

**Domestic Politics vs. the European Union:
Alcohol, Abortion, and Drug Policy**

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Introduction

One of the greatest challenges in the post-Maastricht era is whether national governments of the member states of the European Union (EU) can protect national regulatory regimes, which are clearly at odds with Community law or international intergovernmental agreements. The proliferation of surreptitious side agreements attached to larger supranational or international treaties or conventions is indicative of the need, perceived by national government officials, to secure the survival of uniquely singular regulatory regimes. National-level decision makers regard certain areas off limits to supranational authority or European cooperation and devote considerable resources to extract detailed concessions from the Commission or Council of Ministers. Because civil servants and elected officials throughout Europe are keenly aware of the constraints and expectations faced by their colleagues in other countries, national representatives frequently have their demands met. The paradox is, however, that the pace and substance of European integration do not seem to permit much variations in national regulatory systems and policy regimes. Overall, trends points to institutional, ideological, and policy convergences and to shrinking national autonomy.

How do chief government executives balance the trends toward convergence with their belief that certain areas of government activities are unsuitable for Europeanization or deeper collaboration? My answer will be, based upon the examples of abortion policy in Ireland, drug policy in the Netherlands, and alcohol control policy in Finland and Sweden, that national officials face an incredible difficult task if they seek to shelter sensitive policy areas from European integration. They rely extensively on complicated diplomatic formulas to preserve domestic regulatory regimes, with however, mixed results. One solution is to create different 'pillars' the way in which the Treaty of European Union is designed in order to place sensitive domains of national sovereignty out of the jurisdiction of Community law and European actors. External and internal security are intergovernmental additions to the original Treaty of Rome and deprive European institutions from assuming a visible or active role. However, there are state activities or regulatory regimes that fall under the scope of the first Community pillar, even though some governments consider these areas of paramount national or domestic importance. How do governments of these member states shelter areas of national importance that are exposed to Community law and supranational authority? Moreover, even in the intergovernmental pillars of the TEU, cooperation is

recommended and mandated for areas that individual national governments do not consider an appropriate field of activity for greater European collaboration and harmonization.

Governments willingly delegate decision-making authority to the European level in certain policy areas while isolating other components of their governance system from European involvement. To insulate domestic policy areas from encroachment by supranational forces or treaties, national governments have requested special exemptions from Council agreement or Commission directives. What is considered 'highly regarded' and 'unsuitable' for European legislation differs from country to country. This explains why European negotiations move slowly and why international agreements often contain special clauses in recognition of particular demands of a member state. In retrospect, the special efforts made to insulate particular aspects of domestic regulatory regimes often backfires or misses its targets. The history of the European Community/Union is littered with examples of projects, plans, bargains, or agreements that produced unanticipated, unintended, and unwanted results. Intergovernmental decisions generate long-term developments that constrain national governments and transform public policy, giving unexpected boosts to the supranational/European dimension. Over time, the relationship between intergovernmental decision-making and long-term consequences show gaps between the member-state preferences and the actual functioning of institutions and policies.¹ European institutions have gained a certain degree of autonomy and ability to exploit opportunities to push European integration further and the European Court has been a master in taking advantage of ambiguous treaty clauses to rule in favor of European institution-building and European policy-making.² Examples abound of arrangements, tailored to the preferences of member states and which involved a circumscribed amount of policy delegation to the supranational level, but resulted into something much larger, which limited member-state authority and sovereignty in undesired and unintended ways. The unexpected twists and turns are especially striking in the newer areas of European activity such as environmental, regional, and social legislation or regulation.³

The set of public policies I focus on belong to the domain of social/cultural/moral politics and are therefore beyond the purview of European institutions. National values, normative standards, and constitutional principles are truly one of the least Communitized areas. Social welfare or social security programs

¹ Paul Pierson, "The Path to European Integration," *Comparative Political Studies*, 29 (1996), 123-63.

² Consult the essays in Helen Wallace and William Wallace, eds. *Policy-making in the European Union* (New York: Oxford University Press, 1996).

³ Gary Marks, "Structural Policy and Multilevel Governance in the European Community," Alan Cafruny and Glenda Rosenthal, eds. *The State and the European Community* (Boulder: Lynne Rienner, 1993), 391-410. Alberta Sbragia, "Environmental Policy," in Wallace and Wallace, *Policy-making*, 257-79. Pierson and Leibfried, "Multi-tiered institutions and the making of social policy," Stefan Leibfried and Paul Pierson, eds. *European Social Policy: Between Fragmentation and Integration* (Washington DC: Brookings Institution, 1995), 1-40.

and policies are assigned to national-level decision-making authorities. The entire array of social welfare policies and programs is anchored to deeply-held national values about social solidarity, redistribution, and equity. The evolution of social welfare systems is linked to the development of the modern nation-states. Accordingly, the construction of a European dimension is actively thwarted by national representatives. Public opinion surveys demonstrate over and over again that national electorates do not wish to see greater EU intervention or regulation in social policy. On average, only a third of EU respondents believe that health and social welfare are appropriate spheres of policy action for the EU.⁴ There are regulatory regimes, however, that do not squarely fit with the general definition of social welfare or social security. In other words, what belongs to the sphere of social policy is country-specific. Different countries conceive of different kinds of legislation as being part of the broad category of social policy. One striking example is the regulatory approach to alcoholic beverages. Most European countries treat alcohol the way they would treat tomatoes. Certain minimum consumer and health standards are in operation but neither food product is closely regulated or restricted. International trade is free and not subject to special rules. A small number of countries, however, treat alcoholic beverages as a highly toxic and addictive substance which constitutes a threat to the public health of the nation. Alcohol consumption is regulated, trade in alcoholic beverages is restricted, and rules affecting any aspect of the production, distribution, and sale of liquor is closely defined by law. Because the invoked measures exist to protect public health, alcohol regulation is formulated and administered by the Ministry of Social Affairs, which usually carries responsibility for national health care. The problem is that other countries do not single out liquor for special regulatory treatment and do not identify it as a danger to the well-being of society. Other member states question the justification behind restrictive and anti-competitive measures and view the trade in liquor as a matter for the retail or food sector. Sweden and Finland, two countries which administer wide-ranging anti-drinking measures to modify alcohol consumption ran into this difficulties when they tried to explain the existence of strict rules curbing the trade and distribution of liquor. Other comparable examples are abortion policy in Ireland and drug policy in the Netherlands. The differences in norms, regulatory standards, and corresponding legislation induce national officials to demand special treatment and recognition, and result in considerable tension and misunderstanding between the member state and the rest of the EU.

All three public policy regimes share several unusual characteristics. First, they are regarded as extremely important objectives in their respective polities. Second, domestic regulatory regimes and the accompanying package of measures are at odds with European legislation, rules, or directives. Because of that, national delegations sought and received special exemptions in order to preserve their unique policy objectives. The Council and/or Commission essential agreed that these policies and

⁴ European Commission, *Eurobarometer*, 45 (December, 1996), 59.

their objectives carried significant cultural and moral importance and granted special public policy derogation. Nevertheless, over time, market integration -- the free movement of people, goods, services, and capital -- eroded the diplomatic shell in which these policies were wrapped and exposed them to rising external pressures, fostering widening internal tensions and contradictions.

The fact that diplomatic agreements do not protect unconventional policy regimes comes as a shock to national leaders. They realize that existing public policy objectives clash with the internal logic of the single market. They took preventive action to minimize the negative impact of the single market on national policy regimes at risk for becoming Europeanized. Apparently, international treaties or agreements fail to shelter public policies because market actors follow their own logic and are oblivious to diplomatic agreements. Moreover, the European Court is not obliged to accept Council compromises and interprets conflicts with single market rules as violations of Community law. In particular, disgruntled parties have used the European Court to modify international agreements reached by national governments by challenging their legality. Even voters constitute a threat to the unique character and preservation of singular policy regimes. Voters are also market actors and are free to purchase goods and services throughout the new Europe. By exercising their right as consumers of European goods and services, they accentuate the gap between national regulatory standards and wider European norms. National governments cannot obstruct the free movement of people, which is a fundamental human right according to the Treaties of the European Union, and cannot prevent consumers from exploiting their new won powers to purchase goods or services not available at home or available at home at exorbitant prices. The greatest paradox, however, is that voters as consumers demand access to services and goods available in the European Union but as national citizens demand national standards that hold these areas in special regard. Thus, their behavior is paradoxical in that they bend domestic rules for their own needs yet do not want to reform domestic legislation because of an emotional attachment to the principles or philosophy behind the original package of measures. Anti-drinking measures, ban on abortion, or tolerance towards personal drug use still command wide respect among voters in their respective countries.

The contradictions and conflict between incompatible goals are examined in detail in the next sections. The first part of the paper details the background of each policy regime. The second part of the paper examines the impact of European integration and the single market on the governance of the policy regimes. In the conclusion, I analyze the larger implication of the findings of the paper for the future of the new Europe and the process of integration in general.

Background to the Case Studies: Irish Abortion Politics

Catholicism is the formative influence in the emergence of Irish national identity. The Catholic faith united the Irish against Protestant dominance and claims to

perpetual ascendancy. Later, the promises of Home Rule spurred the growth of political parties and by 1914 Ireland was dominated by one party, the Irish party. The Roman Catholic Church was closely involved in political mobilization of Irish voters because it was the only national institution with a nation-wide structure. Sunday Mass was the only occasion at which a large number of rural people came together. Many political meetings were held on Sunday outside the church.⁵ The 1937 Constitution incorporated numerous Catholic social principles and accorded special recognition to the Catholic church. The Church exercised influence not only through its dominance over national culture but also because many hospitals, schools, retirement homes, youth clubs and so forth were run by the clergy. In the early 1980s, for an estimated Catholic population of 3.7 million, there were 1322 parishes, 2639 churches, 591 Catholic charitable institutions including hospitals, homes for the deaf and blind and reformatories, and 3844 primary and 900 secondary schools.⁶ As a rule, Irish politicians have shied away from questions that touch upon the moral/religious/social sphere of the Church. Above all, abortion touches a raw nerve and represents everything that Irish Catholicism opposes.

Although abortion was criminalized in Ireland since 1861, a right to life movement nonetheless emerged in 1980 in the wake of a visit of the Pope who had spoken out against abortion during his visit. The aim of the pro-life movement was to add an amendment to the constitution to ban abortion. The Pro-Life Amendment Campaign (PLAC) won the right to hold a referendum in 1983. To nobody's surprise, the abortion referendum produced a decisive majority for an constitutional ban on abortion.⁷ Article 40.3.3 declared abortion unconstitutional.

The constitutional ban on abortion passed easily because Irish identification with traditional Catholic beliefs was still very strong. Various cross-national public opinion surveys demonstrated that Irish opinion considered certain actions to be unacceptable because of Catholic opposition. In terms of religious values, the Irish respondents scored far above those of other countries as late as 1990.⁸ Ninety-five percent of the Irish respondents believed in God compared to 73 percent of Europeans, 78 percent believed in life after death compared to 44 percent of Europeans, and 85 percent believed in heaven and sin against respectively 44 percent and 57 percent of European

⁵ David Hempton, Religion and Political Culture in Britain and Ireland. (New York: Cambridge University Press, 1996), 86-89.

⁶ Michael P. Hornsby-Smith and Christopher T. Whelan, "Religious and Moral Values," Christopher T. Whelan, ed. Values and Social Change in Ireland (Dublin: Gill & Macmillan, 1994), 12.

⁷ Basil Chubb, The Politics of the Irish Constitution (Dublin: Insitute of Public Administration, 1991), 55.

⁸ The scoring includes traditional Christian beliefs such as belief in god in life after death, hell or sin and includes questions related to the importance of god or religion in one's life. Michael P. Hornsby-Smith and Christopher T. Whelan, "Religious and Moral Values," Christopher T. Whelan, ed. Values and Social Change in Ireland (Dublin: Gill & Macmillan, 1994), 31-32.

respondents.⁹ Even Irish Catholics were much more closely attached to traditional orthodox beliefs than Catholics in other countries.

After it won the referendum, the Society for the Protection of the Unborn Child (SPUC) hoped to use the new amendment to prosecute doctors considering therapeutic abortions, broadcasters discussing abortion in the media and to suppress magazines that listed names and addresses of abortion clinics in Britain.¹⁰ SPUC initiated a major legal action in October 1988 against a group of student union officials at the University College of Dublin. The fourteen student officers refused to comply with the request not to print abortion information in their welfare manual. When the officers refused, SPUC sought a court injunction. The Supreme Court ruled that SPUC was justified in attempting to suppress the publication of information on abortion. The immediate effects of this legal battle were that the publication of any information about British abortion clinics was declared illegal and unconstitutional by 1990.¹¹ In retrospect, the anti-abortion amendment, and its victory in 1983, was only the beginning of a longer struggle to insulate Ireland from the liberalizing or secularizing trends visible in the rest of Europe.

Background to the Case Studies: Alcohol Control Policies in Sweden and Finland

Many observers claim that a culture of drinking and acceptance of drunkenness is (was) characteristic of the Nordic countries. In pre-industrial times, alcohol was treated as a toxicant to be consumed during holidays and weekends. Although consumption per capita might have been average, the amounts imbibed at one session were enormous. Most of the drinking took place on the farm in rural areas. However, after industrialization began, drinking habits and perpetual drunkenness became a serious health hazard and soon evolved into a major political or social issue. Aside from high mortality rates induced by excessive drinking, alcohol reduced labor productivity and interfered with wholesome working habits. After 1890, well-organized temperance societies or movements arose in Finland and Sweden, lobbying for total prohibition. In each country, temperance became a working class issue and a means for the incipient social democratic movement to reach out to the disorganized industrial labor force. The emphasis on total prohibition was combined with a modern vision of a new industrial/urban individual.¹²

⁹ Michael P. Hornsby-Smith and Christopher T. Whelan, "Religious and Moral Values," Christopher T. Whelan, ed. Values and Social Change in Ireland (Dublin: Gill & Macmillan, 1994), 33.

¹⁰ Anna Eggert and Bill Rolston, "Ireland," Anna Eggert and Bill Rolston, eds. Abortion in the New Europe: A Comparative Handbook (Westport, CT: Greenwood, 1994), 171, note 4. Ailbhe Smyth, "A Sadistic Farce Women and Abortion in the Republic of Ireland, 1992," Ailbhe Smyth, ed. Abortion Papers, Ireland (Dublin: Attic Press, 1992), 16. The phone books were subsequently returned to the public libraries in 1992.

¹¹ Anna Eggert and Bill Rolston, "Ireland," Anna Eggert and Bill Rolston, eds. Abortion in the New Europe: A Comparative Handbook (Westport, CT: Greenwood, 1994), 164-65.

¹² Pertti Alasuutari, Desire and Craving: A cultural theory of alcoholism (Albany: State University of New York, 1992), 10-17.

Working class leaders partly used the temperance movement to build up left-wing political organizations. Their recurrent claim was that the license to sell spirits was in the hands of the bourgeoisie in the towns, which therefore profited from the sale of alcohol not only financially but also by keeping the proletariat passive and subdued. Alcohol was called the 'opium of the people' by the ideologues of the temperance movement. Drunkenness reinforced poverty, misery, and moral decline. Total prohibition would save the working class and improve its social situation.

Finland enforced total prohibition between 1919-1931. Once prohibition was repealed, a period followed during which a special liquor law was in force. This law provided for the creation of a powerful state alcohol monopoly (ALKO), which excluded private vested interests from the production and sale of alcohol. In the first version of the law, liquor stores were banned from rural areas and the monopoly alone could issue licenses to restaurants. Pricing of all alcoholic beverages was done by the monopoly. In the 1960s, growing resentment led to a relaxation of the legislation. In 1969, a new Alcohol Act and Medium Beer Act was passed, which liberalized the consumption of beer. After a visible surge in alcohol consumption, parliament passed another law to restrict the number of outlet stores, to ban advertising, to force the closure of stores on Saturday during the summer (revoked in 1991). After the 1960s, the philosophy moved to minimizing the harmful effects of alcohol by imposing high retail prices to discourage excessive drinking. Many smaller laws help discourage heavy drinking. Age restrictions are in force, sale of alcoholic beverages to intoxicated persons is illegal, credit cards cannot be used for the purchase of alcohol, restaurants need licenses to serve hard liquor, and the number of liquor outlets is restricted.

In Sweden, total prohibition was never legislated. In 1855, the government made the first effort to influence alcohol consumption and forbade the distillation of liquor for household use. Most of the production of alcohol was moved to state distilleries and to the larger towns, which sold liquor to the farming population. The state earned large revenues from selling retail licenses to Swedish towns and individuals, and from producing alcoholic beverages. As in Finland, temperance became a working class issue after 1870 and the social democratic party agitated for total prohibition. Rather than imposing prohibition, Swedish authorities administered the Bratt system, which consisted of two novelties. It removed the profit motive from the alcohol trade by placing it under state control and it introduced rationing booklets. After 1917, Sweden had two state monopolies: alcohol retailing monopoly (Systembolaget) and the Wine and Spirits Corporation (Vin & Spirit) responsible for import of spirits, wine and strong beer and for production and export of spirits. The entire private sector was bought out by the state. In 1955, the rationing system was abolished. However, as in Finland, high taxes and high prices are enforced to deter excessive drinking. The retail state monopoly has a limited number of outlets, restaurants need a license to serve alcohol, and liquor stores are closed during the weekend. Age limits on the purchase of alcohol are strongly enforced.

Unquestionably, alcohol consumption per capita has dropped in Sweden and Finland from a historic high to a current low. Sweden consumes a modest 5.5 liters of ethanol (main component of alcoholic beverages) per capita compared to 12.7 liters in France (among the highest consumption patterns in the OECD). In Finland, per capita consumption is 7.7 liters.¹³ Subsequently, death from liver cirrhosis is low with a rate of nearly 7 people per 100,000 in Sweden and 10.7 people per 100 000 in Finland.¹⁴ Numerous studies demonstrate that alcohol is price elastic so that high retail prices reduce alcohol consumption. By and large, the public agrees with the depiction of the Nordic people as unreformed drunks. Public opinion welcomes the patronizing guidance of the state to steer citizens away from alcohol and to organize treatment centers and intervention methods to cure alcoholics and thus protect the public health of the nation. Mainstream thinking in Finland and Sweden holds social conformity and social inclusion high. Alcohol restrictions are acknowledged as a legitimate tool to ensure similarities in life style and to prevent the marginalization of vulnerable groups. Political movements rely upon state agencies to promote social conformity and to mold society according to a certain ideal.

Background to the Case Studies: Drug policy in the Netherlands

The contrast with the Netherlands could not be starker. The Dutch society displays a large degree of tolerance for unconventional behavior and life-styles. The state views itself primarily as a professional care-giver who desists from passing moral judgments. The Netherlands was one of the first countries to accept abortion on demand, to respect same-sex partnerships, and to allow euthanasia. Finally, of course, the Netherlands is the only country that officially permits the sale of hemp products like hash and marijuana in licensed 'coffee shops.'

In response to the increased prevalence of drug addiction and drug related crimes, the authorities set up a working committee on narcotics in 1972. The commission published a report that proposed several changes in Dutch drug legislation with the aim of drawing a distinction between drugs with unacceptable risks and cannabis products. The report urged the decriminalization of the use of cannabis products because there were legitimate doubts as to their damaging physiological effects. Furthermore, it questioned the foundation of current anti-drug legislation if such an obvious difference between the two categories of drugs continued to be ignored. However, the Netherlands had signed the 1961 Single Convention of New York, which did not permit separate markets for soft and hard drugs. Therefore, formal legalization of soft-drugs did not happen. Rather, the amended Opium Act of 1976 demarcated 'drugs presenting unacceptable risks such as heroin, cocaine, LSD and traditional hemp products such as hashish and marijuana.' Criminal procedures followed this legal distinction. The new act set forth substantially higher penalties for

¹³ Edward Griffith, et.al. Alcohol Policy and the Public Good, (New York: Oxford University Press, 1994), 33-36.

¹⁴ Edward Griffith, et.al. Alcohol Policy and the Public Good, (New York: Oxford University Press, 1994), 10.

the import, export, preparation, sale, delivery, distribution, transport, possession and manufacturing of hard drugs than soft drugs. Criminal law orientation was to treat drug addicts as 'sick' people and to facilitate their cure and reintegration into society.

The overall objective of Dutch policy was to control problems associated with drug use but not to normalize drug use. From a strictly legal viewpoint, the possession of soft drug is both legal and illegal. It is legal to smoke a joint in a 'coffee shop.' The latter is a specially licensed coffee shop that is allowed to sell products consisting of hashish and marijuana. The regulations are strict in that the 'coffee shops' cannot sell hard drugs, cannot sell to minors, and cannot advertise their products. At the same time, it is illegal for anyone to supply a private individual or the 'coffee shop' with drugs. Local authorities and the police turn a blind eye to the existence of 'coffee shops' and to the fact that they depend upon suppliers (read: drug traffickers) for their products. As a matter of fact, considering the existence of regular outlets for cannabis products, around fifty percent of soft drugs sold in 'coffee shops' come from home cultivation and do not involve international trafficking or organized crime.¹⁵

Nevertheless, it should be noted that substantial amounts of money are set aside to apprehend drug traffickers and criminal organizations dealing in hard drugs. Dutch standards in criminal law are in line with international models.¹⁶ Budget spending on anti-drug measures is shared between the ministries of justice and social welfare, which runs a vast system of drug prevention and intervention. The main difference with neighboring countries is therefore that authorities rely upon assistance and prevention rather than detection and prosecution of punishable offenses to keep the drug problem in check. In short, the Dutch difference lies in how to deal with the existing pattern of drug use. Rather than falling back upon prohibition, criminalization, and marginalization, the Dutch approach is to be tolerant, provide assistance, and stress prevention. It is not drug use itself that causes problems but rather it is the criminalization of drug consumption that creates societal problems. Dutch authorities call this the pragmatic approach, one which works, as every Dutch expert will say, because the problem with drug abuse has actually diminished. Pattern of use of soft drugs does not differ from other countries. Rates of addiction are in fact lower than the European average. While 0.16 percent of the Dutch population is addicted to hard drugs, the European average is 0.27 percent. Similarly, drug overdose mortality rates are substantially lower than in neighboring countries. In 1991, 42 people died in the

¹⁵ A.C.M. Jansen, "The development of a "legal" consumers' market for cannabis: The "coffee shop" phenomenon," Ed. Leuw and I. Haen Marshall, eds. Between Prohibition and Legalization: the Dutch Experiment in Drug Policy (New York: Kugler Publications, 1994), 174.

¹⁶ Drugs Policy in the Netherlands. Continuity and Change (Rijswijk: Ministry of health, Welfare, and Sports, Ministry of Justice, & Ministry of the Interior, 1995). 4-5.

Netherlands of a drug overdose. Germany, with a population five times as large, counted 2125 death by drug overdose in 1991.¹⁷

European Integration and the Case Studies

All four countries pursue a policy regime that is different from the rest of the European Union. Standards are more strict in Sweden, Finland, and Ireland but looser in the Netherlands, than the rest of Europe. Whether the governance structures are geared toward maintaining high or low standards is of less importance than the presence of sharply different regulatory norms. National governments have sought to protect national regimes from Europeanization because public opinion supports the existing practices and set of measures and laws. Many Irish are opposed to abortion because it is the ultimate rejection of Catholicism. To be Irish means to adhere to Catholic social principles. Many Dutch are proud of the way in which they deal with the universal problem of drug consumption/trafficking/addiction and roundly reject the repressive/coercive approach practiced by the rest of the world. The Dutch have always tolerated religious, cultural, or life style differences, with great beneficial results. It became a center for international trade and finance precisely because the Dutch were willing to welcome refugees who brought skills, wealth, and connections to the Netherlands. Many Swedish and Finnish residents accept the need for anti-drinking measures even if they do not feel personally bound by the restrictions. But they strongly believe that it is the task of the state to supervise harmful and destructive individual behavior, not only to protect the individual but also to protect the fabric of society.

Voters expect national delegates at summit conferences to speak up and defend the current regulatory regimes and to bargain for compromises from the EU to preserve legislation and policy measures. Unfortunately, it is above all the free movement of people or market integration, which erodes the boundaries around the policy regimes and threatens their integrity. Because fundamental liberal principles prevent governments from restricting the free movement of people, they cannot repair the leaks in their policy regime in spite of diplomatic concessions.

The most poignant example of the hazards of the free movement of people on unconventional policy regimes comes from the Netherlands. From the beginning, the problem has been that its soft policy towards soft drugs served as a magnet for drug addicts and entrepreneurs from neighboring countries. Certainly, compared to other European countries, the easy availability of drugs created an abundance of affordable high quality psychotropic substances. Ample drug supplies provoke a thriving cross-border trade, spurring on 'drug tourism' as weekend tourists stock up on cannabis products to sell back home. Cross-border trade due to the appeal of the Dutch drug market has generated constant friction between the Netherlands and its neighbors.

¹⁷ Drugs Policy in the Netherlands. Continuity and Change (Rijswijk: Ministry of health, Welfare, and Sports, Ministry of Justice, & Ministry of the Interior, 1995). 8.

Germany and France in particular direct an endless stream of criticism to the address of the Dutch establishment. Various diplomatic incidents illustrate the depth of annoyance and aggravations. German federal police encouraged its officers to lure Dutch citizens to sell small amounts of hashish just across the border and then arrested them for selling illicit drugs. German law enforcement also claimed that Dutch citizens can be arrested in Germany for having sold drugs to a German national in the Netherlands!¹⁸ The French ambassador, in his inaugural speech, called the Netherlands an 'airport surrounded by 'coffee shops.'¹⁹ French authorities speak of the Netherlands as a 'narco-state.'²⁰ It argued that the Netherlands keeps the European drug trade going because of its tolerant policy.

Diplomatic skirmishes first emerged in the mid-1980s when a group of EC member states decided to lift border control and custom procedures to ease the free movement of people. Meeting in the little town of Schengen, the governments of the Benelux countries, and Germany and France organized various working groups to deal with police and security, movement of people, transport, and movement of goods. Four years of negotiations resulted in an agreement that went beyond the realization of border controls and encompassed numerous compensatory measures in the sphere of law enforcement. The Agreement covered topics such as hot pursuit, cross-border surveillance, asylum, the status of refugees, illegal immigration, and the common computerized system for the exchange of personal data (SIS), data protection, transport and movement of goods. The parties were supposed to sign the agreement in June 1989. Many outstanding disagreements delayed the final ratification, among other things, Dutch drug policy. In 1990, the Netherlands extracted the concession from the other signatories that the fight against drug addiction will stay under the jurisdiction of domestic authorities and will not be subject to European joint action projects. Article 71 of the Schengen Convention obligates all signatories to prosecute the sale, distribution, and supply of drugs. However, the concluding section of the Schengen Agreement stipulates that member states are allowed to waive the prosecution of persons involved in the supply, distribution, and sale of drugs if such measures fail to promote public health. The Netherlands bargained hard for this clause, and in exchange, acceded to take preventive steps to control the impact of different approaches to drug use among neighboring countries.²¹ The Convention was finally ratified in 1995 but the free movement of people is still unrealized because France has refused to lift security checks at national borders so long as the Netherlands insists on its liberal drug policy.

¹⁸ Dirk J. Korf, "Drug Tourists and Drug Refugees," Ed. Leuw and I. Haen Marshall, eds. Between Prohibition and Legalization: the Dutch Experiment in Drug Policy (New York: Kugler Publications, 1994), 121-25.

¹⁹ The Economist, October 12, 1996, p.58.

²⁰ Cited in John Keeler and Martin Schain, "Mitterrand's legacy, Chirac Challenge," John Keeler and Martin Schain eds. Chirac's challenge: Liberalization, Europeanization, and Malaise in France (New York: St Martin's Press, 1996), 11 (As cited in Le Monde July 1, 1995).

²¹ R.H. Hessing, "Knelpunten in het Nederlandse drugsbeleid," T. Blom, H. de Doelder, D.J. Hessing eds. Naar een consistent drugsbeleid (Deventer: Gouda Quint, 1996), 65-66.

Disappointment with Schengen and with the implementation of the recommendations contained in the third pillar in the Treaty of European Union prompted the Irish presidency of the Council to revive cooperation on internal security. The Council of Ministers of Justice met in late November 1996 to discuss the possibility of joint action to deal with the trafficking of drugs in the EU. Both Germany and France supported a common European legal space and greater EU involvement in the fight against organized crime. Public opinion polls show that the European public views international crime and drug trafficking as a top priority for the EU and as the top policy area for EU action.²² The first draft of the report laid out different points of action with the aim of bringing laws, sentencing, and methods of police, customs and courts more closely into line.²³ The Netherlands, however, threatened to veto the first draft because of French insistence that the action program should also contain a section on uniform national drug policies to stop cross-border trafficking. It was this last item that provoked the threat of a Dutch veto. Frantic negotiations subsequently took place to find a satisfactory compromise that would keep Dutch drug policy intact yet meet the criticism of other EU governments. At the last minute, a new wording was approved that encouraged each government to try to employ the most efficient methods to combat drug addiction.²⁴ It is the responsibility of the national government to prove that its methods yield the biggest results.

Generally, the Netherlands does not object to policy harmonization on international trafficking, including a closer alignment of penalties available to the courts for those convicted. But it refuses to endorse a European approach to fight drug addiction because of the likelihood that it will destroy its special policy toward soft drugs. The Dutch official line is that drug policy is a public health measure to prevent young people from being pulled into the sphere of influence of criminal dealers and networks. It rejects the "stepping-stone" theory that experimentation with soft drugs automatically leads to addiction to hard drugs. Statistics on trends in drug addiction confirm Dutch doubts about the relationship between the occasional use of cannabis products and addiction to heroin/cocaine substances. However, other member states are not convinced by the Dutch figures and by the wisdom of its approach because the issue goes deeper than a choice of policy instruments and targets. The issue centers on the role of government in the use of substances potentially harmful to adult members of society and on the role of criminal law to punish deviant behavior. The debate is basically about how to cope with unconventional life styles of individual members of society. The Dutch view and corresponding experiences set it apart from other countries.²⁵ The disagreement between the Netherlands and other EU member states is

²² Eighty-seven percent of EU respondents in the latest Eurobarometer poll listed fighting organized crime as the top priority. *Eurobarometer*, 45 (December, 1996), 56.

²³ Neil Buckley, "EU leaders agree action on security," *Financial Times*, Dec. 16, 1996, page 2.

²⁴ Theo Vroon, "Doorbraak drugsdiscussie: ontspanning tussen Den Haag en Parijs," *InterNetKrant*, Nov. 30 (1996);

²⁵ The chasm between Dutch values and that of other countries is not that deep. Denmark and Belgium (and certain parts of Germany) share many of the Netherlands' ambivalence about coercion and repression in the field of drug

about the proper role of punishment in the attempt to control of deviant individual behavior and about the dangers of anti-social behavior for the fabric of society. The Dutch view, corroborated by years of experimentation, holds that the number of users of psychotropic substances are basically harmless and should be reintegrated into society.

Ongoing pressure and criticism from abroad has divided the current cabinet of Liberals and Social Democrats (a so-called purple cabinet). To appease its foreign critics, the cabinet put forward a new set of measures. The maximum amount of cannabis per sale was cut from 30 to 5 grams, and the number of licensed 'coffee shops' fell from 1460 to 1290. There is also discussion of restricting the sale of soft drugs to Dutch nationals and of employing a 'flying brigade' of border police to intercept foreign couriers.²⁶ Stricter supervision over the existing 'coffee shop' and stronger action against illegal 'coffee shops' are being formulated. Longer sentences for foreign drug addicts who commit misdemeanors are contemplated. It is not clear for how long its drug policy can exist out of synchrony with the institutions, philosophy, and policies of neighboring countries. For the Netherlands, a Europhile country, it is awkward to be in the minority and to be obstructing progress in an area of European cooperation that enjoys a high rate of approval among voters.²⁷ Diplomatic isolation has convinced the Ministry of Foreign Affairs and conservative voices in parliament/government to take strong action against drug consumption and 'coffee shops.' The Ministry of Justice, in line with its colleagues in other countries, is more than willing to delegalize the 'coffee shop' phenomenon and therefore to eliminate the most visible source of aggravation.²⁸ Other cabinet members are absolutely opposed to any further concessions or reforms.

Sharp differences in tolerance levels and regulation provoke large inflows of people, who in turn, pose a threat to the survival of the policy regime. Like the Netherlands, Sweden and Finland struggle with the preservation of alcohol control policies as a result of the free movement of people and single market. The difference is that in Sweden and Finland the threat comes from the outflow of people who challenges anti-drinking measures. After lengthy bargaining during the accession negotiations, Sweden and Finland were given permission to maintain their retail sales monopolies and to restrict travelers from importing alcohol bought a fully taxed but much cheaper prices abroad. In return, Sweden and Finland had to give up their respective production

use. But the gap is especially wide with France and with the Federal government in Bonn (the state governments gravitate towards the Dutch approach).

²⁶ Gordon Cramb, "Dutch in an EU tangle over drugs," *Financial Times*, Nov. 28, 1996, page 2. Theo Vroon, "VVD: vliegende brigades ook tegen drugtoerisme," *InterNetKrant*, Dec. 7 (1996).

²⁷ Even in the Netherlands, 92 percent of the voters believe that fighting international crime is the key priority for the EU. Only 78 percent feels that fighting against drug trafficking should be a top priority. *Eurobarometer*, 45 (December, 1996), Table 3.11, B.41.

²⁸ C.F. Rüter, "De grote verdwijningstruc," T. Blom, H. de Doelder, D.J. Hessing eds. *Naar een consistent drugsbeleid* (Deventer: Gouda Quint, 1996), 11-15.

monopoly. But two important measures were kept in place. First, private import of alcohol continued to be severely restricted. Sweden limits travelers to one liter of hard liquor, five liters of wine, and 15 liters of beer. The standard rule in the EU allows 10 liters of hard liquor, 90 liters of wine, and 110 liters of beer. In other words, the EU ceiling for private imports of alcohol is much higher than national levels. Second, ALKO in Finland and Systemsbolaget in Sweden are still in business. Liquor is only sold in special retail establishments against extraordinary high prices.

In the early 1990s, the Commission granted permission to retain the limits on imported (taxed) alcohol on the condition that the ceilings would soon be lifted. Repeatedly, the Commission asked Sweden to set a firm date for dismantling the restrictions it imposed on the amount of duty-paid drinks brought into the country. The argument of the Commission was that the measures with regard to the import of alcohol contradicted single market rules. The Commission finally threatened legal action after it became obvious that Sweden and Finland refused to comply. Sweden, in turn, threatened to take the Commission to court for disregarding Council agreements. In December 1996, the Council of Ministers of Finance granted both countries an extension and permitted Finland and Sweden to retain their strict curbs on private import of alcohol for another four to six years (Finland received until 2002). This has brought some relief, for now, and can be considered a victory for Sweden and Finland. It has also, for now, silenced the Commission. Finnish and Swedish authorities justify their implacability with regards to the requests of the Commission by claiming that alcohol control policies belong to the sphere of social policy and are therefore a matter for national parliament and out of the jurisdiction of Brussels. They placed alcohol control policies on the Dublin agenda in December 1996 to isolate and stall the Commission, and because the lifting of restrictions has financial/fiscal consequences for Swedish and Finnish central government budgets. Anti-drinking measures make a sizable contribution to tax revenues in view of the high excise taxes and the existence of a state retail monopoly. Approximately six percent of the total tax bill comes from the alcohol trade and this sum of revenue cannot be easily replaced.

The Council agreement is only a temporary respite. Because the real pressures are coming from somewhere else and cannot be diffused by Council diplomacy. Many Swedes and Finns take ferries to Denmark or Estonia, in spite of the import restrictions, to take home the maximum allowed quantity of alcoholic beverages. Together with smuggling and home brewing, the actual amount of alcohol that is in fact consumed is probably double that of the official statistics. Socio-cultural arguments lose much of their weight if a sizable number of Swedes and Finns blatantly ignore the standards and norms set by the state. Statistics show that more than half of the adult Finnish population imported around 45 million liters of beer, wines, and spirits in 1996 -- the equivalent of approximately 20 percent of total alcohol consumption.²⁹ The cross-

²⁹ Esa Österberg and Juhani Pehkonen, "Travellers' Imports of Alcoholic Beverages into Finland in 1995," Unpublished Paper. June 1995.

border purchases hurt the domestic retail monopoly. Private beer brewers and state monopoly producers have experienced a loss of market shares as more and more consumers go abroad. They are calling for reforms which would include higher import restrictions yet lower taxes to reduce the appeal of ferry trips.

Alcohol tourism is a serious physical threat. It questions the existence of anti-drinking measures to protect the public health. It also sows doubts in the minds of many observers as to how to interpret the sentiments of many voters who still want to maintain anti-drinking measures at home yet take ferries to hoard cheap foreign liquor. While alcohol tourism undermines the rationale of alcohol control policies, a second challenge rests with the disgruntled private food retail sector which complains about the privileges of the state retail monopoly for years. A private businessman in Southern Sweden has brought a case to the ECJ after having been prosecuted in a Swedish district court for selling wine in his establishment on January 1, 1995-- the day that Sweden joined the European Union. This case has wound its way through the lower court of the ECJ and a preliminary report was published in March 1997. This report rules in favor of the Swedish grocer and states that the monopoly contravenes EU regulations. The preliminary ruling questions the balance between public policy derogation and national objectives. According to the lower court report, drinking restrictions are justified considering the historic patterns of excessive drinking but the current regime is considered a disproportionate public health measure. The preliminary report lists ways through which to protect citizens from alcohol abuse without having to resort to a state monopoly, thereby distorts market competition.³⁰

The Swedish Food Retail Association, representing the supermarkets and grocery chains, advocates liberalization of anti-drinking measures and has financed the court case brought by the Swedish grocery store owner. Their main complaint is that the alcohol monopoly distorts local shopping patterns by benefiting larger towns where the retail monopoly has stores. It therefore welcomes the first ruling of the ECJ. The Swedish establishment was shocked by the ruling because it had reached an agreement with the Commission that kept the retail restrictions intact. Although the ruling deals directly with Sweden, it has also implications for the Finnish state monopoly ALKO. A final ruling is not expected until later this summer but serious problems loom for alcohol control policies. The essence of the ECJ ruling, to be expected soon, will center on the justification for public policy derogation from Community law. Other forms of intervention exists to modify alcohol consumption especially if the current measures provoke widespread cheating and deception. Alcohol tourism repudiates some of the moral reasoning brought forward by the authorities to defend the distortions in trade. The ECJ is not oblivious to the actual situation in Finland and Sweden and takes strength from the fact that many citizens tamper with the rules. It gives the European Court the necessary 'courage' to overturn special side-agreements, which at regular

³⁰ Greg McIvor, "Sour grapes over Swedish Alcohol Laws," *Financial Times*, November 20 (1996), p. 3; Greg McIvor and Emma Tucker, "Sweden's alcohol monopoly ruled illegal," *Financial Times*, March 5 (1997), p. 1.

intervals emerge from Council bargaining sessions, and which contradict direct Community rules.

Ireland has also struggled to rationalize its justification for current restrictive practices, which are linked to socio-moral foundation of the country, yet are scorned by many Irish citizens. Many Irish liberal voices were overjoyed in 1973 after Ireland joined the European Community. They expected Community law and member states to dilute the influence of Catholicism. The impact of the ECJ has been more nuanced and subtle and has influenced the abortion controversy in unexpected ways. European Court rulings have affirmed the right of Irish women to travel overseas to terminate unwanted pregnancies and the right to receive information on abortion services abroad. To a certain degree, the ECJ interpretations have given rise to 'abortion tourism,' whereby an estimated 10,000 Irish women travel to England to terminate unwanted pregnancies.

The ECJ became involved in abortion in the early 1990s. The Irish High Court submitted the legal case, brought by the pro-life movement against student union officers, to the ECJ for consideration in October 1989. Previously, the ECJ had ruled in *Luisi & Carbone v Ministero del Tesoro* [Joined Cases 286/82 and 26/83 (1984) ECR 377] that medical treatment constituted a 'service' within the meaning of Article 59 and 60 of the Treaty of Rome, so that potential recipients (as well as service providers) had a right to travel elsewhere within the Community to receive or provide those services. The Irish High Court asked the ECJ to decide on whether abortion constituted a 'service' within the meaning of the earlier decisions in *Luisi* and, if so, whether the students had the right under Community law to inform Irish women of their right to travel abroad to receive that service.³¹ The decision of the lower Irish Court to refer the case to the ECJ carried significant implications. It meant that the national court sought guidance on an issue that it regarded as part of Community law. The Irish Supreme Court was critical of the decision by the High Court to seek a preliminary ruling from the ECJ, precisely because it seems premature to bring the Community into this debate.³² The ECJ considered the case of the 14 officers of students' union in September 1991 (*SPUC v Grogan* (C-159/90)) and addressed the issue in the following way. The ECJ argued that it cannot (and should not) pass judgment on moral issues and on the rights of an unborn child. Then, it proceeded to argue that a lawful service in one state should be accessible to citizens of another state and that abortion constituted a service within the meaning of Article 60. However, it concluded that the prohibition on the distribution of information about a service performed in another member state did not constitute a restriction of services within the meaning of Article 59 of the EC Treaty because there was no direct link between the provider of information and that of services. In other

³¹ Gerard Hogan, "Protocol 17," Patrick Keatinge ed. *Maastricht and Ireland: What the Treaty Means* (Dublin: Studies in European Union, 1992), 110-111.

³² Siofra O'Leary, "Aspects of the Relationship between Community Law and National Law," N.A. Neuwahl and A. Rosas, eds. *The European Union and Human Rights* (The Hague: Kluwer Law International, 1995), 27.

words, the ECJ argued that Irish law in general was not in line with EC standards. But the specific case of *SPUC v Grogan* led the ECJ to conclude that Irish courts had not abused the rights of the students as they themselves had not been directly affected by the lack of access to information on abortion nor been stopped from traveling for an abortion. The students did not suffer undue economic harm and the ECJ in effect ended its judgment with the conclusion that the injunction against the officers of the students' unions was legal.³³

Nonetheless, the ruling of the ECJ came as a thunder bolt. The European Court basically said that Ireland cannot withhold information nor prevent Irish citizens from seeking an abortion abroad. The pro-life movement was shocked and approached the Irish government as it was leaving for the intergovernmental conference at Maastricht in December 1991. The pro-life movement asked the government to demand guarantees from the IGC that the interpretation of the ECJ ruling would continue to be narrow and technical. The delegation under the leadership of the Conservative Fianna Fail party subsequently insisted during the Maastricht deliberations on the insertion of a special Protocol to the Treaty for European Union. The purpose of the Protocol was to nullify or neutralize the long-term implications of the earlier ECJ ruling and stated that Irish citizens cannot override domestic law on abortion by appealing to Community law. In short, Community principles do not apply to the case of abortion in Ireland, according to Protocol 17. Considering the implications of Protocol 17, the Irish government did not publicize its existence and few Irish knew about it.

Everything would have been fine if not a major scandal erupted in early February 1992 that placed Protocol 17 and abortion in the center of a growing controversy. On February 4, 1992, the parents of a 14 year-old girl went to the police stating that she was pregnant as a result of rape. The parents had decided to take their daughter to England for an abortion but checked first with the police if they could use the results of DNA tests on fetal tissue to identify the guilty man. The police reported the parents to the office of the district attorney on the grounds that a crime was about to be committed -- namely an abortion outside Irish territory. The High Court granted the injunction with the argument that Article 40.3.3 required the courts to grant an injunction to restrain the right to travel abroad as otherwise the guarantee with regard to the unborn might be rendered worthless.³⁴

Quickly, it became clear that the logical extension of the Irish Court ruling would be that all pregnant women must be confined to Ireland in case they could or might seek an abortion when abroad. The government pushed the parents of the girl to submit the case to the Irish Supreme Court to sort out what the appropriate public

³³ Anna Eggert and Bill Rolston, "Ireland," Anna Eggert and Bill Rolston, eds. Abortion in the New Europe: A Comparative Handbook (Westport, CT: Greenwood, 1994), 165.

³⁴ Gerard Hogan, "Protocol 17," Patrick Keatinge ed. Maastricht and Ireland: What the Treaty Means (Dublin: Studies in European Union, 1992), 112.

policy stance should be. The first decision of the Supreme Court was to lift the injunction and permit the victim to travel to England. A few weeks later, on March 5, it released its judgment. Three of the five judges concluded that the Constitution did not forbid abortion when there was 'a real and substantial risk to the life, as distinct from the health, of the mother.' Catholic interpretation of this concept was that abortion was legitimate in case of an ectopic pregnancy or cancer of the uterus. The 14-year old girl did not qualify under these conditions. But she had threatened suicide and even tried to commit suicide. The judges ruled that a real danger existed that she would take her life if she had to continue with the pregnancy. They therefore decided that life of the mother (who was suicidal) must take precedence over the right to life of the unborn child. Such a termination of the pregnancy, the Supreme Court reasoned, would have been lawful if performed in Ireland. The travel ban could not be sustained as there could be no objection to traveling abroad to perform an act, which would have been lawful if performed in this State.³⁵

The government found itself in a strange quandary. It had drafted Protocol 17, unbeknownst to most Irish voters, to muster the authority of Europe to underwrite its own anti-abortion stance. The Supreme Court judgment forced the government to reveal that it had negotiated a special amendment to the TEU to preserve the ban on abortion.³⁶ It now appeared that the Protocol contradicted Irish law as recently interpreted by the Supreme Court. The Irish government felt compelled to amend the Protocol to depoliticize the ratification process of the TEU, which became linked in voters' mind with the abortion question, and to bring Community law into compliance with the new developments in Irish domestic law. However, the EC was not in a mood to redraft the TEU afraid of opening a Pandora box of requests for revisions from other member-states. The Irish government therefore decided to issue a 'Solemn Declaration' in relation to the Protocol. The declaration pronounced that the Protocol shall not limit freedom either to travel between member states or, in accordance with conditions which may be laid down in conformity with Community law, by Irish legislation, to obtain or make available in Ireland information relation to services lawfully available in member-states. A referendum in 1993 officially approved free movement and access to information to terminate a pregnancy.

There are some interesting similarities between the Swedish and Finnish case and that of Ireland. At the heart of the matter is the question of relative balance between domestic public policy and Community law. The Treaty provides for instances when member state may derogate from their treaty obligations. The ECJ has devised a

³⁵ Gerard Hogan, "Protocol 17," Patrick Keatinge ed. Maastricht and Ireland: What the Treaty Means (Dublin: Studies in European Union, 1992), 112.

³⁶ Anna Eggert and Bill Rolston, "Ireland," Anna Eggert and Bill Rolston, eds. Abortion in the New Europe: A Comparative Handbook (Westport, CT: Greenwood, 1994), 166. Ailbhe Smyth, "A Sadistic Farce Women and Abortion in the Republic of Ireland, 1992," Ailbhe Smyth, ed. Abortion Papers, Ireland (Dublin: Attic Press, 1992), 19.

justification for national legislation which is incompatible with the Treaty but which pursues an overriding public interest. Increasingly, the ECJ is confronted with the difficult question of the appropriate boundary between Community competence and national values. Thus, most observers would argue that the ECJ would, on the one hand, endorse a ban on the distribution of information on abortion but, on the other, it would void a domestic ban on intra-Community travel for this purpose as a disproportionate reliance on Irish public policy and a disproportionate violation of Community economic principles. If abortion is considered a lawful medical service, abortion clinics in other member states should be free to advertise their services in Ireland, and Irish citizens should be entitled by Community law to receive that information. The ECJ recognizes that member states deserve public policy derogation from the Community to pursue important national objectives like curbing alcoholism or protecting the unborn. But it demands that there is some correlation between the goals to be achieved and the measures undertaken.³⁷ The ECJ is susceptible to existing political realities in a particular country. The appearance of alcohol and abortion tourism plants doubts in the minds of many observers whether the restrictions in place are indeed still valid and appropriate measures at this point of time. Many neutral or impartial observers will argue that these public policy regimes served their purposes and no longer dovetail with the needs of post-industrialized societies. Many voters, for whatever reasons and perhaps out of sentimentality or ignorance, prefer to see few radical changes. They oppose forced conformity and strongly urge elected officials to fight for the long-term preservation of the policy regimes. Voters are convinced that their approach is the best, most sensible and efficient way to deal with universal problems.

Implications and Conclusion

Many observers have noted that national governments have lost considerable policy autonomy. Globalization and European cooperation have narrowed the instruments and options of governments to respond to domestic needs and expectations. Much of this trend was consciously sought as governments willingly transferred policy autonomy in economic/monetary areas to increase European capacity to deal with shifts in the international political economy. Certain areas, primarily related to external, internal, and social security have been kept away from Community law and trans-European cooperation/harmonization. The second and third pillars of the Treaty for European Union guarantee a very modest role, if at all, for European supranational actors. Social welfare and security, which is linked to the process of state building in the postwar era, are formally housed in the Community pillar even though most of its scope of action remains under the control of national-level decision-makers. For these reasons, political integration or European state-building lag behind market integration as core functions, performed by national

³⁷ Madeleine Reid, "Abortion Law in Ireland after the Maastricht Referendum," Ailbhe Smyth, ed. Abortion Papers, Ireland (Dublin: Attic Press, 1992), 30.

governments, continue to be excluded from stronger intergovernmental cooperation and Community principles.

Market integration has nonetheless touched upon and constrained national policy autonomy in areas reserved for domestic authorities. This is especially striking for policy regimes that are founded upon unique principles. Many country-specific regulatory regimes are at odds with European norms and are threatened by the free circulation of services, goods, and people. To address this danger, government leaders rely upon Council agreements to obtain exemptions from Community law. This has given rise to complicated compromises to meet the conflicting demands of individual member states. As a rule, exemptions or special deals are granted because the threatened policy regimes have no direct bearing on the functioning and success of the single market and require only minimal concessions from other member states. The sum of all exemptions and special deals undermines state building, of course, and interferes with the ultimate goals of fostering stronger or deeper intergovernmental cooperation and harmonization.

The case studies selected in this paper shed some further light on the discrepancy between active market integration and passive state building. International diplomatic agreements do not reconcile the fundamental contradiction between unconventional public policy targets, corresponding 'extreme' policy measures, and market integration. International agreements enable national governments leaders to maintain existing restrictions and ignore the inconsistency with Community law. But the agreements do not curb or alter the fundamental right of the free movement of people. As consumers, citizens wish to avail themselves of goods and services restricted at home. As citizens of a specific nation-state, they wish to retain the peculiar structures and institutions, created by national historical developments, and firmly reject greater conformity to European norms and values. Voters assign low priority to cultural policy or support for European culture. In fact, a small minority of voters, even in the Netherlands and Ireland, see themselves as citizens of the EU.³⁸ As individuals of a nation-state, voters insists that government leaders bargain for the preservation of unique and unorthodox policy regimes. But these agreements fail to provide much security or protection because of the mobility of goods, services, and people achieved after the legislation of the single market directives.

Ironically, national regulatory systems are more likely to survive, after minor adjustments, if Europe possessed greater state or policy capacity. International intergovernmental agreements would acquire greater significance and cohesion if the EU participates as the ultimate executor of intergovernmental accords and if it shares the responsibility for ensuring compliance and respect for diversity. Instead, the ineffectual legislative and executive powers of the Commission endow market forces

³⁸ The Netherlands and Ireland are among the most pro-EU countries. But only 16 percent of citizens of these countries identify themselves as European citizens. European Commission, *Eurobarometer*, 45 (1996), 45.

and agents with disproportionate weight, influence, and allocative authority. National protectionist legislation is rather useless in taming market forces and agents because . European-wide challenges must be met by European-wide political intervention. The four case studies are an excellent illustration of what the costs and disadvantages are of decoupling market from political integration. Market building has proceeded apace and continues to transform national economies. But state building, which should accompany market building, has stagnated for years. Only a European solution, which involves the Commission and the European Parliament, can achieve the essential balance between unique national values and contrasting European norms.

The lack of congruity between the two dimensions of Europe -- market and political integration -- fosters resentment against Europe among national governments and voters. Enthusiasm for European integration has dropped in all four countries. Greater skepticism reflects the wide disenchantment with the promises of the single market. Rather than growth and prosperity, the single market is associated with growing unemployment and stagnant economic growth. One of the few countries which has seen a remarkable economic recovery is the Netherlands. Yet, here, too, support for the EU has dropped. By and large, voters are slowly realizing the real impact of post-Maastricht Europe and do not like what they see. The grandest paradox of all is that European institution-building may in fact be one of the few feasible solutions to fight the gradual erosion of socio-cultural autonomy. But the European public, together with many elected officials, are retreating from embracing daring EU action plans after witnessing the encroachment of "Europe" onto national politics and policy-making. So long as European institution-building is blocked, because of a high degree of existing cultural/moral divergences resulting in the underdeveloped capacity of the EU, irreconcilable conflicts between member states and the EU will continue to dominate national debates and voter preferences. In the absence of a larger European framework to accommodate socio-cultural diversity, market integration will continue to limit and constrain the functioning of singular policy regimes. How to resolve this issue is extremely complex. Certainly, the first step is to acknowledge that there is an issue, one which will not disappear any time soon.