

Is Free Movement of Workers a Fundamental Right or Merely the Price for Full Access to the Internal Market of the E.U.?

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Factortame (Case C-213/89 [1990] ECR I-2433, starting in 1988, ff.) was the case that Eurosceptics felt doomed UK parliamentary sovereignty. *Factortame* said that, having committed itself to the treaty, a Member State could not then contradict the treaty with contrary domestic action. Specifically, no discrimination against nationality (now TFEU Art. 18) has been permitted since the beginning. Nevertheless, parliament amended the Merchant Shipping Act in 1988 to prevent Spanish fishermen from catching fish in UK waters by requiring, for example, that 75% of the shares in a fishing enterprise must be owned by people domiciled and residing in UK. The diehards never accepted that parliament had to exercise its authority within the framework established by the treaty.

With strong support of the Eurosceptic former Prime Minister Thatcher, Bill Cash, a Conservative MP for Stone (Staffordshire), led the "Maastricht Rebellion" and has not let up since. Cash wrote several popular books, including *Against a Federal Europe: The Battle for Britain* (1993) and *Associated, not Absorbed* (2000). He triumphantly said that his constituents backed Leave so that they could recover their own sovereignty. Interviews of the actual voters show that many of those who voted Leave said that now they are now "free." The "potteries" (think Wedgwood) area is doing well in employment. Barnsley, in S. Yorkshire, however, lost its mines in 1994. When told that Barnsley received aid from the EU, voters said good, now we have the £ and our sovereignty. They did not seem to understand that the EU would not continue to send money once UK left and that the Leave campaign did not intend to make up the lost revenue.

Did reactionaries mislead unsophisticated people into voting for something that went against the interest of those voters but benefited the leaders of the campaign? When voters in Cornwall discovered that they too would lose their EU aid, they asked to vote again. Others had voted because the Leave campaign had said hundreds (£ 350 or 500 million, depending on who was speaking) of millions of pounds a week (!) would go into the NHS (National Health Service, which like American Social Security and Veterans Hospitals, is deliberately underfunded by the legislature responsible [or should I say irresponsible?] for its budget).

After the vote Nigel Farage admitted that whoever said money would be available for the NHS was speaking illustratively only. The leaders of the Leave campaign have no plans to ask the now supremely sovereign parliament to allocate any money to the badly underfunded NHS. Waiting-times for health care, both serious and routine, will increase and services delivered will decrease. Some who actually admitted to voting for Leave to decrease immigration were surprised (they did not know business needs immigrants) that Leave had no plans to decrease immigration, which comes perhaps more from third countries than from other EU Member States, including Polish immigrants who arrived in UK before Poland became a Member State in 2004. Did Remain utterly fail to explain what the EU does in its agricultural, fishing, and other policies? Hilary Benn suggests that tepid enthusiasm for Remain may have lost some Labour votes that could have been harvested by more robust campaigning.

Probably no one wished to reveal that average UK voters, whose salaries fell about 7% since the Great Recession, are in fact against the lobbying that manages to channel the trickle of revenue coming in from the slow growing economy toward the largest multinationals and largest investors but they think they are against the EU. The same is true in other Member States, to say nothing of the United States.

Closing loopholes that allow the privileged to take advantage of the democratic system might provide money to develop infrastructure, develop new industries, and provide job training. It may be that the average voter in the USA or the UK may not wish to hear such technicalities about deductions. Could the UK voters have understood better if Remain gave its warnings in terms of the messiness involved when two human beings divorce? Certainly, the voters did not like hearing President Obama say we have spent seven years developing a trade treaty with the EU (the completion of that treaty itself may arguably be in jeopardy) and you will, at least in terms of time, be waiting at the end of the line for negotiating a trade treaty with USA if you leave. No wonder Remain did not give warnings, prudent though they may have been.

Thomas Piketty, in his book *Capital in the 21st Century* (2014), explained that democracy has been changed by the current political economy: left vs. right is irrelevant compared to vertical interests in the global economy such as multinational companies vs. the retail service worker in a chain store. What does democracy mean when the voter has a vote but neither the time nor the training to understand what is at stake in the vote? Donald Trump apparently charged his own campaign to rent his golf resort at Turnberry for his press conference as candidate. Maybe, as the Don said, facts don't matter ("I could shoot someone on 5th Avenue and they'd still vote for me"; and in another context, "I am for 2d amendment rights"); luckily enough for Trump, with a post-factual electorate, he does not have to learn the facts). There he was, in Scotland where people largely voted to Remain,

and gave his congratulations to the UK for taking the "country" back by leaving. The Don also brashly said that the decline in sterling is good for him because more people who use other currencies can afford to come to his resorts here (close to his wording) since they will get more for their money on conversion into lower valued pounds. Who else congratulated UK besides the Don? The Don's friend Vlad, who has a union of his own to promote to Ukraine, Georgia and, he hopes, Eastern and Baltic Europe, such as Belarus, as well as Central Asia), Iran, and jihadi tweets that indicated their terrorism will be easier to carry out now that security channels are more difficult with UK on the outs.

Jeffrey Sachs says it is not so likely that anyone will pay attention to his (and others') suggestions to provide meaningful aid to the areas where refugees are coming from in order to give people a real choice to stay where they are. That may be the real failure of the EU. An EU-wide policy that both admits and supports refugees and strengthens safe-havens in their home countries is vital, as are strengthened security policies, work on infrastructure, deposit insurance, and greater monitoring and support for weak banking systems—yes, more EU-wide institutions—if problems are to be fully addressed rather than only endured.

The triumphant Leave campaigners say they feel sorry for the EU, which is no longer going to have Great Britain to grace it. What does Lisbon Art. 50(2) state? The first sentence provides: "A Member State which decides to withdraw shall notify the European Council of its intention." It does not say when the Member State shall notify. The two years to full exit are triggered by the UK's notification. Secretary of State Kerry is in Brussels and has met with other foreign ministers. He has called for calm and seems to share some of Angela Merkel's positions on taking measured steps. Others want the fastest exit possible to prevent the "contagion" of several Member States seeking referenda.

Mark Carney, Governor of the Bank of England, is doing everything he can to prop up the currency and has provided liquidity for the banking system. Some hotheads have called for Carney to resign because they deem him a collaborator with the failed Conservative government, but it will be very difficult to replace such a seasoned hand at this critical time. The UK's debt has been down-graded because of the fear of a recession and interest rates nevertheless fell. Carney assured the public that he would make £250 billion available, if necessary, to provide credit and support the markets; the Bank might lower interest rates next month. The stability or volatility of the pound and other currencies in the coming days will tell much about the health of the world economy in the near future.

Businesses always prefer stability, not to say certainty, which is crucial for world markets, although markets often deliver more volatility than risk managers can absorb. Have volatility and the devaluation of stocks and currency reached crisis-levels similar to the situation of Lehman Bros. in 2008? Certainly not, though volatility abounds. Try saying

there is no crisis, just “unrecognized loss,” to a person with a § 401 (k) account that has not been robust lately anyway. We hope political distress will not cause extreme losses in valuation, especially if we think the underlying economy is basically sound and the blurry picture will soon begin to come into focus. The stock markets, but not all currencies have begun to stabilize, possibly with several false starts still to come. But growth will not be robust and may be at a standstill so that the fear of recession is real. Life will be more difficult for all at least for a time and the young people in England, who will not have Erasmus fellowships or a chance to work in other places and instead will have a harder time getting started, are not grateful for the unexpected hardships visited upon them by their grandparents who are happy to be free, sovereign and independent. Will 23 June 2016 look better to them than 9 May (Europe Day) (when Schuman made his declaration in 1950, setting forth a supranational community engaged in setting up a coal and steel community) as a day to celebrate on the calendar?

What about the border between Northern Ireland and the Republic? 300 miles of opportunity for smugglers? Armed border stations like Check-point Charlie? Will the UK give up the six counties and let them reunite with the Republic? They voted to remain but some die-hard Unionists (the Acts of Union of 1707 and the Scotland and Northern Ireland Acts of 1998 provide for devolution) do not wish to leave England. Could the Queen remain Head of State? Yes, in Canada or Australia, but she will not be head of state in a republic like Ireland. What about Scotland? Next weekend Elizabeth II is going to Scotland to speak to her Scottish people. If Scotland remains in the EU but leaves the UK, Elizabeth may remain head of state because she is in effect but not in title Queen Elizabeth I of Scotland (Mary was Queen of Scots and Elizabeth I was Queen of England only). The First Minister Nicola Sturgeon is pursuing all her options to remain in the EU, but is not necessarily interested in staying in the UK if she must give up Scotland's relationships with the other 27 Member States in the EU. Nevertheless, it is unlikely that the EU will be able to deal with Scotland unless and until it becomes independent of UK.

Unwinding long-standing relationships is hard to do but poking into the interstices of the relationship does unlock EU values in the process. How much should the Union mean to the future of the remaining 27 Member States and even to the new outsider, the UK? If the founders' values (peace, not war; brothers, not others; open borders, not barriers; prosperity, work and food for all) are rejected, then none of those expansive, irenic plans for all the partners will come to pass. For Robert Schuman's philosophical underpinnings in pursuing what became essential EU value, including new emphasis on democracy in response to totalitarianism, see Robert Schuman, *Pour L'Europe* (1963, translated by the Centre for European Studies as *For Europe* 41-59 (2010) (highlighting the work of Jacques Maritain as well as the Christian Democratic parties emerging after World War II.) These values were first translated into the treaties as the four freedoms, including the free movement of workers. The Brexit movement rejected free movement of workers and

subsumed it under the category of unwanted immigration leading to the desire to take the country, or sovereignty, back. It will be difficult for the UK to ask as a non-Member State for the benefits of the internal market while refusing to participate in the free movement of workers which makes the internal market work and invests the project of uniting Europe with the fundamental values of human respect and human rights. The irony of wanting access to the benefit of the internal market without honoring the free movement of workers integral to making the market work, that is, without accepting the price to be paid for cheaper goods and ease of trading, may be lost on the illusionists who gestured that millions of pounds a week would be available for the NHS and on those who willingly participated in the illusion by voting Leave. The interest politics of the aggressive, rather than cooperative, nation state, on display in Russia's invasions of Georgia and Ukraine, may become more common in a difficult, dangerous and heartbreaking time. Is this the dramatic setting for novels? Yes. But unfortunately it may be a setting for reality as well. Is there a way for the founders' values to flourish and grow in UK if it is outside the Union? This will depend on people in the younger generation, who will now have to go it alone. Barring some unforeseen political reversal of fortune, their generation will be foreclosed from being EU citizens.

