The changing court of justice of the European community: a metaphor for growth in the European community?

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The Changing Court of Justice of the European Community:
A metaphor for growth in the European Community?

by

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CHAPTER ONE: INTRODUCTION

International relations has been altered by the recent resurgence of the European Community. The Single European Act in 1987 and the 1992 internal market deadline are indicators that the member states of the European Community are serious about going beyond the Treaty of Rome and coordinating many other formerly national policy areas.

This new growth phase has been predicted by many observers. Keohane and Hoffmann write, "There seems little doubt that European institutions will continue to become stronger and more encompassing...and the institutions of the European Community in particular, will play the leading role in providing finance, investment, markets, and political guidance for the Eastern European countries whose politics enable them to become linked closely to Western capitalism."1

The resurgence of the European Community (EC) as an economic leader in global relations is clear. Today the EC has a combined population of 345 million people in twelve member states, or approximately 6.5% of the total world population. The EC had an annual budget in 1991 of European Currency Units (ECU) 55.6 billion, or approximately $65.61 billion dollars above and beyond the individual national budgets of member states. In terms of global

market shares, in 1989 the EC had a gross domestic product (GDP) of ECU 4407 billion, compared to ECU 4658 billion for the United States and ECU 2560 billion for Japan. This translates into the EC having 20 percent of the world market in goods and services, on both the imports and exports side. Average imports and exports for the EC were approximately 12.2 percent of the EC's GDP, compared to 10.3 percent for the United States, and 10.7 percent for Japan.2

The end of the Cold War and a world dominated by two superpowers has signaled the ever-increasing importance of economic prowess. The previous view that military concerns alone constitute high politics is changing. As a result, the expanding role of the European Community within its member states may have a resounding effect throughout the international arena as the economic power consolidated in the Community increases. The importance of the Community is even more compelling when one considers the disintegration of the Eastern Bloc and the possible addition of many new members. In addition, the end of the Cold War has caused some previously neutral countries to reconsider their relationship with the EC. For example, Austria, and Finland have both applied for full membership in the Community with accession negotiations beginning in January of 1993.3 The increased importance of economic security and the potential for increased EC membership justify


research to determine whether the Community is indeed becoming more integrated.

Within the institutional framework of the Community, the Court of Justice has seldom been the focus of scholarly efforts. The purpose of the European Court of Justice is to ensure that Community law is observed in the interpretation and application of the establishing Treaties and the laws adopted by the Community's Council and Commission. Described as an "integrating factor of the highest order," the Court is responsible for defining the principles on which the Community legal order rests. It is this unique role that makes the Court an appropriate metaphor for the European Community overall. The functions and jurisdiction of the Court mirror the functions and jurisdiction of the Community. European Community growth and increased integration have not yet been studied from the perspective of the Court. The Community's Court of Justice is ideally suited for this research because of its pervasive role in the Community. This is a study of the European Community's Court of Justice as a metaphor for change in the Community. The following set of unobtrusive indicators will be used in order to measure the level of integration of the Court; the number of issue areas addressed by the Court, the number of non-government plaintiffs bringing cases to the Court, and the number of both cases heard, and preliminary rulings issued, by the Court. The issue areas within the Court's competence will provide an indication of the areas in which the Court is active and will identify any new areas in which the Court has or is becoming active. This will indicate if the Court's jurisdiction is expanding into new issue

areas. By analyzing the number of non-government plaintiffs, (either EC institutions or individual citizens), we can determine if the Court is considered legitimate and therefore useful, in the minds of these plaintiffs. The number of cases heard by the Court will serve as an initial indicator of the utilization of the Court and will help signify the extent to which it is considered legitimate. The number of preliminary hearings issued by the Court will also serve as a measure of Court legitimacy. If the national courts of member states consider the European Court of Justice a legitimate and/or useful institution, they will appeal for preliminary rulings more often.

The term integration can be defined either as a process or an outcome. Here, integration is defined as a process rather than an outcome. In doing so, the need for establishing an integration threshold should be avoided. Instead, the Court's current level of integration will be compared to past levels of integration to determine whether the Community is more or less integrated today.

Before beginning an analysis of the European Court of Justice today, it is necessary to establish the theoretical foundation of the study of integration as it relates to the Court. Chapter Two reviews the different schools of integration theory and past efforts at analyzing the European Community. The second part of this chapter attempts to classify the European Community in a typology of international actors. What we expect to see the EC develop into is distorted by how we interpret the EC today. Therefore, it is critical to understand how we interpret the EC so we can account for this distortion.

Chapter Three is a discussion of the historical background of the European Community and the Court of Justice. It reviews the evolution of the
EC from its conceptual birth to its current state. The expansion of the EC by additional treaties and the gradual geographical expansion of the EC are observed. A description of the structure and institutions of the Communities is also provided. The evolution of the Court and its purpose and relationship to the other EC institutions is discussed. The establishment of the supremacy and direct effect doctrines by the Court is analyzed, as is the internal structure of the Court and the newly functioning Court of First Instance. The chapter ends with a brief discussion of the role others have suggested the Court plays in EC integration.

An elaboration of the research question and methodology underlying this study constitutes Chapter Four. The data source, and specifically the data utilized here, is examined. The concept of integration is further defined as a function of both the Court's scope and domain, and the indicators chosen to measure both are detailed. Lastly, the possible results of this analysis of the indicators are briefly considered.

Chapter Five consists of an interpretation and analysis of the data and findings in terms of the definition of integration as a function of the Court's scope and domain. Whether the Court is growing in scope and/or domain will be assessed by combining the results of the indictors. Also, a sense of the influences on the indicators will be gained by examining some of the events in the evolution of the Community that may have affected the Court.

Chapter Six reviews the findings of this study and draws conclusions from it. Direct implications of the study for the Court of Justice and the European Community will be assessed. The chapter also includes an evaluation of the broader implications of the study for international relations, and
integration and international relations theory. Finally, some related areas for further research will be discussed.
CHAPTER TWO: LITERATURE REVIEW AND THEORETICAL BACKGROUND

Theories of Integration

In this chapter some of the different schools of integration theory will be discussed in relation to the EC. There are various schools of integration theory, most of which have theoretical roots that predispose their advocates to certain classifications of the European Community. Consequently this discussion of integration theories will include an analysis of the varying theories and their expectations for the future of the European Community. The anticipated outcomes serve as core assumptions on which many integration process theories are based. Four main schools of thought comprise the major approaches to EC integration: federalism, communications theory, functionalism, and neofunctionalism.

Federalism focuses on the formative stages of the integration process and emphasizes the formal establishment of constitutions, treaties, and other critical decisions. The distribution of rights and obligations between the different levels of government and among the different branches of government are important elements in the federalist equation. Political, rather than economic or social, factors are most crucial to federalist integration theories. These factors serve as measures of state-building. The eventual state of the European


Community, according to federalist theory, would be a fully developed nation-state with a division of sovereign powers between the Community government and the member states. This has not yet happened. There still remains a "hard core of sovereignty" in areas such as "defence, foreign affairs, monetary and (to a lesser extent) fiscal policies," demonstrating a "crucial difference between the European System(s), where sovereign powers remain in the purview of the states, and the classical federations, where sovereign powers are (as a rule) centralized."7

Communications theory links social and economic factors with political outcomes. The focus is on preconditions and process factors that are either social or economic, such as interstate communication and trade flows. These factors create "in-groups" where members are more inclined to work together than with others outside the group.8 The advocates of this approach suggest that increased transactions within a group enhance the likelihood of further integration by encouraging mutually responsive behavior through learning.9 Karl Deutsch, a pioneer in this area, stresses the necessity that a sense of community exist among the people, as a measure of nation-building. This sense of common loyalty would include a "shared we-feeling sufficient to persuade

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8 Hopkins, Structure and Process in International Politics, 282.

9 Ibid., 283.
groups and citizens to accept recurrent and structural sacrifices of their interests in the furtherance of the interests of others or of the system as a whole."\textsuperscript{10}

The anticipated outcome of the integration process, according to Deutsch, is a "security community" that can resolve disputes peacefully in most instances, but does not need to have a "high level of interdependence or central political organizations to enforce joint decisions."\textsuperscript{11} If the predictions of communications theorists were to prove accurate, the European Community would become a security community and would not require the centralized Community institutions. If so, the European Community would develop a true sense of community where, for example, citizens would not consider themselves French or German or British, but European.

William Wallace distinguishes between formal and informal integration. Formal integration emphasizes "those changes in the framework of rules and regulations which encourage-- or inhibit, or redirect-- informal flows. Formal integration is discontinuous: it proceeds decision by decision, bargain by bargain, treaty by treaty." Informal integration stresses "those intense patterns of interaction which develop without the impetus of deliberate political decisions, following the dynamics of markets, technology, communications networks, and social change...a continuous process, a flow..."\textsuperscript{12} These


definitions serve to emphasize the different foci of integration theories. Federalism is considered formal integration while communications theory is an example of informal integration.

Functional integration theory, like communications theory, emphasizes social and economic factors as preconditions and process mechanisms that create common interests. Functionalism is based on economic theories of supply and demand. If nation-states are unable to provide certain services and goods to their citizens, new levels of organization will be established for the purpose of providing those goods and services. For example, environmental problems like air pollution are not contained by state borders. Economic recessions also cross national borders, linking economic conditions in one country to economic conditions in another. As a result, regional and international organizations like the European Community have been established to address these geographically diffuse problems. Functionalists believe that, with the creation of each new regional or international organization, a ripple effect will increase the organization's functional scope and capacity by linking issue areas. This ripple effect is not automatic. It only continues until the minimum amount of cooperation and coordination necessary exists. As a result, organizations like the European Community reach growth plateaus where the status quo is accepted and a "zone of indifference" not necessitating further

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13 Ibid., 283.
14 Ibid., 283.
integration is established. Consequently, functionalists argue, the theory is not a "frontal attack" on nation-states or their sovereignty.

This approach to integration theory focuses on institution-building. In terms of Wallace's distinction between formal and informal integration, functionalism stresses the discontinuity of the formal integration processes. The European Community would be expected to continue to grow in functional scope, according to the functionalists, through growth spurts, rather than through an unstoppable and ongoing process.

Both communications theory and functionalism serve as the theoretical foundation for neofunctionalism. The dynamics of international organizations and institution-building are emphasized by neofunctionalists. These theorists argue that within the international agency, there are internal pressures for expansion not triggered by external factors. In organizations created expressly for the purpose of economic unions or common markets there may also be "pressures for broadening or strengthening their own authority." First articulated by Ernst B. Haas, this neofunctionalism differs from the original "in that it establishes some prerequisites to effective problem-solving which involve a partial but direct threat to the autonomy of the nation-state. Specifically, it is argued that one must begin with a real delegation of decision-

15 Ibid., 284.
17 Hopkins, Structure and Process in International Politics, 284.
18 Ibid., 284.
making authority to a supranational agency." Lindberg and Scheingold explain, "It was certainly consistent with the neofunctionalist image to think in terms of a new kind of system that may transform the nation-state but not replace it." Neofunctionalists, however, do not stress an inevitable and unstoppable increase in the scope of the supranational organization. Zones of indifference are acknowledged as part of the integration process by

![Diagram: Potential integration paths](image)

**Figure 1: Potential integration paths**


20 Ibid., 24.

neofunctionalists. The above diagram illustrates the potential paths of growth and degeneration in a political community. The core of neofunctionalism is Haas' concept of "spillover," where spillover is "a prosaic result of 'swapping concessions from a variety of sectors." Restated by Hopkins and Mansbach, spillover exists when areas with which the central agency deals expand and the authority of its decisions increase. Similarly, "spill around" occurs when new areas of interest exist but there is no increase in decisional authority.

Neofunctionalist theory suggests that the European Community will continue to grow in both scope and domain, but with intermittent zones of indifference. Periods of retrenchment, characterized by increases in degree of authority, but in fewer issue areas, and periods of spillback, characterized by decreases in both degree and scope of authority, are possible. Also possible are periods of increased scope but with decreased decisional authority, called "muddling about," and periods of unchanging scope with increasing decisional authority, called "build up."

These four schools of thought comprise the major approaches to European Community integration. The predictions of the federalists and the


25 Ibid., 285.
communications theorists do not appear likely, at least in the foreseeable future. Functionalist and neofunctionalist theories seem more plausible given what is known about the Community thus far. The focus on institution-building and economic and social processes through the concepts of spillover and zones of indifference has proven insightful.

Classifying the European Community

In asking whether an entity is becoming more or less integrated, there is a certain expectation as to what that entity will become. This is why so much integration literature about the European Community has focused on the problem of classifying the European Community. A number of possible international actor categories have been found, but a consensus as to which category is most accurate is still not established. It is appropriate to begin this section of the thesis with an examination of some of the most common categorizations, because they illustrate the outcomes anticipated by integration theorists.

Many theorists consider the European Community a federalist state. Most of these advocates argue that while the EC is not a federalist state yet, its structure and purpose best fit that of a potential state. The founding treaties serve as a constitution in which the duties and obligations are divided between the member states and the Community. The superiority of Community law over the laws of member states is also often cited as evidence of a federalist state. This classification, however, is generally not accepted as the most accurate assessment of the EC. Borchardt, for example, stresses that the Community is
not a federalist state because it "lacks both the universal jurisdiction characteristic of a state and the power to create new fields of competence."26 Similar conclusions have been reached by Keohane and Hoffmann.27

The Community is often described as an "international regime." The generally accepted definition of a regime, articulated by Krasner, is "sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors expectations converge in a given area of international relations."28 The European Community appears to fit into this definition, but, as Keohane explains, these principles, norms, rules, and procedures "imply obligations even though these obligations are not enforceable through a hierarchical legal system."29 It is here that this categorization is incomplete. The legal structure of the European Community distinguishes it from other regimes. The ability to impose obligations on member states and to enforce those obligations if necessary sets the EC apart from regimes as they are usually defined (i.e., by Krasner).

The next possible category identifies the European Community as an international organization. Keohane and Nye write that international organizations are viewed "not as sources of definitive law, but as institutionalized policy networks, within which transgovernmental policy

\[\text{26 Ibid., 9.}\]

\[\text{27 Keohane, The New European Community, 10.}\]


coordination and coalition building could take place." They reach this conclusion while delineating models of regime change. The European Community is appropriately described as an organization of institutionalized networks for the policy coordination of member states, but the EC does have a source of definitive law. It is the Court of Justice and the Community's accompanying legal system that distinguishes the EC from other international organizations. As explained by Keohane and Hoffmann, the European Community has gone beyond the limitations inherent in international organizations, in part because the Community legal process has a dynamic of its own and because the Community has gained limited sovereignty in some issue areas.

The European Community does not adequately fit any of the categories discussed above. It is neither a federal state, nor a regime, nor an international organization. In fact, in trying to identify the Community, there is little else left with which to compare it. Consequently, many have created a new category custom-made to address the uniqueness of the Community. As Michael Burgess writes: it is "conventional wisdom to describe the EC as sui generis... a unique state congruent with European needs and requirements." While this new classification has been generally accepted it does not relate the characteristics of the European Community directly to those of other international actors.

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Some have sought to relate further the unique characteristics of the European Community to the other categories. In doing so the concept of supranationality, as defined by Ernst B. Haas, has also been accepted as an accurate assessment of the Community. Supranationality is defined as a "cumulative pattern of accommodation in which the participants refrain from unconditionally vetoing proposals and instead seek to attain agreement by means of compromises upgrading common interests."33 Borchardt concurs, noting that the EC is an "association endowed with independent authority, with its own sovereign rights and a legal order independent of the Member States to which both the Member States and their citizens are subject in matters for which the Community is competent."34 In addition, Renaud Dehousse and Joseph H.H. Weiler point out that the term 'supranationality' was coined expressly for the purpose of identifying the unique status of the Community.35 In this sense, both terms *sui generis* and supranationality reinforce the same point by connoting similar EC characteristics.

An attempt at further identifying the European Community by Keohane and Hoffmann has led to the development of the concept of "pooled sovereignty."36 In discussing the Single European Act and its potential revitalization of the Community, the two have described the growth of the EC

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35 Dehousse "The Legal Dimension," 250.

as an "increase in the practice of pooling sovereignty," meaning "sharing decision-making capabilities through a qualified majority rule."³⁷ Keohane and Hoffmann explain that the Community is an "experiment in pooling sovereignty, not in transferring it from states to supranational institutions."³⁸

The concept of pooled sovereignty is not incompatible with Haas's notion of supranationality. "The European Community can best be viewed as a set of complex overlapping networks, in which a supranational style of decision-making, characterized by compromises upgrading common interests, can under favourable conditions lead to the pooling of sovereignty."³⁹ Keohane and Hoffmann stress that the European Community rests on intergovernmental bargains like the Single European Act.⁴⁰ It is through these intergovernmental bargains that sovereignty is pooled in order to address specific functional areas of interest.

This new description of the European Community is further elaborated by the identification of complex, overlapping networks originally discussed here in reference to Keohane and Nye's international organization model of regime change.⁴¹ This conceptualization is consistent with the classification of a network form of organization suggested by sociologists, "in which units are

³⁷ Ibid., 7.


³⁹ Ibid., 277.

⁴⁰ Keohane, The New European Community, 10.

⁴¹ Keohane, Power and Interdependence, 58.
defined not by themselves but in relation to other units."42 Keohane and Hoffmann explain that the concept of a network is "more of a metaphor than a theory" in that it "helps to emphasize the horizontal ties that exist among actors and the complexity of their relationships, but it does not elaborate clear hypotheses about behaviour."43

In 1975 Haas applied this network concept to the European Community and specifically described it as a "semi-lattice" form of organization, where "[t]here is a clear centre of authority for some activities and decisions, but not for all. Lines of authority duplicate and overlap; tasks are performed in fragments by many sub-systems; sometimes authority flows sideways and upwards, at other times the flow is downward."44 Part of the definition posited by Keohane and Hoffmann is this semi-lattice form "between a hierarchy and a simple matrix."45 This categorization of the European Community is a more accurate description than the previously mentioned categorizations and a more detailed account of those characteristics unique to the Community.

Another classification similar to that elaborated by Keohane and Hoffmann is provided by Barry B. Hughes, in his paper "Delivering the Goods: European Integration and the Evolution of Complex Governance." Hughes suggests a link between the concepts of complex interdependence and

42 Keohane, "Conclusions: Community Politics," 281.

43 Ibid., 282.


integration theory. This new approach, called *complex governance*, focuses on the linkages between complex interdependence and integration theory.\[^{46}\] "This view suggests that governance of Europe in the future will consist of multi-tiered, geographically overlapping structures of government..."\[^{47}\] While the phrase *complex interdependence* is new to integration theory, the underlying conceptual linkages are not. This sort of "structural future" was earlier described by Hopkins and Mansbach when they predicted that the future international system would consist of a "complex, multi-leveled, but fragmented set of actors with overlapping and conflicting goals."\[^{48}\] In fact, Hughes cites Lindberg and Scheingold for also predicting this expected "sector integrated supranational system."\[^{49}\] Hughes suggests that complex interdependence is insightful because of the direction in which it leads toward "discrete issues, the extensiveness of inter-issue linkages, and to the considerable constraints placed on state action by a dense pattern of interactions."\[^{50}\]

This approach is similar in part, if not in whole, to the approach taken by Keohane and Hoffmann in delineating the concept of pooled sovereignty by supranational decision-making procedures in the European Community. Hughes, perhaps more explicitly, articulates the linkages between complex

\[^{46}\] Hughes, "Delivering the Goods," 3.
\[^{47}\] Ibid., 3.
interdependence and integration theories, while at the same time identifying similar Community characteristics. The distinction between the conclusions reached by Keohane and Hoffmann, and Hughes lies only in the scope of their theorizing. Hughes's thesis categorizes the European Community "not as an embryo of a superstate or supernation, but as one organ in the embryo of complex governance."51 In other words, the EC is a supranational "part" of the "whole" that is complex governance.

All of these potential classifications serve to illustrate the varied outcomes anticipated by integration theorists. In trying to determine whether the European Community is changing, one must have some sort of expectation of what the Community will or will not change into. This is why much of integration literature focuses on answering the question of what the European Community will become before answering the question of whether or not it is changing.

51 Hughes, "Delivering the Goods," 4.
CHAPTER THREE: BACKGROUND OF THE EUROPEAN COMMUNITY AND THE COURT OF JUSTICE

The European Community

In Chapter Two the foundational theories of integration were reviewed and applied to the European Community. The Community was held up to the various categories of international actors to obtain a sense of what expectations the theories of integration have for the Community. In this chapter a brief history of the evolution of the Community will be provided along with a description of its institutional structure. In the second section special attention will be paid to the Court of Justice to provide a solid background for the research that follows.

The European Community consists of three organizations. The European Coal and Steel Community was the first organization, established in 1951. The European Atomic Energy Community (also known as Euratom) was initiated along with the European Economic Community in 1957. While these three Communities were created in separate treaties, they rely on the same institutions and consist of the same member states. Consequently, they are referred to collectively as the European Community.52

European Community membership initially consisted of six countries: France, Italy, West Germany, Belgium, the Netherlands, and Luxembourg. The European Coal and Steel Community was initiated by a plan drafted by Frenchman Jean Monnet and presented by then French Foreign Minister Robert

52 The three communities were officially named the European Community in 1978 when the European Parliament passed a resolution to do so. Borchardt, Community Law, 5-6.
Schuman in May of 1950. In an effort to pool Europe's coal and steel industries Schuman and Monnet proposed joint administration of these industries by national and supranational authorities. The ECSC meant different things to different people, but Schuman and Monnet saw it as only the first of many steps in a process ultimately leading to political integration. Schuman, Monnet and other like-minded Community advocates hoped to initiate a unification process that would link the economies of member states to such an extent that it would be virtually impossible for them to wage war on one another. The Schuman Plan claimed,

The pooling of coal and steel production will immediately provide for the establishment of common bases for economic development as a first step in the federation of Europe, and will change the destinies of those regions which have long been devoted to the munitions of war, of which they have been the most constant victims.

While the ECSC was not the first attempt at bringing Europe closer together through economic or political cooperation, it was the first major step in the unification process that has resulted in the European Community as it is today.

The Treaty of Rome in 1957 signalled a major addition to the ECSC and another step along the road to European integration. The road to Rome had not been smooth, and several other previous attempts to further link Europe fell by

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54 Borchardt, *Community Law*, 6-10.

55 Urwin, *Community of Europe*, 46.
The Treaty of Rome consisted of two new communities, the European Atomic Energy Community (Euratom) and the European Economic Community (EEC). The Euratom Treaty sought to link the economies of the member states in the research and development of atomic energy in order to create the "conditions necessary for the speedy establishment and growth of nuclear industries." Similarly, the EEC Treaty aimed at broader economic policy coordination among members by establishing a common market in order to,

...promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it.

Combined with the ECSC Treaty, these two new treaties form the foundation of the European Community. They have been supplemented and amended by other treaties and acts, but for the most part they have remained the same.

In terms of geographical expansion, the Community has experienced growth on a number of occasions. EC membership grew in 1973 to include Denmark, Ireland and Great Britain. This first enlargement could have occurred

56 This comment is in reference to the failed efforts at a European Defence Community and the Western Defence union in the 1950s. See further Urwin, The Community of Europe, 60-75.


58 Article 1, "EEC Treaty," Ibid., 125.
much earlier had it not been for French President, General de Gaulle who opposed British accession attempts in 1961 and 1967.\(^{59}\) The Community again grew in size when Greece joined in 1981, and when Spain and Portugal joined in 1986.\(^{60}\) This southward expansion brought with it new policy concerns and developments. For example, the entry of these less industrialized and more agrarian members has resulted, *inter alia*, in a reevaluation and restructuring of the Community Agricultural Policy (CAP). Shifts in emphasis and policy directives of this kind evidence some of the effect of this southward expansion.\(^{61}\) Further Community enlargements seem probable given recent events in Central and Eastern Europe, and given the current negotiations over the accession of Austria, Switzerland and Finland. It seems reasonable to expect that any new accessions will also effect the functioning and policy goals of the EC.

Along with changes initiated by these geographical expansions have come policy changes in the Community. The European Economic Community has been "revitalized" by the project directed at removing all internal market barriers by the end of 1992.\(^{62}\) In order to expedite this process, the 1992 program was incorporated into the Treaties of Rome in the Single European Act in 1987, which directed the Community to take all necessary steps to complete

\(^{59}\) Unfortunately for the Danes and the Irish, their applications for membership were attached to the British application, as was the practice then. Neill Nugent, *The Government and Politics of the European Community*, second edition, (Durham, North Carolina: Duke University Press, 1991), 50.

\(^{60}\) Borchardt, *Community Law*, 6-7.


the internal market by the 1992 deadline. The Single European Act amends the EEC Treaty by adding, *inter alia*, the following provision:

The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992, in accordance with the provisions of the Article and of Articles 8b, 8c, 28, 57 (2), 59, 70 (1), 84, 99, 100a and 100b and without prejudice to the other provisions of this Treaty.

The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty.

This revitalization through closer economic union has rippled throughout the Community and has served as a booster for other EC projects.

The EC consists of five main institutions; the Commission, the Council of Ministers, the Parliament, the European Council, and the Court of Justice. Since 1967 these institutions have been shared by all three of the Communities. Each institution has a different role in the decision-making process and the general functioning of the Community.

The Commission is appointed for four-year terms by the governments of the member states, and its function is mainly that of initiating all Community actions. The Commission may also challenge the actions of individual member states if they contradict Community law. It can pass legislation, but only subject to Council approval. In many ways the Commission can be

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64 The "Single European Act," in *Treaties Establishing the European Communities*, 544.

considered an executive branch in that it oversees the Community bureaucracy and is responsible for the implementation of Community directives within the EC. The Commission is also responsible for defending Community interests in debates before the Council.\textsuperscript{66} The Commission is held accountable to the Parliament and must present a report of its activities annually to the Parliament. If the Parliament does not approve of the Commission's conduct, it can call for the resignation of the entire Commission through a vote of no confidence.\textsuperscript{67}

The Commission's role in the legislative process is mostly technical and administrative much like the bureaucracy in the United States. Legislation by the Commission is usually more technical in nature, along the lines of administrative law, and is "subject to tight guidelines laid down in enabling Council legislation."\textsuperscript{68} In terms of size, however, Commission legislation is approximately two times as voluminous as Council legislation.\textsuperscript{69}

The Council is a board of representatives of all the governments of the member states and serves as a forum for airing the interests of the member states. Its purpose, however, is as an institution of the Community, rather than as an "intergovernmental conference."\textsuperscript{70} The Council is the primary legislative body for Euratom and the EEC, but its role in the European Coal and Steel

\begin{thebibliography}{9}
\bibitem{66} Ibid., 15, 19-20. The Commission has both 'primary' and 'derived' executive powers through the administration of Community law. For more see Borchardt, \textit{Community Law}, 19-20.
\bibitem{67} Borchardt, \textit{Community Law}, 15.
\bibitem{68} Nugent, \textit{The Government and Politics of the European Community}, 168.
\bibitem{69} Ibid., 168.
\bibitem{70} Borchardt, \textit{Community Law}, 18.
\end{thebibliography}
Community (ECSC) is mainly as an endorsing body. Originally, member states had a right of veto in the Council, but the Single European Act (SEA) of 1987 stressed a more consensual approach of qualified majority voting, except in sensitive areas such as "taxation, the free movement of labour and the rights and interests of workers." The SEA supplements the EEC treaty, for example, with the following provisions:

1. By way of derogation from Article 100 and save where otherwise provided in this Treaty, the following provisions shall apply for the achievement of the objectives set out in Article 8a. The Council shall, acting by a qualified majority on a proposal from the Commission in cooperation with the European Parliament and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.

2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.

There are four different types of Community legislation distinguished in the founding treaties: regulations, directives, decisions, and recommendations. Regulations (called general decisions under the ECSC) are usually adopted by the Commission and are administrative and technical adjustments to existing Community law. Most Community regulations relate to

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71 Ibid., 18-19.

72 The "Single European Act," in Treaties Establishing the European Communities, 547.

the Common Agricultural Policy (CAP).\textsuperscript{74} Directives (called recommendations under the ECSC) are "binding as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and method."\textsuperscript{75} Because directives are not necessarily applicable to all member states, (only to those to which they are addressed), and because directives require action by the member states to have direct effect, they are usually more general in nature than regulations, and consist of policy principles for member states to pursue in ways they deem most appropriate.\textsuperscript{76} Community decisions (individual decisions under the ECSC) are also binding in their entirety, but only on those to whom they are addressed. Decisions are different from directives in that they can be addressed to member states, or individuals. Most decisions are highly specific and administrative in nature, but some others more closely resemble directives in their decree of general principles.\textsuperscript{77} Recommendations (opinions under the ECSC) are unique in that they have no binding force on member states or individuals. Along with other Community proposals, agreements, guidelines, etc., recommendations are just that. The Court of Justice, however, has on occasion referred to

\footnotesize
\textsuperscript{74} Ibid., 169.

\textsuperscript{75} Article 189, "EEC Treaty," in Treaties Establishing the European Communities, 282.

\textsuperscript{76} In practice, most directives are addressed to all member states, and are commonly drafted in such a way that there is little room for variation in the implementation methods for national authorities. It has also been the case that The Court of Justice has ruled that some directives are directly applicable, for example when national authorities have unduly delayed implementation or have incorrectly implemented the directive in such a way as to distort its purpose. Nugent, The Government and Politics of the European Community, 169-171.

\textsuperscript{77} Ibid., 171.
recommendations in its decisions, imparting some legal status to them. Therefore the legal status of recommendations is sometimes unclear.\textsuperscript{78} These four types of Community acts comprise the legislative methods available to the Council and the Commission for creating Community law.

The Parliament is directly elected by the citizens of the member states, but it "exercises only symbolically the functions of a true parliament." Originating with the ECSC, the Parliament was referred to as the Assembly. The Parliament is generally considered the weakest of the four main Community institutions but that reputation has been gradually improving. In the legislative process, the Parliament plays mostly an advisory role, participating in policy debates with the Commission before a proposal is made to the Council. The Parliament can also formally submit proposals for new Community legislation to the Commission but the Commission is under no obligation to take on the proposals.\textsuperscript{79} The Parliament does have more power in the Community budgetary process. A Joint Declaration in 1982 between the Council, the Commission, and the Parliament aimed at improving the budgetary process, opened the door for increased Parliamentary involvement.\textsuperscript{80} For example, the institutions agreed that spending caps for legislation should be treated as part of the budgetary process instead of the legislative process.\textsuperscript{81} The Parliament was further strengthened by the SEA in 1987 but still its only real decision-making power remains in decisions "concerning the accession of

\textsuperscript{78} Ibid., 171-2.

\textsuperscript{79} Nugent, \textit{The Government and Politics of the European Community}, 129-130.

\textsuperscript{80} Ibid., 130.

\textsuperscript{81} Ibid., 130.
new Member States and association with non-member states. "82 In most other areas of Community legislative and budgetary processes the Parliament's role is limited relative to those of the Commission and the Council. In this regard, the European Parliament is very different from the parliaments of national governments throughout Europe.

The European Council was institutionalized in 1974 at the Paris Summit, although it did exist in the form of a few summit meetings of Heads of Government in the 1960s and 1970s. The European Council was established to bring together informally on a regular basis (twice yearly) the Heads of Government of the member states to "exchange ideas, to give direction to policy development, and perhaps sometimes to break deadlocks and clear logjams."83 The European Council was expected to deal mainly with general policy issues instead of details, though in practice it has dealt with both. The European Council has been active in many issue areas including economic and social conditions within the Community, international economic and monetary issues, economic and monetary integration, international political issues, specific Community policy issues, and constitutional and institutional matters within the Community.84 The role of the European Council in Community affairs has become perhaps, more involved than originally intended. As one author explains: "The evolution and operation of the European Council have owed much more to the preferences of the participants and practical necessities than

82 Borchardt, Community Law, 15-17.


they have to agreed rules and requirements."85 The European Council's role in EC politics has been to provide a larger voice to the member states and to increase the intergovernmental aspect of the Community, "by virtue of the fact that the leaders usually act on the basis of unanimous agreements -- either because they prefer to or, where subsequent Council legislation is required to give their decisions effect, because they may in effect be required to."86

The Court of Justice

The purpose of the EC Court of Justice is to see that the treaties and laws of the Community are adhered to by Community institutions, member states, and citizens of the Community. The Court plays a unique role as the supreme body in determining questions of community law.87 While there is no supremacy clause in the Treaties of Rome, the Court ruled in the 1964 case Costa v. Enel that Community law takes precedence above all national law when the two conflict.88 Flaminio Costa was an Italian who refused to pay his electric bill (of approximately $3.00) on the basis that Italy's nationalization of

85 Ibid., 194.
86 Ibid., 206.
87 Ibid., 32.
electric companies violated Article 37 of the EEC Treaty. The Court explained:

By creating a Community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the States to the Community, the Member States have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves.

The integration into the laws of each Member State of provisions which derive from the Community, and more generally the terms and the spirit of the Treaty, make it impossible for the States, as a corollary, to accord precedence to a unilateral and subsequent measure over a legal system accepted by them on a basis of reciprocity. Such a measure cannot therefore be inconsistent with that legal system. The executive force of Community law cannot vary from one State to another in deference to subsequent domestic laws, without jeopardizing the attainment of the objectives of the Treaty...The obligations undertaken under the Treaty establishing the Community would not be unconditional, but merely contingent, if they could be called in question by subsequent legislative acts of the signatories...The transfer by the States from their domestic legal system to the Community legal system of the rights and obligations arising under the Treaty carries with it a permanent limitation of their sovereign rights, against which a subsequent unilateral act incompatible with the concept of the Community cannot prevail.

89 Article 37 directs member states to adjust any state monopolies of a "commercial character" to remove any discrimination regarding conditions under which goods and services are procured and marketed between nationals of member states. Article 37, "EEC Treaty," in Treaties Establishing the European Communities, 150. Costa v ENEL in Mary L. Volcansek, "The European Court of Justice: Supranational Policy-Making," West European Politics, Special Issue on Judicial Politics and Policy-Making in Western Europe 15 (July 1992): 112.

Equally as critical to the development of Community law was the establishment of the direct effect doctrine. The *Van Gend en Loos* case was the first case in which the Court articulated direct effect. In *Van Gend en Loos* the Court ruled that "under certain conditions provisions of the Treaty [EEC] itself would have direct effect in the Community bestowing enforceable rights as between individuals and the Member States."\(^9\) The Court continued,

The conclusion to be drawn from this is that the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not Member States but also their nationals. Independently of the legislation of Member States.[sic] Community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the Treaty, but also by reason of obligations which the Treaty imposes in a clearly defined way upon individuals as well as upon the Member States and upon the institutions of the Community.\(^92\)

The direct effect doctrine has been further solidified in other similar cases since *Van Gend en Loos* in 1963. For example, in the case *Simmenthal v Commission* in 1978 the Court wrote,

> Every national court must, in a case within its jurisdiction, apply Community law in its entirely and protect rights which the latter confers on individuals and must accordingly set aside

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91 Case 26/62 *Van Gend en Loos* [1963] ECR 1, in Joseph Weiler, "Community, Member States and European Integration: Is the Law Relevant?," 42.

92 Ibid., 43.
any provision of national law which may conflict with it, whether prior or subsequent to the Community rule.93

The *Simmenthal* case is considered an example of the Court's application of both the direct effect and the supremacy doctrines to ensure member states are fulfilling their Community obligations.94 These two legal doctrines serve as foundations of Community case law, and have been relied upon heavily since their first applications. In fact they are commonly referred to as the "twin pillars of the Community legal system" and as such are critical to a full understanding of the Community's legal authority.95

In addition to hearing actual cases, the Court of Justice also issues advisory opinions in the form of preliminary rulings. These preliminary rulings are allowed under Article 177 of the EEC Treaty, which reads,

> The Court of Justice shall have jurisdiction to give preliminary rulings concerning:
> (a) the interpretation of this Treaty;
> (b) the validity and interpretation of acts of the institutions of the Community;
> (c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide.

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable


it to give judgment, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State, against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.96

This outlet for national courts directly linking them to the Court of Justice essentially provides another tier of Community courts by placing national courts in the Community structure. Community law is further strengthened by this linkage because in issuing a preliminary ruling, the Court of Justice rules only on the interpretation of the law. It does not issue a decision on the specific facts of the case before it.97 The application of the law (as interpreted by the Court of Justice) is left to the national courts, so the actual decision on the case at hand is handed down by the national court, therefore giving it the full authority and legitimacy of any other national court decision. One scholar of the Court writes, "The main result of this procedure is the binding effect and enforcement value which such a decision will have on a Member State--coming from its own courts--as opposed to a similar decision handed from Luxembourg by the European Court of Justice wearing its intergovernmental hat."98

The Court does not require that an actual dispute exist for a preliminary ruling to be issued. A preliminary ruling can be, and often is, issued for

96 Article 177 of the "EEC Treaty," Treaties Establishing the European Communities, 279.

97 This distinction is interesting. In American courts the judge is considered the interpreter of law, and the jury the interpreter of fact. This is the same distinction at work in the Community except that in this case, the national level courts serve to interpret the facts after the Court of Justice provides an interpretation of the law.

98 Weiler, "Is the Law Relevant?," 55.
preemptive measure. This is in part due to one of the functions and purposes of preliminary rulings, which is to "bring to an end such violations in order to ensure the achievement of the objectives of the Community." Preliminary rulings also serve to ensure legally "correct" judgments by national courts and they provide an access route to the Court for individuals who "cannot directly appeal to it, either because there is no legal provision or because of inadequacy of funds."

This ability to issue preliminary rulings on the validity and interpretation of Community law and the Court's ability to hear actual cases combined with the doctrines of supremacy and direct effect make the Court an important and potentially powerful Community institution. With the accession of Spain and Portugal the Court was expanded from eleven judges to thirteen; one from each member state and another from one of the four largest member states, (Germany, France, Great Britain and Italy). Judges are appointed for six year terms (staggered every three years to allow for continuity), which can be and often are renewed. Although the Treaties state that judges are to be appointed "by common accord of the Governments of the Member States," from among persons "whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are juriconsults of recognised competence," this is


not necessarily the case. In practice, each state is allowed one nominee automatically, leaving only the thirteenth judge to be chosen by 'common accord.' While there appears to be no evidence of political appointments, judges are generally chosen based on a "background in professional activities and public service." Once chosen, the judges elect a President of the Court among themselves for a three year term who is then responsible for overseeing the administration of the Court's activities. Duties include scheduling cases, and assigning cases to the Court's Chambers. The Court of Justice does much of its work in Chambers. There are two Chambers with five judges and four Chambers with three judges, along with the full Court. The importance of a case determines whether it will be assigned to either one of the Chambers or to the full Court. Generally, if a case is relatively straightforward and raises no substantial points of principle, or the circumstance falls under existing Community law, the case will be referred to a Chamber of three judges. More complex cases or cases dealing with novel or important points of law are referred to either a Chamber of five or to the full Court, again depending on the relative importance of the case. The full Court reaches a quorum with seven judges present.

The Court is assisted by six Advocates-General, who serve as researchers and lawyers, but not in the sense that lawyers function in the United States. An Advocate-General is assigned to each case to research the facts and the law

102 Article 32b as amended by Article 4 (2) (a) of the Convention on Common Institutions, "ECSC Treaty," in Treaties Establishing the European Communities, 45.


104 Ibid., 189.
relevant to the case. After collecting all information and opinions relevant to the case, the Advocate-General presents the case to the Court or Chamber, providing the facts, the opinions of concerned parties, and then a recommendation for action by the Court or Chamber. The Court or Chamber is not required to accept the Advocate-General's recommendation, but uses it as a basis for their deliberations. All Court (and Chamber) deliberations are conducted in secrecy, and all decisions and preliminary rulings are delivered as unanimous (though majority voting is used). No dissents are ever issued and all deliberations are secretive in order to allow judges to be impartial and to avoid pressure from their nominating governments and other constituents.105

Since the Court's inception with the ECSC, it has continued to grow in importance and case load.106 As a result of the growing case load of the Court, in 1988 a Court of First Instance was established under the provisions of the Single European Act. The Court of First Instance is responsible for personnel actions against the Community, for certain actions under competition law and anti-dumping law, and for actions under the ECSC Treaty.107 While this new court has original jurisdiction in these areas, all cases heard by the Court of First Instance are subject to appeal to the Court of Justice. This appeal process links the two courts and allows the Court of Justice to maintain its status as the court of last resort, while still reducing its case load. The Court of First

105 Ibid., 190-191.

106 Burgess, Federalism and European Union, 111.

107 Ibid., 208.
Instance began hearing cases in November of 1989, and by the end of 1992 had decided approximately 207 cases.108

In overseeing Community law, the Court of Justice, (and now the Court of First Instance as a lower Community court) plays a leading role in the development and integration of the Community. The supremacy of European Community law over conflicting national laws as established in the supremacy and direct effect doctrines, further strengthens the leadership role of the Court. Borchardt suggests that the Court is credited with "having defined the principles on which the Community legal order rests, thereby providing the process of European integration with a firm foundation."109 This study intends to see if this is indeed the case.

This chapter has provided a brief history of the development of the European Community. It has described the four main institutions of the Community and some of their policy-making processes. The mission of the Court has been discussed as well as the two key doctrines developed by the Court to strengthen Community law, supremacy and direct effect. In Chapter Four the methodology that will be used to analyze the Court's integration will be detailed. It will provide a review of the data source and an operationalized definition of integration.

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109 Borchardt, Community Law, 21.
CHAPTER FOUR: RESEARCH QUESTION AND METHODOLOGY

This chapter lays out the methodology used to analyze the Court's integration. It will examine the information in the data source and highlight the specific data to be used in this study. The definition of integration will be operationalized and an examination of the indicators for scope and domain provided. After a review of the paths of integration articulated by Philippe Schmitter (detailed in Chapter Two), the paths of integration will be combined with the potential results of our indicators to illustrate possible paths for the Court. This version of the Court's potential paths of integration will serve to place the results in the context of previous integration theories. This chapter will lay the methodological groundwork for the data analysis and findings in Chapter Five. This in turn will suggest conclusions about the research and its implications for the Court, the European Community and international relations in Chapter Six. Before the data source is examined, though, it is necessary to reiterate the importance of research on the Court of Justice and its role in EC integration.

Robert O. Keohane and Stanley Hoffmann declare: "Increasingly in years to come, international politics will be played on the chessboard of economic interdependence, where Community authority is predominant..."\textsuperscript{110} In addition, European Community decision-making has "quite suddenly become more decisive, expeditious, and effective."\textsuperscript{111} Economic concerns are no

\textsuperscript{110} Keohane, "Conclusions," 292.

\textsuperscript{111} Ibid., 284.
longer considered low politics, but rather have joined rank with military concerns as critical international security issues.

Given the increased importance of economic concerns, issues of integration, specifically economic integration, are also growing in importance. Existing regional and international organizations created to address specific issue-areas continue to provide both answers and new questions in the international arena. The need for these organizations is ever-present as nation-states become less able to meet the transnational needs of their citizens. The need for supranational organizations to address transnational issues such as price stability, environmental protection, and capital flows became apparent as individual nation-states were unable to regulate or stop these issues at their borders. While the acceptance of the nation-state as the predominant unit of analysis is not in question here, the role of potentially supranational organizations like the European Community is in question because of their potential for altering or modifying nation-state behavior.

Little research has been done to assess the role of the Court in Community integration. Nevertheless, within the European Community, the Court of Justice is a crucial component in the integration process. The Court's unique position and ability to rule definitively on the legal aspects of integration

112 Hopkins, Structure and Process in International Politics, 279.

113 Most of the work done regarding the role of the Court has focused on the theoretical underpinnings and methodological approaches that could be used in an assessment of the Court. Very little research has been done to actually assess the role of the Court. See further Joseph Weiler, "Community, Member States and European Integration: Is the Law Relevant?" in the Journal of Common Market Studies; Special Issue on the European Community: Past. Present and Future, vol. xxi, no. 1 &2. September/December 1982. Also see Mary Volcansek, "The European Court of Justice: Supranational Policy-Making," in West European Politics: Special Issue on Judicial Politics and Policy-Making in Western Europe, vol. 15, no.3. July 1992.
provide it the opportunity to clear new paths for integration. As William Wallace declares: "The accretion of legal norms has proven to be an essential vehicle for consolidating the Community enterprise."114 He continues to explain that legal norms serve to codify accepted behavior by Community members and therefore play a dual role in the integration process both as an integrating factor and as a reflection of integration initiated in other community institutions. Consequently, the Community's Court of Justice is an appropriate indicator of Community integration. This is best expressed by Renaud Dehousse and Joseph H.H. Weiler in an article discussing the legal dimension of the Community. They write, "legal and institutional elements condition both the magnitude and the spatial scope of integration."115 They continue to explain that legal institutions can develop a dynamic of their own when entrusted with specific competences as the ECJ is. By giving the EC total competence in specific areas such as competition and international trade, member states are deprived of acting autonomously in these areas. In this way, EC institutions and the Court specifically have a significant degree of control over the extent to which integration in these fields of competence occurs. Furthermore, the Court has taken on an activist role in the integration of the European Community by crafting such legal doctrines as direct effect and Community law supremacy.116 Indeed the Court has interpreted its role as one

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116 Ibid., 242-255. For more on the doctrines of direct effect and Community law supremacy see Chapter 3 here.
necessitating the filling in of lacunae "caused by the inaction of Community legislative organs." 117

It is worth noting here, that the relationship between the Court and other EC institutions is not necessarily one of single-minded harmony. Because the institutions of the Community are charged with different purposes, friction among them can result when each institution pursues its own purpose. The Court’s mission is to see to the adherence of the treaties and laws of the Community by Community institutions, member states and citizens. This coupled with its ability to interpret the treaties and laws, enables it to play a much larger role in the Community’s integration process than may have been intended originally. This is in part, why study of the Court and its reflection of the integration process is worthwhile.

Data Sources

Considering the potentially influential role of the Court, very little data on the activities of the Court exist. The data source utilized in this study are the reports of the Activities of the Court of Justice in the General Report on the Activities of the European Communities written by the European Commission. 118 The Report is published annually by the European Commission in Brussels and is part of the Commission’s report to the European Parliament. The data in the Reports begin in 1978 and continue through 1992,

117 Ibid., 246.

which provides fifteen years of Court activity data. This report covers the years shortly after Danish, Irish and British entry into the EC (1973), and the accession of Greece (1981), Spain, and Portugal (1986). We will need to account for any increase in Court activity from this geographical expansion of the EC resulting from the accession of these new member states during this fifteen year period. The data also include six years of the most recent data on the EC with the current membership of twelve member states.

Each annual report contains a classification of ECJ cases. The reports break down the Court's case load into categories of subject matter (see Table 4.1). The first classification separates cases by the treaty under which each case was brought, either the ECSC, Euratom, or EEC Treaty. Within each of these treaty classifications, the case is further categorized by the main issue area involved in each case. Cases are classified according to the legal basis used by the ECJ in its decision. Cases based on more than one Treaty article are cross-listed under all relevant articles used in the Court's decision. The data provided includes actions brought, cases not resulting in judgments, and cases decided.

119 Borchardt, Community Law, 6-7.

120 Christopher Ross, academic consultant for the Commission of the European Communities, telephone interview by author, 25 March 1993, Washington, DC.

121 As a result of this potential for multiple listings, the cases in each issue area may not add up to equal the total number of cases.
Table 4.1. ECJ cases from 1953 through 1978 classified by issue area

<table>
<thead>
<tr>
<th>Issue area</th>
<th>ECSC</th>
<th>EEC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scrap Compensation</td>
<td>Transport</td>
<td>Competition</td>
</tr>
<tr>
<td>Actions brought</td>
<td>169</td>
<td>36</td>
</tr>
<tr>
<td>Cases not resulting in a judgment</td>
<td>22</td>
<td>6</td>
</tr>
<tr>
<td>Cases decided</td>
<td>147</td>
<td>30</td>
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<td>Cases pending</td>
<td>1</td>
<td>11</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Proceedings brought under</th>
<th>Other</th>
<th>Euratom</th>
<th>Privileges and immunities</th>
<th>Proceedings by staff of institutions</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actions brought</td>
<td>27</td>
<td>4</td>
<td>8</td>
<td>524</td>
<td>1,875</td>
</tr>
<tr>
<td>cases not resulting in a judgment</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>98</td>
<td>233</td>
</tr>
<tr>
<td>Cases decided</td>
<td>17</td>
<td>3</td>
<td>7</td>
<td>403</td>
<td>1,381</td>
</tr>
<tr>
<td>Cases pending</td>
<td>9</td>
<td></td>
<td></td>
<td>23</td>
<td>261</td>
</tr>
</tbody>
</table>
The annual report also provides an analysis of ECJ cases by the treaty article under which the case proceedings were brought. This information is provided in the form illustrated in Table 4.2. All preliminary rulings issued by the Court are also brought under a specific article of one of the founding treaties (EEC, ECSC, or Euratom). The EEC Treaty provides for preliminary rulings under Article 177 (see excerpt in Chapter Three above), the ECSC Treaty allows for preliminary rulings under Article 150, and the Euratom Treaty does so under Article 41.\textsuperscript{122} The data for the ECSC and Euratom Treaties are provided in the reports as illustrated in Tables 4.2 and 4.3, depending on the total number of cases brought to the Court in each particular year.

The annual reports also sort ECJ cases by plaintiff. This analysis classifies the plaintiffs as either governments, individuals, or Community institutions.\textsuperscript{123} Table 4.3 illustrates classifications of only the ECSC and Euratom Treaties, classifying cases both by the treaty article the case was brought under and by plaintiff type, again either governments, individuals or Community institutions.

Also, beginning in 1991 the annual report began to provide data on the activities of the Court of First Instance, illustrated in Table 4.4. As mentioned above, the Court of First Instance was created in 1987 as part of the Single


\textsuperscript{123} It is interesting to note that in 1983 the classification heading of "by individuals (undertakings)" was changed to "by natural or legal persons" for the ECSC and Euratom data. No explanation was provided for the change. One can only assume that the new heading was more accurate in some way. The Commission of the European Communities, \textit{General Report on the Activities of the European Communities}, 1983, 350.
Table 4.2. Cases analyzed by treaty article and plaintiff type, 1953-1978

<table>
<thead>
<tr>
<th>Type of case</th>
<th>Proceedings brought under</th>
<th>Article 169 and 93</th>
<th>Article 170</th>
<th>By Governments</th>
<th>Article 173</th>
<th>By Individuals</th>
<th>By Community Institutions</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actions brought</td>
<td></td>
<td>69</td>
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<td>26</td>
<td>185</td>
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<td></td>
<td>214</td>
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<td>Cases not resulting in a judgment</td>
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<td>3</td>
<td>17</td>
<td>0</td>
<td></td>
<td>21</td>
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<tr>
<td>Cases decided</td>
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<td>91</td>
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<td></td>
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<tr>
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<td>8</td>
<td>77</td>
<td>0</td>
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<table>
<thead>
<tr>
<th>Type of case</th>
<th>Proceedings brought under</th>
<th>Article 177</th>
<th>Article 175</th>
<th>Validity</th>
<th>Interpretation</th>
<th>Total</th>
<th>Article 215</th>
<th>Protocols Article 220 Conventions</th>
<th>Grand Total</th>
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<tr>
<td>Actions brought</td>
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<td>11</td>
<td>96</td>
<td>571</td>
<td>616</td>
<td>125</td>
<td>16</td>
<td>1</td>
<td>1,042</td>
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<tr>
<td>Cases not resulting in a judgment</td>
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<td>0</td>
<td>4</td>
<td>25</td>
<td>28</td>
<td>9</td>
<td>1</td>
<td>1</td>
<td>76</td>
</tr>
<tr>
<td>Cases decided</td>
<td></td>
<td>9</td>
<td>73</td>
<td>460</td>
<td>492</td>
<td>90</td>
<td>14</td>
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<td>86</td>
<td>96</td>
<td>26</td>
<td>1</td>
<td>1</td>
<td>226</td>
</tr>
</tbody>
</table>
Table 4.3: ECSC and Euratom Treaty cases analyzed by plaintiff type, 1953-1978

<table>
<thead>
<tr>
<th>Type of case</th>
<th>By Government</th>
<th>By Community Institutions</th>
<th>By Individuals</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ECSC</td>
<td>Euratom</td>
<td>ECSC</td>
<td>Euratom</td>
</tr>
<tr>
<td>Actions brought</td>
<td>22</td>
<td>0</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Cases not resulting in a judgment</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Cases decided</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Cases pending</td>
<td>13</td>
<td>12</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Number of Proceedings instituted</th>
<th>ECSC</th>
<th>Euratom</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>300</td>
<td>58</td>
<td>358</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>3</td>
<td>5</td>
</tr>
</tbody>
</table>
Table 4.4. 1991 Court of First Instance cases analyzed by issue area

<table>
<thead>
<tr>
<th>Type of case</th>
<th>ECSC</th>
<th>EEC (competition)</th>
<th>Staff cases</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actions brought</td>
<td>1</td>
<td>11</td>
<td>80</td>
<td>92</td>
</tr>
<tr>
<td>Cases not resulting in a judgment</td>
<td>1</td>
<td>1</td>
<td>13</td>
<td>15</td>
</tr>
<tr>
<td>Cases decided</td>
<td>1</td>
<td>15</td>
<td>36</td>
<td>52</td>
</tr>
</tbody>
</table>

European Act to reduce the case load of the Court of Justice. Prior to 1990 and after the inception of the Court of First Instance, these cases were included in the reports by footnote reference. The Court of First Instance has jurisdiction as the trial court for all Community cases falling under the ECSC Treaty, all Community staff cases and certain competition cases under the EEC Treaty. While this reflects a loss of direct, immediate involvement by the Court of Justice in these areas of competence, the maintainence of the Court of Justice as the appeals court still makes the Court of Justice the court of last resort. Unfortunately, the Court of First Instance is still so new, that little analysis of its role in the Community and its impact on the Court of Justice has been done.

124 For more on the Court of First Instance see Chapter Three.

An Operational Definition of Integration

The key hypothesis is: The European Community is becoming more integrated. The integration of the Court of Justice of the European Community serves as a metaphor for integration in the European Community. Operationally, integration is defined as a function of the Court's scope, meaning the breadth of issue area coverage, and domain, meaning the degree of authority held by the Court. Since integration is defined as a process here, any measures of integration are measures of increases or decreases in the Court's progress along the path of integration relative to previous levels of integration. By analyzing cases in the Court's scope and domain, an indication of the Court's, and by extension the Community's, integration can be determined.

If the combined analysis of the component parts of integration show that both the Court's scope and domain are increasing over time, we can conclude that the Court is indeed becoming more integrated. This would be considered "spillover" according to neofunctionalist theory, and as illustrated by Schmitter (see the potential paths of integration in Figure 4.1) where spillover is the expansion of the issue areas in which the Court has competence and an increase in decisional authority.\textsuperscript{126} If this is the case, we can conclude that the European Community is becoming more integrated. Conversely, if analysis of the data indicate that both the scope and domain of the Court are shrinking, we

\textsuperscript{126} Schmitter, "Regional Integration," 845.
infer that the Court is becoming less integrated. This is "spill back," and entails a retreat on both dimensions, according to Schmitter.\textsuperscript{127} If analysis of the data indicate that the Court's domain is increasing over time, but its scope is decreasing, we infer that while the Court's horizontal coverage of Community issues is limited, its degree of authority within those issue areas is increasing. This is labeled by Schmitter as "retrenchment," and it involves an "increase [in] the level of joint deliberation but withdrawal of the institutions from certain areas."\textsuperscript{128} If the exact opposite appears to be true from analysis of the data, we

\textsuperscript{127} Ibid., 846.

\textsuperscript{128} Ibid., 846.
infer that even though the Court is expanding into new issue areas, its authority in all issue areas is declining.

"Muddling about" is the label Schmitter uses to identify this integration path, which he describes as letting "the regional bureaucrats debate, suggest, and expostulate on a wider variety of issues but decrease their actual capacity to allocate values." 129 "Build up" is the term applied when the scope of the Court is not changing but the domain of the Court is increasing. 130 The last potential path surveyed by Schmitter is "spill around" which describes an increasing scope for the Court, but an unchanging domain. 131 This would apply to a Court that is addressing more issue areas, but is only maintaining current levels of authority within those areas.

These combinations describe the possible paths of integration for the Court. By measuring the change in scope and domain of authority of the Court, we can determine the direction of Court integration. If the Court is gaining or losing jurisdictional ground in some issue areas or is increasing or decreasing its level of authority within the issue areas in its competence, we can generalize that the Community is doing similarly though with the qualification attached that it may be that the loss of decisional authority in the Court is due to an increase in authority by another Community institution. Still, the Court would remain the ultimate arbiter in any question of Community law. In order to assess the direction of the Court's integration, it is necessary to operationalize

129 Ibid., 846.

130 Ibid., 846.

131 Ibid., 845.
the two component parts of integration, scope and domain, and to discuss the indicators that will be used to measure each.

The scope of the Court refers to the issue areas within the Court's jurisdiction. Scope is a measure of the breadth of Court involvement in European Community affairs and the lives of its member states and citizens. Schmitter defines it as "the issue areas in which these [regional] institutions are permitted or not permitted to deal."\(^{132}\) The first indicator of scope is the number of issue areas addressed by the Court of Justice each year. Issue areas refer to the type of question being adjudicated in each case and are determined by the Court of Justice in its decision. The European Commission in the General Report on the Activities of the European Communities, classifies ECJ cases by subject matter according to the legal basis of the Court in making its decision.\(^{133}\) It is worth noting that the categories used by the Commission in its classification of cases are general in nature, relative to the detailed and highly complex nature of Community law. Cases are broadly categorized as "competition," "commercial policy," and "agricultural policy" for example.

The indicator of number of issue areas addressed by the Court will provide an indication of the Court's scope. Since the Court's scope is by definition, the number of legal areas within which the Court has competence, measuring change in the number of issue areas addressed by the Court will serve as a measure of the Court's scope. If the Court is addressing more areas over time, we infer that its scope is increasing. If the Court is addressing

\(^{132}\) Ibid., 844.

\(^{133}\) Christopher Ross, academic consultant for the Commission of the European Communities, telephone interview by author, 25 March 1993, Washington, DC.
approximately the same number of issue areas over time, we infer that its scope is neither increasing nor decreasing. If the Court is addressing fewer issue areas over time, we infer that its scope is decreasing. This indicator serves as an initial measure of scope, and its results will be combined with the results of a second indicator to provide a fuller measure of change in the Court's scope over time. This indicator, though, may not account for the loss of some issue areas to other Community institutions. Because the Court has taken an activist role in Community issues in the past, if the other institutions of the Community begin to act within a certain issue area, the Court may withdraw from that area, either temporarily or permanently. For example, if the Council legislates stricter policies on environmental protection measures, the Court may lose some of its necessity to act on questions of environmental policy. This would be a decline in the need for Court involvement, but only as a result of increased integration by other Community institutions. Therefore, the measure of scope based on the indicator of issue areas addressed by the Court must be evaluated with this qualification in mind.

The second indicator is the type of plaintiffs, either governments, individuals, or Community institutions, bringing cases to the Court of Justice. This indicator is meant to provide another measure of the Court's, and by extension the Community's, change in scope over time. Non-government plaintiffs are plaintiffs that are, by definition, not governments. This includes Community institutions and citizens (individuals) of member states. The European Commission includes natural and legal persons in the "individual" classification. The type of plaintiff bringing cases to the Court may reflect which actors within the Community consider the Court legitimate and therefore
useful. Though it may be the case that the Court is useful as only a symbolic tool on the part of plaintiffs, for the most part, it is assumed that if plaintiffs bring cases to the Court, they expect to benefit in some way from doing so. If the Court is perceived as useful by an increasing number of non-government plaintiffs we infer that it has established a role as a valid adjudicator in the minds of these non-government actors. The extent to which non-state actors utilize the Court reflects the degree to which the European Court is replacing national level courts as the court of choice in Community law issues. This suggests the extent to which the Court is directly affecting the lives of Community citizens. This indicator counts the number of cases brought to the Court each year (as opposed to cases decided), to account for all attempts to involve the ECJ in issues within the Community. If more non-government plaintiffs are bringing cases to the ECJ over time, we infer that its scope is increasing. If approximately the same number of non-government plaintiffs are bringing cases to the ECJ over time, we infer that the Court's scope is neither increasing nor decreasing according to this measure. If fewer non-government plaintiffs are bringing cases to the Court over time, we infer that the Court's scope is decreasing according to this measure.

The number of issue areas in which the Court has competence combined with the number of non-government plaintiffs bringing cases to the Court provide a measure of the Court's scope. Table 4.5 contains the possible outcomes from these combined indicators of scope. Any of the possible combinations of results from the indicators of scope below will directly affect conclusions about the Court's integration progress. The other half of the definition of integration involves the Court's domain or vertical involvement in
the Community. Domain is a measure of the degree of the Court's authority within each issue area. Schmitter defines it as "the degree of decisional authority conceded to, devolved upon, or taken away from regional institutions."\textsuperscript{134}

The first indicator of domain is the average number of cases heard by the ECJ per member state per year. This indicator is meant to measure the Court's authority. Whether the Court is hearing more or fewer cases, will indicate if the domain of the Court's authority is increasing, unchanging, or decreasing. In order to account for the geographical expansions of the EC, though, we need to account for the number of member states in the Community each year. This will take into account any increase in Court cases due simply to an increase in Community member states.\textsuperscript{135} Furthermore, because it takes approximately two years for a case to be processed through the Court, a two year time lag will be added to the accession dates of new member states. This will prevent counting a new member state before it has actually received a decision on a case it brought to the Court. This indicator specifically measures the number of cases heard by the Court in order to account only for cases in which the Court does have direct involvement and authority. If the average number of cases heard by the ECJ per member state per year (with the two year time lag) is

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{134} Schmitter, "Regional Integration," 844.
\item \textsuperscript{135} Although this may appear to be too imprecise a measure for the increase in the Court's constituency, because the data begin in 1978, the only accessions to the Community in this period were Spain, Portugal and Greece, none of which constituted major additions to the Court's constituency in terms of numbers of legal or natural individuals, relative to the Community's prior constituency.
\end{itemize}
\end{footnotesize}
Table 4.5. Potential scope of the Court.

<table>
<thead>
<tr>
<th>Variable Change</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>If number of issue areas increases and number of non-government plaintiffs increases</td>
<td>scope increases</td>
</tr>
<tr>
<td>If number of issue areas increases, and number of non-government plaintiffs is unchanged</td>
<td>scope increases</td>
</tr>
<tr>
<td>If number of issue areas increases, and number of non-government plaintiffs decreases</td>
<td>scope is unclear</td>
</tr>
<tr>
<td>If number of issue areas is unchanged, and number of non-government plaintiffs increases</td>
<td>scope increases</td>
</tr>
<tr>
<td>If number of issue areas is unchanged, and number of non-government plaintiffs is unchanged</td>
<td>scope is unchanged</td>
</tr>
<tr>
<td>If number of issue areas is unchanged, and number of non-government plaintiffs decreases</td>
<td>scope decreases</td>
</tr>
<tr>
<td>If number of issue areas decreases, and number of non-government plaintiffs increases</td>
<td>scope is unclear</td>
</tr>
<tr>
<td>If number of issue areas decreases, and number of non-government plaintiffs is unchanged</td>
<td>scope decreases</td>
</tr>
<tr>
<td>If number of issue areas decreases, and number of non-government plaintiffs decreases</td>
<td>scope decreases</td>
</tr>
</tbody>
</table>

increasing, we infer that the Court's domain is increasing. If the average number of cases heard per member state per year is static over time, we infer that the Court's domain within the issue areas addressed is unchanged. If the average number of cases heard by the ECJ per member state per year decreases over time, we infer that within the issue areas addressed, the Court's domain is decreasing.
The second indicator of the Court's domain is the average number of preliminary rulings issued by the Court per member states per year. Again, a two year time lag will be applied to the accession dates of new member states to account for any increase in preliminary rulings issued by the Court due simply to the increase in member states in the Community. As mentioned above, national level courts of member states can appeal to the ECJ for rulings on questions of interpretation and validity in cases that involve Community law. Unlike the U.S. Supreme Court, the European Court of Justice can and often does issue preliminary rulings, or advisory opinions to the courts of member states when they involve a question of Community law. These cases fall under Article 177 of the EEC Treaty, Article 41 of the Euratom Treaty, and Article 150 of the ECSC Treaty. Measuring the average number of preliminary rulings issued by the Court per member state per year will provide an indication of the domain of the Court's authority and perhaps provide an insight into the extent to which the courts of member states consider the European Court of Justice a legitimate adjudicator. It is up to the discretion of the national courts to ask for preliminary rulings from the ECJ. If the national courts consider the ECJ legitimate, they will be more inclined to defer to its judgment in questions of interpretation of EC law and the validity of institutional acts. Conversely, if the national courts of member states do not perceive the ECJ as a legitimate adjudicator, they will be less inclined to defer to its judgment. Therefore, the

136 Treaties Establishing the European Communities, 279, 51, 472 respectively.
Table 4.6. Potential domain of the Court.

<table>
<thead>
<tr>
<th>Variable change</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>If the average number of ECJ cases increases, and the average number of preliminary rulings increases</td>
<td>domain increases</td>
</tr>
<tr>
<td>If the average number of ECJ cases increases, and the average number of preliminary rulings is unchanged</td>
<td>domain increases</td>
</tr>
<tr>
<td>If the average number of ECJ cases increases, and the average number of preliminary rulings decreases</td>
<td>domain is unclear</td>
</tr>
<tr>
<td>If the average number of ECJ cases is unchanged, and the average number of preliminary rulings increases</td>
<td>domain increases</td>
</tr>
<tr>
<td>If the average number of ECJ cases is unchanged, and the average number of preliminary rulings is unchanged</td>
<td>domain is unchanged</td>
</tr>
<tr>
<td>If the average number of ECJ cases is unchanged, and the average number of preliminary rulings decreases</td>
<td>domain decreases</td>
</tr>
<tr>
<td>If the average number of ECJ cases decreases, and the average number of preliminary rulings increases</td>
<td>domain is unclear</td>
</tr>
<tr>
<td>If the average number of ECJ cases decreases, and the average number of preliminary rulings is unchanged</td>
<td>domain decreases</td>
</tr>
<tr>
<td>If the average number of ECJ cases decreases, and the average number of preliminary rulings decreases</td>
<td>domain decreases</td>
</tr>
</tbody>
</table>
average number of preliminary rulings issued by the Court per member state per year will provide an indication of the degree to which the Court has established authority. If the average number per year is increasing, we infer that the courts of member states consider the ECJ a legitimate and useful adjudicator for questions of Community law. If the average remains the same, we infer that the domain of the Court and the extent to which the courts of member states perceive the ECJ as legitimate and useful is also unchanged. If the average number of preliminary rulings issued by the ECJ per member state per year decreases over time, we infer that the domain of the Court is also declining, and that the courts of the member states perceive the ECJ as less legitimate and/or useful than in previous years. Combined, the indicators of the average number of cases heard by the Court per member state per year, and the average number of preliminary rulings issued by the ECJ per member state per year will provide a measure of the Court's, and by extension the Community's, domain. Table 4.6 contains the possible outcomes from these combined indicators of domain.

Any of the possible combinations of results from the indicators of domain above will directly affect conclusions about the Court's integration progress. When in turn combined with the indicators of Court scope, we can place the results of our analysis in the context of Schmitter's paths of integration. Figure 4.2 is an adaptation of Schmitter's diagram that "unpackages" integration in terms of our operationalized definition of scope and domain. By placing the results of our indicators of scope and domain in the diagram, a sense of the direction of the Court's integration can be determined.

The "unpackaged" diagram in Figure 4.2 illustrates the potential paths for the Court of Justice. By measuring the scope and domain of the Court we can
determine the direction of integration in the Community. The number of issue areas addressed by the Court and the number of non-government plaintiffs bringing cases to the Court provide an indication of Court scope. The average number of ECJ cases per member state per year and the average number of preliminary rulings issued per member state per year provide an indication of the Court's domain. Together these two component parts define integration as operationalized it here. If the Court is gaining or losing jurisdictional ground in some issue areas or is increasing or decreasing its level of authority within the
issue areas in its competence, we can generalize that the Community is doing similarly. Assessing the direction of the Community's integration will allow us to understand better the potential future role of the European Community in international relations.

The next chapter will provide an analysis of the data. The results of our four indicators will be examined and then, in Chapter Six, some inferences will be drawn as to the direction of the Court's scope and domain based on the analysis. Some of the implications of the results for the Court, the Community and international relations will also be discerned. Lastly, areas for further integration research on the Court and the Community will be suggested.
CHAPTER 5: ANALYSIS AND FINDINGS

In Chapter Four the methodological groundwork for the analysis of the data was laid out. The potential paths of integration as delineated by Schmitter were reviewed and applied to the Court of Justice, and integration was operationalized as a function of the Court's scope and domain. The number of issue areas addressed by the Court and the number of non-state plaintiffs bringing cases to the Court are the two indicators of scope. The average number of ECJ cases decided per member state per year, and the average number of preliminary rulings issued by the Court per member state per year, serve as the indicators of domain.

In this chapter the data compiled from the General Report on the Activities of the European Communities will be analyzed in terms of these indicators of scope and domain. By doing so, a sense of the direction of the Court's integration can be gained. By extension, a sense of the Community's scope and domain, and therefore, integration path can also be gained. This will in turn, in Chapter Six, suggest some conclusions from this research, regarding the potential implications of the role of the Court and the Community in international relations.

Scope Indicators

The first indicator of scope is the number of issue areas addressed by the Court. Cases are categorized by the European Commission staff according to the legal basis used by the Court in its decision. The cases are first categorized
by the treaty under which the proceedings are brought, either the ECSC, Euratom, or EEC Treaty. Within the EEC and ECSC Treaty categories, the cases are further classified by specific subject matter (refer to table 4.1 for an example). The following is a list of issue areas addressed by the Court in 1978:

Within the ECSC Treaty:
- Scrap compensation
- Transportation
- Competition
- Other: levies, investments, declarations, tax changes, and miner's bonuses

Within the EEC Treaty:
- Free movement of goods and customs union
- Right of establishment, freedom to supply services
- Tax cases
- Competition
- Social security and free movement of workers
- Agricultural policy
- Transport
- Convention Article 220
- Other: contentious proceedings, staff regulations, Community terminology, Lome Convention, short-term economic policy, and relationships between Community law and national law

Euratom
- Privileges and Immunities
- Proceedings by staff of institutions

This list provides a classification of all ECJ cases by issue area addressed. This information is also displayed in Figure 5.1.

137 These issue areas are classified under the ECSC category "other." Commission of the European Communities, General Report on the Activities of the European Communities, 1978, 367.

138 These issue areas are classified under the general category "other." Ibid., 367.
The total number of issue areas in 1990 amounted to 31 compared to 27 issue areas in 1978. A cursory glance at both the issue areas is enough to indicate that the number of issue areas addressed by the Court has increased from 1978 to 1990 but only slightly. In fact, from 1980 up to 1990 the number of issue areas was unchanged.

Table 5.1. Number of issue areas addressed by the Court

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of issue areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>1978</td>
<td>27</td>
</tr>
<tr>
<td>1979</td>
<td>28</td>
</tr>
<tr>
<td>1980</td>
<td>29</td>
</tr>
<tr>
<td>1981</td>
<td>30</td>
</tr>
<tr>
<td>1982</td>
<td>30</td>
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<td>1983</td>
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<td>1987</td>
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<td>1988</td>
<td>30</td>
</tr>
<tr>
<td>1989</td>
<td>30</td>
</tr>
<tr>
<td>1990</td>
<td>31</td>
</tr>
</tbody>
</table>

The data for 1991 and 1992 is not included in the table or figure above because it was incomplete. The Commission did not provide a list of issue areas included in the "other" categories in 1991 and 1992 so an accurate comparison was not possible.
The Growth and Decline of Issue Areas

While the number of issue areas addressed by the Court did not change significantly between 1978 and 1990, of the issue areas that are in the Court's competence some grew in importance and others relative to previous levels. The importance of an issue area can be measured in part by the number of cases the Court heard within the issue area. A descriptive analysis of the issue areas that both grew and declined in importance during this time will provide a sense of the areas in which the Court was becoming more or less involved.
The importance of an issue area relative to past levels of importance can be determined by the way in which issue areas are categorized. Issue areas in which the Court hears more cases constitute a separate category in the tables provided by the Commission in their annual reports. Other issue areas in which the Court presumably does not hear as many cases are grouped together in the Commission report under the category "other." As an issue area becomes more or less important it is either promoted or demoted. By tracing the movement of issue areas from 1978 through 1990, we can gain a sense of the importance of each issue area relative to its prior levels of importance.

The first issue area change occurred in 1980 when the category of "production quotas" was added to the "other" category within the ECSC Treaty. This was an entirely new issue area for the Court. This can be in part explained by the global oil crisis in the 1970s and the Community's efforts to establish energy independence and efficiency. In 1978 and 1979, the Community's policy, intended to maintain consumption and production capacities, had not "progressed sufficiently" for the coal industry to "fulfil the role ascribed to it in supplying energy to the Community."\(^{140}\) The energy crisis in turn negatively affected the steel and iron industries which were already struggling. In 1979 there was a continued decline in investments in the steel industry, so the Commission granted loans at reduced interest rates to facilitate the reorganization of the steel industry. This was thought necessary if the industry was to remain competitive.\(^{141}\) The domino effect of the oil crisis in the late

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\(^{140}\) The developments in the coal and steel industries are detailed in the *General Report on the Activities of the European Communities*, 1978, 201-206; 1979, 185.

1970s on other Community industries like steel, iron, and shipbuilding, resulted in Community efforts to bolster these industries by establishing minimum prices and a voluntary production quota system for iron and steel. The Court became involved in both of these corrective measures when a number of steel and iron producers took the European Commission to the Court to obtain a ruling on the legality of the minimum prices and production quotas set by the Commission. In the case *S.p.A Ferriera Valsabbia and Others v Commission of the European Communities* the plaintiffs tried to gain an annulment of a series of Commission decisions imposing pecuniary penalties for selling concrete reinforcement bars below the minimum price established by the Commission. They also asked for Commission Decision No. 962/77/ECSC of May 1977 (which established the minimum price levels and the production quotas) to be overturned. In its ruling, the Court decided that the Commission had not, as the plaintiffs argued, violated Article 61 of the ECSC which laid down the procedures for establishing minimum price levels and production quotas, nor was it guilty of a "manifest failure to observe the Treaty."

In 1981 "environment" was added to the competence of the Court for the first time as an issue area in the "other" general category. Environmental concerns were growing gradually in importance within the Community as was evident, among other things, by the Action Program for the Environment approved by the Council for 1977 through 1981, to assess environmental

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143 Ibid., 1044.
impacts in project appraisals for projects before the Community. This increased importance was reflected in the Court which was beginning to address more cases regarding Community environmental policy. For example, the Court began to hear more cases involving the infringement of Article 169 of the EEC Treaty by member states. Article 169 reads,

If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the later may bring the matter before the Court of Justice.

A number of the infringement cases were due to incorrect implementation or non-implementation by member states of Community directives on environmental policy, according to the Commission's annual report. For example, Italy was found in violation of certain environmental directives relating to the use of fertilizers. In the case Commission of the European Communities v Italian Republic the Italian government was found guilty of non-


147 Ibid., 295.
compliance with Council Directive No. 76/116/EEC of December 1975.\textsuperscript{148} This directive established new Community-wide methods for sampling and analyzing fertilizers, established new provisions relating to the designation and composition of straight and compound fertilizers, and set new standards for the packaging and labelling of those fertilizers.\textsuperscript{149} In this particular case Italy had not adopted any of the measures necessary to comply with the directive.\textsuperscript{150} Cases like this where the question revolves around Community environmental law probably contributed to the Commission's decision to add "environment" to the general "other" category in 1982.

"Environment" was taken out of the general category "other" and was made a separate category in 1991. This appears to be a response to efforts on the part of Community institutions to link environmental policy to the overall economic policies of the Community as required under Article 130r of the EEC Treaty as amended by the Single European Act in 1987.\textsuperscript{151} Increased efforts were made to link environmental policies to the common agricultural policy.

\textsuperscript{148} Case 44/80 Commission of the European Communities v Italian Republic (1981). European Court Reports, 344-347.

\textsuperscript{149} Ibid., 347.

\textsuperscript{150} In this case, Italy argued that Italian law required special legislative measures be adopted in order to implement the Community directive and that a draft version of the necessary measures was in the legislature at the time of the Court's proceedings. The Court's response was to reinforce previous case law regarding non-compliance due to national legal requirements. It ruled that national legal requirements were not sufficient justification for non-compliance with Community law. Ibid., 351-359.

\textsuperscript{151} Article 130r lays out the goals of Community environmental policy and states the principle of preventative action as the basis of Community action along with the need for the polluter to pay costs to rectify damages. It also states "environmental protection requirements shall be a component of the Community's other policies." Article 130r of the "EEC Treaty," in Treaties Establishing the European Communities, 247.
energy, transport, and internal market policies. For example, in the case *Commission of the European Communities v Federal Republic of Germany*, Germany was found in violation of Council Directive 80/799/EEC of July 1980 which established air quality values for sulfur dioxide and lead. Germany had not adopted all of the measures necessary to comply with the Directive and therefore had failed to fulfill its obligations under Community law. While this case did not fall under Article 130r, it serves to illustrate the connection between Community environmental law and other aspects of Community law. The case could have been brought under Article 130r if the air pollution had been the result of a new incineration plant funded by state aid (aid provided by states for undertakings in order to compensate for some disadvantage), for example. The new "environment" category also may have been a reflection of Community involvement in international planning for the upcoming United Nations Earth Summit in Rio de Janeiro in June of 1992.

There were no other additions or mergers of issue areas until 1990 when "state aid" was promoted out of the "other" category and added to "competition" under the EEC Treaty. Aids granted by states are addressed under article 92 and 93 of the EEC Treaty, and refer to the following circumstances:

Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring

152 Ibid., 197-212.


154 This involvement as well as Community efforts to assist Central and East European countries in environmental clean-up, could have contributed to the new emphasis on environmental issues. Ibid., 198.
certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.155

While there are exceptions to the rule above, they refer to special circumstances, such as allowing for state aid in order to correct damages resulting from natural disasters, or to promote economic development of areas with an abnormally low standard of living or severe underemployment.156 The growth in state aid cases brought to the Court can be explained in large part by a new program undertaken by the Commission to review all state aid programs. The Commission's Report explains,

Most aid awards are made under schemes which in many cases were approved some years ago; the Commission therefore embarked upon a systematic review of all systems of aid existing in the Member States...The review, which is being carried out under Article 93(1) of the EEC Treaty, should enable changes in the economic and industrial situation due to the completion of the internal market to be taken into account."157

Article 93 allows the Commission to review all state aid programs, and if a program is not in compliance with Article 92, refer the matter to the Court of Justice. This is precisely what happened in 1990, and this increase in state aid cases likely resulted in the addition of "state aid" to "competition" cases under


156 Article 92, section 2 (b), 3 (a), Ibid., 198.

the Commission's categorization of Court cases. The case *Commission of the European Communities v Hellenic Republic* serves as a good example of a state aid case. Greek law No. 1256/82 of May 1982 provided that "all public property including the assets of Greek undertakings must be insured exclusively with Greek public sector insurance companies."\(^{158}\) The Commission, arguing under Article 90 of the EEC Treaty that Greece had provided a monopoly to Greek insurance companies, took the dispute to the Court.\(^{159}\) The Court ruled Greece was in violation of Article 90 and had failed to fulfill its obligation under Community law by providing state aid to Greek insurance companies via the Greek law.\(^{160}\)

An example of a competition case not dealing with state aid, can be found in a preliminary ruling requested by the Tribunal de Commerce in Liege, *Louis Erauw-Jacquery SPRL v La Hesbignonne SC.*\(^{161}\) The case revolved around an agreement concerning plant breeders' rights in respect of certain varieties of seeds (specifically Gerbel multi-row winter barley), and its compatibility with Article 85 of the EEC Treaty. Article 85 states which actions are explicitly prohibited as incompatible with the common market:

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159 Article 90 of the EEC Treaty states that in public undertakings "entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules of competition..." EEC Treaty, *Treaties Establishing the European Communities*, 197.


All agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

(a) directly or indirectly fix purchasing or selling prices of any other trading conditions...

The defendant in this case was authorized to sell and propagate in Belgium the species held by the plaintiff, under an agreement which prohibited exporting without the written authorization of the plaintiff. The agreement also allowed a base minimum price for the sale of the seeds fixed by the plaintiff. The Court ruled that the breeder is entitled to restrict exportation and that the agreement was compatible with Article 85 in that respect. It further ruled that price fixing is prohibited under Article 85 (1) "only if it is found, having regard to the economic and legal context of the agreement containing the provision in question, that the agreement is capable of affecting trade between Member States to an appreciable degree." As in all preliminary rulings, the ECJ only rules on the interpretation of Community law. It was left to the national court to then apply the law to the case at hand. This case is representative of competition cases overall. Other areas included in competition law address dominant positions of undertakings within the common market (Article 86), public undertakings and the prevention of monopolies (Article 90, as discussed

162 Article 85, EEC Treaty. Treaties Establishing the European Communities, 193.


164 Ibid., 1941.
in the case *Commission of the European Communities v Hellenic Republic* above), the practice of "dumping," (Article 91), and state aid (Article 92). 165

"State aid" itself, became a separate category in 1991, implying a further increase in importance. This appears to be a result of the increase in cases before the Court, due to the Commission's continued review of state aid programs for their compatibility with EEC Article 92.

At the same time "state aid" was taken out of "competition," "competition" was divided into "direct actions" and "appeals," most likely to account for appeals in competition cases from the newly functioning Court of First Instance. Beginning in late 1989, the Court of First Instance became the trial court for certain competition cases, all of which can be appealed to the Court of Justice.

In 1991 the Commission's classification scheme was significantly revamped as four issue areas were promoted out of the "other" category. "Fisheries" became a separate category, possibly as a result of the Commission's continued review of state aid programs. The Commission initiated proceedings in seven cases of state aid to fisheries as part of its overall review of state aid programs. 166 Although not a state aid case, the case *Commission of the European Communities v France* serves as a representative example of a fisheries case. 167 France had exceeded its catch quota for redfish in Faeroese waters and for "other species" (meaning other species of fish caught in the


process of fishing for redfish) in Norwegian waters. The catch quotas for member states had been established by the EC Council as authorized in the Fisheries Agreement between the EEC and the Government of Denmark and the Home Government of the Faroe Islands in 1982.\textsuperscript{168} France admitted it had exceeded the catch quotas but only because of "management difficulties" in getting the catch information back from the remote fishing region. In its decision, the Court ruled that France had exceeded the catch quotas and had therefore failed to fulfill its obligations under the Council Regulation No. 2057/82 of June 1982. The Court decided that the French argument for having exceeded the quotas due to management difficulties was not sufficient cause for failing to meet the quotas.\textsuperscript{169}

The last new issue area that grew in importance in 1991 was "dumping," which was added to "commercial policy" as a combined category. Dumping is addressed under the EEC Treaty under Article 91, and refers to the practice of selling a product abroad at a price lower than the price in the domestic market. Dumping is often practiced to obtain market shares in a foreign market and/or to eliminate competing businesses by driving prices so low they are unable to compete. Anti-dumping laws in the Community in 1991 were more visible before the Court of Justice possibly in part because the Court had to determine the compatibility of Community law with the anti-dumping code established in the General Agreement on Tariffs and Trade (GATT). The Court did decide that the two anti-dumping codes were compatible, but acknowledged that a

\textsuperscript{168} Ibid., 165.

\textsuperscript{169} Ibid., 169-198.
wide range of discretion in interpreting the codes existed. In the case *Nakajima All Precision Co. Ltd. v Council of the European Communities* the Court ruled on an anti-dumping duty on dot-matrix printers originating in Japan. Nakajima argued before the ECJ that the Commission had failed to investigate thoroughly enough, the alleged need for an anti-dumping duty and that the Council's failure to state why the duty was being applied made the action illegal under Community law. In its decision, the Court ruled, *inter alia*, that the Commission had conducted a thorough investigation of the alleged dumping and that the Council had provided a complete reasoning for the implementation of the duty, therfore the Court dismissed the case. This case was important because it was the first case in which the Court established the legality of the Community's new anti-dumping code and found it compatible with the GATT anti-dumping codes.

The category of "free movement of goods and customs union" was divided into two categories, "free movement of goods" and "customs." Free movement of goods refers to Title I of the EEC Treaty addressing the removal of quantitative restrictions on imports and all measures having an equivalent effect. Customs union refers to the elimination of customs duties on imports and exports and all charges having equivalent effect within the Community.

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170 Case C-69/89, *Nakajima All Precision Co. v Council*. Ibid., 428.


172 Ibid., 2080-2104.

173 Ibid., 2204.

The case *Commission of the European Communities v Kingdom of Belgium* serves as a representative example of free movement of goods cases. In this case the Court ruled that Belgium failed to fulfill its obligations under Community law by violating Article 30 of the EEC Treaty, which states, "Quantitative restrictions on imports and all measures having equivalent effect shall, without prejudice to the following provisions, be prohibited between Member States." 175 Belgium had passed legislation that "laid down criteria for determining the minimum and maximum price of pharmaceutical products which refer to factors peculiar to the Belgian market," and did not account for the costs related to importing in that the maximum price was low relative to prices elsewhere and to the cost of imports. 176 The law further allowed for contracts of pharmaceuticals which permitted price rises subject to conditions which could only be met by domestic products. 177 The Court ruled that on both aspects of the Belgian law, Belgium had failed to fulfill its obligations under Community law by violating Article 30 of the EEC Treaty.

Most customs union cases are either questions of how to classify a product to determine the appropriate customs tariff, or questions asking which of the component parts of the product can be included in the assessment of the tariff. For example in the case *Nordgetranke GmbH and Co. KG v Hauptzollamt Hamburg-Ericus* the Court ruled that apricot puree made by "pressing fruit pulp through a sieve and bringing the puree thus obtained to

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175 Article 30, EEC Treaty, Ibid., 146-149.
177 Ibid., 1287.
boiling point in a vacuum concentrator for no more than thirty seconds" was not to be regarded as fruit puree, but as "fruit otherwise prepared or preserved" because the boiling process did not alter the taste and chemical properties of the product, as is the case with fruit puree.\footnote{178}

An example of the latter type of customs case is provided in the case \textit{Brown Boveri \& Co. AG v Hauptzollamt Mannheim}.\footnote{179} This revolved around the question of whether the customs tariff for an imported computer assisted design system should include the cost of transportation in the country of importation, the value of the software, and the assembly costs.\footnote{180} The Court ruled that under Commission Regulation No. 1224/80/EEC the costs of the software could not be deducted, and for the assembly costs to be deducted they need to be distinguished in the customs declaration at the time the goods go through customs. The costs of transportation within the country of importation, however, could be deducted.\footnote{181}

The separation of the categories "free movement of goods" and "customs union" seems to be due in part, to a large number of new Community directives and regulations established to meet the 1992 program deadline for completing the internal market. Examples are numerous, but a few will serve to illustrate the point here. In 1990, the Commission adopted a proposal for a regulation establishing a Community Customs Code "which consolidates the corpus of

\footnote{178} Ibid., 1927-1939.


\footnote{180} Ibid., 1853-1854.

\footnote{181} Ibid., 1890-1894.
customs rules in a single text and, together with the appropriate implementing regulations, will ensure greater legal transparency from 1993 onwards. 182 Proceedings were also taken under Article 169 EEC in order to establish equivalent effect on import duties, and the Commission continued to "pressure the Council to speed the adoption of provisions needed to settle difficult questions of interpretation under Community law." 183 Also the 1992 program aimed at removing all barriers to free trade by the end of 1992, consists of changes many of which fall under "free movement of goods" and "customs". 184 The establishment of both of these areas as separate categories reflects their probable increase in number of cases. Since many of the internal market barriers still exist and the deadline has not been met, it seems reasonable to expect that heightened Community activity will continue in these areas.

At the same time these issue areas were growing in importance, other issue areas were declining in importance relative to previous levels. These declines are visible in the fewer number of cases heard by the Court within these issue areas. "Privileges and immunities" was combined with "convention Article 220" and all four of the categories under the ECSC Treaty, including "other," were collapsed into "direct actions" and "appeals" under the ECSC Treaty. 185 "Article 220 conventions" refers to Article 220 of the EEC Treaty


183 Ibid., 64-5.


185 Ibid., 452.
which addresses bilateral negotiations among member states meant to establish reciprocal treatment of nationals. It reads,

Member States shall, so far as is necessary, enter into negotiations with each other with a view to securing for the benefit of their nationals: the protection of persons and the enjoyment and protection of rights under the same conditions as those accorded by each State to its own nationals; the abolition of double taxation within the Community; the mutual recognition of companies and firms within the meaning of the second paragraph of Article 48, the retention of legal personality in the event of transfer of their seat from one country to another, and the possibility of mergers between companies or firms governed by the laws of different countries; the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals and of arbitration awards.186

The combining of "privileges and immunities" with "Article 220 conventions" is a reflection of fewer cases being brought to the Court in these areas. "Privileges and immunities" refers to the protection of Council and Commission members when on official Community business throughout the EC.

The collapsing of categories under the ECSC Treaty into "direct actions" and "appeals" is most likely a response to the creation of the Court of First Instance. ECSC cases fall under this new court's jurisdiction except in certain specific circumstances.187 The creation of the Court of First Instance, along

187 The Court of First Instance has immediate jurisdiction in ECSC cases unless it is a request for a preliminary ruling, or if the case is brought by a member state or by a Community institution. In all of these exceptions, the Court of Justice has immediate jurisdiction. Article 4, "Single European Act," in Treaties Establishing the European Communities, 537.
with the other changes in issue areas addressed by the ECJ have combined to gradually alter the composition of the ECJ's case load from 1978 to 1992.

At the same time, the collapsing of other issue areas into combined categories suggests that the Court was hearing fewer cases in those areas. Whether this was due to increased involvement on the part of other Community institutions, therefore requiring a lesser role for the Court, or by the clarification of legal questions within those issue areas, therefore requiring a lesser role for the Court, or by some other reason, is not clear. It is probably due in part to both increased involvement by other Community institutions and a reduced need for clarification of Community law within those areas.

Based on the virtually unchanged number of issue areas addressed by the Court in the early 1990s, we infer that the number of issue areas addressed by the Court is not increasing to any real degree. We further infer that the scope of the Court is unchanging because its areas of competence are unchanging. This indicator combined with the number of non-government plaintiffs bringing cases to the Court, will provide a fuller indication of the direction of the Court's scope.

The number of non-government plaintiffs bringing cases to the Court also serves as an indication of the Court's scope. The number of non-government plaintiffs suggests the extent to which these plaintiffs perceive the Court of Justice as legitimate and useful. It may also suggest the extent to which the Court of Justice is replacing national level courts as the court of choice. Table 5.3 shows the number of both government and non-government plaintiffs (individuals and Community institutions) bringing cases to the Court every year.
Table 5.3. ECJ cases analyzed by type of plaintiff bringing the case

<table>
<thead>
<tr>
<th>Year</th>
<th>Government plaintiffs</th>
<th>Non-government plaintiffs</th>
</tr>
</thead>
<tbody>
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<td>1991</td>
<td></td>
<td>10</td>
</tr>
<tr>
<td>1992</td>
<td></td>
<td>29</td>
</tr>
</tbody>
</table>

from 1979 through 1992. Figure 5.3 illustrates the number of non-government plaintiffs bringing cases to the Court each year. Figure 5.4 analyzes the data in terms of the average number of non-government plaintiffs bringing cases to the Court of Justice before the passage of the Single European Act (SEA) from 1979-1986, and after its passage from 1987 through 1992. The figures for 1978 were not available, nor was the number of government plaintiffs in 1979. Commission of the European Communities, General Report on the Activities of the European Communities, 1979-1992.
Single European Act was chosen as a pivotal event in Community and Court activities because it signalled the largest reinvigoration of Community integration efforts in the period from 1978 to 1992. This analysis is intended to provide a larger perspective than the yearly data and may illustrate more clearly if an integration trend is emerging, and if so, in which direction it is going. Analysis of the data on plaintiff types from all of these approaches will provide an insight as to whether non-government plaintiffs are bringing more cases to the Court.

The number of cases brought to the Court by non-government plaintiffs each year in Figure 5.3 appears to be much like a bell curve. The number of non-government plaintiffs was relatively low in 1979 and 1980, but then began to climb in 1981. The years 1982, 1985, 1987, and 1989 all seem to have exceptionally high numbers of non-government plaintiffs. But perhaps the most curious aspect of the data is that it tapers off so much after 1989. This tapering off in the early 1990s, and the lack of an upward trend contradicts the hypotheses put forth by neofunctionalists and suggested in this study. When the picture in Figure 5.4 (pre- and post-SEA) is added to the analysis, any possible upward trend seems even more unlikely. In the period prior to the passage of the SEA from 1979 through 1986, the average number of non-government plaintiffs bringing cases to the Court was 53. After the SEA went into force in 1987 through 1992, the average number of non-government plaintiffs was 50 per year, indicating a decline of three non-government plaintiffs on average per year. While this may or may not be a meaningful change, it is a decline suggesting that the Court is not attracting more non-government plaintiffs than it did in previous years. The years with high numbers of non-government
plaintiffs can in part be explained by the specific issue areas that were developing and heating up in those years. A complete discussion of these boom years, can be found in the next section on the domain indicator of average number of cases per member state heard by the Court each year. The same years (1982, 1985, 1987, and 1989) appear to have exceptionally high numbers of both non-government plaintiffs bringing cases to the Court and total cases heard by the Court (the first indicator of domain).

Figure 5.3. Non-government plaintiffs bringing cases to the Court of Justice
Figure 5.4. Average number of non-government plaintiffs per year before and after the Single European Act

From this analysis of the number of non-government plaintiffs bringing cases to the Court of Justice, it is apparent that the Court is not attracting more non-government plaintiffs over time. This is the case when analyzed by individual yearly figures and when analyzed in relation to the Single European Act in 1987. The decline in average number of non-government plaintiffs from 53 before and 50 after the SEA is probably not meaningful. We can infer from the data on non-government plaintiffs that the scope of the Court is unchanging.
This indicates that non-government plaintiffs may no longer perceive the Court as legitimate and useful to the extent that they have in the past. It also suggests that the Court of Justice is not replacing national level courts as the court of choice among non-government plaintiffs. From all of this analysis of the use of the Court by non-government plaintiffs, we infer that the scope of the Court is itself unchanging, because the Court has not been able to attract more non-government plaintiffs, and appears to be losing some of its past clientele, though only minimally. The analysis of non-government plaintiffs based on the periods before and after the SEA, suggests that this decrease is slight, and the yearly analysis indicates that there is no clear upward trend, or even an established plateau. Instead, in the yearly analysis there is a visible peak in 1987 and then decline in non-government plaintiffs. Why this peak occurred is not clear, though a few possibilities can be considered. It may be that the bulk of legal questions for non-government plaintiffs have been answered by the Court and that most of the remaining questions revolve around member state obligations. The increase of Article 169 cases (failure of member states to fulfill obligations under Community law) may be a reflection of this. It may also be the case that the new regulations and directives established in the years leading up to the Single European Act combined with the legislation passed to meet the 1992 deadline of the barrier-free internal market caused a marked increase in cases brought by non-government plaintiffs, which has since tapered off. Or it may be that more non-government plaintiffs are opting to bring their disputes to national level courts with the hopes that the home court advantage will have an effect. Purely based on cost, it is more expensive to bring a case before the European Court of Justice than a national level court, and this alone
may have affected the number of non-government plaintiffs before the ECJ. Some or all of these reasons may have contributed to the slight decline in non-government plaintiffs bringing cases to the ECJ.

Combined analysis of the two indicators of scope, number of issue areas addressed by the Court and the number of non-government plaintiffs bringing cases to the Court, suggests minimal, and most likely irrelevant, changes. The number of issue areas addressed by the Court indicates that the Court's scope is virtually unchanged. Similarly, the slight decline in number of non-government plaintiffs bringing cases to the Court suggests that the scope of the Court essentially is unchanged.

This first dimension of integration combined with an analysis of the domain of the Court will provide some insight as to the general direction of integration of the Court, and by extension, the Community. It may also provide insight as to the role of the Court in contributing to the Community's integration process.

Domain Indicators

Domain refers to the degree of authority held by the Court within its area of competence. The first indicator of domain is the average number of ECJ cases per member state per year. This is a measure of the ratio of number of cases heard by the Court each year to the number of member states in the Community. In order to account for the lag between the time a case is brought to the Court and the time a decision is delivered, a two year time delay has been
added to the accession date of new member states. As a result, the accession of Greece in 1981 is not counted in the number of member states in the Community until 1983 and the accessions of Spain and Portugal are not added until 1988. This will prevent including new member states in yearly figures when they could not have received a Court decision yet due to the time needed to process cases. The total number of ECJ cases each year, the number of member states in the Community (with the two year time lag), and the number of ECJ cases per member state per year are listed in Table 5.4. For 1991 and 1992 the cases before the Court of First Instance have been added to the ECJ total. All of these cases were included in the ECJ's case load prior to the establishment of the Court of First Instance, so this addition is necessary if these years are to be accurately compared to earlier years. Figure 5.5 illustrates the total number of ECJ cases heard by the Court per year. Figure 5.6 illustrates the average number of ECJ cases per member state per year, accounting for the two year lag time needed to process a case. In addition, Figure 5.7 shows the average number of ECJ cases heard by the Court before the passage of the Single European Act from 1978 through 1986, compared to after the Single European Act from 1987 through 1992. Again, the SEA was chosen because it signalled the largest reinvigoration of Community integration efforts in the period from 1978 to 1992. This analysis is intended to provide a larger perspective than the yearly data, and may illustrate more clearly if an integration trend is emerging, and if so, in which direction it is going.

189 Micheal Kenny, staff lawyer for the European Court of Justice, telephone interview by author, 27 May 1993, Luxembourg.
Table 5.4. Average number of ECJ cases per member state per year

<table>
<thead>
<tr>
<th>Year</th>
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Looking at Figure 5.5, the total number of ECJ cases seems to be increasing between 1978 and 1992, though not unidirectionally. There are clearly some years in which the total number of ECJ cases is exceptionally high. 1979, 1982, 1985, 1987, 1988, and potentially 1992, are all examples of apparent boom years for the Court. Closer examination of the Court's docket in these specific years provides some insight as to why the Court experienced these increases in case load.
1979 was the first year of the European Monetary System and the first year of direct elections to the European Parliament. It also was the first year the European Parliament did not approve the Community budget resulting in the use of a "provisional-twelfths" budget system under EEC Treaty Article 204. This provisional system was used until a budget was approved, six months later. In terms of the Court's docket, agriculture cases increased

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190 Article 204 of the EEC Treaty allows for the equivalent of one-twelfth of the budget appropriations for the preceding financial year to be spent each month until the budget is approved. The Council can spend, with a majority vote, more than one-
Figure 5.6. Average number of ECJ cases per member state per year with two-year accession date delay

from 48 in 1978 to 101 in 1979, to account for the largest issue area increase. Another noticeable increase occurred in competition cases which jumped from 4 in 1978 to 53 in 1979. The increase in agriculture cases can be explained in


part by an increase in infringement procedures under Article 169 of the EEC Treaty against member states, of which agriculture "was the dominant sector," meaning a large number of these Article 169 cases were due to infringements of Community agricultural policy.\(^{192}\) As discussed above, Article 169 provides for a procedure by which the Commission can bring cases to the Court against

![Graph showing the average number of ECJ cases before and after the Single European Act of 1987](image)

**Figure 5.7.** Average number of ECJ cases before and after the Single European Act of 1987

member states if they fail to properly implement a Community directive or regulation.193

Many of these Article 169 cases involved quantitative restrictions under the provisions of Title 2 of the EEC Treaty, which addresses agriculture policy and Article 30 which addresses quantitative restrictions on the free movement of goods. For example, in the case *Commission of the European Communities v Federal Republic of Germany* Germany was found in breach of Article 30 for forbidding imports of meat products from member states manufactured in any of those states from meat originating in a different member state.194 The case originated from a complaint by a Dutch manufacturer of pork-tongue sausage who used among his ingredients, pork-tongues imported from the United States.195 Although Germany tried to justify its action on the grounds of "protection of health and life of humans" (which would provide an exemption under Article 36), the Court ruled that the ban on imports was prima facie forbidden by Article 30.196 Similarly, a case was brought against the United Kingdom for import restrictions on potatoes from Denmark and another case was brought against France for import restrictions on sheepmeat from the


195 Ibid., 2569.

196 Ibid., 2569-2574.
United Kingdom. These cases are representative of the type of agriculture cases that contributed to an increase in the Court's case load.

The increased number of competition cases appear to be the result of a series of cases in 1978 meant to clarify Community law under Article 86 of the EEC Treaty which defines abuse of a dominant position within the common market. Abuse is defined as:

...directly or indirectly imposing unfair purchasing or selling prices or other unfair trading conditions; limiting production, markets or technical development to the prejudice of consumers; applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Case 27/76 United Brands Co. v Commission decided in 1978, along with three other critical cases, helped the Court to clarify this definition of abuse of a dominant position but not before a number of similar cases were placed on the Court's docket.

1982 saw a near tripling of agriculture cases brought before the Court of Justice, which contributed to the significant jump in total cases before the

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198 Article 86, of the "EEC Treaty," in Treaties Establishing the European Communities, 194.

Court. The budget crisis in 1979 had carried over in terms of continued budget problems, and from 1980 through 1984 budget talks were held with the Common Agricultural Policy (CAP) at the center of the debates. The 1982 jump in cases may also be in part a result of new changes in the market organization for Mediterranean agricultural products. These changes were brought about due to the accession of Greece where thirty percent of the workforce is in agriculture. Greece's accession caused many changes in Community agriculture policy which was being revamped in 1981 and 1982. Lastly, some cases brought to the Court in 1982 questioned the validity of certain provisions of the regulation on the new common market organization in sheepmeat and goatmeat. All of these changes in Community agricultural policy appear to have contributed to an increased number of agriculture cases before the Court, and therefore a noticeable increase in number of cases overall in 1982.

The high number of cases before the Court in 1985 seems to be the result of a general increase in most issue areas, but especially in cases under "free movement of goods and customs," which increased from 27 in 1984 to 51 in 1985. This virtual doubling in cases seems to be the result of several


201 Urwin, The Community of Europe: A History of European Integration since 1945, 188.


203 Ibid., 153.

changes in Community law. It was in June of 1985 that the Commission published and the Council approved the White Paper completing the internal market. In December of that year the European Council also approved the principles of the SEA. Specifically related to customs law, on 7 May 1985, a new approach to technical harmonization was adopted by the Council and the Common Customs Tariff (CCT) was scheduled to go into effect 1 January 1986. As for the Court's activities, the Commission brought cases to the Court against member states in 113 cases (as compared to 54 in 1984) of which 73 were for the incorrect implementation or non-implementation of Community directives relating to the free movement of goods. These free movement of goods cases combined with other changes in customs laws contributed to the increase in Court cases in 1985.

1987 saw an increase in Court cases in many issue areas, but increases were most concentrated in agriculture and staff proceedings. In 1986 the Single European Act (SEA) was signed, signalling a new effort at Community integration through the elimination of internal market barriers by 1992, further attempts at political cooperation, and cooperation toward monetary union, among others. In February of 1987, the President of the Commission,


206 Ibid., 403-404.


Jacques Delors presented his program for 1987 including a proposal for completing the reform of the common agricultural policy (CAP).\textsuperscript{210} The CAP reforms in 1987 were intended mainly as "reinforcement and extension of producer co-responsibility, flexibility of the intervention arrangements and price restraint."\textsuperscript{211} These reforms coupled with a Council agreement in December of 1986 on milk and beef/veal reforms seem to have contributed to the rise in agriculture cases.\textsuperscript{212} The increase in staff proceedings is less easily traced. In 1986 the Council adopted a new regulation on "the five-yearly verification of salary weightings," which may have contributed to the increase in staff proceedings. This may have been the case, since the Council regulation "departed considerably from the Commission's proposal" causing the Commission to refer the matter to the Court of Justice.\textsuperscript{213}

In 1988 the Court saw continued growth in the number of cases in most all issue areas. The largest increase in 1988 occurred in competition cases--meaning cases dealing with free competition, such as monopolies, dumping, and state aid--which more than doubled.\textsuperscript{214} The general increase in cases as well as the increase specifically in competition cases in 1988, is likely a result

\begin{footnotesize}
\begin{enumerate}
\item[	extsuperscript{210}] Nugent, \textit{The Government and Politics of the European Community}, 386.
\item[	extsuperscript{211}] Commission of the European Communities, \textit{General Report on the Activities of the European Communities}, 1987, 224.
\item[	extsuperscript{212}] Ibid., 396.
\end{enumerate}
\end{footnotesize}
of the Single European Act and the new regulations that accompanied it. One case falling under competition law in 1988, for example, revolved around the question of whether a French law reserving the provision of "external services" for funerals (services outside the church or sanctuary, such as transportation of the body) where the "holders of concessions in a number of communities covering a large part of the national territory belong to a single group of undertakings and can thus influence patterns of trade is the result of the conduct of the undertakings and not of the national or municipal authorities."215 This was a preliminary ruling so the Court only ruled on the interpretation of Community law, particularly monopolies under Article 37 of the EEC Treaty. The Court ruled that Article 37 only applies insofar as the monopoly "exerts an appreciable influence on trade between Member States by discriminating against imported products."216

The increase in competition cases may also be attributed in part to the stronger emphasis on aid provided by member states to national industries and firms. In 1987 the Court delivered several opinions regarding Articles 92 and 93 (see discussion above). For example, the Court, in Belgium v Commission217 ruled that aid provided by Belgium to the the firm Tubemeuse, a manufacturer of seamless tubes, violated Article 93(3) which, inter alia, requires member states to notify the Commission prior to distributing planned


216 Ibid., 2505.

aid. 218 Belgium claimed that the aid already given to Tubemeuse could not be recovered without seriously risking the survival of the firm and the confidence of its creditors. On the question of recovery of the aid, the Court dismissed the Belgian application on the grounds that the case for serious or irreparable damage, due to the recovery attempts by Belgium (ordered by the Court of Justice), would have to be made by Tubemeuse under Belgian law in order to show that no national remedies existed. 219 This is an example of a new development in state aid cases, which in 1988 fell under the issue area of "competition," and contributed to the increased number of cases before the Court in 1988.

1992 may also prove to have a high number of total cases compared to other years. In 1992, both agriculture and taxation cases increased noticeably. Cases in agriculture rose from 41 in 1991 to 51 in 1992, and taxation cases rose from 17 to 26. 220 Most other issue areas varied only slightly in number of cases. The sensitive and volatile nature of agricultural policy has already been described above in reference to other years with high numbers of agriculture cases. In 1992, a series of cases were brought to the Court regarding Community legislation establishing milk quotas in 1984. The 1984 legislation in question failed to grant quotas to producers that had agreed to stop marketing milk for a limited time period, therefore entitling them to receive payments for

218 Ibid., 361.

219 Ibid., 361-2.

non-marketing. The Court declared the legislation in violation of the Community's principle of "legitimate expectations." To correct the problem, the Council provided the relevant producers a quota at sixty percent of the milk delivered in the year preceding the application for non-marketing payment, beginning in 1989. The Court in its ruling upheld the plaintiff's applications stating that the Community could be held liable under Article 215, which requires the Community, in cases of non-contractual liability, to make good any damages caused by its institutions or its staff in the performance of their duties. The Court therefore, ordered the Commission to pay compensation to the plaintiffs. This group of cases and others similar in question appear to have contributed to the increase in agriculture cases before the Court in 1992. Also, more generally, continued reforms of the common agricultural policy may have done the same. The increase in the number of taxation cases in 1992 seems to be in part due to a specific question on the legality of a "parafiscal charge on certain

221 Case 120/86, joined with 104/89 and 37/90 Mulder and Others v Commission and Council, judgment on 19 May 1992, Ibid., 423.

222 The principle of legitimate expectations has been employed in several situations of Community case law. In this case, it appears that the milk producers had established a "legitimate expectation," or could reasonably expect that they would receive milk quotas even though they had agreed to not market milk at the time. The principle of legitimate expectations has also been applied to state aide cases. For example, under Article 93 (3) of the EEC Treaty, member states must notify the Commission "in sufficient time to enable it to submit its comments, of any plans to grant or alter aid." States have been allowed to by-pass this step by arguing that their was a "legitimate expectation" that the aid would be legal. See Further case 303/88 Italy v Commission of the European Communities (1991). European Court Reports, 1991, 1435.


petroleum products in France.\textsuperscript{225} Six cases were brought asking the Court to clarify whether a charge "levied by a uniform criterion on both domestic and imported products to be used to finance activities for the specific benefit of the domestic products on which the charge is levied" is legal under Community taxation laws. The Court ruled that if "the benefits fully offset the burden borne by the domestic product" then the charge is equivalent to an import duty and is prohibited outright.\textsuperscript{226} Furthermore, if the benefits only partially offset the burden on the domestic product, the charge constitutes a discriminatory internal tax which is also prohibited by Community law under Articles 12 and 95 of the EEC Treaty.\textsuperscript{227} This particular question on the legality of parafiscal charges contributed to the increase in taxation cases and therefore the overall increase in Court cases in 1992. While it is unclear yet if 1992 will prove to be a year of high numbers of Court cases, the general increase in cases indicates that it may.

All of the years with high numbers of Court cases, can in part be explained by the circumstances and developments in Community law surrounding each of those years. As the description of the events in these years has illustrated, Community law has developed in fits and spurts over the past fifteen years. The number of cases before the Court and the specific issue areas involved in those cases seems to reflect both this uneven pattern and perhaps, contribute to it. The Court's role as the supreme adjudicating body for

\textsuperscript{225} Ibid., 433.

\textsuperscript{226} Ibid., 433.

\textsuperscript{227} Ibid., 433. Article 12 of the EEC Treaty prohibits member states from introducing new customs duties on imports or exports or making any changes "having equivalent effect." Article 95 similarly, prohibits any internal taxation of any kind on imported goods, in excess of that imposed on similar domestic products. Treaties Establishing the European Communities, 136, 200.
Community law seemingly enables it to contribute to the development of law over the years.

In Figure 5.6 the data on the number of ECJ cases decided has been reevaluated to account for the number of member states in the Community in a given year. This should control for any increases in case load that may have resulted from the accession of new member states. A two year time delay has been added to the accession dates, to account for the average of two years it takes for a case to be processed through the Court. Again the general trend is upward, indicating that the Court's case load is increasing even when the number of member states in the Community is taken into account. Like Figure 5.5 though, the increase is not unidirectional. 1979, 1982, 1985, 1987, 1988, and potentially 1992, have relatively high averages in number of cases per member state per year. Again, these heavy case loads can be explained, at least in part, by referring to issue area developments and/or unclear Community policies addressed during each of these particular years.

Figure 5.7 groups the total number of cases in another format. This figure shows the average number of ECJ cases heard by the Court prior to the Single European Act from 1978 through 1986, compared to after the Single European Act from 1987 through 1992. The Court heard an average of 198 cases per year before the Single European Act (SEA) entered into force. After the SEA and through 1992, the Court has heard an average of 299 cases per year. This is a clear increase in case load for the Court. By analyzing the data in larger time frames like this, anomalous years are averaged in and the larger trend becomes visible.
From the data provided in Table 5.4 and Figures 5.5, 5.6, and 5.7 we infer that the Court is hearing more cases over time. This is true if we look only at the number of ECJ cases per year or if we account for the number of member states in the Community with a two-year time lag for case processing. The broader perspective provided by analyzing the average case load of the Court prior to and after the Single European Act also shows an increase in case load for the Court. From this we can infer that the Court's domain is increasing in terms of the number of cases heard by the Court. This indicator, combined with a second indicator of the average number of preliminary rulings issued by the Court per member state per year (with a two year time lag for case processing), will provide a fuller analysis of the Court's domain.\textsuperscript{228} The initial data is listed in Table 5.5, and Figure 5.8 graphs the number of preliminary rulings issued by the Court each year. Figure 5.9 shows the average number of preliminary rulings issued by the Court per member state per year, with the two year time lag. The average number of preliminary rulings prior to the SEA from 1979-1986, compared to the average number after the SEA from 1987 through 1992 is presented in Figure 5.10.

Figure 5.8 shows the number of preliminary rulings--advisory opinions issued by the ECJ to national level courts to provide interpretations of Community law or the validity of acts of Community institutions-- issued by the Court per year gradually increasing. There are some anomalous years, and this

\textsuperscript{228} The time it takes for a preliminary rulings to be brought until a ruling is issued by the Court is an average of 20 months, which has been rounded to two years here. Michael Kenny, staff lawyer for the Court of Justice, telephone interview by author. 27 May 1993, Luxembourg.
Table 5.5. Average number of preliminary rulings per member state per year

<table>
<thead>
<tr>
<th>Year</th>
<th>number of preliminary rulings per year</th>
<th>number of member states</th>
<th>number of preliminary rulings per member state per year</th>
</tr>
</thead>
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<tr>
<td>1978</td>
<td>n.a.</td>
<td>9</td>
<td>n.a.</td>
</tr>
<tr>
<td>1979</td>
<td>109</td>
<td>9</td>
<td>12.11</td>
</tr>
<tr>
<td>1980</td>
<td>80</td>
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<td>8.89</td>
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<td>65</td>
<td>9</td>
<td>7.22</td>
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<tr>
<td>1982</td>
<td>134</td>
<td>9</td>
<td>14.89</td>
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<td>1983</td>
<td>79</td>
<td>10</td>
<td>7.90</td>
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<td>81</td>
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<tr>
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<td>10</td>
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<tr>
<td>1992</td>
<td>136</td>
<td>12</td>
<td>11.33</td>
</tr>
</tbody>
</table>

increase is clearly not unidirectional. 1979, 1982, and 1988 each have high numbers of preliminary rulings. There also is a distinct jump in the number of preliminary rulings between 1987 and 1988. It is perhaps not surprising that the years with relatively high numbers of preliminary rulings are also years with relatively high numbers of ECJ cases heard by the Court. This is probably due
to similar developments in Community law affecting both the number of preliminary rulings and actual cases.\textsuperscript{229}

The data presented in Figure 5.9 consist of the average number of preliminary rulings per member state per year with a two year time lag for the

\textsuperscript{229} The Commission in the \textit{General Report on the Activities of the European Communities} does not provide a break down of preliminary rulings by issue area, so an analysis of the years with increased numbers of preliminary rulings is not possible. It seems reasonable, however, to expect that the same issue areas that contributed to increases in actual ECJ cases also contributed to the increases in preliminary rulings in the same years.
Figure 5.9. Average number of preliminary rulings per member state per year with two year accession date delay

processing of preliminary rulings. Here again, an upward trend in the number of preliminary rulings is visible, though it appears more gradual here than in Figure 5.8 where the number of member states is not considered. The highest number of preliminary rulings per member state took place in 1982. More subtle spurts appear in 1979, 1985, 1988, 1990 and potentially 1992.

When the data are reworked to illustrate the difference in number of preliminary rulings before and after the Single European Act, as shown in

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230 The 1978 data on preliminary rulings was not available, so Chart 5.9 and 5.10 begin with the 1979 data.
Figure 5.10. Average number of preliminary rulings issued by the ECJ before and after the Single European Act of 1987.

Figure 5.10, there is a clear jump. In the pre-SEA period from 1979 through 1986 the Court issued an average of 93 preliminary rulings per year. In the post-SEA period from 1987 through 1992, the Court issued an average of 119 preliminary rulings per year, indicating an increase of approximately 26 rulings per year between the two periods.

The indicator of the number of preliminary rulings issued by the Court appears to be increasing according to the data analysis presented here. The raw number of preliminary rulings per year shows a gradual increase but with some
anomolous years. Accounting for the number of member states in the Community with a two-year time delay to allow for case processing time, the data shows a gradual increase in the number of preliminary rulings, though at a slower rate than was suggested in the previous analysis. There are still anomolous years of which 1982 is the most distinct but a general upward trend is visible. Analyzing the data in terms of the Single European Act further corroborates these results. This analysis indicates an increase in approximately 26 rulings per year when the SEA went into force in 1987. From all of this analysis we can conclude that the number of preliminary rulings issued by the Court is increasing. Furthermore, we infer that the domain of the Court is increasing according to this indicator. This suggests that the Court is being perceived as a more legitimate and/or useful adjudicator by national level courts.

The combined analysis of the two indicators of domain suggests the Court's domain is increasing. The Court is hearing more cases and issuing more preliminary rulings over time. This is evident when the number of member states in the Community is taken into account with a two year time lag is allowed for the time needed to process cases and preliminary rulings. The data analysis based on pre- and post-SEA periods also indicates that the Court is hearing more cases and issuing more preliminary rulings. Still, it is important to note that these increases are not unidirectional. Some years demonstrate high numbers of cases and preliminary rulings due to new Community legislation and/or activity in specific issue areas. Some of the years immediately after boom years witness a decline in cases heard and preliminary rulings issued. Nonetheless, the broader trend of increased number of cases decided and
preliminary rulings issued is evident. This is illustrated in the analysis of both average number of cases and number of preliminary rulings before and after the Single European Act.

Conclusion

From all of the analysis above of both the indicators of scope and domain, an assessment of the Court's integration can be made. The slight increase in number of issue areas addressed by the Court from 1978 through 1992 was too small to be relevant. The apparent decrease in the number of non-government plaintiffs bringing cases to the Court of Justice is also too slight to have any real meaning. This suggests that the legitimacy or usefulness of the Court is neither increasing nor decreasing for these non-governmental plaintiffs. From these two indicators we infer that the scope of the Court is unchanging.

The domain indicators seem to show stronger results and allow clearer, more confident conclusions. The average number of ECJ cases heard per member state per year demonstrates an upward trend, though it is important to note that it is not unidirectional. This suggests that the Court is commanding more authority within its established areas of competence. From this we infer that the domain of the Court is increasing. The average number of preliminary rulings issued by the Court per member state per year corroborates these results. Like the number of cases heard by the Court, the number of preliminary rulings issued by the Court has increased over time since 1979. There is a relatively clear upward trend in preliminary rulings, with the exception of some anomalous years that demonstrate high numbers of preliminary rulings,
followed by drops in rulings in the years immediately after. This illustrates again that the increase is not unidirectional, but rather seems to ebb and flow at varying levels. This variation seems to be the result of controversial and contentious issue areas which also ebb and flow over the years. From these two indicators we infer that the domain of the Court is increasing. This can be inferred with a significant degree of confidence since all of the analyses of both the number of cases heard by the Court and the number of preliminary rulings issued by the Court reinforce this same conclusion.

The scope and domain of the Court combine to provide an operationalized definition of integration. Given the results of our indicators of scope and domain, we can determine whether the Court's integration is increasing, decreasing, or unchanged. The analyses of unchanging scope and increasing domain place the Court most accurately, along a path of build up according to the analysis in Chapter Four and neofunctionalist theory as articulated by Philippe Schmitter.

Further conclusions from these analyses will be drawn in the next chapter. Chapter Six will lay out some of the implications of this research for the Court of Justice and the Community. It will also contain an assessment of the possible implications for the EC in global affairs and for international relations theory also. Lastly, it will suggest some areas for further research in order to understand better integration in the Court and in the EC, and to understand better the role of the EC in international affairs.
CHAPTER SIX: THEORETICAL AND PRACTICAL IMPLICATIONS: CONCLUSIONS

Given the data analysis and findings discussed in Chapter Five, this Chapter intends to place the results of this study in the broader context of the European Community. The implications of this research for the Court of Justice and the European Community will be assessed, along with the broader implications for international relations and international relations theory. Lastly, some areas for further research which may serve to complement this study, will be suggested.

We found that the two indicators of scope suggested similar results. The number of issue areas addressed by the Court of Justice was unchanging and the number of non-government plaintiffs bringing cases to the Court was unchanging. This conclusion is based on the interpretation that the increase in the number of issue areas addressed by the Court and the decrease in non-government plaintiffs bringing cases to the Court are both too small to be significant.

The results of the indicators of domain of the Court of Justice are less ambiguous. Both the average number of cases heard, and preliminary rulings issued by the Court of Justice, per member state per year showed an increase between 1978 and 1992. From this evidence we inferred that the domain of the Court is increasing. Combined, the two dimensions of integration, scope and domain, provide an indication of the direction of the Court's integration.

The integration of the Court of Justice is most accurately placed along the path referred to here as build up (refer to Figure 4.1). Build up is a process of unchanging scope and increasing domain. This means that the Court's degree of
authority is increasing within its areas of competence but that the Court is not acquiring new areas of competence. This suggests that the Court has established a significant degree of authority within its areas of competence but that it has not been able to gain new areas of competence or to attract new non-government plaintiffs. This further suggests a continued role for the Court limited in scope but with real authority within its scope. This may be the result of a number of factors. The lack of significant growth in issue areas for the Court is directly linked to the scope of the Community. Unless the Community has expanded into new areas the Court cannot address new areas. Some possible factors involved in the slight decrease in non-government plaintiffs bringing cases to the Court have already been discussed in Chapter Five: a perception of lost legitimacy and/or usefulness, cost considerations, and fewer legal questions relevant to non-government plaintiffs left unanswered. The increasing domain of the Court is perhaps, more easily explained. In the Treaties the Court is clearly established as the definitive voice on Community law. This legal basis for the Court's decisional authority, agreed to by all member states, combined with the principles of supremacy of Community law over national law and direct effect of Community directives and regulations, make it reasonable to expect that the Court would gain decisional authority. The acceptance of this authority is perhaps most visible in the increased number of preliminary rulings requested by national level courts today.

From these conclusions on the European Court of Justice's integration process and direction we can extrapolate to the Community as a whole. The Court serves as a metaphor for the Community in that integration taking place in the Community is reflected in the Court. As the Community develops new
areas of competence they become part of the Court's jurisdiction. As the Community gains increased levels of authority in those areas of competence, the Court gains the authority to rule decisively in those new areas. It is this reflective relationship between the Community and the Court that allows us to use the Court as a metaphor for change and integration in the Community.

The results of the research here suggest that the Community, like the Court, has increased its decisional authority in issue areas within the Community's competence. The Community, though, is not expanding into new issue areas as neofunctionalist theory suggests. This may bode ill for the Community in the long run if the trend continues because it may be that the Community remains only a loose economic zone and does not develop into the federation of states anticipated by many.

**Implications for the Court of Justice**

In describing the Court of Justice, one scholar has written: "The Court has successfully acted as an unequivocal and indefatigable promoter of centralism, uniformity and unification."\(^{231}\) While the author intended this to be a criticism of the Court's activism and biased positions, others consider this to be praise for the Court. It is the Court's mission to assure that the Treaties are being applied and that progress toward increased unification and integration remains the goal of the Community. Whether the Court has overstepped its role is a matter of interpretation. From the results of this study, however, it is

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reasonable to conclude that the Court is gaining authority in the issue areas in which it has competence but it has not been able to expand its competence or attract more non-government plaintiffs.

The increasing domain of the Court of Justice suggests that it may play a larger, more decisive role in Community politics in the future. The increased degree of authority may even eventually have an impact on the scope of the Court, in terms of its ability to attract more non-government plaintiffs. If the Court is perceived as more effective and authoritative, it may become the court of choice for citizens yet.

The immediate future of the Court appears rather stable. Few changes to the Court have been proposed in the Maastricht Treaty. In fact, if anything a larger role for the Court could be expected. Amendments to Article 143 of the Euratom Treaty provide for lump sum or penalty payments to be imposed on member states that do not comply with judgments of the Court regarding the failure to fulfill or the incorrect fulfillment of Community obligations under the Euratom Treaty. This new provision should provide the Court and the Community more enforcement ability in seeing that member states fulfill their obligations under Community law but only within the scope of the Euratom Treaty.

In terms of new issue areas, the Maastricht Treaty (also known as the Treaty on European Union) allows, inter alia, for monetary union among member states including the establishment of a European Central Bank, increased security and foreign policy cooperation, and a European police force

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(Europol). The role of the Court in these new areas is not yet clear, except that the Court has no established role in these policy-making processes delineated in the Treaty.

This research, provides a sense of the Court's integration progress in the past fifteen years. It is a snapshot of the Court's activities intended to illustrate recent trends in the Court's scope and domain. It seems evident that the Court is a major player in the European Community and changes in the Community are visible in the Court. The Court is becoming more integrated in that it's authority is increasing within its areas of competence. If this continues to be the case, and if more issue areas are added to the Court's competence, we can expect that the Court will continue to serve as both a reflection of integration occurring throughout the Community and as a major player in the integration process.

Implications for the European Community

There are many possible implications for the Community that can be drawn from the research here. The Maastricht Treaty provides evidence that Community efforts will continue to encourage Community growth. This is witnessed in its attempts to undertake monetary, foreign, and security policy. Continuing efforts at establishing the internal market free of barriers also suggest desire for further integration for the Community. The desire for further integration is by no means guaranteed though, especially in terms of increased scope. The struggles of the Community in trying to gain acceptance of Maastricht are evidence of this. In fact the research conducted here may have
predicted the difficulty currently being experienced in the European Community in trying to gain passage of the Maastricht Treaty. We could have expected, based on the trends visible in the analysis of scope indicators conducted here, that acceptance of Community control over even more sensitive issue areas like defense and foreign policy contained in the Maastricht Treaty would be difficult.

If the Maastricht Treaty is ratified, the future of the Community's degree of authority within these areas is also not certain. Issue areas such as foreign policy strike closer to home for member states and the extent to which they will be willing to surrender decisional authority is unknown. Judging on past and current trends evidenced in the Court of Justice, however, it seems reasonable to expect that the Maastricht Treaty will continue to be stalled as states hesitate to delegate authority in new issue areas.

The potential for Community expansion in terms of accession of new member states seems likely. This outward expansion may slow internal integration, though, as efforts to assimilate new member states may take precedence. Indeed, it has been suggested that it is for this reason that new member states have not been admitted since 1986, in order to focus Community energies soley on internal integration. Whether or not these two dimensions of Community growth will remain competing interests in the minds of Community players is yet to be seen.
Implications for International Relations

The internal integration of the Community poses many interesting possibilities for the international community. If the Community continues to become stronger internally and if the relations of member states continue to become more closely intertwined in economic areas, the Community can be expected to play an even larger role in international economic affairs than it plays today. This is especially true if the Maastricht Treaty is ratified and European monetary union becomes a reality. Furthermore, if the member states also are able to reach common ground in foreign and security policy areas, the Community could become a stronger player in international relations defined as military power politics. Pooled foreign and security policy still seems more of a possibility than a probability, but its potential merits acknowledgement.

If instead, the member states are unable to agree to a Maastricht Treaty, the Community could see its growth in scope stunted permanently. If the Community does not gain competence in new issue areas, it will remain as it is today, a loose economic and free trade zone, assuming the elimination of market barriers is completed. The difficulties experienced by Maastricht so far and the extent to which it has been altered to accommodate hesitating member states, suggest that even if the Maastricht Treaty is ratified, it may affect little change.

The results of the research done here suggest that the Community has steadily increased its degree of authority in the areas of competence set aside for it by the member states. It seems reasonable to expect that this trend will continue given the extent to which member states have already surrendered
authority and given the nature of the issue areas surrendered. The issue areas proposed in the Maastricht Treaty however, are of a much more sensitive nature, and therefore probably will not be surrendered so easily. Historical conflicts among member states which have proven difficult to overcome in the past may prove insurmountable in security and foreign policy debates. For reasons such as this, qualifications must be added to any optimistic statements about continued European integration. More sensitive issue areas such as this will likely slow, if not stop, integration efforts for some time. The sensitive nature of these new issue areas combined with the results of the study here, suggest that the Community may continue to not see growth in scope in the foreseeable future.

The potential outward expansion of the Community adds yet another dimension to its future role in international relations. If non-member states continue to perceive membership in the Community as beneficial, we can expect that the Community will continue to expand geographically (if it so desires). The current accession procedures with Norway, Finland and Austria appear to be just the beginning. It has been speculated that some of the formerly Eastern bloc countries such as Poland, Czechoslovakia, and Hungary may apply to the EC in the near future. In fact, on June 22nd of this year the Community extended a public invitation to six former Soviet-bloc countries: the Czech Republic, Slovakia, Poland, Hungary, Romania and Bulgaria.233 A target date was not set, and it was acknowledged that these countries would probably not be ready for accession before 2000.234 If this proves to be the


234 Ibid., A5.
case, the Community could potentially increase from twelve member states to as many as twenty-two. While this would certainly take place over a number of years, the potential for a European Community of that size and stature is worth considering. The Community already accounts for 345 million people, and makes up approximately twenty percent of global markets in exports and imports of goods and services.\textsuperscript{235} A more integrated, larger Community could become the major economic player in international economic affairs if expansion trends continue. This increased stature could also bolster the Community in military relations and power politics if efforts at coordinating and pooling sovereignty in security and foreign policy areas are successful. As mentioned above though, geographical expansion and internal integration are competing goals, which are difficult to pursue simultaneously. Indeed, it has been suggested that the redirecting of efforts toward geographical expansion signals a loss of continued effort toward internal integration.

The increased integration that has occurred in the Court and the Community has not been unidirectional. Community integration has ebbed and flowed as different issues have been debated, as different individuals have lead the process, and as the environment in which the integration process takes place, has changed. This contradicts the proposition of functionalist theorists discussed earlier in Chapter Two, that economic spillover is a "never ending domino effect inevitably leading to more and more integration."\textsuperscript{236} While neofunctionalism anticipates a "cumulative and expansive process whereby the

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\item[235] Eurostat, 232.
\item[236] Lindberg, Europe's Would-Be Polity, 118.
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supranational agency slowly extends its authority so as to progressively undermine the independence of the nation-state," neofunctionlists also acknowledge that this process may include periods of spillback, retrenchment, and muddling about.237 This is the discontinuity of the formal integration process described by William Wallace, rather than the continuous process associated with informal integration.238 The uneven growth visible in the indicators analyzed here suggests that this has been the case for the Court and the Community.

The likelihood of the Community becoming a federalist state still seems minimal. Although the argument against the EC being classified as a federalist state because the member states still retain a "hard core of sovereignty," may be weakened by the ratification of the Maastricht Treaty, the Treaty does not entail a complete surrender of sovereignty to the Community. In fact the Treaty as it exists today is a much watered-down version of the Treaty originally considered. Also the research here indicates that while the Community is increasing its degree of authority within the issue areas in its competence, it has only slowly gained new areas, and has not been able to attract new non-government plaintiffs. This may suggest that the Community's role will continue to be limited if its constituents continue to hesitate in delegating more issue areas to the EC.

The belief by communications theorists that a security community does not require a "high level of interdependence or central political organizations to enforce joint decisions," makes this theoretical foundation inaccurate for the

237 Ibid., 7.

238 Wallace, The Dynamics of European Integration, 9.
European Community. This would require the community to exist without the need for a legal system and without the institutional framework already firmly established in the EC. The fact that the Court has grown in terms of the number of cases it addresses and the number of preliminary rulings it issues to member state courts, and the fact that the Court is increasingly hearing cases to ensure member states are fulfilling their obligations to the Community indicate that a security community without enforcement capabilities as described by Karl Deutsch is not likely to evolve in the foreseeable future.

Areas for Further Research

There are many research questions related to the one addressed here, that merit serious inquiry. The first question for further research addresses the probable duality of the role of the Court in European Community integration. Whether or not, in addition to reflecting integration initiated elsewhere in the Community, the Court also acts as an integrating factor itself should be studied. From the research in this study, it seems that there is a strong possibility that the Court does indeed play this dual role, in a symbiotic relationship with the Community.

Additional research to test the propositions of neofunctionalism should be done. Neofunctionalists also advocate the position that spillover occurs due to internal pressures to integrate. The extent to which those individuals and groups directly impacted by the activities of the Court of Justice desire continued Community integration would provide insight into this neofunctionalist proposition. Called "elite value complimentarity" by Phillipe
Schmitter, this aspect of the Court's and Community's integration has not been researched.

In terms of the research conducted here, an analysis to determine by member state who is bringing cases to the Court of Justice could enhance the study. This could identify which member states bring the most cases to the Court. Also, a break down of which member states are brought before the Court for not fulfilling their obligations under Article 169 could provide insight as to which member states are less committed to Community policies.

The research done here could also be complemented by a study of the characteristics of the "legal actors and judicial organs themselves: their personal composition, recruitment, self-perception of role, representability, accessibility and legitimacy of function." The perceived legitimacy of the Court by non-government plaintiffs and by the national courts of member states was analyzed in the indicators considered here, but the other characteristics suggested by Joseph Weiler were not due to time and space constraints.

All of these areas for further research would contribute to a better understanding of the European Community as it exists today and as it may exist tomorrow. The increased degree of authority experienced by the Court and the Community over the past fifteen years suggests that the Community will continue to play a major role in the activities of its member states and in international relations. The Community's inability to grow in terms of issue areas and constituents suggests that its growth in scope is neither automatic nor guaranteed and appears to be stalled. The immediate future of the Community

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239 Weiler, "Community, Member States and European Integration: Is the Law Relevant?," 56.
probably can be expected to continue with these current trends but because the integration process is not necessarily smooth or continuous, it is difficult to anticipate what will happen next. As one scholar warns: "One must never forget that international integration is an innovative and experimental process. It takes place in an ambiance of considerable uncertainty and trepidation." 240


Kenny, Michael, staff lawyer for the Court of Justice. Telephone interview by author, 27 May 1993, Luxembourg.


Ross, Christopher, academic affairs consultant for the Commission of the European Communities. Telephone interview by author, 25 March 1993, Washington, DC.


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