . . . [and] necessary preparations for the third stage [were] advancing at the national and Community level."147

The advantages of EMU are compelling: creating a more efficient single market by, for example, reducing the costs of doing business and thereby stimulating growth and employment; making "cross border transactions more attractive by eliminating costs associated with currency conversion and by eliminating the exposure to exchange risks,"148 fostering

143. See id.; Peter B. Kenen, The Transition to EMU, Issues and Implications, 3-4 COLUM. INT'L L.J. 359 (1997); Cameron, supra note 20, at 2.
144. For detailed description of the complicated evaluation and decision processes, see Kenen, supra note 143 (including how the Member States measure up in October 1997, suggesting that most will be close to satisfying the criteria.) See also Cameron, supra note 20, at 28-29 (suggesting that eleven States will be chosen). In 1996, only three states were not subject to a Council decision of excessive deficit: Denmark, Ireland, and Luxembourg. See EUROPEAN COMMISSION, EUROPEAN ECONOMY 12, 30-31 (Jan. 1997) (presenting analysis of Member States' progress toward convergence).
145. The Treaty refers to the compatibility of each country's laws with the requirements of the Treaty and the numerous other economic conditions which the Commission and the EMI must take into account. This unavoidability leaves some ambiguity in the process. See Kenen, supra note 143, at 12-14.
146. See Medley, supra note 19, at 23.
147. EUROPEAN ECONOMY, supra note 144, at 28.
148. DIRECTORATE GENERAL XV OF THE EUROPEAN COMMISSION, supra note 134, at 4. Further, the EMU will increase market transparency by "making prices more easily comparable." Id. Transaction costs are estimated at 0.3-0.4% of the EU's gross domestic product, or ECU 220-25 billion. See ECONOMIC AND MONETARY UNION, supra note 110, at 14. Reducing exchange costs will re-order some business practices and profit centers. For example, the lack of volatility in the foreign exchange market is currently hurting banks who engage heavily in that trade or speculation, "driven by the narrowing of inflation rates around the globe, the end of the cold war and the fast approaching European monetary union." Jonathan Fuerbringer, Calm Seas Roll Currency Markets: Trading Ebbs as Technology Advances, Costing Jobs, N.Y. TIMES, Dec. 19, 1996, at D1. "Market
currency stability; and instituting the collective management of a single monetary policy that will give greater visibility and predictability to markets and investment.\textsuperscript{149} The coordination provided by a central bank should help keep public deficits under control and foster price stability. This, in turn, will promote growth, investment, and savings. A more stable and efficient single market will enable the participating states to compete more effectively in the global economy.\textsuperscript{150}

Of course, monetary union has a political side as well. Tensions among the Member States, distrust between political leaders, and a disillusioned citizenry will help dictate the pace and substance of future policy.\textsuperscript{151} Former German Chancellor Kohl heavily campaigned for the EMU and "[t]he construction of a European house," urging repeatedly that European unity is "a matter of war and peace."\textsuperscript{152} By the German example, it appears that Member States pay a price for this new era of economic unity in the form of political uncertainty. The following section focuses on efforts to harmonize Member States’ economic ambitions with political realities.

IV. EU Member States

A review of fiscal efforts and goals in the leading EU Member States — Germany, Austria, France, and Italy — reflects the struggle to streamline national economic performance to satisfy the convergence criteria. This inquiry re-examines the existing comprehensive, generous social welfare systems. These programs form the basis of Europe’s modern culture of social cohesion and provide a broad social safety net. The safety net includes disability, survivor (death), health, work injury, unemployment, and family benefits (children benefits).\textsuperscript{153} In general, the benefits are mandated by national legislation and provide higher levels of assistance for a longer period of time than those provided in the United States. No corresponding benefit exists in the United States regarding family allowance, state-provided maternity health care, and the requirements for lengthy, fully-paid maternity leave time. Member State employment-related benefits
generally require both employer and employee funding or contribution, with varying levels of government subsidy.\textsuperscript{154}

A. Germany

Even Germany, Europe’s industrial and financial powerhouse, must demonstrate its economic fitness to qualify for the convergence criteria. Germany faces a budget gap between DM 25 to DM 27 billion.\textsuperscript{155} Chronic unemployment and the cost of re-unification have taken their toll on the German economy.\textsuperscript{156} Overall economic sluggishness has also contributed to the budget gap.\textsuperscript{157} Germany’s legal structure and restrictive work rules burden productivity, with German workers receiving the highest wages, the shortest working hours, and the longest vacations of all workers in Europe.\textsuperscript{158} The 1996 German national debt rose to $1.33 trillion, equal to 61\% of GDP.\textsuperscript{159} In the face of such alarming numbers, German leaders will find it difficult to correct budget imbalances and market inefficiencies. The distasteful corrective measures might further impede economic reform. While budget discipline will entail pruning a majority of the federal departmental budgets, proposals to reduce social welfare benefits raise widespread public concern.\textsuperscript{160}

Former Chancellor Helmut Kohl initiated efforts at fiscal improvement in the early 1990s, though not through an organized or comprehensive pro-

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\textsuperscript{154} See generally U.S. SOCIAL SECURITY ADMINISTRATION, supra note 53 (describing the descriptions of each country’s level of benefits and funding sources). For example, Austrian law requires full salary maternity benefits for eight weeks before and after child birth, paid from a small tax (approximately 3.75\%) on wage earners and employers. See id. at 21-22.


\textsuperscript{156} See Cowell, supra note 14, at A4. The welfare crisis in Germany is largely the result of two factors unrelated to social welfare, namely the phenomenon of high unemployment and the financing of re-unification. See Mushaben, supra note 49, at 4.

\textsuperscript{157} See INTERNATIONAL MONETARY FUND, supra note 7, at 3 (setting out four major factors for “exceptional sluggishness”).

\textsuperscript{158} See Mushaben, supra note 49, at 7. See also Dowling, supra note 51, at 45 (describing how high employment costs and restrictive employment regulations impose significant production burdens). The OECD and the EMI broadly recommend easing employment protection legislation, reducing taxes on labor costs, tightening retirement and disability schemes, and restricting unemployment insurance systems across Europe to improve employment and related economic problems. See OECD, supra note 83, at 15-21 (illustrating country-by-country recommendations for these reforms); EUROPEAN MONETARY INSTITUTE, supra note 7, at 2-3.

\textsuperscript{159} See Menke-Gluckert, supra note 152, at 18.

\textsuperscript{160} The federal Ministry of Labor and Social Affairs is the largest recipient in the 1997 budget, exceeding DM 120 billion. This contrasts with a defense budget of DM 46 billion and transport budget of DM 45 billion. See European Union/Budget, Money, Banking Special, supra note 135.
With German reunification achieved, economic reform efforts gained momentum in the mid-1990s. As economic events unfolded, Kohl campaigned extensively for further restructuring of Germany's "vaunted and well-padded [social] welfare state." Germany warned its citizens what many experts had already concluded: in a global economy, the rules of business have changed and expansive, expensive welfare states do not compete well. Kohl concluded that the present state of affairs "demands that people adjust and lower expectations." He argues against maintaining the present welfare state because a third of Germany's GDP is spent on welfare programs. He advocated focusing benefits on the truly needy and carrying out reforms essential for creating jobs. The Social Democrats and the labor unions fought the changes as expected. For years, Germany's powerful labor unions have protested against social cuts, but with unemployment so high, the economic and political context indicates that reforms engendering more efficiency and competitiveness have become inevitable. The fact that many German manufacturers are relocating production to avoid the "high labor costs and rigid union rules signals the need for welfare and labor reform."

Over the past six years, the German government has enacted and implemented substantial budget cuts, particularly in the area of social insurance. The list of reform laws include: the Law on Securing and Improving the Structure of the National Health Insurance (GSG) of 1992, the 1992 Pension Reform, the 1994 Law on Long-term Care Insurance, the Law Revising Parental Allowances of 1996, the First and Second Health System Restructuring Laws of 1996 and 1997, the Reform Law on Unemployment Assistance of 1996, the First Law on Changing Services and Benefits for Asylum Applicants of 1996, and the Law Reforming Rights to

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161. See Mushaben, supra note 49, at 1. Kohl's Christian Democrats and their junior coalition partner, the Free Democrats, have worked together to enact reforms since 1992. See id. at 19.

162. Cowell, supra note 14, at A1. For a detailed description of Germany's comprehensive social protection program, the current efforts at restricting expenditures and entitlements, and the resulting heavy criticism, see Mushaben, supra note 49, at 19-24. See generally U.S. Social Security Administration, supra note 53, at xx-xxiv; EC Social Protection, supra note 22, at 13-23. The German welfare state is a "Bismarckian"-type, with employment-based financing (as opposed to full general funding by the state). Employers and employees contribute to the general scheme, and the government subsidizes it from general tax revenues. In 1994, the funding was allocated at the following rates: employers paid 36.2%, employees paid 21%, and the central government paid 30%. See Karl Hinrichs, The Impact of German Health Insurance Reforms on Redistribution and the Culture of Solidarity, 20 J. Health Pol'y., Pol'y & L. 653, 659 (1995).


165. See Dowling, supra note 51, at 45.


These laws included a host of substantive changes in the qualifications, funding, and benefits associated with the social provisions. For example, the Federal Ministry for Labor and Social Order reduced expenditures for social spending — including pension, health care, and other benefits programs — by DM 10 billion between 1995 and 1996. Finally, German representatives introduced ancillary legislation that would relax labor laws to stimulate employment. The OECD reports German advancement toward streamlined economic effectiveness and increased competitiveness.

In 1996, the German government adopted a comprehensive 50 Point Action Program for Investment and Jobs, later developed in the Increased Growth and Employment Program. The programs target reduced government spending to pre-unification figures, and increased investment and job creation, while reducing taxes, wage costs, and labor restrictions. In April 1996, Kohl and his coalition partners instituted the 1997 Sparpaket (literally meaning “savings” or “economizing package”), which implemented the Growth and Employment Program. The Program called for measures to decrease unemployment benefits, raise the retirement age for everyone to sixty-five by the year 2001, postpone the scheduled 10% increase in the family child allowance, reduce government-required sick pay from 100% to 80% in the first six weeks, allow less time in state-sponsored recuperative treatments in health spas, and permit short-term dismissals in small companies. When political negotiations with the Social Democrats who strongly opposed the legislation faltered, the entire process broke down.

168. See Mushaben, supra note 49, at 4-5.
169. See id. at 5-6. Previous reforms in social welfare produced DM 9 billion in reduced expenditures, but these were not maintained as loopholes emerged and some regulations were relaxed. See id. at 6. Reform of the statutory health care insurance system gained prominence in the 1990s. Hinrichs, supra note 162, at 663. Medical services funding and long-term disability wage replacement represent the second largest component of the German welfare program. See id. at 665. For a description of the 1000 plus insurance funds through which these welfare programs are funded, see id. Reform efforts in 1989 failed to curb rising costs, and renewed efforts began in 1992. In 1993 successful reforms took effect, bringing cost containment and organizational fund reform. See id. at 671. Benefits were frozen at 1991 levels and doctors and pharmacies faced limits on services and prices. Patient co-payments were also increased. Significantly, the funds were cross-subsidized in order to balance risk differentials and contribution levels were harmonized. See id. at 672.
170. See OECD, supra note 83, at 8. The Report praises raising the retirement age, reducing red tape for business start-ups, and exempting small companies from employment protection programs. The Report also criticizes some reforms that affect only marginal sectors, such as the part-time work-force in small firms and businesses who engage in short-term contracts. See id. at 8.
172. The coalition consists of the Christian Democratic Union (CDU), the Christian Social Union (CSU), and the Free Democratic Party (FDP).
173. See Menke-Gluckert, supra note 152, at 18. These measures represent the most recent round of saving packages. The 1994 Sparpaket originally introduced the cuts followed by further packages in 1996 and 1997. See Mushaben, supra note 49, at 7.
In a March 1997 speech, Kohl elaborated on the 50 Point Action Program, designed to make Germany more attractive to industry and reduce unemployment. Kohl designed the plan to further reduce government-mandated benefits to workers. Specifically, the new legislation lengthens the average number of working hours allowed per work day; eliminates the burdensome dismissal protection regulations to businesses with fewer than ten employees, allowing small and medium-sized businesses to hire new workers more efficiently; facilitates the employment of workers on an independent contractor basis; and allows companies to negotiate for smaller sick pay obligations to workers. Numerous small adjustments, such as adding a one-month qualifying period before continued pay provisions take effect, and omitting overtime wages from the calculation of holiday pay, will help ease the cost burden. Kohl also promised to continue reform of the pension and health care systems. This reform required a brake on annual pension hikes and a new basis for disability status, including health factors independent of extraneous job market considerations. Kohl also emphasized that reducing government expenditure would result in lower subsidies to industry.

Funding worker pensions has imposed a heavy burden on the budget. With decreasing birth rates and increasing life expectancies, fewer workers fund the benefits while the sums needed for retirement are raised. "As the proportion of citizens aged 65 or older increases significantly (24% in 1995 and predicted to exceed 30% by the year 2010), the divergent demographics and economic costs" will produce a huge economic problem.

By all accounts, Germany is groaning under the strain of high labor costs, lavish vacation and sick pay benefits, and rigid work rules. Employees are entitled by law to six weeks of vacation, plus frequent religious holidays, and union contracts in many industries entitle workers to extra money for vacation and a month's bonus at Christmas. Employee sick pay is one of the most generous in Europe — 100% for six weeks. The new law decreases sick pay to eighty percent. Social benefits


175. See id. In addition, Kohl praised the privatization of the federal railway and postal service, and Deutsche Telecom's initial public offering of stock.

176. See Program for Increased Growth and Employment, supra note 171, at 5.

177. See id. at 2-3.

178. Present subsidies of DM 10 billion would be reduced to DM 3.8 billion. See id. at 5.


180. Cowell, supra note 14, at 3.
and vacation pay add eighty percent to basic wages, and the restrictive
work rules inhibit the creation of new jobs. Consequently, it costs
approximately $55,000 to lay off one worker. A 1996 study revealed
that the social welfare costs associated with employee benefits significantly
hinder small and medium-sized businesses in the EU from competing and
expanding in today's competitive global markets. To alleviate the
problems, the Conservative government hopes to reduce non-wage costs of
labor to below forty percent.

Pension reform in 1997, similar to its precursor in 1992, will decrease
retirement entitlements by referencing them to net rather than gross wages.
Most workers will see a six percent decrease (from seventy to sixty-four
percent) in their former gross income. Since July 1997, 1.8 million civil
servants have had their retirement age raised to sixty-three. Moreover, the
reform discounts contain training periods with respect to qualification
years for retirement benefits. The reform also places certain limitations on
supplementary earnings, part-time work, and benefits for "political bureau-
crats." These changes in retirement vesting rules will surely arouse
deep concern among workers.

Additional reforms occurred with respect to social insurance pro-
grams. In 1995, required contributions to social insurance programs were
increased via a surcharge on health and pension premiums.

The reforms also affected job security. Prior to 1996, the
Kundigungsschutz protected workers from termination in firms with ten
full-time or twenty part-time employees. With the enactment of the 1996
law that exempted mid-sized businesses from the Kundigungsschutz, eight
million workers enjoyed less job security. Germany also made changes to
employee healthcare benefits. Beginning in 1997, the government allowed
participants in major health funds to choose from competing funds, thus
increasing competition. Other 1997 reforms included raising co-pay-
ments for medical services such as prescriptions and levying surcharges on
Krankenkasse (health insurance) members to finance hospital
renovations.

Additionally, Germany capped expenditures for health cards at DM

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182. See id. at 17.
183. Europe Information Service, Excessive Charges for SMEs Pose Short-Term Threat
to Employment, EUROPEAN SOCIAL POLICY, Apr. 12, 1996, at 1.
185. See id. at 6. See also EC SOCIAL PROTECTION, supra note 22, at 29.
186. Mushaben, supra note 49, at 10. Education or training years earned prior to age
17 will no longer count toward vesting pensions, and a maximum of educational vesting
years is set at three. Also, the assessment basis for pensions will not exceed 75% of
average remuneration. See EC SOCIAL PROTECTION, supra note 22, at 29.
187. See EC SOCIAL PROTECTION, supra note 22, at 29; Mushaben, supra note 49, at 6.
188. See EC SOCIAL PROTECTION, supra note 22, at 29; Mushaben, supra note 49, at 6.
These private health insurance funds were previously available only to those in the
higher income brackets.
1.8 billion below the 1995 budget allotment for this benefit. Dental insurance has largely privatized, and sick pay was reduced substantially: twenty percent in short-term illness and ten percent in long-term benefits. The Growth Program also contains several new changes to the tax laws designed to stimulate job growth and investment, such as incentives for the start-up of small and medium-sized businesses and the reduction of many taxes.

To make the economy more flexible, the 1996 law changed a longstanding European tradition — businesses and shops may now stay open for business after 6:30 p.m. on weekdays, as well as Saturday afternoons. Hence, the march to market flexibility and the single currency caused cultural, as well as economic, adaptations. Aside from changes implemented by the government, the private sector is also taking steps to adapt to the changing economy, further affecting worker pay and government support. Considered the model of industry from the 1960s through the 1980s, German companies became less efficient and more generous to workers over the years. In an effort to make their companies more competitive, some private corporations enacted unexpected budget cuts. Additionally, three major German corporations recently attempted to take advantage of the new law that reduced the legally required minimum employer sick pay from 100% to eighty percent. These three corporations unilaterally cut sick pay by twenty percent, even though labor contracts presently in force covered the workers. While the companies backed away from the drastic cut after the union and employees protested, the attempt reflects the aggressiveness of the new market environment. This trend is certain to continue in response to rising global competition created by the opening of the Eastern European markets, the success of the European Union, the creations of the World Trade Organization, and the emerging industries in Asia.

Privatization also served as an effective tool in Germany. For example, the government sold its stake in Lufthansa, a major international air carrier, netting $2.8 billion for the state budget. Furthermore, privatization freed some enterprises from the government’s often costly and inefficient management.

Germany has undertaken an overall campaign for efficiency and competitiveness, as evidenced by the general tightening of the requirements for social assistance and benefits, and moves toward streamlined business rules and privatization. One political scientist complained that the trend is moving away from social benevolence: “[t]hough German TURBO-CAPITALISM (Der Speigel) is still many degrees removed from its American KILLER CAPITALISM (Newsweek) equivalent, it is hardly moving towards

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190. See EC SOCIAL PROTECTION, supra note 22, at 29.
192. See Program For Increased Growth and Employment, supra note 171, at 1.
193. See Cowell, supra note 163, at 4. One company noted that it would save DM 76 million a year by cutting sick benefits to 80% (approximately $50 million). See id.
the CARING CAPITALISM of Ben & Jerry’s.”195 She concluded that an economic system whose only goal is to promote the free flow of commerce threatens Germany’s traditional social partnership, its custom of consensus building, and its cultural-ideological commitment to social solidarity.196

B. Austria

To reduce its budget deficit and comply with the convergence criteria, “Austria recently adopted a far-reaching set of reforms,” including major structural reforms in social protection programs.197 In 1996, Austria conducted extensive legislative cuts to reduce employment and health benefits, ease job restrictions, tighten entitlement requirements, and trim the traditionally generous social benefits to families and students.198

The 1996 Sparpaket implemented numerous reductions in social protection programs, including pension reforms. In 1997, the new rules required an additional two and a half years in vesting time for early retirement, from 420 months (thirty-five years of actual work) to 450.199 Similarly, the rules extended the required insurance period for early retirement through the unemployment system, requiring an additional five years of qualified work (twenty years with insurance, rather than the previous fifteen) before the unemployed applicant can qualify. Finally, the legislature raised the vesting age for early retirement of men with reduced capacity to work to fifty-seven, but left the vesting age for women unchanged at fifty-five. This increased the vesting time period for men by five years.200 The new rules restricted disability pensions as well and placed new emphasis on rehabilitation. Limited to a maximum term of two years, the benefit is available only when rehabilitation proves impossible, and work is limited while receiving the pension. Furthermore, a new model for calculating pension sums favors longer contribution periods, which encourages later entry into retirement. Finally, the rules reduced the “over-proportional fed-

196. See id. at 20-22. Significant growth in the foreign population of Germany (from 1.2% in 1960 to almost 9% in 1997) also raises numerous questions about commitment to social solidarity. See Alan Cowell, Like It or Not, Germany Becomes a Melting Pot, N.Y. Times, Nov. 30, 1997, at 3.
197. EC SOCIAL PROTECTION, supra note 22, at 13, 14, 46-48.
198. See id. The author wishes to thank Dr. Roland Winkler of the University of Salzburg, as well as Mag. Dagmar Schelle and Mag. Verena Haas, both of Vienna, for assistance with the Austrian budget modifications. For full description of the comprehensive social welfare program in Austria, see U.S. SOCIAL SECURITY ADMINISTRATION, supra note 53, at 21-23, and EC SOCIAL PROTECTION, supra note 22, (alphabetically listing each country’s system with specific, detailed explanations of benefits).
199. See EC SOCIAL PROTECTION, supra note 22, at 46. The whole pension system continued under reform negotiations in 1997. A compromise bill subsequently passed the Nationalrat (the first house of Parliament) and is awaiting passage in the upper house.
200. See id. Also, the qualifying time for retirement benefits no longer automatically includes time spent at school or at a university.
eral grant," which once helped fund the pensions for farmers and the self-employed, and raised the contributions by the insured.\textsuperscript{201}

Reforms also made unemployment benefits more difficult to obtain and reduced the amount allotted to the unemployed.\textsuperscript{202} The reforms doubled the required assessment period for this benefit from six to twelve months. Now, only those who are available for work can obtain unemployment benefits. Furthermore, the rules increased the sanctions for those who refuse to work. The unemployment-reduction scheme encouraged the creation of a special system to stimulate the employment of older workers (Bonus-Malus-System). Under this system, employers who hire workers between ages fifty and fifty-five pay only half of the usual required unemployment contributions, and none at all when hiring workers over fifty-five. In addition, penalty contributions apply when an employer dismisses an employee in these age groups, provided that the company employs the employee for ten years or more.\textsuperscript{203}

The legislature extensively reformed hospital and sickness benefit provisions.\textsuperscript{204} Since July 1, 1996, the health insurance branch of social security fully paid for cures and rehabilitation programs (e.g., for recoveries after heart attacks or other serious illnesses) in special hotels, spas, or hospitals. The new rules now require a daily contribution of 70 to 180 Schillings for cures (several levels according to social position) and 70 Schillings for rehabilitation.

The rules particularly affected social benefits relating to the family. For example, the legislature gradually reduced the traditional government financial contribution to each family upon the birth of a child (known in Austria as the Geburtenbeihilfe) from 15,000 Schillings to zero.\textsuperscript{205} The legislature also abolished a related social benefit, the Mother-Child Pass (Mutter-Kind Pass), which once allowed children free access to medical care and served as a motivation for parents to seek medical care for their children. The program required parents to attend to and document the regular medical needs of their child, such as vaccinations and check-ups. Without the requisite doctor's signature to demonstrate the scheduled care, the financial grant has discontinued. When the rules abolished the overall benefit, the leverage and subsequent impetus for good child care also disappeared.

Similarly, the legislature modified the Karenzgeld financial benefit, which allowed parents of newborns to take time off from work and reflected an interesting attempt to encourage fathers to spend time with their children. The rules reduced benefits from two years leave per parent to two years per couple and induced one parent to spend at least six

\textsuperscript{201} Id.
\textsuperscript{202} See id. at 47. Article 23 of the law provided extensive details primarily designed to avoid abuse of the system.
\textsuperscript{203} See id.
\textsuperscript{204} See EC Social Protection, supra note 22, at 48.
months with the newborn.\textsuperscript{206} Furthermore, the rules restricted the family allowance for children by limiting the allowance to children age twenty-six or younger, rather than the previous twenty-seven.\textsuperscript{207}

The legislature restricted student benefits. Textbooks for school are no longer completely free of charge, and the rules modified the Familienbeihilfe, a monthly benefit paid to parents for each child in school. The changes provide for termination of benefits if the student (over age nineteen) fails twice in school or takes two or more semesters beyond the required minimum time in which to complete their studies.\textsuperscript{208} In addition, the rules discontinued free transportation for university students on trams, subways, and buses during the academic year.\textsuperscript{209}

Civil servants and teachers received no raise in monthly wages in 1996 and 1997. Instead, the legislature allotted only a small, one-time additional payment. The legislature also discontinued the customary "jubilee extra pay" (what teachers with thirty-five years of service receive upon retirement), except for those over sixty years old. The new rules cut civil service early retirement benefits, and the general retirement benefit was reduced because of several new methods of calculating the pension.

Tax reform also decreased benefits. For example, the reforms curtailed the "Sonderausgaben" (an important tax deduction) for people who earn more than 500,000 Schillings per year and eliminated it for those making over 700,000 annually. This tax provision allowed deductions for certain expenditures, including life insurance and home construction. This deduction was particularly significant because it could move the taxpayer into a lower taxation level.

The legislature made efforts to increase taxes on workers' monthly wages above the regular twelve monthly payments. In Austria, workers receive two or more extra monthly payments in addition to the twelve calendar months. These extra payments are taxed at lower rates. The employer must transfer the mandatory social security tax for Werkvertraege (independent work contracts) to reduce social security tax.\textsuperscript{210} Many consider this a deep-seated reform due to the growth of atypical employment relationships.\textsuperscript{211}

The legislature reduced the Allgemeine Absetzbetrag (standard per person annual deduction) for people who earn more than 200,000 Schillings per year and abolished it for those earning 500,000 Schillings or more. Certain business deductions were also reduced. The Betriebsausgaben (business expenses, such as computers, office machinery, paper)

\textsuperscript{206} The parents could share equally, with each taking one year. This enactment applies to parents of babies born after July 1, 1996. See EC Social Protection, supra note 22, at 3, 47.
\textsuperscript{207} See id. Many young people in Europe remain enrolled in college for longer periods than their U.S. counterparts and can qualify for this family benefit.
\textsuperscript{208} The rule began on October 1, 1996. See id.
\textsuperscript{209} The rules took effect on September 1, 1996. See id.
\textsuperscript{210} See EC Social Protection, supra note 22, at 48 (discussing popularity of program with students who occasionally work).
\textsuperscript{211} See id.
lump sum deduction, known as the Pauschale, was reduced from twelve percent to six percent of the turnover. Thus, a wide range of reforms have imposed restrictions on social spending in Austria.

In addition, the legislature raised the inheritance and gift tax for real estate. Short-term life insurance lost favorable tax treatment, and the overall tax on capital gains (Kapitalertragssteuer) increased from twenty-two percent to twenty-five percent. Taxes on utility consumption (electricity and gas) and on cigarettes were raised. The government imposed an interesting new tax (Blaulichtsteuer — "Blue light cost") on anyone who calls the police to a traffic accident without personal injury — 500 Schillings.

C. France

France's new Socialist finance minister, Dominique Strauss-Kahn, predicts that France will satisfy the "dreaded euro-qualifying target" of a public sector deficit under three percent of GDP in time for entry into monetary union. The new Socialist government, he asserts, will achieve this fiscal improvement while keeping its campaign promises: to hold both spending and taxes down; to give more money to education, culture, and the courts; and to create jobs. This painless transition seems exaggerated in light of the troubled economic and political struggle to satisfy the criteria over the past three years.

In 1997, voter disapproval of the economy and budget policies pursued to attain the convergence criteria forced the center-right coalition government out of office. Over the past four years, the tax burden in France increased to a record forty-six percent of GDP in 1997, with unemployment at 12.8%. The tax and rigid labor regulation system cried out for reform with public spending amounting to fifty-four percent of GDP. President Chirac proposed "a brutal new dose of austerity"

213. See id.
215. See France's Budget: Circle Squared?, supra note 212, at 54. Since 1991, France had introduced two new taxes (Contribution Sociale Generalisée and Remboursement de la Dette Sociale) on a broader than payroll basis, including income from business and investment, earmarked to help pay for the family allowance and to service pension funds. See Kopits, supra note 12, at 14, n.11.
217. See Crossed Fingers, supra note 216, at 45-46. The tax burden and public spending reached record highs in the last two years of the center-right coalition. See Pas de Blair, supra note 216, at 46. By 1994, social welfare spending totaled $463 billion, 31.4% of GDP, higher than in Germany or Italy. See Social Protection and Unemployment Benefits, at 1 (last visited Jan. 1, 1998) <http://www.france.diplomatie.fr/france/societe/protsoc.gb.html>. Fundamental labor market reforms are considered essential to restore economic performance. See INTERNATIONAL MONETARY FUND, supra note 7, at 5.
218. Id. For a description of social protection in France, see EC SOCIAL PROTECTION, supra note 22, at 13-23 (alphabetically listing each country's system with a detailed
and then issued a surprise call for new elections in May 1997 (ten months ahead of time), hoping to gain voter approval of the Conservative government’s approach to the budget process.\textsuperscript{219} The tactic exploded into a shocking rejection of the government and the creation of the new Socialist coalition.\textsuperscript{220}

Chirac’s conservative government froze budgets at 1996 levels and proposed sweeping changes in the national health care system as a key governmental tool for cutting spending.\textsuperscript{221} The French health care system offered generous, if not lavish, benefits when viewed in comparison to present U.S. practices of managed health care. In France, it has “been considered the universal right of French citizens to unlimited health care, with practically no questions asked of doctors or patients.”\textsuperscript{222} Other austerity efforts initiated reforms of the defense industry, the university and judicial systems, and even the railways.\textsuperscript{223} When the government threatened further stern measures, the public again became restive. The Socialists campaigned on the theme of the social cuts’ brutality and expressed grave reservations about the convergence criteria for France’s entry into the monetary union.\textsuperscript{224} Promising a different direction from the Conservatives, Socialist candidate Lionel Jospin pledged to create 700,000 new jobs for the young, raise the minimum wage and increase pensions, boost cultural and education spending, and cut the work week without pay reductions.\textsuperscript{225} The voter rejection of the Conservative tack resulted in the appointment of Socialist Prime Minister Lionel Jospin and the awkward process of government by cohabitation.

\textsuperscript{219} Party loyalty was weak, as many Conservatives in Parliament were unwilling to vote for “harsh reforms and vicious spending cuts.” \textit{Crossed Fingers}, supra note 216, at 45.

\textsuperscript{220} \textit{See} \textit{Kicking and Screaming}, supra note 18, at 19. That governments should limit public expenditure (for vital social purposes) to balance budgets is an alien, incomprehensible concept to some French. \textit{See} Paul Spicker, \textit{Exclusion}, \textit{35 J. COMMON Mkt. STUD.} 134, 141 (Mar. 1997).

\textsuperscript{221} Restrictive measures, including target ceilings on health benefits, were intended to reduce the deficits in the pension and health insurance budgets through the use of computer tracking of patient costs, with penalization of doctors who surpass budget limits. \textit{See} Whitney, \textit{The More Things Change}, supra note 56, at 4-5. \textit{See also} Craig R. Whitney, \textit{In France, Socialized Medicine Meets Gallic Version of H.M.O.}, \textit{N.Y. TIMES}, Apr. 25, 1996, at A5.

\textsuperscript{222} \textit{Id.}

\textsuperscript{223} \textit{See} \textit{Crossed Fingers}, supra note 216, at 46.

\textsuperscript{224} \textit{See id.} In a reversal of roles, the Socialists, who originally favored the single currency, proposed conditions before France should proceed further: no new austerity cuts, establishment of an European "economic government" to counterbalance the ECB, restraint on the valuation of the euro, a solidarity and growth pact, and the inclusion of Italy and Spain in the first wave. \textit{See} \textit{Pas de Blair}, supra note 216, at 45. EU legendary leader Jacques Delors, former Commission president and one of the inventors of the single currency, advises the Socialist government on monetary union. \textit{See Kicking and Screaming}, supra note 18, at 20.

\textsuperscript{225} All of these promises are to be accomplished without raising the budget deficit or raising taxes. \textit{See} \textit{France Still Trapped}, \textit{ECONOMIST}, July 5, 1997, at 51. \textit{See also} \textit{France: Politics Meets Mathematics}, supra note 76, at 52.
The clash between a new free-market Europe and a bloated welfare state sharpened with Rightists advocating some form of the American model, and Socialists defending the state’s central role in the economy. For many, the euro became synonymous with fiscal austerity. While “getting into the first round of the euro union” has a nice ring to it, getting there is not without some painful retraction.

Public protest and disapproval, often disruptive and confrontational, has proven pandemic in France. Annual strikes by numerous groups caused enormous upheaval in business and politics, and “pushed social issues to the forefront.” Government attempts at fiscal discipline, such as reigning in growing French deficits by reducing pensions and other benefits, prompted countless public protests and job actions. In the winter of 1995, a month long transportation strike virtually paralyzed the country. Yielding to political pressure, the government withdrew plans for pension and health care reform, along with plans to reduce the budgets for the national rail system.

Workers struck again in November 1996. The resolution of this twelve day trucker’s strike evidences the difficulty of the French experience. Despite urgent need to reduce government spending, the widespread public support for the strike forced the Government to capitulate again to union demands. The truck drivers successfully negotiated an award of a special $500 bonus for the drivers as well as reductions in the retirement age and the number of work hours. These enhanced employment benefits and salary increases clearly conflicted with the Government’s unquestioned fiscal need to reduce costs and increase competitiveness.

The scenario repeated itself again in November 1997, when truckers erected 150 barricades all over France blocking most inter-city trans-


France has vastly better public medicine than America, safer cities, higher minimum wages, less crime and more job security, particularly in its huge public sector. But it also has a 12.6 [?] unemployment rate that is more than double the American [rate], much higher taxes, a long-stagnant economy, crippling social security charges that discourages hiring., and a debilitating anxiety about change that has held back its investment in new technologies.

Id.


230. See supra note 229 and accompanying text.

These blockades prevented transit of trucks around most of Western Europe, and the new Socialist-led Government faced pressure from other EU countries to open the roads for commerce. The French government's refusal to open the roads represented a "clear cut collision between Europe and l'exception francaise" — the widespread conviction here that France can enter the new millennium with its idiosyncracies and resistance to change intact. Paradoxically, this new Government rose to power, at least partially, on the wave of protest and unrest caused by previous strikes, and Socialist leaders had promised to support workers in getting the benefits of their prior bargaining. Taking the soft approach discussed above, the parties resolved the strike after a few days with minimal damage to the national economy. Nonetheless, the government still faces the basic dilemma of governing in the single currency transition period, while trying to solve the French puzzle of chronic unemployment and soaring public debt.

Thus far, the French have implemented only modest reforms. The government amended the constitution to allow Parliament to set general financial parameters for social security expenditures. The relationship between the Government and social security institutions has been modified to conclude multi-annual agreements regarding expenditures and standards of service. More direct measures to raise income and reduce outlays include: reductions in the defense budget, a temporary surcharge of FFr 18 billion on company profits, and reductions in some social benefits, including the traditional family allowance. Other measures include an increase in the contribution rate for health insurance on replacement income, an increase in the flat hospital copayment to FFr 70, limits on the maternity benefit, as well as broadening the tax base to include investment, property-related and other sources of income. In 1996, the legislature

232. See id. Another estimated 160 barricades blockaded oil refineries and fuel depots, forcing 40% of French gas stations to close or restrict supplies. See Barry James, Trucker Talks Yield Progress; French Strikers Win Many Demands but Stay Out, INT’L HERALD TRIB., Nov. 7, 1997, at 1.

233. See James, supra note 232, at 1.

234. John Vincour, French Strike Hardening; International Pressure Grows on Paris to Act, INT’L HERALD TRIB., Nov. 5, 1997, at 1. The EU neighbors — Spain, Britain, and Germany — as well as the European Commission, insisted that the French government must "begin making policy in a frame of reference going beyond that eternal push-and-pull of national doctrine and politics." Their irritation arose from "the French government's seeming lack of resolve in maintaining freedom of movement of people and goods across the country, a prime tenet of the European Union." Id. at 1, 10.

235. See id. Trucker union leaders insisted that some of the employer associations had failed to live up to the agreements reached after the 1996 strikes, such as the work hour reductions and bonuses. See Whitney, French Truckers’, supra note 56, at A4.

236. See EC SOCIAL PROTECTION, supra note 22, at 22, 33-37. Articles 34 and 39 of the constitution were amended and a new article 47-1 was added granting Parliament this power.

237. See France’s Budget: Circle Squared?, supra note 212, at 54. The French have, however, raised child-care funding, considering it increasingly important as more mothers work. See Simons, supra note 214, at A1, A8.

238. See EC SOCIAL PROTECTION, supra note 22, at 34 (ordinance of January 24, 1996, concerning the repayment of the social debt).
enacted a new tax on employer contributions and personnel representation bodies to support the Old Age Solidarity Fund, and introduced a new indemnity concept to require third parties responsible for accidents to contribute to the related social security costs. Many on the Left are pleased, as Jospin's revenue-generating plans focus more on the wealthy. The rules subject large firms with annual sales of FFr 50 million or more to the surcharge and temporarily raise both the corporate and capital gains tax rates from 36.6% to 41.6%. The OECD, however, concludes that the reforms have been "measured and incremental," rather than the broad approach needed to prompt substantial economic recovery. The OECD report approves the new incentives to encourage part-time work, tightened early retirement regulations, eased restrictions on unusual working hours, lowered tax rates on lower income workers, and a shift away from payroll taxes as revenue sources, but criticizes increased benefits for employment protection and new measures to discourage overtime work.

France spends more on its family policy than any other European country, devoting 3.5% of GDP toward funding various family benefits. These benefits include a grant for birth of the first child, an allowance for mothers remaining in the home to raise the child, school allowance, and certain fiscal advantages for large families. As in most European countries, these government payments to parents with children are based on the number of children in the household, and many of the payments are unrelated to family income. Thus, wealthy couples with children often receive many of the same financial benefits as less fortunate parents.

This benefits scheme presents an obvious target for budget cuts. In France, for example, the child allowance benefit is approximately $111 per month per child to families with one or two children, $250 for three children, and $390 for four. This substantial financial grant may well symbolize family importance, but it raises costs for the taxpayer and is an unnecessary boon for higher income families. The new Socialist Prime Minister Jospin recently proposed to cut this benefit for families with incomes in excess of FFr 25,000, but this proposal met cries of protest in the Parliament. The proposed budget for 1998 will introduce means testing the child benefit for families earning in excess of FFr 25,000 a

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239. See id. at 35 (ordinance of January 24, 1996, relating to urgent measures to re-establish the financial balance of social security).


241. OECD, supra note 83, at 8.

242. See id. at 8-10. French officials cite fear of negative public reception to the reforms based on social cohesion as the reason for slow reform. See id. at 10.


244. See U.S. SOCIAL SECURITY ADMINISTRATION, supra note 53, at 133 (containing descriptions of detailed provisions, including child care and school benefits). See also France's Budget: Circle Squared?, supra note 212, at 54.

month (approximately $50,000 per year) or FFr 32,000 if both parents work.246

Other budget measures also affect the middle class. France plans to reduce grants for child care at home by half and limit tax rebates for hiring certain domestic workers to those earning less than $90,000. Finally, the French government plans to eliminate tax deductions for single parents with grown children.247

A reduction in labor costs is needed to stimulate economic growth. With non-wage costs reaching fifty-one percent of salary in some cases,248 the tax and bureaucratic paperwork burden on business hinders efficiency. These taxes include those financing the family allowances discussed above, as well as funds to pay for low cost housing loans, unemployment insurance, worker accident insurance, pensions, job safety, professional training, and reducing the social security deficit.249 Consequently, the tax burden on employee payroll is high. Employment protection regulations, such as requiring some employers to continue paying near full salaries to laid off employees for eighteen months, impose an onerous burden on business, and inhibit hiring and business expansion.250

To promote job growth, the new Socialist government proposes to increase spending on education and employment, and will award a tax incentive to firms that add new employees. The defense budget will contain the largest cut (a 2.1% cut), along with President Chirac's plan to construct an all-volunteer defense force in the future.251 The proposal also includes a series of tax increases, including "a broad-based tax on most income, by 4.1% to 7.5% to help pay for France's welfare system."252

As in Germany and Italy, funding retirement pensions for the steadily enlarging number of retirees in France imposes enormous economic burdens on the government budget, especially since the general retirement age decreased to sixty.253 A recent study by the OECD suggests that these countries face difficult prospects for the future as the ratio of workers to recipients continues to shift.254 In France, red ink from the pension system alone could drive the budget deficit to ten percent. Private pension funds offer some relief, but government efforts to broaden them appear

246. The government pays FFr 671 a month for families with two children, FFr 1531 for three children, and FFr 2392 for four children, with FFr 32,000 if both parents are working. See France's Budget: Circle Squared?, supra note 212, at 54.
247. See id. In addition, a 4% tax will apply to savings income.
248. See Cohen, supra note 12, at A1. For a worker with a gross monthly pay of $1700, the employer must pay $2572 (an additional 51% of wage for social welfare benefits) and the worker takes home only $1324. See id. at A12.
249. See id. The 1997 estimate of the social security deficit was $7 billion. See id.
250. See id.
251. See France's Budget: Circle Squared?, supra note 212, at 54. Defense arms procurement will be cut "by 8.7%, forcing the military to delay some arms purchases and development programmes." Myra MacDonald, France Budget, Reuters, Sept. 24, 1997.
252. MacDonald, supra note 251.
254. See Whitney, supra note 67, at 5.
stagnant. In 1993, the method for calculating retirement benefits was adjusted to include forty years of work, rather than the previous 37.5, and the base changed from the worker's highest ten years of work to the highest twenty-five. In 1995 and 1996, additional reforms merged the different pension systems into one to promote equity and efficiency, and extend the pension system to income beyond wages.

Efforts to reform the health care system are also underway. While attempting to raise the standards of primary health care, many of the measures, such as establishing global targets for fee levels, are designed to contain costs. New national agencies were established to assist in negotiating among insurance funds, national services, and health care establishments on quality and finance, as well as to set standards for good practice.

Privatization provides an additional tool for the French government to bring its budget into balance. The 1997 sale of one-third of France Telecom, the large state telecommunications monopoly, brought a windfall of $4 billion to the government. Operating as private, independent companies provides businesses with greater flexibility and improves their ability to compete in the marketplace.

At the same time, the Prime Minister rejected the pleas of Air France directors to privatize "the country's flagship airline." To gain support from labor and other groups, the Socialists campaigned on a promise to maintain government-owned companies, and Jospin announced that he would suspend privatization of the rest of France Telecom and Thomson-CSF, France's huge defense electronics company.

The austerity cuts also raised cultural issues in another way. In 1996 and 1997, the government cut maintenance efforts thirty-five percent on the great cathedrals in France (where more tourists go than anywhere else in the world). In Strasbourg, the government spent about $2.6 million a year on the Romanesque and Gothic structures to restore them to their thirteenth century condition. Current budget cuts jeopardize that cultural and historic preservation.

255. See id.
257. See id. at 5.
258. See EC SOCIAL PROTECTION, supra note 22, at 18.
259. See id.
261. See Andrews, supra note 260, at 41.
262. Id. The chairman of Air France had "passionately argued that the airline had to become a private company if it was to survive brutal new competition caused by deregulation of the European airline industry." Id.
263. See France: Politics Meets Mathematics, supra note 76, at 52.
265. See id.
The catharsis in France has proven painful. Though the International Monetary Fund reports that economic growth is improving, it cautions that France's plans to create more public sector jobs and other labor market proposals "may complicate fiscal consolidation efforts and hamper economic growth."266

D. Italy

Italy has undertaken broad fundamental economic reforms to satisfy the convergence criteria,267 including the most radical pension reform in the EU in recent years.268 Italy lowered the public spending deficit, inflation is at its lowest in years, and governmental borrowing is approaching the criteria limits.269 Inflation is down to approximately two percent, and the budget deficit is down to 3.2%.270 In October 1997, the European Commission revised its deficit predictions for Italy downward to three percent of GNP, which is beneath the required convergence ceiling.271 "The ongoing battle that is causing the biggest stir, however, is the race to join the European Monetary Union,"272 as Italians face heavier taxes, cuts in generous pensions and welfare subsidies, reductions in life-long job guarantees in the public service work force, and the imposition of merit-based salary levels. "But what is important in the meantime is that the government has announced its desire to put an end to a concept of work that is incompatible with the new rules governing market globalization."273

Italy has long maintained a strong commitment to European integration, though adapting the nation's economy to the rigorous demands of the European Community has proven problematic.274 Recently, in its push to meet the convergence criteria, Italy made "staggering strides" in reforming its economy — "[n]owhere is it more obvious that the euro is fueling profound economic adjustment in Europe."275

266. INTERNATIONAL MONETARY FUND, supra note 7, at 5.
268. See EC SOCIAL PROTECTION, supra note 22, at 13.
269. Inflation is at 1.5%, the lowest rate in 29 years, and the GDP public debt ratio is at 3.9%. See d'Aquiro, supra note 267, at 10.
272. D'Aquiro, supra note 267, at 10. "[T]he outcome [is] unclear as the powerful unions prepare to fight the cuts." Id. For a full description of the organization and extent of social protection in Italy, see EC SOCIAL PROTECTION, supra note 22, and U.S. SOCIAL SECURITY ADMINISTRATION, supra note 53, for alphabetical discussion of EU and other national social security schemes.
273. D'Aquiro, supra note 267, at 8.
274. See Antonio La Pergola, Italy and European Integration: A Lawyer's Perspective, 4 INT'L & COMP. L. REV. 259 (1994). La Pergola is a professor at the University of Rome, Member of the Italian Parliament and former President of the Constitutional Court.
275. Id.
Predictably, the new austerity policy caused political opposition. Amid the struggles to pass the 1998 budget, the unions ultimately withdrew their support. This prompted the far left wing of the Communist Party to bolt from the coalition, causing the government to lose its operating majority and ultimately fall from power.276 The new budget called for $2.9 billion in cuts to pension and health care.277 The moderates of the Communist Party agreed to the fiscal discipline because it constituted "the necessary price for a more modern, flexible and competitive economy." Agreement, however, came only after a demonstration of widespread public support for the government, including criticism of the radical Communists by the more moderate Communists. Withstanding the threat, the Prodi government re-assembled its coalition and retreated from its 1998 goals. However, it only reduced its projected $2.9 billion budget cuts by $290 million.279 Farmers recently blocked roads across Italy to protest the government's efforts to reduce milk subsidies, as part of its "spending diet."280 The government offered to compromise with the farmers in hopes of defusing the conflict. In spite of the struggle over the cuts, a "broad consensus" in Italy supports joining the common currency and the associated fiscal discipline.281

Sweeping reform of the pension system constitutes a major part of the government efforts to reduce budget deficits.282 "More than 10 percent of Italians — six million people — are officially disabled. They will cost Italy $33 billion this year in disability pensions. . . . Many do have physical handicaps but many are the healthy beneficiaries of a bygone system."283 One investigation found one in four claimants lacking a disability.284 Upon implementation of the new verification requirements, the number of people claiming handicaps stopped rising for the first time in years.285 The International Monetary Fund noted that Italy's new measures for pension reform and improved cost effectiveness consist of raising retirement ages, increasing minimum service requirements, and reducing the proportion of earnings used to compute the pension base.286 One reform encourages later retirements by using a new pension calculation formula based on the employee's contribution record, his life expectancy, and the expected

276. See Bohlen, supra note 271, at A10.
277. See id.
278. Id.
279. See id. at A5.
280. See John Tagliabue, Dairy Farmers Must Finance Their Subsidy, Italy Insists, N.Y. Times, Jan. 7, 1998, at A4. Dairy farmers receive about $484 million a year, out of some $6 billion in subsidies distributed annually by the Italian government to farmers, 90% of which is from EU funds. Agriculture spending accounts for two-thirds of the EU's $98 billion annual budget. See id.
281. See id.
283. Id.
284. See id.
285. See id.
286. See Kopits, supra note 12, at 6.
growth of the economy. Italy set limits on the accumulation of multiple benefits from different sources, harmonized the numerous pension schemes, and eliminated special benefits for public sector employees. These reform measures facilitated the use of supplementary pension funds composed of contributions from employers. More importantly, the qualification and verification restrictions imposed on the disability pension system resulted in enormous savings.

Much of the fiscal discipline resulted from increased taxation and tighter control of government expenditures. For example, a "Europe tax" raised 5.3 trillion lire, a withholding tax on employee severance pay added 5.2 trillion, and controls on cash distributions to government restrained outlays. Italy had a surplus of tax revenues over public expenditures of almost 7% this year. . . . The surplus tax revenues resulted from raising the VAT [Value Added Tax] in October 1997 and implementing 15 trillion [lire] in spending cuts. Additionally, Italy gained 4.5 trillion lire from welfare reform. Italy's strong anti-inflation policy contributed to its economic stability, and its payment balance now boasts a large surplus.

Financial legislation introduced job regulations that promoted flexible employment contracts and part-time work. These improvements built more efficiency and harmony into Italy's industrial workplaces. "[T]he entire system of industrial relations in Italy is changing" as a result of the 1993 cooperation agreement between the government, employer associations, and trade unions. This collaboration emphasized quality work and employee participation in management. Employee and union participation produced recent contract renewals without strikes, and all parties adopted the "total quality" philosophy to improve competitiveness. Further, Italy introduced this same concept into the public sector to re-establish efficiency and quality in public services.

Italy has achieved much of its fiscal progress through a privatization plan, termed "one of the world's largest sales of national assets." Italy is splitting up and selling its fifth largest industrial group (Instituto per la Ricostruzione Industriale) over a three year period. This divestiture also includes selling a thirty-six percent share of Banco di Roma, an eighty-six

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287. See EC SOCIAL PROTECTION, supra note 22, at 14, 41.
288. See id. at 13, 41.
289. See Kopits, supra note 12, at 6.
290. See EC SOCIAL PROTECTION, supra note 22, at 42.
291. See id. The government also imposed a new payroll contribution tax funded entirely by employers to offset social welfare spending. See id. at 41. Of note is that Italy raised its family allowance above its previous low level. See id. at 42.
292. Id.
293. See id.
294. See A Healthy Regime, supra note 267, at 522.
295. See EC SOCIAL PROTECTION, supra note 22, at 43.
297. See id. at 621-22. The quality goals, however, are being achieved less effectively.
298. See id. at 624-25.
percent share in the Italian highway network, majority shares in Rome's two airports, and the national airline (Alitalia). Ultimately, the sale is expected to pump over $29 billion into Italy's state treasury.

Three concurrent developments have enhanced Italy's prospects of joining in the Euro's first round. First, Italy's vast reduction in the public-sector deficit draws its economic numbers close to the convergence criteria. Second, Germany's own economic difficulties with the criteria lessen its ability to insist on strict convergence. Third, the shift in EU politics since France's elections and strong French support for Italy's entry in the first wave increase Italy's prospects for inclusion in the Euro. Italy's dramatically improved fortunes offer the brightest story among the major Member States.

E. Two Other Countries

Economic and social developments in two additional EU states — the Netherlands and Britain — add balance and a broadened perspective to this discussion.

The Dutch have enjoyed considerable success with their economy.

As Europeans wring their hands over what is usually presented as a choice between heartless American-style modernizing of their economies and preserving the old European social safety nets, many people say the Dutch have found a third way, combining an open, vigorous market with generous social benefits and a measure of social justice.

The Dutch economy grew faster over the last five years than the economies in Britain, France, or Germany, and unemployment is much lower than most of the large European countries.

The Dutch have suppressed wages, inflation, and interest rates, while relaxing rules for hiring, firing, and opening new businesses. There is a "social pact" between labor, government, and employers to keep wage demands moderate (two percent per year) in exchange for shorter work weeks and more jobs. When the government cut unemployment benefits, many returned to work. When new laws shifted sick benefits to employers, fewer workers used them. The labor unions also joined in the

300. See id.
301. See id.
302. See A Healthy Regime, supra note 267, at 521.
304. See id. See also INTERNATIONAL MONETARY FUND, supra note 7. The Netherlands' economy enjoys a "mature stage of... expansion with high levels of resource use." Id. at 5. It is a "promising example" of market reform, "successful in enhancing flexibility of... [its] economy." Id. at 12.
306. See id. In 1996, a new structure for employee insurance schemes was implemented, with a central board representing employees and employers to set contribution rates, budgeting, and the administration of funds. See EC SOCIAL PROTECTION, supra note 22, at 22. For a full description of social benefit programs, see id. at 44-45. See also U.S. SOCIAL SECURITY ADMINISTRATION, supra note 53, at 255-57.
free market. Consumer sales and construction have increased, and deregulated working hours have spurred new job creation.

The OECD reports that, beginning in the 1980s, the Netherlands used a gradualist approach to pursue comprehensive reforms. The Netherlands experienced lower unemployment than other European countries. Though it once suffered from high labor costs, the Netherlands achieved general wage moderation through centralized bargaining and tax reductions, decreased minimum wages, and scaled back payroll taxes. One recent policy analysis noted market reforms that included limits on retirement and survivor pension benefits, hospital and pharmaceutical costs, and disability and sick pay. The International Monetary Fund praises the Netherlands' successful approach to reform for demonstrating that "there does not need to be a conflict between labor market flexibility and social cohesion."

Britain also offers a significantly different economic picture than the Member States discussed above, although its economic culture is so profoundly different from the Continent's that comparisons between them are difficult. Evolving British positions deserve mention for two reasons. First, Britain's changed political position on monetary union could promote the European integration process. Second, its two-directional social policy, which publicly embraces the broad European social protection norms of the Social Charter, appears to maintain the spreading ethos of social cost cutting. The Blair Labor government has surprised most, and angered some, onlookers with "hard-edged social reforms" that have generated protests reminiscent of the struggles in France and Germany.

308. See id.
309. See OECD, supra note 83, at 8.
310. See id. at 7.
311. See Kopits, supra note 12, at 6-7; EC Social Protection, supra note 22, at 16-17, 45-46. New laws also impose stricter procedures for qualifying for social benefits, emphasizing the recipient's more active role in seeking employment, and measures safeguarding against fraud and abuse. See id.
312. INTERNATIONAL MONETARY FUND, supra note 7, at 13.
313. See Roger Cohen, Under the Knife, Each Welfare State Has Its Own Pain Threshold, N.Y. TIMES, Sept. 19, 1997, at A7. Britain has a stronger economy, less unemployment, and a history of emphasis on individual initiative. See Warren Hoge, Blair Hoping to Disarm Critics, Creates Agency to Work for Poor, N.Y. TIMES, Dec. 9, 1997, at A6. Wage burdens are also far less with social security taxes adding only 10% to the wage bill in Britain, while 50% is added in France. The OECD reports that the U.K. began widespread structural reform in the 1980s and, after implementing it, now suffers less unemployment. And while the U.K. had a heritage of national industries and troubled labor relations, its efforts focused on privatization and product market reform. Britain scaled back unemployment benefits and employment protection, while public sector employment relations have been made similar to the private system. See OECD, supra note 83, at 7-9.
314. Blair welfare reform measures have "provoked a backlash from his own party and public dismay from protesters as diverse as farmers, butchers, students, consumers, welfare recipients and genteel country people." William D. Montalbano, Blair Beset by the Pesky Realities of Governing, NEW ORLEANS TIMES PICAYUNE, Dec. 27, 1997, at A16. "Blair has built on inherited Conservative free-market economic strengths. . .," intends
Britain’s previous stalwart opposition to the single currency and its public declaration that it will not participate in the first round have rendered convergence criteria comparisons less meaningful. Further, the International Monetary Fund and the OECD contrast Britain’s strong economy with the weakness found in Germany, France, and Italy. Nonetheless, the new government’s attitude toward the EU marks an important turn around, and may signal smoother passage of legislation promoting many aspects of Community policy. The well-known British opposition to the common currency is finally softening. Reports from Britain suggest that the new Labor government “was considering joining the single currency shortly after its introduction in 1999.”

Signaling another similar attitude shift, Britain has accepted the Social Charter. However, this movement of the new Socialist government seems not to reflect a softer outlook on the issues under discussion here. Prime Minister Blair has taken an aggressive stand on “tight spending restraints and toughened welfare standards.” In fact, numerous legislative initiatives and public statements demonstrate some convergence with the trends in Germany, France, and Italy. Blair’s economic strategy is to produce higher tax revenues, while lowering social welfare payments and encouraging work, not dependency. In 1997, for example, as a part of his policy of “tough compassion” and emphasizing work opportunities and training, Blair issued a decision to cut benefits to unemployed single parents. With this tough stance on social welfare, the Labor Party has found itself enjoying the acceptance of the traditional conservatives and the aspiring middle class. However, it has caused some discord among its own ranks.

In October 1996, the government replaced the “Unemployment Benefit and Income Supplement” with the “Jobseeker’s Allowance,” which requires the recipient to sign a written contract setting forth a job search and train-
ing plan. Other reforms include limits on single parent benefits, housing benefits, and benefits to non-citizens. The Social Security Administration has reorganized and streamlined its operations, and privatized its social services. The Blair government has even suggested abolishing free university tuition, the “keystone of the welfare state,” and reports suggest that disability and health benefits are under study for reforms as well. Britain hopes the new approaches will promote labor market flexibility and reduce unemployment, yet maintain an acceptable level of social cohesion.

V. United States Targets

In August 1996, President Clinton signed the Republican-inspired welfare reform law, the “Personal Responsibility and Work Opportunity Reconciliation Act” (PRWORA). This new legislation radically altered basic government policy regarding social welfare assistance to the poor in the United States and was called “the most fundamental changes in programs affecting low-income persons since the inception of the Social Security Act in 1935.” The PRWORA terminates the federal government’s longstanding obligation to provide basic aid to the poor by abolishing cash assistance, as well as reducing and restricting Supplemental Security Income, child care programs, child nutrition programs, Food Stamps, and

322. Id. at 16, 53.
323. Social security offices may be sold and leased back to the government, leaving property management to the new landlords, while the delivery of certain benefits may be “contracted out” to private agencies. See id. at 20, 53-56.
324. Montalbano, supra note 314, at A16.
325. See id.
326. See Bruce Barnard, Inside Europe, Dec. 97-Jan. 98, at 1. The United States enjoys low unemployment but little social protection; the Continent suffers chronic unemployment but maintains high social cohesion; the United Kingdom and the Netherlands take a middle approach to acceptable levels of both.

- the movement toward greater state autonomy has been associated with deregulation both as a theoretical and as a political matter. In theory, devolution encourages deregulation by giving individual states discretion to relax uniform rules. . . . Not surprisingly, state empowerment has found favor among politicians looking for ways to roll back intrusive federal economic regulation.

Medicaid. One Congressman described this fundamental policy shift as "mov[ing] to a new paradigm."

The Congressional Budget Office estimated government savings of over $50 billion through fiscal 2002, and proponents hope that it will move thousands of people from welfare to work, ending the U.S. liberal welfare policy of the past six decades and transferring much of the money and regulatory responsibility to the states. One source estimates a reduction of two million welfare recipients in the first year and a half. Early 1998 statistics show welfare rolls declining to a twenty-five-year low. The new federal law and accompanying state regulation, coupled with a booming economy, produced this substantial decrease.

The PRWORA includes three major tools for implementing this broad overhaul. First, federal funding is re-routed through the states as block grants, giving the states broad control over their administration. Second, regulations impose requirements on recipients, including requirements that recipients work within two years of receiving aid and limiting all welfare assistance to five years. Third, the regulations affect a broad array of benefits — cash welfare payments, food stamps, immigration regulations, aid to disabled children, federal child care assistance, and enforcement of child care orders. The general theme of the legislation is to jettison the long standing federal guarantee of welfare support in favor of state-run welfare programs.

The most financially significant cuts come in the reduction of the food stamp program and aid to legal immigrants. The transfer of money and

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333. See id. § 114 (to be codified at 42 U.S.C. § 1396).
334. Representative Timothy J. Roemer of Indiana urged Clinton to sign the bill and explained that recipients will no longer simply be given something, but will be required to "sign a contract to improve themselves." Barbara Vobegda, America Moves Away from the Welfare State, INT'L HERALD TRIB., Aug 2, 1996, at 1.
335. Critics claim that $55 billion in welfare cuts to the poorest people in America will result in as many as 2.6 million additional people living below the poverty line by 2002. See Houseman, supra note 328, at 2.
339. See Katz, supra note 327, at 2645, 2696.
authority to the states, however, manifests fundamental and structural alterations. In one of the most significant changes, block grants to the states for Temporary Assistance for Needy Families (TANF) replaced the well-known federal Aid to Families with Dependent Children. Placing billions of dollars and broad administrative authority in the hands of the states marks a radical change in the philosophy and structure of welfare assistance in the United States.

TANF provides states with broad discretion over spending federal funds in any reasonable manner to accomplish the general purposes of the law. A few general guidelines do apply, however. Each state is required to file a plan for eligibility and distribution of these benefits every two years. The federal legislation required states to switch over by July 1, 1997, and to spend at least seventy-five percent of the sums they spent in the previous year for social assistance. Federal work requirements play a central role in this delegation to the states. Adult recipients of assistance must begin working within two years of receiving that aid, and states must have a certain percentage of their welfare caseload participating in work activities.

Consequently, states have autonomy in shaping the administration of government assistance. With each state designing different programs, some states will perform more effectively than others in constructing safety nets for the poor. Amid some reports of early successes in states with strong economies, poorer regions appear less successful. While the overall dual purposes of budget reduction and work promotion appear advanced, the related and more difficult questions naturally relate to human cost and fairness.

A vivid example was recently reported in an acutely depressed area of Mississippi. The Delta region along the Mississippi River has a ten percent

Another study estimates Food Stamp reductions at $28 billion, by "almost 20 percent, the equivalent of reducing the average food stamp benefit from its current level of 80 cents per person per meal to 66 cents per person per meal." David Super et al., The New Welfare Law – Summary, Center on Budget and Policy Priorities (last visited Aug. 13, 1996) <http://www.cbpp.org/ WCNSUM.HTM>.

See Houseman, supra note 328, at 932.

See Katz, supra note 327, at 2696-97. For historical and detailed discussion of the changes in the government programs, see generally Sheila Ards, Contract With America: The Implications to the Children, 2 Loyola Poverty L.J. 89 (1996).

The AFDC philosophy of strict entitlements for all needy persons sharply contrasts with the mantra of work and limited benefits.

See Katz, supra note 327, at 2697.

States must explain the following: how the state plan will require and ensure that parents who receive assistance will engage in work activities within two months of receiving benefits; how it will ensure equitable treatment in determining eligibility and delivery of benefits; how it will prevent and reduce out-of-wedlock pregnancies; and how the state intends to treat families moving into the state differently from other residents. See Katz, supra note 327, at 2696-97.

See id. at 2697-98 (rising from 25% in fiscal 1997 to 50% in 2002).
unemployment rate.\textsuperscript{347} Under the new Mississippi program to encourage welfare recipients to work, the welfare rolls have diminished statewide, as they have in many areas in the United States. Unfortunately, many of those unemployed in the impoverished Delta area cannot find jobs as required by the new strict state rules conditioning welfare assistance on a return to work.\textsuperscript{348} These families will lose their cash assistance checks, food stamps, and medical insurance for adults.\textsuperscript{349} Many of those newly employed leave the jobs because of practical problems (caring for children) and lose their benefit.\textsuperscript{350} In one Delta county, of 1,299 participants in the workfare program, "only 61 got subsidized jobs and only 15 kept them — about 1% of the case load."\textsuperscript{351}

In rural areas like the Mississippi Delta, several factors combine to discourage the switch from welfare to work. "Jobs and child care are scarce,"\textsuperscript{352} distances between homes and jobs can be large, with no public transportation, and education is poor. The matter is exacerbated because TANF allocates federal dollars according to how much a state previously spent on such assistance. Thus, Mississippi receives half of the federal money that many other states receive.\textsuperscript{353}

Recent experience with Connecticut's adaptation of the federal mandate offers another example. Adopting one of the shortest time limits for welfare receipt of all states, at twenty-one months, Connecticut's new law cut off benefits for approximately 450 families in November 1997.\textsuperscript{354} Approximately 950 families had exhausted their twenty-one month eligibil-


\textsuperscript{348}. One report shows that families removed from welfare eligibility "for violating the new work rules outnumbered those placed in jobs by a margin of nearly two to one." Id. at A1. And in a state where 80\% of those on welfare are black, the racial overtone adds to the misfortune. See id.

\textsuperscript{349}. The work rules require unemployed people to attend job search classes, accept job assignments, and stay with them, or lose assistance eligibility. See id. at A24.

\textsuperscript{350}. For example, Mississippi provides $120 a month for a mother with two children. See id. Mississippi's "Work First" program offered financial incentives to businesses to hire former welfare recipients (the employer pays only the first $1 per hour of minimum wage, with the state paying the remaining $4.15 for the first six months) and it required recipients to attend job-search classes and cuts off benefits to those who did not attend the classes or accept offers on employment. See id.

\textsuperscript{351}. Id.

\textsuperscript{352}. Id.

\textsuperscript{353}. See id. Wisconsin receives $7,200 per family, Mississippi gets about $2,100; the average is $4,100. See id. Oregon receives about $6,600 and adds substantial state contributions. See id.

\textsuperscript{354}. See Jonathan Rabinovitz, \textit{Connecticut Welfare Cutoff Falls on Hundreds of Families}, N.Y. Times, Nov. 3, 1997, at B1. Connecticut's program is three-pronged, "combining the 21 month limit with penalties and incentives to move welfare recipients into the labor market." Id. To encourage those who are cut off to get jobs, the program preserves their Medicaid and child care subsidies. Also, extensions are available, depending on the circumstances, when jobs are not found through no fault of the recipient. See id. On the other hand, sanctions are included for failure to make a good-faith effort at finding a job and have not participated in an intensive case-management program. See id.
ity, but half were granted six-month extensions. Of those losing benefits, Connecticut cut off 380 because of the twenty-one month time limit, and Connecticut determined that sixteen families did not make a good faith effort to find jobs.355 Approximately 100 families lost benefits because they failed to show up for interviews with welfare officials, had children that became too old, or failed to meet some other requirement.356 State officials expressed approval of the law because the number of individuals on welfare decreased substantially and many of those removed from the rolls had found jobs.357

New federal legislation also limited eligibility for another form of federal assistance, Supplemental Security Income (SSI). SSI is for the low-income disabled and elderly. SSI benefits, averaging $436 a month, are used for food, clothing, shelter, and other care costs for the disabled.358 One estimate suggests that the new law will affect 1.2 million recipients359 especially children.360 For example, the new law and its strict interpretations make it more difficult for children to qualify for SSI.361 One study revealed that the government denied benefits to fifty-six percent of the 170,300 cases re-evaluated in the first stages.362

Under the new law, a child's medical condition that would qualify for adult disability no longer qualifies for aid. The law eliminates the previous “comparable severity” standard and now requires “marked and severe functional limitations” causing death or lasting longer than a year.363 Recipients of this SSI will also be re-evaluated every three years, and many are

355. See id.
356. See id.
357. See id. at B5. Reports from Idaho include similar numbers, where its program bars welfare assistance after 24 months and cash assistance has been reduced and limited regardless of the number of children living in a household. See Soup Kitchens Fill After Idaho Welfare Cuts, N.Y. Times, Dec. 7, 1997, at 22. Notably, Idaho has seen a 70% decline in the number of single women with children applying for federal and state cash assistance. See id.
359. See Claudia Schlosberg, States Ignore Due Process Protections – 1.6 million Medicaid Beneficiaries at Risk, National Health Law Program 1 (Feb. 10, 1997).
360. The CBO estimates that approximately 315,000 children who would have been receiving SSI benefits in 2002 will lose eligibility. See Katz, supra note 327, at 2699.
361. See Pear, supra note 358, at Al.
362. See Robert Pear, After a Review, 95,000 Children Will Lose Cash Disability Benefit, N.Y. Times, Aug. 15, 1997, at Al. Later figures show that 236,586 children have been re-examined and over 142,000 have been cut off (60%), and over 225,000 new claims have been denied. See Pear, supra note 358, at Al. The American Bar Association and others have objected to the law, which one Senator complains increases suffering for “the most vulnerable of our society.” Id.
363. Katz, supra note 327, at 2699. The old standard made children eligible who had “impairments that seriously limited their ability to perform activities normal for their age,” while the new law requires the “marked and severe” limitation. Pear, supra note 362, at Al. Other restrictive limitations apply, such as a more restrictive Listing of Impairments, and excluding behavioral functioning. See Katz, supra note 327, at 2699. See also Rita L. DiSimone, Major Welfare Reforms Enacted in 1996, Social Security Bull., Fall 1996, at 57.
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already being denied eligibility upon re-assessment.\textsuperscript{364} The Congressional Budget Office predicts that the new rules will affect about 315,000 children by the year 2002.\textsuperscript{365} Some critics fear that the strict implementation guidelines will disqualify many children with low IQs, diabetes, and AIDS, even beyond the letter of the original 1996 Congressional enactment.\textsuperscript{366}

Child care for working parents is essential to encourage parents to leave welfare. Federal funding for child care for low income families is now channeled through the block grants to the states and new procedures to establish paternity and enforce child support orders are also included in the law.\textsuperscript{367} The Summer Food Service Program for Children will receive a smaller federal subsidy and similar reductions will take place in subsidies to food programs for family day care homes (except for those in low-income neighborhoods).\textsuperscript{368}

The new law also diminished the broad federal food stamp program. It reduced the food stamp assistance and added new work requirements. It cut individual allotments by lowering the percentage of entitlements on the agricultural department standard and modified calculations for eligibility by changing certain deductions in the qualifying process.\textsuperscript{369} The new work requirement mandates that food stamp recipients without dependents work at least twenty hours per week or participate in state-approved work, training, or workfare programs.\textsuperscript{370} Poor, unemployed people between eighteen and fifty years of age without children can have food stamps limited to just three months in a three year period.\textsuperscript{371}

Immigrants are particularly affected by the new law. Both illegal aliens and legal non-immigrants, such as travelers and students, face added restriction for eligibility for SSI, food stamps, and other benefits.\textsuperscript{372} The government will refuse to provide current legal immigrants with SSI and food stamps until they become U.S. citizens, and those receiving the benefits prior to the new law must have had an eligibility review in 1997.\textsuperscript{373} The government will deny future legal immigrants low income assistance for their first five years in the United States. “Although legal immigrants represent only about 6% of those on public aid, they took the brunt of the cuts made by the welfare law.”\textsuperscript{374} In fact, the 1996 welfare bill aimed forty

\textsuperscript{364} See Pear, supra note 362, at A1.
\textsuperscript{365} See id.
\textsuperscript{366} See id.
\textsuperscript{367} See Katz, supra note 327, at 2700, 2702.
\textsuperscript{368} See id. at 2703.
\textsuperscript{369} See id.
\textsuperscript{370} See id. at 2704. Waivers of these rules are possible for jobless areas and those hit hardest by unemployment, and exceptions for the work requirement are made for pregnant women, those caring for incapacitated persons, and others. See id.
\textsuperscript{371} See Super et al., supra note 340, ¶ 9.
\textsuperscript{372} See Katz, supra note 327, at 2701.
\textsuperscript{373} See id. at 2701-02 (allowing exceptions for refugees, veterans, and those who have worked here for ten years).
\textsuperscript{374} George Soros, Legal Immigrants Deserve a Safety Net, N.Y. Times, Aug. 22, 1997, at A1. One recent report from New York illustrates the impact on immigrants, citing the denial of food stamps to more than 50,000 legal immigrants between the ages of 18 and
percent of the cuts at legal immigrants.\textsuperscript{375}

Significantly, the states maintain wide discretion in determining eligibility and distribution guidelines for assistance to immigrants.\textsuperscript{376} The 1996 federal welfare provisions allow individual states to calculate welfare benefits for new residents by using the rules of the newcomers' previous residences, thus discouraging movement of people from one state to another to gain higher welfare benefits.\textsuperscript{377} Pennsylvania used this new power to enact a welfare distribution system which, for example, allocated $304 a month in cash assistance to a poor eight-member family from Puerto Rico (that amount based on the sum allowed in Puerto Rico) rather than the $836 permitted to similar families residing in Pennsylvania for a year or more.\textsuperscript{378} Predictably, the family moved back to Puerto Rico upon failure to qualify for more support, insisting that they had insufficient assistance to pay for even basic shelter and clothing in Philadelphia. In a class action suit, the district court found the state law unconstitutional. Pennsylvania intended the law to discourage an influx of poor people and to encourage people to work. The court held that the law violated the Equal Protection Clause of the Fourteenth Amendment because it had a disparate impact on particular immigrant groups and failed "miserably" to achieve its purpose of encouraging people to work.\textsuperscript{379}

The 1996 welfare law also restricted Medicaid, the joint federal-state health insurance program for the poor.\textsuperscript{380} Unlike the previous system, which recognized categorical eligibility based on receipt of welfare and immigration status, states are now permitted to modify the qualification standards and methodologies.\textsuperscript{381} Additionally, state law may deny Medicaid benefits to those who refuse to satisfy the state's work requirements.\textsuperscript{382} Illegal aliens are ineligible for Medicaid and states may deny coverage for legal aliens who have not yet become citizens.\textsuperscript{383} New immigrants are also disqualified from obtaining Medicaid benefits for five years after entry, and those who will lose their SSI benefits also lose Medicaid

\textsuperscript{59} in just four months. See Rachel L. Swarns, Denied Food Stamps, Many Legal Immigrants Scrape for Meals, N.Y. TIMES, Dec. 8, 1997, at B1. "The law, which was intended to move foreigners off public assistance and into jobs, has pushed an estimated 770,000 immigrants off the food stamp rolls across the nation, Federal officials say." Id.

\textsuperscript{375} See Soros, supra note 374, at A1.

\textsuperscript{376} "States may choose to deny most legal immigrants . . . benefits from the welfare, Medicaid, and social services block grants." Katz, supra note 340, at 2702.


\textsuperscript{378} Thirteen other states have taken similar action. See id.

\textsuperscript{379} See id.

\textsuperscript{380} The federal and state governments share funding to provide a comprehensive range of services to those who satisfy certain requirements demonstrating financial need. In 1965, federal law established this program with federal guidelines, but each state may design its own program within those guidelines.

\textsuperscript{381} See DiSimone, supra note 363, at 60.

\textsuperscript{382} See Katz, supra note 340, at 2698 (explaining that the Medicaid coverage would continue for the children of such a disqualified person).

\textsuperscript{383} See DiSimone, supra note 363, at 61.
eligibility. Under the 1997 balanced budget bill passed in July, Congress reversed some previous cuts of programs for the poor. At President Clinton's urging, Congress restored some of the benefits for the poor that existed prior to the 1996 cuts. Despite this, about one million households will lose food stamps, two-thirds of which are families with children.

Nevertheless, the President's bill significantly changed the implementation of the 1996 reforms. For example, food stamp limits now have a wider range of exemptions; minimum wage is required for workfare recipients (minimum wage is required for welfare recipients who take state created jobs) and SSI and Medicaid benefits are restored to legal immigrants living in the United States prior to August 22, 1996. Additionally, a new welfare-to-work tax credit for employers who hire persons previously on welfare will help the unemployed find jobs. Notably, the bill also allocated $24 billion to provide Medicaid benefits to half of the nation's ten million children who lack health insurance.

As it turns out, fewer than half of the states will meet the guidelines for requiring welfare recipients to go to work. Many now urge that the regulation requiring work from seventy-five percent of the two parent families on welfare was unrealistic. Rather, most states have twenty-five percent of the total caseload in work activities.

When assessing the targets (or victims) of welfare reform, one discovers that the intended goals are often misleading. While encouraging people to work sparked much of the reform enthusiasm, statistics show that nearly two-thirds of all welfare recipients are children. By the time the welfare law's five year limit takes effect, between 2.5 and 3.5 million children could be affected.

Other statistics demonstrate that the welfare abuse rationale is merely an inaccurate stereotype. A majority of welfare recipients live in the South, not in cities. About 39% are Caucasian, 37% African American, 18% Hispanic, and many do not hold high school diplomas. While the wel-

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384. See id. States may not deny emergency medical care to either legal or illegal aliens, and other exceptions exist. See id.
385. See id.
387. See id. at A12.
389. See id. This problem is primarily political. See id. at A14. Interestingly, almost half of the two parent families affected by this law are refugees in California. See id.
390. See id.
391. See Kost & Munger, supra note 29, at 35 (citing Comm. on Ways and Means, 103d Cong., 2d Sess., Background Material and Data on Programs Within the Jurisdiction of the Committee on Ways and Means 409,454 (Comm. Print 1994)).
392. See Super et al., supra note 340, at 2. Senator Patrick Moynahan has stated that, "You won't know what you've done until the five year cut off begins." DeParle, Success, supra note 336, at A17.
393. See Kost & Munger, supra note 29, at 57.
394. See id.
fare rolls are falling dramatically, only time will reveal the specific nature and magnitude of the new laws' impact.

A discussion of federal spending reductions should include defense spending cuts. The U.S. defense budget has undergone extensive cuts, totaling about $40 billion over five years. According to one estimate, the 1992 outlay for military defense of $286.8 billion will have been reduced to $247 billion. From 1988 to 1995, the government closed almost 100 major domestic military bases and recommendations for 1998 include another round of base closings. This means a $15 billion a year shift from personnel and operating costs to procurement. Defense Secretary Cohen has advocated a "revolution in business affairs," calling for slimming down or contracting out non-combat affairs. The pentagon has cut its size by about a third, while military bases reduced their size by 18%.

The budget reforms have produced measurable change. Billions of dollars and considerable authority have shifted to the states. The states responded by imposing a vast network of tougher welfare regulations, and the welfare rolls have diminished dramatically. Military bases are closed and spending reduced. President Clinton may have been correct when he predicted that this is not the end of the changes, but the beginning.

VI. Convergence — Divergence — Paradigm Shifting

Initially, distinctions between legal and political reform must acknowledge the interdependence of law and politics. In both Europe and the United States, the current discourse of change "is much wider than doctrine and norms and... the very dichotomy of law and politics is questionable." The 1994 political revolution in the United States presaged the legal one in 1996. Though the landscape continues to shift as the political and legal actors react to voter reception, these two events are substantially inter-

397. Id.
398. See id. at 1082 (providing detailed numerical reductions in specific line items, such as army divisions, ships, jet fighters, ballistic missiles, etc.). "Under pressure from Congress to reduce the Pentagon's bureaucracy before ordering more cuts in troops or weapons, Secretary of Defense William S. Cohen plans to trim thousands of civilian jobs at the Pentagon and transfer thousands more military personnel out of their headquarters and into the field." Steven Lee Myers, Pentagon to Trim Thousands of Jobs Held by Civilians, N.Y. Times, Nov. 10, 1997, at A1. "A sweeping plan to reorganize the Pentagon's bureaucracy, to streamline operations and to otherwise save money..." has been adopted. Id. Plans to hold two more rounds of base closings have been revived in the hopes of saving $6 billion. See id. The United States reduced the number of troops from 2.1 million (at the end of the cold war) down to 1.4 million in 1997. See id.
399. "Perhaps the simplest of all surprises is that welfare really changed. Unlike previous welfare laws, this one was not a paper reform confined to a White House lawn." DeParle, The 'Drawer People,' supra note 336, at A16.
400. See id. at A1.
401. Weiler, supra note 3, at 2409.
The dominant influence of economics in the legal and political context of the evolving European Union and the devolving U.S. federalism suggests a preeminent divergence between the two approaches. As noted at length above, the European and U.S. economies could hardly be more dissimilar. In Europe, a modest recovery is underway, but crippling unemployment continues to restrain economic progress. However, unemployment dwarfs other EU economic concerns, and the new Treaty specifically demands action on this sore subject. The growing numbers of payees of the generous European unemployment and retirement benefits combine with the reduced number of employed payors to spiral the budget deficits steeply upward. The soured economic recovery has progressed radically to alter the political and economic chemistry of entry into the single currency's third stage, with potentially profound effects. German insistence on strict adherence to the convergence criteria is undermined by its own budgetary shortfall. Furthermore, Germany's displeasure at the inclusion of weaker economies in the first wave, contributing to a "softer" euro, may have a destructive effect on the single currency process.

The United States, by contrast, has enjoyed the economic boom, which has buoyed prospects for continued reform. Unemployment reached thirty-year lows in 1997, inflation remained subdued, and other indicators of strong economic growth forecast a period of constructive prosperity. Witnessing this different mixture of economic, political, and legal forces in the two spheres must impress the observer with the complexity of movements in each context.

To the extent that these economic and legal changes are judged to constitute reform depends on their depth and duration. While many of the budgetary changes noted may prove superficial, temporary accounting adjustments and other legislative changes — such as constitutional amendments granting parliaments new powers or complete legislative overhauls of longstanding administrative apparatus — appear to be more substantial and may endure to constitute significant reform. As legislation validates evolving legal norms and social expectations, reform may accrete slowly in unforeseen ways. The complexity, interconnectedness, and gradual unfolding of the legal and social movements necessarily become a part of the broader movements themselves.

This wide range of legal, political, economic, and social developments, concurrently across two continents, presents a plethora of similarities and differences. From minor, discrete, concrete changes in social benefit rules to broad, abstract alteration of governing principles, some of the developments represent systemic convergences, while others merely coincidence. One may see some of the evolving convergences as concentric within other

402. The speed of continuing European integration was throttled back. Of particular note is the slowing of the rate of accessions.
403. See supra note 46 and accompanying text (U.S. economic summary).
convergences and others as part of multidirectional movements, converging in one direction, with divergent side-effects in the opposite direction. These often heavy tides can carry cross-currents and smaller, separate rivulets in the path. Thus, careful scrutiny and some skepticism should frame any effort at broad categorization.

Many differences in the national developments stand out boldly and appear on one level to overwhelm the comparisons. Different perspectives will reflect deep-rooted variances because the European civil law tradition derives from a different philosophical and historical basis than the U.S. common law system. The starkly divergent U.S. and European experiences in the two apocalyptic wars of this century add to their separate views on many subjects. Physical geography affects the proximity to Marxism that has contributed to the different outlooks, while varying access to resources, vulnerability to political and military threats, and physical size. Most continental countries are only slowly approaching the unprecedented ethnic diversity that exists in the United States. The European traditions of governing through consensus building, cooperation with strong labor unions, and a coalitional multi-party system contribute to differing perceptions and experiences with the government process. The recent economic experiences noted above, like opposite trends of record-high versus record-low unemployment, inevitably cast different impressions on the two cultures. These interwoven differences provide a relevant and pointed divergence between the U.S. and European tradition of social solidarity and comprehensive, social protection.

This comparison of European and U.S. legal reform reveals significant differences in world views. The political climate in the United States has recommended delay in two sensitive areas: pensions and health care. Widespread restructuring of these systems has begun in most European countries. Moreover, every European nation considered in this Article has enacted new retirement pension legislation. German legislation has lowered pension benefits, increased employee contributions, and raised retirement vesting ages. Austria's new laws have also raised retirement ages.


405. Another interesting characteristic of European government has been the tradition of leadership by an elite group. For example in France, the same elite school educated two of the last three Presidents and six of the last eight Prime Ministers. See The Ever Surprising Lionel Jospin, Economist, June 7, 1997 at 50. Presidents of the United States rarely attend the same school. Instead, U.S. political leaders receive their wisdom from public opinion polls. U.S. News reports House Majority Leader Army commenting: "I think the president gets up in the morning, he reads the polls, and he says, 'Ah, now I've read my biography for the day.'" Ronald Brownstein, Clintonism, U.S. News & World Rep., Jan. 26, 1998, at 23. In one voter survey, 58% agreed that the president "is driven by polls and the politics of the moment." Id.

406. See Paul Spicker, Exclusion and Citizenship in France (paper on file with author). The European concept of social solidarity presents a different philosophical basis for social protection: an overarching concept of social cohesion in which people are "linked to one another through a complex network of interrelated obligations — both reciprocal and collective." Id. at 13-15.
encouraging workers to work longer by adjusting payout formulas. Italy and France have followed suit and have even re-organized and harmonized their previously complex pension funds and agencies.

In comparison, the United States has only marginally attempted disability pension reform. Widespread criticism of the U.S. Supplemental Security Income reductions have not resulted in a comprehensive plan. Throughout Europe, countries are enforcing the disability pension qualifications more vigorously, emphasizing rehabilitation measures to promote a return to work.

Similarly, the United States has not enacted broad legislation that would reorganize the structure of public health care along the model of France, Austria, or other countries. This is not to say that the forces of competition have not generated change in U.S. health care. Indeed, corporate consolidations and contract management of services have caused widespread change in the private sector. However, the U.S. government has yet to reform the public health system to match European guarantees of quality universal medical care.

While the different course and pace of reform in these areas is reflective of the differing political and social circumstances, a long-term view may actually disclose more of a convergence in policy objectives. In the United States, the public rhetoric of health care reform, social security refinancing, and other benefit restructuring may produce results similar to those in Europe. Thus, although the complex evolution may include different forms and sequences of change, these events may ultimately lead to similar movements.

The consistent legislative efforts to improve labor market flexibility in Germany, Italy, Austria, and France represent another apparent divergence in legislative activity. Efforts to reduce the financial and bureaucratic burdens on employment, employer payroll contributions, and restrictions on contracts and hours have little concurrent analogues in the United States. The German example illustrates the new approach: specific legislation has resulted in allowing longer working hours, facilitating the hiring of independent contractors, reducing sick pay by twenty percent, raising vesting periods and lowering calculation sums for some employee pension benefits, and eliminating much of the employee dismissal protection for smaller businesses. Timing and past experience are distinguishing factors, as U.S. work style flexibility and quality promotion have emerged in response to foreign technology improvements in the past decade. U.S. job restrictions and tax burdens were never as onerous as in modern Europe. The different status of labor unions in the two economies contributes to this divergence. The strong European labor unions have advanced and protected workers' benefits through decades of economic good health. Funding for social solidarity was built into the employment relationship, placing traditionally heavier burdens on business and industry.

The prominence of the large, influential European labor unions as participants in government also represents a related divergence between the two cultures. The European consensus-building tradition among govern-
ment, unions, and employers is unfamiliar to U.S. labor relations. Contract negotiations in the United States are generally not cooperative discussions, and far fewer U.S. workers are represented by unions than are their European counterparts. Labor's role in the U.S. government and vice versa has always proved far less active than in Europe.

Other similar divergences are evident. The reduction of government subsidies to industry constitutes a more significant part of the European reforms, mainly due to the traditional lessened government role in the United States. Reflecting the trend, Austrian farmers and German coal miners receive less government financial support. Italian and French civil service are undergoing similar reform, harmonizing benefits consistent with other employment sectors. The United States, however, will not likely follow European tax increases on capital and the wealthy. To the contrary, the current economic prosperity in the United States is likely to result in tax reductions, especially on capital and the wealthy.

Certain convergences, or at least similar developments, between Europe and the United States exist. These developments, however, vary in substance. Numerous budget decisions viewed overall may reflect similar national policy choices, but in some cases constitute little more than spontaneous reactions to unfolding events. At other times, policy choices constitute deliberate, bold breaks with the past and portray significant trends in evolving governmental change. For example, the prompt reunification of Germany, in cooperation with France and other neighbors, marked a seismic advance in European cooperation and integration. The fall of the Berlin Wall and the collapse of the former Soviet Union generated epochal changes around the world. Simultaneously, common needs and aspirations contributed to common responses across the Atlantic. Decisions to open markets and compete regionally and internationally became a part of the changing European landscape. Likewise, the shift of government power to the regional or local level and the shift away from broad guarantees of social security toward individual initiative and work constituted the deliberate re-ordering of governmental relationships.

Many of the specific, concrete budget cuts discussed here followed from such broad movements. For example, reductions in national defense spending offered relatively easy choices for cuts in both the U.S. and European systems. From French and Austrian offerings of private health and disability insurance, to the sale of national utilities in Italy and Germany, privatization of unprofitable government enterprises was a common European response to general economic pressures, especially as foreign capital became more available. By contrast, although the United States has never participated in the ownership of major industry or business entities to the extent European governments have, privatization contributes to the downsizing of big government. This movement to privatization represents a more abstract convergence — the promotion of the central and controlling

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407. In the United States, only 10% of private-sector workers are union members. See Minda, supra note 11, at 180.
principle that government should withdraw from private economic life, except where necessary for public safety or national security. This technique represents a broader, more abstract trend because a reduction in any government benefit is a form of privatization, as it shifts costs away from the government. When government-sponsored pension or unemployment sums are reduced, private resources from personal, church, or other non-governmental reserves will fill the gap. The emphasis on private economic resources, free from government direction or support, is a cardinal theme in both spheres.

This review suggests hypotheses of two substantial convergences regarding the nature of social welfare, as well as the appropriate roles of the state, businesses, unions, and workers in social cohesion and government processes. Evolving relationships between the individual states and the central governments in Washington and Brussels represent a significant convergence. This convergence also exhibits some multidirectional movement. In the United States, power and authority are devolving to the states through the massive transfers of the new welfare laws. Yet the new federal law maintains its controlling position, imposing a template of overarching guidelines that states must follow. In Europe, the principle of subsidiarity generates similar change as restricting EU competence in favor of the Member States. Yet, the central force at work in Europe discussed here remains, the overarching EU convergence criteria for monetary union. At the same time subsidiarity is emphasized, the European Union deepened its competencies and added power to the central government granted in the 1997 Treaty of Amsterdam. Indeed, the Treaty marks progress toward political integration. Thus, one may observe evolving convergence through the unfolding complex processes.

More relevant to the social issues discussed herein, the constitutional sanctity of social cohesion in Europe may have suffered fatal encroachment in this period. Former Chancellor Kohl is one of several European leaders who initiated broad legislative efforts toward a major re-orientation and restructuring of national economic relationships and performance. One German scholar foresees the social welfare future with a containment of social spending, increased competition with less regulation, “and, under the auspices of self-reliance, a shift in . . . financing” to private provisioning.

Perhaps the social welfare model had to change because of the end of the Cold War and the need for a new social and legal order. When so much of the external context changes substantially, paradigms will adjust

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408. The Treaty would add some enforcement procedures to counter "serious and persistent" Member State breaches of the constitutional principles democracy, human rights, and rule of law. The Council would be granted authority to legislate in areas previously included in the third pillar (freedom, security, and justice, including the Schengen Convention border harmonization), and would allow jurisdiction of the Court of Justice in these matters. New Community activity is required by the Treaty in the employment area, as discussed above, and social issues competences were expanded. See Bermann et al., supra note 6, at 10-11.

409. Hinrichs, supra note 162, at 657.
or break down. Technological innovation, globalization of trade, the dominance of competition in the market, and the prospect of peace and a unified Europe all mix to create a supercharged atmosphere for spontaneous combustion. The political and social struggle portrayed above, with its protests and surprise election results, stimulates this environment for growth. The movement to reform, the resulting protest, and the struggle to resolve the conflict reflect predictable patterns: action, reaction, compromise — thesis, antithesis, and synthesis. The catharsis ultimately produces advancement, albeit slowly and sometimes painfully, but usually for the better.

On this side of the Atlantic, the reform of welfare marks the end of one period and the transition to another yet undetermined. The 1997 transfer of substantial money and authority to the states reverses the opposite trend dating back to the post Civil War federalism struggle, and the end of the federal guarantee of minimal social protection to the poor marks a shift in fifty years of policy. The agreement among Democrats and Republicans that the reforms benefitted both the tax payers and those needing assistance represents a paradigm shock, if not shift, in U.S. politics. While debate about welfare reform in the United States continues, most observers agreed that the previous entitlement system was problematic: the enormous financial costs, the unbalanced budget, and the "pervasive incentives" rewarding parents who remain unmarried, "and benefits that continue unaffected by addiction, promiscuity, and other irresponsible behavior that prolongs dependency."

Federalism shifts of power and resources to local and regional units in both Europe and the United States mirror one another in some ways. In both systems, all powers not specifically delegated to the central government are presumed to be reserved by the States. In recent years, the general principles have taken on added meaning. The EU mandate for subsidiarity, a matter of constitutional emphasis since the Maastricht Treaty, restrains all union organs from acting in matters which could be better achieved by local government, even if nominally falling within a Commu-

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410. For twenty-six centuries, in Europe, we have developed a theory of society. . . . made not in a linear way from ancient Greece onward, but in an accretive way, forming and reforming itself in a dialectical relation to social reality. . . . The idea of democracy. . . producing dramatic social effects within national societies: action and reaction, dissent and revolution, social progress and social conflict.


411. See Kost & Munger, supra note 29, at 3-4.

412. Loftus, supra note 30, at 388.

413. Constitutive charters so provide. See, e.g., U.S. Const. amend. X ("powers not delegated. . . are reserved to the States. . ."); TEU, supra note 7, art. 2 (sets forth permissible goals of Community activity); id. arts. 3 & 3a (list permissible activities in pursuit of those goals); id. art.3b (restricts Community action "within the limits of the powers conferred upon it by the Treaty," and "[in areas which do not fall within the exclusive competence" of the Community, in accordance with the principle of subsidiarity).
nity competence.\textsuperscript{414} Such a potential "rollback" of power to the States represents a major shift away from behemoth Brussels, and one expert observes that "the concept of subsidiarity has taken on unprecedented significance."\textsuperscript{415} In the United States, the 1996 welfare law reform marks a major shift in a half century of legal and social policy, transferring billions of dollars and widespread authority to the states.\textsuperscript{416}

These concurrent movements do suggest potentially significant convergences of the two legal families breaking with longstanding traditions by reshaping, restructuring, and downsizing — all in the name of the same ideals: global competition, balanced budgets, reduced government waste, technological progress, economic and personal fitness, and initiative. The uncertain extent of these shifts presents deeper questions. Does the constitutional scope of governmental action face renewed challenge? And more narrowly, has the fundamental role of social protection in the European scheme of constitutional democracy been undermined? Does the new scheme represent a move away from the Sozialstaat concept and toward a residual, privatized approach to social protection?\textsuperscript{417} Is this a philosophy shift — a shift in Europe from social solidarity and security to economic growth? Has economics become the senior partner over social objectives? Has democratic decision-making yielded to elitist banker decision-making?

To whatever degree this movement in Europe progresses, the present forces surely lead toward a more free market direction, prompting the next question: has the fundamental role of social protection changed in both cultures? One commentator asks: have the conservative doctrines of the nineties changed the foundations for state activity by limiting the spectrum of welfare reform options to one direction?\textsuperscript{418} Perhaps ascending political and economic principles now limit more than welfare reform options. On both fronts, as the legislative "adjustments" unfold, the public's sense of security and trust can erode, thus diminishing confidence in the stability of the systems.\textsuperscript{419}

European workers are losing their previous high level of job security, illustrating a more discrete convergence with job security in the United States. In both economic cultures, efficiency and flexibility have become mantra. This evolving business management philosophy infuses rigor into untold aspects of corporate, industrial, and business life, increasing pro-

\textsuperscript{414} EC Treaty, \textit{supra} note 87, art. 3b, as amended by the TEU. \textit{See} BERMANN \textit{et al.}, \textit{supra} note 6, at 46. Monetary union policy matters should generally be within the "exclusive competence" of Community organs, so subsidiarity principles do not apply to them. SMITS, \textit{supra} note 3, at 11-12. \textit{See also} Nicolas Bernard, \textit{The Future of European Economic Law in the Light of the Principle of Subsidiarity}, 33 \textit{Common Mkt. L. Rev.} 633 (1996) (explaining that subsidiarity can help the Union answer the calls for more decentralized decision-making, without fragmenting the Community legal order, as is threatened by the variable geometry of opt-outs and derogations.).

\textsuperscript{415} BERMANN \textit{et al.}, \textit{supra} note 6, at 47.

\textsuperscript{416} \textit{See} supra note 29 and accompanying text.

\textsuperscript{417} \textit{See} Mushaben, \textit{supra} note 49, at 2.

\textsuperscript{418} \textit{See} id.

\textsuperscript{419} \textit{See} Hinrichs, \textit{supra} note 162, at 682-83.
duction and profits, while affording less social comfort and security. In this way, the European trend converges toward U.S. practice.

Additional similarities in the legal adjustments of the two spheres are numerous: reductions and restrictions in unemployment benefits and qualifications, increased insistence that refusal to work disqualifies rewards, more means testing for financial assistance, strengthened anti-fraud provisions; and reductions in sick benefits and "welfare" social assistance to the poor. Forty-nine states have submitted their formal plans, implementing the vague federal template of required provisions and adding their individual regional judgments of the time limits for social assistance and encouragement to work. Likewise, most of the European Union States have exercised the same options to control social spending and still offer care for the most needy.

While health care reform proceeds unevenly on the two continents, similarities arise: new or increased patient co-payments for physician care and medicine, limited schedules of options available to doctors and patients, and more frequent use of contract work with performance standards. Health care reform, however, poses an uphill battle in both systems, as the move is under way to transfer as much as possible to private parties and insurance companies.

Immigrants suffer disproportionately to their population in both systems. Strong anti-immigration legislation passed in Europe and the United States limited border entry and, in some cases, offered fewer social benefits. In the United States, efforts to relax 1996's severe restrictions in welfare benefits and food stamps for immigrants have progressed. Similarly in Europe, the French "Draconian anti-immigration measures," imposed after the fall of the Iron Curtain, are currently under discussion for some relaxation.

Pension reform also represents a principal divergence, yet one aspect of this reform may lead to a telling attitudinal convergence. A potential convergence may be the growing acceptance of the notion that disability pensions are not appropriate as part of the general social padding. Government disability pensions are not just another part of a system to manipulate, and those who can work should not be considered disabled. Expressed differently, this view reflects the rule of law principle which provides that the language of the law is truly intended to mean what its words literally signify. Thus, economic and political systems, not to mention legal norms, should not be subverted.

Rule of law principles are adaptable to regional culture, and these notions regarding entitlement to government aid appear to be under reinterpretation. Italy provides a vivid example of this changing notion, where the practice of citizens supplementing their income with pension regardless of actual need or qualification is under assault. Reforms now

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420. See DeParle, supra note 30, at A1 (stating that many states project they will not meet the goals of the 1995 welfare law within the specified time limit).

challenge "long-standing cultural expectations" that the State must do what the economy and society, acting alone, cannot do: "provide the services and conditions through which its citizens may aspire" to a prosperous life.\footnote{422} The same "expectation change" may be evidenced to some degree in the United States with the early shakeout of welfare rolls in many states, as described above.

Two further European developments show similar movement to U.S. practice: the rapid spread of information technology in Europe and the increased use of management-by-contract, with specified outputs and performance standards. These innovations assist in administering social programs and help cut costs and reduce fraud.\footnote{423} Another convergence slowly evolving may be seen in the wave of new laws abolishing more traditional working hours in Europe. This seemingly superficial legal adjustment can have surprisingly important social, cultural, and economic effects on workers and the public. In the United States, for example, weekend and evening shopping has become the rule, rather than the exception.

VII. Similarity in Policy Targets

The review of actual and proposed cuts on both sides of the Atlantic suggests four categories of policy cuts: social welfare reform, labor market deregulation, privatization, and military cuts. In their traditional family care-giver roles, women are particularly affected by the welfare reductions in the United States. Immigrants, the poor, the young, and the elderly have also historically been less politically powerful and thus are more vulnerable to political policy decisions. The various military branches may be included in the budget cuts because they find themselves in a politically tenuous position.\footnote{424}

Reforms in social assistance, from France to Mississippi, center on assistance that benefits children. Reductions in child care supplements and assistance for food, maintenance, and schools all implicate children. Students complaining about underfunded schools in Germany and the considerable cuts in the generous benefits to students will likely get little beyond sympathy, while poor children in the U.S. inner city school suffer a similar plight. The elderly are most concerned about the intense efforts at pension reform as battles for the future loom. While pension reform has not proceeded in the United States, it is high on the national agenda. Immigrants bear the brunt of reduced outlays in the U.S. overhaul, and their European counterparts will necessarily feel similar constrictions as overall social protection benefits for the poor are altered in Europe.

Subsequent potential targets may be health care providers, but the inherent resistance of these powerful institutions will place much of the cutting back onto the groups described above. Benefits will be limited

\footnote{423} See EC SOCIAL PROTECTION, supra note 22, at 14.
\footnote{424} Europe's "defense industries are reeling from budget cuts." Joseph Fitchett, Bonn Set to Clear Funds For the Eurofighter 2000, INT'L HERALD TRIB., Oct. 8, 1997, at 1.
more than profits, if the past is any predictor. Yet, containing health costs in both the United States and EU presents an irresistible issue for politicians.

Conclusion

The European and U.S. developments in the time frame reviewed here show the potency of the current forces of global competition, transnational regulation, and government retrenchment — stimulating change in economic, political, and social structures. Yet, the clear lens for which this review searched ends up more a prism refracting categories with shades of similarities and differences. One must resist superficial conclusions. Caution with generalities is always necessary for reasoned analysis. A French proverb warns of the complexity of comparisons: "Comparaison n'est pas raison" — translated literally: "A comparison is not an argument; it proves nothing." But the proverb also connotes that substantial differences in quality and nature can render comparisons inapposite and fruitless, as suggested by the idiom "apples and oranges."

This notion applies here with special relevance. Many of these legal events and their causes have no counterpart in the other system and just do not adequately compare — they are too different. For example, European social welfare expectations arise from a different source and history and do not compare with the U.S. experience. While the seemingly irresistible forces of global competition, fiscal efficiencies, and technological development may generate concurrent patterns of growth and adaptation, these similarities will always include deep, enriching differences. Nonetheless, inquiry into any complex scheme of advancing events and trends will benefit from categorization, analysis, and comparison.

This Article searches for early similarities and differences in the two evolving systems, stimulates questions, and provides focus for further inquiry in this rapidly developing political and social context. Even though many developments will not compare fully, examining the divergences and convergences inevitably deepens understanding and therefore appreciation of the complex movements and counter-movements. The heavily promoted single currency convergence criteria have prompted changing norms, policies, and practices. These face resistance as they implicate real needs and expectations. Adaptation and transformation are certain to fill agendas for the near future. The same may be expected in the United States, where the "radical" shift in federalism and social policy has already started to adapt to moderating influences.

This concurrent pressure to devolve authority and resources from the federal apex toward to the local or regional level, seen in the ideologies of

425. "[I]ncreasing interconnectness and interdependence [are] driven by capital flows, technology, investment patterns, growing linkages between societies and more rapid dissemination of ideas. The acceleration of internationalism in the 1990s has profound implications for political and economic order at the international, regional, and national levels." Laffan, supra note 3, at 1.

the EU's subsidiary and the U.S. states' rights, may in itself be the expected reaction to the previously over-sized, unresponsive, unaccountable bureaucracies long criticized in Washington and Brussels. On the other hand, considering the central role of harmonization in these times of burgeoning transnational commerce, the devolution can go only so far. An equilibrium must be reached.

Advancing internationalism necessarily raises issues about the gap between functional efficiency on the one hand and accountability and legitimacy on the other. The synergy of the European Union's evolving growth and economic globalization will necessarily restrict national decision-making and will limit effective options for growth. In the United States, the rise of conservatism and the flow of power to the states imposes similar restrictions. Improved national economic performance and competition are favored universally, as is a high level of social protection and cohesion. Because the economic and political environment of the 1990s refuses to allow full measure of both, the disruptive debate over accommodating priorities is a natural part of the process.

How far will these tides flow? Will the U.S. and European economic reforms spawn widespread prosperity? Will the fruits of the economic growth be distributed broadly to all classes of the people? Is there substantial risk that present processes and structures of the economic growth will enlarge the groups of the lower economic classes, widening the distance between the wealthy, or even middle class, and those in the lower strata? Gross disproportionality of resources among members of groups inevitably leads to social reaction. What forms would that take and how far could that proceed? Should both the U.S. and European governments strive to protect every citizen's basic right to adequate housing, food, education, and medical care, regardless of wealth? Are such guarantees even possible?

These questions inevitably respond to the rapid and widespread change in the current economic, legal, and social order, and they will generate debate on every level. Perhaps most critically, that debate must also include discussion about the philosophical, moral, or spiritual direction of the movements. Ever-present ethos requires careful attention. Ethos remains the most fundamental force in the evolution and unmistakably will pre-ordain the nature and quality of the long-term creation. Nationalism may yield to regionalism, and statism's powerful forces may relent. But what ethos controls these current governmental initiatives and ambitions? Noble concepts of community and even democracy itself should find a more prominent place in the judgments of today and the plans for

427. See Laffan, supra note 3, at 11.
429. See Loftus, supra note 30, at 388.
A final reflection may be considered about the interconnected, yet disorganized, evolution of this world-wide legal change. Would this be better accomplished if it were moderated by or channeled through a more comprehensive, coherent, even systematized process? As those in the common law world know well, ad hoc rule and policy making can produce multidirectional, conflicting, often ineffective and sometimes counterproductive results. Functional budget reduction within political parameters may cause results that do not reflect actual cultural and moral norms. Sometimes politicians choose options carrying the least political fallout: they cut budgets, or defer responsibility, just because they can do so with relative impunity. Consensus is unlikely where women and children should bear so much of the brunt of these current economic shifts. The need to care adequately for the poor and the elderly is beyond debate. With so much at stake, more open discussion and circumspect policy deliberation are warranted. The elevated level of social policy discussion in the EU presents a constructive alternative to the shallow, sound-bite public dialogue in the United States. Without the clarifying and organizing effects of structured dialogue, the political process too severely limits accountability.

This review of fiscal restriction and restructuring has not shown substantially different public policy choices in the two spheres. The new legal developments do show widespread similarities, with some convergence and even systemic change in traditional models. The changes alter fundamental structures and relationships in both legal cultures. These developments merit, if not demand, careful investigation and thoughtful assessment for future direction. Legal and economic experimentation, resistance, compromise, and adaptation will be the course for the future in this time of unusually fast development in global trade, technology, and governmental theory. Symbolically appropriate, this cathartic period at the transition to the new century signals the beginning of a new international era.

430. See Weiler, supra note 3, at 2478-83 (emphasizing concepts of ethos, community and democracy); Allott, supra note 411, at 2500 (calling for "a new vision of the highest values of European society . . .").

431. The Robert Schuman Centre at the European University Institute in Florence, Italy, exemplifies the many interdisciplinary research centers in Europe that promote and coordinate in-depth study of European integration and developing public policy, and organize conferences and other fora for cooperation among academics and policy makers. The Robert Schuman Centre (last modified Sept. 15, 1997) <http://www.iue.it/RSC/Welcome.html>.