

# GOD SAVE THE [EU]: A CRITICAL ANALYSIS OF THE UNITED KINGDOM'S DEPARTURE

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## I. INTRODUCTION<sup>1</sup>

“It’s a madhouse in here. It has been a bloodbath. Carnage.” – David Papier, ETX Capital<sup>2</sup>

“It’s scary, and I’ve never seen anything like it.” – James Butterfill, ETF Securities<sup>3</sup>

“I think it’s a great thing. I think it’s a fantastic thing.” – President Donald J. Trump<sup>4</sup>

On June 23, 2016, the United Kingdom voted to leave the European Union (EU).<sup>5</sup> This referendum was the culmination of a tumultuous debate that had been raging within the United Kingdom for some time.<sup>6</sup> As a seemingly desperate effort during his most recent campaign for office, former Prime Minister David Cameron “promised to hold the referendum should he be re-elected prime minister.”<sup>7</sup> This move by former Prime Minister Cameron was designed “[t]o pacify his party and undermine the anti-European Union

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<sup>1</sup> This note is current as of the date of selection for publication in the *University of Louisville Law Review* (spring of 2017). For a more recent account of the status of Brexit negotiations, see *Brexit*, CNBC, <https://www.cnn.com/brexit> (last visited Jan. 15, 2018); *Brexit*, GUARDIAN, <https://www.theguardian.com/politics/eu-referendum> (last visited Jan. 15, 2018); *Brexit*, INDEPENDENT, <http://www.independent.co.uk/topic/brexit> (last visited Jan. 15, 2018); *Brexit*, TELEGRAPH, <http://www.telegraph.co.uk/brexit> (last visited Jan. 15, 2018); *Brexit: The Aftershocks*, ECONOMIST, <http://www.economist.com/brexit> (last visited Jan. 15, 2018).

<sup>2</sup> AFP, *Brexit Reactions, in Quotes*, YAHOO! NEWS (June 24, 2016), <https://www.yahoo.com/news/brexit-reactions-quotes-105805087.html>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Brian Wheeler & Alex Hunt, *Brexit: All You Need to Know About the UK Leaving the EU*, BBC NEWS, <http://www.bbc.com/news/uk-politics-32810887> (last updated Jan. 30, 2018).

<sup>6</sup> See Steven Erlanger, ‘Brexit’: Explaining Britain’s Vote on European Union Membership, N.Y. TIMES, <http://www.nytimes.com/interactive/2016/world/europe/britain-european-union-brexit.html> (last updated Oct. 27, 2016).

<sup>7</sup> *Id.*

U.K. Independence Party.”<sup>8</sup> However, to say that this strategy backfired would be an understatement.

Experts had varied predictions regarding the probable outcome of the referendum. According to *The Economist*, “[f]or the vast majority of the campaign, both polls and markets had ‘remain’ with a solid lead.”<sup>9</sup> However, as the date of the referendum crept ever closer, “the polls shifted sharply towards ‘leave.’”<sup>10</sup> The “leave” campaign faced opposition from many prominent leaders including then Prime Minister David Cameron, and President of the United States Barack Obama.<sup>11</sup> Faced with this uphill battle, proponents of “Brexit” (“British exit of the European Union”) overcame their notable and powerful opponents and “won by 51.9% to 48.1%.”<sup>12</sup>

This note begins by analyzing the history of the events that led up to this referendum. This history includes an overview of the history of the European Union (including the initial reasons for its creation and benefits of membership at its inception), as well as the movements and pressures, both internal and external, that lead to this severance of ties known as Brexit. Although the ultimate impact of the Brexit referendum will only come to light in the future, it is unlikely that aftershocks from Brexit will singularly be felt in the United Kingdom. Thus, this note will analyze the impact of Brexit on three distinct international actors: 1) the United Kingdom, 2) Europe as a whole (particularly the remaining EU member states), and 3) the United States of America. In analyzing these separate groupings, there are potential overarching and overlapping effects as well as certain impacts that are only relevant to a particular actor or group of actors. Although this analysis is not intended to be exhaustive, it will provide an expansive exploration into the economic and legal shifts that are likely to occur within the existing international legal framework due to Brexit. To accomplish this, the analysis is centered primarily on the “four freedoms” that are fundamentally preserved by the EU, and the economic and legal changes that may arise due to the United Kingdom no longer being bound by these “four freedoms.”<sup>13</sup> Finally,

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<sup>8</sup> *Id.*

<sup>9</sup> D.R., *Polls Versus Prediction Markets: Who Said Brexit Was a Surprise?*, *ECONOMIST* (June 24, 2016, 2:50 PM), <http://www.economist.com/blogs/graphicdetail/2016/06/polls-versus-prediction-markets>.

<sup>10</sup> *Id.*

<sup>11</sup> *Post-Brexit Trade Deal with US Could Take 10 Years, Obama Warns*, *BBC NEWS* (Apr. 24, 2016), <http://www.bbc.com/news/uk-politics-eu-referendum-36120808>.

<sup>12</sup> Amanda Taub, *Brexit, Explained: 7 Questions About What It Means and Why It Matters*, *N.Y. TIMES* (June 20, 2016), <http://www.nytimes.com/2016/06/21/world/europe/brexit-britain-eu-explained.html>; Wheeler & Hunt, *supra* note 5.

<sup>13</sup> Will Martin, *Britain Only Has Two Options – ‘Hard Brexit’ or No Brexit*, *BUS. INSIDER* (Oct. 14, 2016, 4:23 AM), <http://www.businessinsider.com/donald-tusk-says-hard-brexit-or-no-brexit-2016-10>.

a prospective, normative resolution will be offered that discusses the current status of each international actor that is analyzed, and advises whether Brexit will be a positive or negative event for each actor.

## II. HISTORICAL BACKGROUND

### *A. Creation and Development of the European Union*

“It is usually claimed that the European Union (EU) traces its beginnings to the years just after World War II and possibly also to various political-economic developments during the interwar period.”<sup>14</sup> Initially, the partnership that was created was “the European Coal and Steel Community,” and consisted of “Belgium, France, Germany, Italy, Luxembourg and the Netherlands.”<sup>15</sup> The purported goal of this newly created partnership between states was to put a stop to “the frequent and bloody wars between neighbours.”<sup>16</sup>

“In 1957, the Treaty of Rome” was signed.<sup>17</sup> This “create[d] the European Economic Community (EEC), or ‘Common Market.’”<sup>18</sup> Some of the characteristics of the new European “Common Market” included “the elimination of most barriers to the movement of goods, services, capital, and labour, the prohibition of most public policies or private agreements that inhibit market competition, a common agricultural policy (CAP), and a common external trade policy.”<sup>19</sup> The EEC led to a significant amount of growth for many states’ economies.<sup>20</sup> This was due in large part to “the fact that EU countries stop[ped] charging custom duties when they trade[d] with each other.”<sup>21</sup> This monetary growth, coupled with increased cooperation among the member states, began to promote relative economic calm in the region.<sup>22</sup>

“[T]he first enlargement” of the newly created partnership between European states came in 1973 when “Denmark, Ireland and the United

<sup>14</sup> Richard Swedberg, *The Idea of ‘Europe’ and the Origin of the European Union – A Sociological Approach*, 23 ZEITSCHRIFT FÜR SOZIOLOGIE 378, 378 (Oct. 1994).

<sup>15</sup> *The History of the European Union*, EUR. UNION, [https://europa.eu/european-union/about-eu/history\\_en](https://europa.eu/european-union/about-eu/history_en) (last updated Feb. 11, 2017).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*; Matthew J. Gabel, *European Union (EU)*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/European-Union> (last modified July 7, 2016).

<sup>18</sup> *The History of the European Union*, *supra* note 15.

<sup>19</sup> Gabel, *supra* note 17.

<sup>20</sup> *The History of the European Union*, *supra* note 15.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

Kingdom” became members.<sup>23</sup> Interestingly, “[t]he United Kingdom had applied for membership in the EEC in 1963 and in 1966, but its application was vetoed by French Pres. [sic] Charles de Gaulle.”<sup>24</sup> During this period, various subgroups were developed within the larger EEC and were tasked with managing specific areas of policymaking.<sup>25</sup> Greece joined the EEC in 1981 along with Spain and Portugal in 1986, further expanding the reach of this partnership.<sup>26</sup> The next major development within the EEC was the signing of the “Single European Act (SEA)” in 1986 (“entered into force” the following year).<sup>27</sup> Among other things, the SEA gave more power to the EEC by consolidating foreign-policy efforts and further enhancing and promoting the idea “of a [European] common market.”<sup>28</sup>

Following the SEA, the next (and arguably most important) event that occurred was the signing of “[t]he Maastricht Treaty (formally known as the Treaty on European Union)” in 1992 (which took effect in 1993).<sup>29</sup> This treaty marked the official creation and establishment of the European Union as it is known today.<sup>30</sup> The Maastricht Treaty accomplished several objectives including further consolidating and strengthening European foreign and domestic policy initiatives, as well as “establish[ing] EU citizenship” and “planning . . . to replace national currencies with a common currency managed by common monetary institutions.”<sup>31</sup> This began the creation and implementation of arguably the most unifying feature of the EU: the common use of the “euro” as currency.<sup>32</sup>

“[B]orn amid political and economic upheaval” after “the collapse of the Berlin Wall in 1989,” this new common currency “was designed to link together the European nations for trade and political purposes.”<sup>33</sup> In order for states to participate in the adoption of the euro, they had to meet certain monetary standards.<sup>34</sup> Many states decided to initiate the process to adopt the euro, but “the United Kingdom chose not to apply for membership.”<sup>35</sup> Since

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<sup>23</sup> *Id.*

<sup>24</sup> Gabel, *supra* note 17.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*; *The History of the European Union*, *supra* note 15.

<sup>28</sup> Gabel, *supra* note 17.

<sup>29</sup> *Id.*; see also *The History of the European Union*, *supra* note 15.

<sup>30</sup> Gabel, *supra* note 17.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Irene Chapple, *How the Euro Became a Broken Dream*, CNN, <http://www.cnn.com/2011/09/23/business/europe-euro-creation-maastricht-chapple/> (last updated Nov. 3, 2011, 9:26 PM).

<sup>34</sup> Gabel, *supra* note 17.

<sup>35</sup> *Id.*

that time, the United Kingdom has never chosen to use the euro as its currency.<sup>36</sup> The United Kingdom was never satisfied that adopting the euro (and the “monetary union” in general) was an economically wise move to make.<sup>37</sup>

Shortly after the signing of the Maastricht Treaty, “Sweden, Austria, and Finland joined the EU” in 1995.<sup>38</sup> Not long after this, the next major organizational agreement was established: The Treaty of Amsterdam.<sup>39</sup> “[S]igned in 1997 and enter[ing] into force on May 1, 1999,” this treaty further enhanced, expanded, and defined the EU’s goals and powers.<sup>40</sup> In the decade following the signing of this treaty, the EU saw a significant increase in membership.<sup>41</sup> “10 new countries join[ed] the EU in 2004,” including “Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia.”<sup>42</sup> Following this, the next two states to join the EU were “Bulgaria and Romania in 2007.”<sup>43</sup>

Perhaps the most important organizational update in recent years occurred with the signing of the Treaty of Lisbon (Lisbon Treaty) in 2007 (which took effect in 2009 after being adopted by each member of the EU).<sup>44</sup> This notable agreement “provide[d] the EU with modern institutions and more efficient working methods.”<sup>45</sup> After the signing of the Treaty of Lisbon, the final state to join the EU was “Croatia . . . in 2013.”<sup>46</sup>

In the years following the signing of the Treaty of Lisbon and the establishment of the current group of member states, the EU has faced significant challenges.<sup>47</sup> Some of these challenges will be discussed below as potential sources of instability and as factors that may have given rise to the Brexit referendum. As demonstrated above, the history of the EU is one that has largely been shaped by the international political landscape throughout the past century.<sup>48</sup> The same can be said of the United Kingdom’s recent referendum.

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<sup>36</sup> Chapple, *supra* note 33.

<sup>37</sup> *Id.*

<sup>38</sup> Gabel, *supra* note 17.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*; *The History of the European Union*, *supra* note 15.

<sup>42</sup> *The History of the European Union*, *supra* note 15; Gabel, *supra* note 17.

<sup>43</sup> *The History of the European Union*, *supra* note 15.

<sup>44</sup> Gabel, *supra* note 17; *The History of the European Union*, *supra* note 15.

<sup>45</sup> *The History of the European Union*, *supra* note 15.

<sup>46</sup> *Id.*

<sup>47</sup> Gabel, *supra* note 17; *The History of the European Union*, *supra* note 15.

<sup>48</sup> See Gabel, *supra* note 17; *The History of the European Union*, *supra* note 15.

### B. Events Leading to Brexit

In order to fully analyze the United Kingdom's departure, it is important to discuss the context in which the recent referendum was taken. This context includes the rise of populist and nationalist movements throughout the world, the unstable condition that the international political community was (and still is) in, and various similar (albeit smaller-scale) secession campaigns across the globe.

#### 1. Global Populist and Nationalist Movements

First, the recent proliferation of populism and nationalism has left an overt mark on the current political landscape. Generally speaking, "populism" is a political ideology that "seeks to defend the interest and maximize the power of ordinary citizens."<sup>49</sup> "Nationalism" generally refers to strong feelings of pride in one's "national identity," but can also refer to "the actions that the members of a nation take when seeking to achieve (or sustain) self-determination."<sup>50</sup> Recently, there has been a "wave of authoritarian populists whose support has swelled in many Western democracies," including the United Kingdom.<sup>51</sup> No longer is populism confined in recent years to Latin American "leaders like Hugo Chavez in Venezuela and Evo Morales in Bolivia."<sup>52</sup> Presently, nationalist and populist ripples have been felt in Western states such as Switzerland, Austria, and Sweden.<sup>53</sup> Other noteworthy examples of populist movements include "Hungary's government . . . building a wall against the waves of migrants flooding across Europe," as well as the recent political success enjoyed by President Donald Trump despite strong nationalist rhetoric.<sup>54</sup>

Brexit, in part, is the culmination of a popular nationalist ideological movement within the United Kingdom.<sup>55</sup> Noted geopolitical expert George Friedman affirms that "the rise of nationalism across the world" contributed

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<sup>49</sup> André Munro, *Populism*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/populism> (last updated Oct. 14, 2015).

<sup>50</sup> Nenad Miscevic, *Nationalism*, STANFORD ENCYC. OF PHIL., <http://plato.stanford.edu/entries/nationalism> (last updated Dec. 15, 2014).

<sup>51</sup> Pippa Norris, *It's Not Just Trump. Authoritarian Populism is Rising Across the West. Here's Why.*, WASH. POST (Mar. 11, 2016), <https://www.washingtonpost.com/news/monkey-cage/wp/2016/03/11/its-not-just-trump-authoritarian-populism-is-rising-across-the-west-heres-why>.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> See George Friedman, *3 Reasons Brits Voted for Brexit*, FORBES (July 5, 2016, 7:26 AM), <http://www.forbes.com/sites/johnmauldin/2016/07/05/3-reasons-brits-voted-for-brexit/#1cde170d78c1>; Taub, *supra* note 12.

to the Brexit referendum.<sup>56</sup> As support for this proposition, Friedman cites “a growing distrust of multinational financial, trade, and defense organizations” as reasoning for the surge in nationalist sentiments.<sup>57</sup>

Turning to the definitions of “populism” and “nationalism” themselves, it is apparent that these ideologies are particularly applicable to the Brexit referendum.<sup>58</sup> Accepting a general definition of “populism” as a political ideology that “seeks to defend the interest and maximize the power of ordinary citizens,” the Brexit referendum is a concrete example of an attempt to restore autonomy to “ordinary citizens.”<sup>59</sup> “Brexit was a vote against the British elite.”<sup>60</sup> As part of a larger regional community such as the European Union, it is easy to see how some “ordinary citizens” could begin to feel that decisions about their daily lives were being made by people who had very little relation to them at all.<sup>61</sup> One author has described a particular type of populism “as a cultural backlash in Western societies against long-term, ongoing social change.”<sup>62</sup> Considering the progressive and ever-changing nature of the EU, the Brexit referendum can be understood as the very same type of “cultural backlash” that this commentator was describing when referring to “populism.”<sup>63</sup>

Interpreting “nationalism” as “the actions that the members of a nation take when seeking to achieve (or sustain) self-determination,” the fact that a referendum to secede from a multinational organization occurred *at all* in one of the organization’s member states is *prima facie* evidence of “nationalism.”<sup>64</sup> “[I]nstitutions” like the EU are criticized by nationalists because “these organizations take control away from individual nations.”<sup>65</sup> In this sense, the Brexit referendum was an attempt to restore power and control to the United Kingdom instead of the EU.<sup>66</sup>

## 2. International Sociopolitical Instability

A second factor that led to the Brexit referendum was the instability that has plagued the international community in recent memory. This instability

<sup>56</sup> Friedman, *supra* note 55.

<sup>57</sup> *Id.*

<sup>58</sup> Munro, *supra* note 49; Miscovic, *supra* note 50.

<sup>59</sup> Munro, *supra* note 49.

<sup>60</sup> Friedman, *supra* note 55.

<sup>61</sup> Munro, *supra* note 49; *see* Friedman, *supra* note 55.

<sup>62</sup> Norris, *supra* note 51.

<sup>63</sup> *Id.*

<sup>64</sup> Miscovic, *supra* note 50.

<sup>65</sup> Friedman, *supra* note 55.

<sup>66</sup> *See id.*

stems from a number of sources including, primarily, worldwide economic challenges and various immigration and refugee crises due to military conflicts across the globe.

The world economy has experienced its fair share of fluctuations recently. One major example of these fluctuations has been the “economic slowdown” within China.<sup>67</sup> After experiencing “a turbulent 2015 for markets and the yuan,” there was a decrease in “investor confidence in Chinese authorities’ ability to manage the economic slowdown smoothly.”<sup>68</sup> As a result, the 2015 crash of the Chinese stock market left many other states wondering about their own economies’ futures.<sup>69</sup>

Turning to the United Kingdom, it is necessary to keep in mind the importance of the United Kingdom’s economy (specifically the London economy) to the international community.<sup>70</sup> “More than a third of global foreign exchange takes place every day in London.”<sup>71</sup> Remembering the interconnection that is inherent in the “common market” of the EU, it follows logically that if a few economies within the EU were affected by an economic crisis like the Chinese stock market crash, then other EU economies would feel those negative impacts as well.<sup>72</sup> Thus, another logical inference is that the desire to create an individual economic policy for the United Kingdom in the wake of global economic instability could very well have contributed to the outcome of the Brexit referendum.<sup>73</sup> Additionally, “Europe as a whole has stagnated economically.”<sup>74</sup> The desire to break from an economically stale Europe was a clear motivating factor for many in the decision to leave the EU.<sup>75</sup>

In addition to economic challenges, perhaps the greatest factor contributing to international instability was the global immigration and refugee crisis that was largely caused by various military conflicts.<sup>76</sup> One of

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<sup>67</sup> Sophia Yan, *China’s Sluggish Economy Continues to Drag*, CNN: MONEY (July 12, 2016, 5:43 AM), <http://money.cnn.com/2016/07/12/news/economy/china-economy-forecast-q2>.

<sup>68</sup> *Id.*

<sup>69</sup> *The Causes and Consequences of China’s Market Crash*, ECONOMIST (Aug. 24, 2015), <http://www.economist.com/news/business-and-finance/21662092-china-sneezing-rest-world-rightly-nervous-causes-and-consequences-chinas>.

<sup>70</sup> Jon Kelly & Jason Hawkes, *London-centric*, BBC NEWS (Sept. 30, 2015), <http://www.bbc.co.uk/news/resources/idt-248d9ac7-9784-4769-936a-8d3b435857a8>.

<sup>71</sup> *Id.*

<sup>72</sup> Gabel, *supra* note 17; see also *The Causes and Consequences of China’s Market Crash*, *supra* note 69; *The History of the European Union*, *supra* note 15.

<sup>73</sup> Friedman, *supra* note 55.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> See Taub, *supra* note 12.

the most prominent examples of this crisis is the plight of Syrian refugees.<sup>77</sup> Due to a violent civil war within the country, and the rise of the “so-called Islamic State,” “[m]ore than 4.5 million people have fled Syria since the start of the conflict, most of them women and children.”<sup>78</sup> Many international organizations, including “[s]ome EU leaders,” raised their banners and declared “that aiding the refugees was a moral obligation.”<sup>79</sup> However, many “EU opponents saw immigration as a national issue” that should be addressed by individual states, not one that should be decided by some larger, seemingly amorphous entity such as the EU.<sup>80</sup> This destabilizing international event was demonstrative of a larger issue within the United Kingdom: immigration.<sup>81</sup>

Immigration was a key issue for the “leave” campaign leading up to the Brexit referendum.<sup>82</sup> In 2013, a study “found that more than three-quarters of Britons want[ed] the country’s immigration policies reduced.”<sup>83</sup> Throughout the United Kingdom, “[l]abor migration, particularly from Eastern Europe, has often been painted as economically threatening.”<sup>84</sup> “The immigration crisis in Europe was a trigger” for many citizens who already “distrust[ed]” the EU.<sup>85</sup> This international crisis only exacerbated already festering anti-immigrant sentiments within the United Kingdom, leading to increased support for the Brexit referendum.<sup>86</sup>

### 3. Other Geopolitical Secession Efforts

Although “[n]o nation state has ever left the EU,” there have been other secession campaigns of varying types and degrees across the international landscape.<sup>87</sup> For example, within the EU itself, “Greenland, one of Denmark’s overseas territories, held a referendum in 1982 . . . and voted by 52% to 48% to leave.”<sup>88</sup>

Turning the clock back a year from the Brexit referendum, the most pressing issue on the international stage was the possibility that Greece would

<sup>77</sup> See Lucy Rogers, David Gritten, James Offer & Patrick Asare, *Syria: The Story of the Conflict*, BBC NEWS (Mar. 11, 2016), <http://www.bbc.com/news/world-middle-east-26116868>.

<sup>78</sup> *Id.*

<sup>79</sup> Friedman, *supra* note 55.

<sup>80</sup> *Id.*

<sup>81</sup> See Taub, *supra* note 12.

<sup>82</sup> See *id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Friedman, *supra* note 55.

<sup>86</sup> See Friedman, *supra* note 55; Taub, *supra* note 12.

<sup>87</sup> Wheeler & Hunt, *supra* note 5.

<sup>88</sup> *Id.*

leave the EU.<sup>89</sup> Thus, before there was “Brexit,” there was “Grexit.”<sup>90</sup> The Greek referendum arose mainly for economic reasons, and a motivating factor for many in the “exit” campaign was the possibility of no longer using the euro.<sup>91</sup> Although Greece did not end up leaving the EU, it reminded the international community that the exit of a member state was not completely out of the question.<sup>92</sup>

Another failed secession effort that hits somewhat closer to home for the United Kingdom was Scotland’s 2014 referendum to leave the United Kingdom.<sup>93</sup> Although this referendum failed by a margin of over 10%, it is probable that it may have weighed on the minds of many within the United Kingdom and created additional internal unrest.<sup>94</sup>

A final example of an international secession campaign is the threatened secession of Catalonia (a region within the state) from Spain.<sup>95</sup> After taking “an unofficial poll in November 2014,” the secession campaign began working more and more toward a complete break with Spain.<sup>96</sup> In November 2015, the regional parliament “pushed through a motion to start the process towards independence.”<sup>97</sup> Although the government insists that “the secessionist step [is] unconstitutional,” it is unclear what the eventual outcome will be for Catalonia.<sup>98</sup> In any case, this is yet another example of an international secessionist movement that, although existing in a slightly different context, may have influenced individuals within the United Kingdom who were gravitating toward breaking from the EU.

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<sup>89</sup> See Dragana Jovanovic & Susanna Kim, *Greece: What Could Happen if Country Leaves the European Union*, ABC NEWS (July 1, 2015, 12:23 PM), <http://abcnews.go.com/Business/happen-greece-leaves-european-union/story?id=32153394>.

<sup>90</sup> *Id.*; Wheeler & Hunt, *supra* note 5.

<sup>91</sup> Jovanovic & Kim, *supra* note 89; see also Wheeler & Hunt, *supra* note 5.

<sup>92</sup> See Jovanovic & Kim, *supra* note 89; Taub, *supra* note 12; Wheeler & Hunt, *supra* note 5.

<sup>93</sup> *Results, SCOT. INDEP. REFERENDUM*, <http://scotlandreferendum.info> (last modified Sept. 24, 2014, 9:46 AM).

<sup>94</sup> *Id.*

<sup>95</sup> *Catalonia's Push for Independence from Spain*, BBC NEWS (Nov. 11, 2015), <http://www.bbc.com/news/world-europe-29478415>.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*; see *Catalonia's bid for independence from Spain explained*, BBC NEWS (Jan. 31, 2018), <http://www.bbc.com/news/world-europe-29478415>, for a discussion of recent developments relating to the secessionist movement in Catalonia.

## III. ANALYSIS

*A. United Kingdom*

Objectively, the United Kingdom, being the locational focal point of the Brexit movement, will undoubtedly be greatly impacted by this monumental shift in international relations. When discussing the impact that Brexit will have on the United Kingdom, this analysis will focus on the “four freedoms” of the EU, and how they relate to the United Kingdom’s economic status and role within the international market.<sup>99</sup>

In general, there are “four freedoms” that, taken together, define the relationship between the member states of the EU.<sup>100</sup> These “four freedoms” are: “the free movement of goods, services, capital, and people.”<sup>101</sup> Generally speaking, the Treaty of Lisbon<sup>102</sup> and the various treaties and charters that it enforces, such as the Treaty on European Union,<sup>103</sup> the Treaty on the Functioning of the European Union (TFEU),<sup>104</sup> and the Charter on Fundamental Rights,<sup>105</sup> are the main sources of legal codification for these four, and many other, freedoms.<sup>106</sup> Because the United Kingdom has voted to no longer be a part of the EU, it is no longer privy to enjoy the benefits of these “four freedoms.”<sup>107</sup> However, the United Kingdom will also no longer be legally bound by the restrictions that adherence to these ideals may impose.<sup>108</sup>

## 1. Free Movement of Goods

First, the “free movement of goods,” or the lack thereof, will likely be something that the United Kingdom now must contend with.<sup>109</sup> Articles 28–

<sup>99</sup> Martin, *supra* note 13.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Dec. 13, 2007, 2007 O.J. (C 306) 1 [hereinafter Treaty of Lisbon].

<sup>103</sup> Consolidated Version of the Treaty on European Union, Feb. 07, 1992, 2012 O.J. (C 326) 13 [hereinafter Treaty on European Union].

<sup>104</sup> Consolidated Version of the Treaty on the Functioning of the European Union, Mar. 25, 1957, 2012 O.J. (C 326) 47 [hereinafter TFEU].

<sup>105</sup> Charter of Fundamental Rights of the European Union, Dec. 12, 2007, 2012 O.J. (C 326) 391 [hereinafter Charter of Fundamental Rights].

<sup>106</sup> See Martin, *supra* note 13.

<sup>107</sup> *Id.*

<sup>108</sup> See *id.*

<sup>109</sup> TFEU, *supra* note 104, arts. 28–37.

37 of the TFEU discuss the “free movement of goods.”<sup>110</sup> These articles set limitations on the customs and tariffs that can be implemented by a member state, and control the other types of regulations that member states can place on trade.<sup>111</sup> Additionally, the Treaty on European Union states the explicit desire to seek “balanced economic growth and price stability,” and to “promote . . . free and fair trade.”<sup>112</sup> Although it can be understood that these articles seek to promote consistency and equality within the economies of the EU member states, these restrictions may also have negative effects.<sup>113</sup>

To illustrate, consider *Scotch Whisky Association and Others v. The Lord Advocate and The Advocate General for Scotland*.<sup>114</sup> In this case, Scotland sought to institute a regulation fixing a “minimum price” for certain types of alcohol.<sup>115</sup> The rationale behind the proposal was that it was “in the interest of the protection of human health to increase the cost of consumption of a commodity — in this case alcoholic drinks — to consumers.”<sup>116</sup> The issue in this case was that this regulation was a “restriction on trade” that was not allowed under the TFEU.<sup>117</sup> The court stated that although this “legislation” did constitute a “restriction on trade” (in this case, the regulation was interfering with the “free movement of goods”), it could still be permitted, but “the measure must be appropriate for attaining the objective pursued, and must not go beyond what is necessary to attain that objective.”<sup>118</sup> Because the court found that the statute complied with the requirements for implementation, it was allowed to stand.<sup>119</sup> Although the outcome was a favorable one for Scotland (and thus, the United Kingdom), the *Scotch* case demonstrates the rigorous scrutiny that legislation from EU member states can be subjected to due to the protection of this freedom.<sup>120</sup>

Although the United Kingdom may no longer be subject to the restrictions that the codification of the “free movement of goods” brings, it may also no longer be subject to its protections.<sup>121</sup> Returning briefly to the history of the EU, when the “Common Market” was created there was a

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<sup>110</sup> *Id.*

<sup>111</sup> *See id.*

<sup>112</sup> Treaty on European Union, *supra* note 103, art. 3.

<sup>113</sup> *See id.*; TFEU, *supra* note 104, arts. 28–37.

<sup>114</sup> Case C-333/14, *Scotch Whisky Ass’n and Others v. The Lord Advocate and The Advocate General for Scotland*, 2015 EUR-Lex CELEX LEXIS 845 (Dec. 23, 2015).

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> TFEU, *supra* note 104, arts. 28–37.

significant amount of growth for many states' economies.<sup>122</sup> This was due in large part to “the fact that EU countries stop[ped] charging custom duties when they trade[d] with each other.”<sup>123</sup> Should the United Kingdom formally leave the EU, there would no longer be a “prohibition of customs duties and quantitative restrictions” afforded to trade relations with the other EU member states.<sup>124</sup> Thus, the other EU member states could theoretically impose greater tariffs on exports to the United Kingdom, driving up prices for goods that the United Kingdom has relied on in the past.<sup>125</sup> This is one of the many far-reaching negative effects that the lack of the “free movement of goods” could have.<sup>126</sup>

## 2. Free Movement of Services and Capital

Next, in addition to the “free movement of persons” (discussed below), Articles 45–66 of the TFEU discuss the “free movement of . . . services, and capital.”<sup>127</sup> Article 57 defines “services” to “include: (a) activities of an industrial character; (b) activities of a commercial character; (c) activities of craftsmen; [and] (d) activities of the professions.”<sup>128</sup> Additionally, “the person providing a service may, in order to do so, temporarily pursue his activity in the Member State where the service is provided, under the same conditions as are imposed by that State on its own nationals.”<sup>129</sup> Thus, the “free movement of services” is concerned not only with the ability of people in a certain member state to receive the services, but also with protecting an individual's right to “provide” those services.<sup>130</sup> Without these protections, citizens of the United Kingdom would not only be limited in which services were provided to them, but also in their ability to provide services to others in the remaining EU member states.<sup>131</sup>

Regarding the “free movement of capital,” one method of promoting this freedom is “adopting . . . measures on the movement of capital to or from third countries involving direct investment – including investment in real estate – establishment, the provision of financial services or the admission of

<sup>122</sup> *The History of the European Union*, *supra* note 15.

<sup>123</sup> *Id.*

<sup>124</sup> TFEU, *supra* note 104, art. 37; *see also* Taub, *supra* note 12.

<sup>125</sup> *See* TFEU, *supra* note 104, arts. 34–37; Taub, *supra* note 12.

<sup>126</sup> TFEU, *supra* note 104, arts. 28–37; Taub, *supra* note 12.

<sup>127</sup> TFEU, *supra* note 104, arts. 45–66.

<sup>128</sup> *Id.* art. 57.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *See id.*

securities to capital markets.”<sup>132</sup> Within this regulatory scheme, the individual member states are still free “to apply the relevant provisions of their tax law” and to maintain “the prudential supervision of financial institutions.”<sup>133</sup> Accordingly, although there are restrictions on the impacts that certain actions can have, individual member states are not prevented from maintaining a certain degree of regulatory control over their financial sectors.<sup>134</sup> Similarly, it is important to remember that the United Kingdom, as discussed above, has never been a complete economic member of the EU (ex: never adopting the euro).<sup>135</sup> Because of the relative autonomy that the United Kingdom has already enjoyed over its financial sector (compared to other areas such as immigration (discussed below)), the loss of this freedom would likely not have a tremendous impact on the state.<sup>136</sup>

### 3. Free Movement of People

Finally, “the free movement of . . . people” is perhaps the most contentious and material issue that can be traced to the rationales for the Brexit referendum.<sup>137</sup> Article 3 of the Treaty on European Union states that “[t]he Union shall offer its citizens an *area of freedom, security and justice without internal frontiers*, in which *the free movement of persons is ensured* in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.”<sup>138</sup> Articles 45–66 of the TFEU govern the “free movement of persons” as well.<sup>139</sup> As discussed above, immigration and the movement of individuals, culminating in the growth of “nationalism,” is quite possibly the issue that contributed the most to the Brexit referendum.<sup>140</sup> Accordingly, this may be the issue on which many residents of the United Kingdom are seeking the greatest amount of change.<sup>141</sup> Reflecting on “the rise of nationalism,” it appears that the “free movement of persons” is exactly the issue that many citizens of the United Kingdom were concerned with.<sup>142</sup> Should the United Kingdom follow through on its decision to leave the European Union, the

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<sup>132</sup> *Id.* art. 64.

<sup>133</sup> *Id.* art. 65.

<sup>134</sup> *See id.*

<sup>135</sup> Chapple, *supra* note 33.

<sup>136</sup> *See* TFEU, *supra* note 104, art. 65; Chapple, *supra* note 33.

<sup>137</sup> Martin, *supra* note 13; *see also* Friedman, *supra* note 55.

<sup>138</sup> Treaty on European Union, *supra* note 103, art. 3 (emphasis added).

<sup>139</sup> TFEU, *supra* note 104, arts. 45–66.

<sup>140</sup> Friedman, *supra* note 55.

<sup>141</sup> *See id.*

<sup>142</sup> TFEU, *supra* note 104, arts. 45–66; Friedman, *supra* note 55.

United Kingdom will no longer be a part of the free and open exchange of individuals that is so enshrined within the governing documents of the EU.<sup>143</sup> While many individuals may consider this restriction on movement a terrible and damaging outcome, to many supporters of the Brexit referendum, this restriction may be precisely the remedy desired to fix the damage that, as they perceive it, was caused by this free movement.<sup>144</sup>

A hallmark of this freedom to move relates to employment for “workers.”<sup>145</sup> Article 45 of the TFEU states, in pertinent part, that this freedom to move and work in any member state prohibits “any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.”<sup>146</sup> Should this protection no longer be mandated across the United Kingdom, employees (who are not citizens of the United Kingdom) of companies within the United Kingdom could be subjected to “discrimination based on nationality” within their current employment, and possibly future employment opportunities as well.<sup>147</sup> Additionally, Article 45 grants employees the ability “to remain in the territory of a Member State after having been employed in that State.”<sup>148</sup> Should this guarantee no longer be enforced by the United Kingdom, non-citizen employees could find themselves unable to remain in the state (the United Kingdom) in which they have lived and worked up to this point.<sup>149</sup> For these workers and their families, this disruption (i.e. not being able “to remain . . . after having been employed in that State”) has the potential to drastically change their way of life.<sup>150</sup> However, as a counter-argument to these points, perhaps supporters of Brexit would argue that revocation of these guarantees (such as “remain[ing] in the territory of a Member State,”) is essential to promoting job growth and providing permanent employment for *citizens* of the United Kingdom.<sup>151</sup>

### B. Europe

In addition to the United Kingdom itself, Brexit is also poised to have a broad and significant impact on Europe (specifically the remaining EU

<sup>143</sup> See Treaty on European Union, *supra* note 103, art. 3; TFEU, *supra* note 104, arts. 45–66.

<sup>144</sup> See Friedman, *supra* note 55.

<sup>145</sup> TFEU, *supra* note 104, arts. 45–48.

<sup>146</sup> *Id.* art. 45.

<sup>147</sup> *Id.*; Taub, *supra* note 12.

<sup>148</sup> TFEU, *supra* note 104, art. 45.

<sup>149</sup> See *id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

member states). Viewing this potential impact through the lens of the “four freedoms,” the remaining EU member states are likely to feel the shockwaves of Brexit also.<sup>152</sup>

### 1. Free Movement of Goods

As mentioned above, the “free movement of goods” is one of the main benefits to membership in the European Union.<sup>153</sup> With this ideal, the European Union sought to “establish an internal market” and to “work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment.”<sup>154</sup> Brexit acts as a disruption in the balancing act that is the larger European economy.<sup>155</sup> Not only will the United Kingdom no longer be able to import from and export to the other EU member states with the ease that it once could, but the remaining EU member states will no longer be able to import from and export to the United Kingdom as easily as before, unless this “free movement of goods” is preserved somehow.<sup>156</sup>

Potentially, goods passing to and from the United Kingdom could now be subject to “customs duties on imports and exports and . . . charges having equivalent effect.”<sup>157</sup> Thus, in order to encourage individuals to purchase products that are made within the United Kingdom, tariffs could be imposed on goods that are imported from other states (including EU member states) that would have the effect of driving up the prices of those imported goods.<sup>158</sup> Simply put, because the United Kingdom no longer will be bound by the goal of achieving “price stability” or the duty to preserve the “internal market” of the EU, the remaining EU member states could suffer as a result of new customs policies that are implemented.<sup>159</sup> However, the imposition of new market controls by the government of the United Kingdom could also have desirable effects for the rest of the EU member states. By losing a major player in the transfer and flow of goods, smaller EU member states now have a larger percentage of the market share when it comes to internal imports and

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<sup>152</sup> Martin, *supra* note 13.

<sup>153</sup> TFEU, *supra* note 104, arts. 28–37.

<sup>154</sup> Treaty on European Union, *supra* note 103, art. 3.

<sup>155</sup> *See id.*

<sup>156</sup> TFEU, *supra* note 104, arts. 28–37.

<sup>157</sup> *Id.* art. 28.

<sup>158</sup> *See id.*

<sup>159</sup> Treaty on European Union, *supra* note 103, art. 3.

exports.<sup>160</sup> Perhaps the loss of the United Kingdom will bring about an increased system of trade cooperation between the remaining EU member states.<sup>161</sup> In this scenario, there may be states that have historically not been major exporters of goods within the EU that are now able to export more of their goods due to having newfound competitive footing against the United Kingdom's exports to the EU.<sup>162</sup> However, George Friedman argues that member states might not "throw up trade barriers against Britain," and provides the example that "[t]he UK is Germany's third most important export target" so "[t]he last thing Germany wants is a trade war with Britain."<sup>163</sup> Accordingly, although the United Kingdom and the EU member states may have the ability to change the way goods are imported and exported between them, there may also be strong incentives for them to maintain the existing trade structure.<sup>164</sup>

## 2. Free Movement of Services and Capital

As with the "free movement of goods," the remaining EU member states will no longer be able to exchange services or capital with the United Kingdom as easily as they used to.<sup>165</sup> If workers are no longer able to "temporarily pursue [their] activity in the Member State where the service is provided, under the same conditions as are imposed by that State on its own nationals," then not only could the economy of the United Kingdom suffer, but the remaining EU member states could suffer harm as well.<sup>166</sup> Additionally, should the movement and investment of capital be restricted, not only could the United Kingdom potentially not be able to invest in, and draw from, the markets of the remaining EU member states, but the member states would not have such free access to the powerful market of the United Kingdom, and London in particular.<sup>167</sup> Thus, potential new restrictions on the exchange of services and capital could threaten individual companies that rely on investment from the United Kingdom.<sup>168</sup> Conversely, companies within the United Kingdom may seek other sources of capital investment and labor if tighter restrictions are implemented by the remaining EU member

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<sup>160</sup> See Taub, *supra* note 12.

<sup>161</sup> See *id.* (discussing the potential impacts of Brexit).

<sup>162</sup> See *id.*

<sup>163</sup> Friedman, *supra* note 55.

<sup>164</sup> *Id.*

<sup>165</sup> TFEU, *supra* note 104, arts. 28–37, 45–66.

<sup>166</sup> TFEU, *supra* note 104, art. 57; Taub, *supra* note 12.

<sup>167</sup> See TFEU, *supra* note 104, art. 57; Taub, *supra* note 12.

<sup>168</sup> See TFEU, *supra* note 104, art. 57; Taub, *supra* note 12.

states.<sup>169</sup> Thus, EU member states may not be able to benefit from investing in the United Kingdom, and they may not benefit from investments in their states that normally come from the United Kingdom.<sup>170</sup>

However, an argument could be made that there will likely not be dire economic consequences of this nature. George Friedman argues that “the Europeans need a financial center in London,” and thus “[t]hey will not lock it out.”<sup>171</sup> Additionally, Friedman notes that “[t]he European Union didn’t create the existing financial relationships. Britain’s financial role goes back almost two centuries. The EU is a system that aligns with financial reality. It does not create it.”<sup>172</sup> Thus, because of the important role that the United Kingdom plays in the European financial market, it is entirely plausible that every effort will be made to preserve existing investment structures and ensure the provision of services within the continent of Europe.<sup>173</sup>

### 3. Free Movement of People

Finally, restrictions on the “free movement of persons” arguably have the potential to bring the most noticeable changes throughout the remaining EU member states.<sup>174</sup>

First, greater restrictions on the movement of individuals could shape where people seek to live and work.<sup>175</sup> Should the United Kingdom choose to, it could greatly restrict workers’ ability to travel to and from the state to pursue employment.<sup>176</sup> The United Kingdom would now be able to utilize and implement “any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.”<sup>177</sup> Not only does this have the potential to devastate the livelihoods of individuals who live outside, but work inside, the United Kingdom, these restrictions could also accordingly drive up unemployment in the remaining EU member states if these workers are not able to find employment in their home states.<sup>178</sup> This in turn would put greater pressure on the individual governments of the EU member states and could

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<sup>169</sup> See TFEU, *supra* note 104, art. 57; Taub, *supra* note 12.

<sup>170</sup> See TFEU, *supra* note 104, art. 57; Taub, *supra* note 12.

<sup>171</sup> Friedman, *supra* note 55.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> TFEU, *supra* note 104, arts. 45–66.

<sup>175</sup> See Taub, *supra* note 12; see also TFEU, *supra* note 104, arts. 45–66 (governing the “free movement of persons, services and capital”).

<sup>176</sup> See TFEU, *supra* note 104, arts. 45–48.

<sup>177</sup> *Id.* art. 45.

<sup>178</sup> See Taub, *supra* note 12; see also TFEU, *supra* note 104, arts. 45–66.

have even broader impacts than simply restricting travel.<sup>179</sup> One potential remedy for this situation would be increased movement of individuals and workers between the remaining EU member states.<sup>180</sup> Perhaps those employees who are no longer able “to remain in the territory of a Member State [the United Kingdom] after having been employed in that State [the United Kingdom]” will accordingly seek employment in other states within the EU.<sup>181</sup> This has the potential to be a positive change (because this movement could fill in gaps in the workforce in other EU member states), but it also has the ability to be a negative change (because an increase of laborers in other states could place a strain on the workforce that could potentially drive up unemployment and decrease wages).<sup>182</sup>

However, as previously discussed, it is important to remember that fear over overwhelming immigration, coupled with a rise in populist sentiments, contributed greatly to the Brexit referendum being taken in the first place.<sup>183</sup> Additionally, other EU members, such as Hungary, are struggling with populist and anti-immigrant movements as well.<sup>184</sup> Thus, should individuals wish to travel to other EU member states, they may be met with resistance there also.<sup>185</sup> Additionally, Brexit has the potential to act as a catalyst for other EU member states to attempt to leave the EU due to similar issues regarding immigration and the perceived “crisis” that it has caused in their states.<sup>186</sup> In any case, enhanced restrictions on the “free movement of persons” could very well undermine the creation and maintenance of a European “area of freedom, security and justice without internal frontiers.”<sup>187</sup> Although “[e]very citizen of the Union has the right to move and reside freely within the territory of the Member States,” that territory is shrinking.<sup>188</sup>

### C. *United States of America*

Despite the fact that the “four freedoms” of the European Union do not apply directly to the United States, it is possible that their lack of effect on the United Kingdom may have implications for the United States.<sup>189</sup>

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<sup>179</sup> See Taub, *supra* note 12; see also TFEU, *supra* note 104, arts. 45–66.

<sup>180</sup> See TFEU, *supra* note 104, arts. 45–66.

<sup>181</sup> *Id.* art. 45.

<sup>182</sup> See Taub, *supra* note 12; see also TFEU, *supra* note 104, arts. 45–66.

<sup>183</sup> Friedman, *supra* note 55; Taub, *supra* note 12.

<sup>184</sup> Norris, *supra* note 51.

<sup>185</sup> See Taub, *supra* note 12.

<sup>186</sup> Friedman, *supra* note 55; Taub, *supra* note 12.

<sup>187</sup> Treaty on European Union, *supra* note 103, art. 3.

<sup>188</sup> Charter of Fundamental Rights, *supra* note 105, art. 45.

<sup>189</sup> Martin, *supra* note 13; Taub, *supra* note 12.

First, one major issue that could arise is the negotiation of new trade deals between the United States and the United Kingdom.<sup>190</sup> President Obama was notoriously skeptical about the possibility of a quick and easy negotiation on this front between the two international actors.<sup>191</sup> To this effect, President Obama “has previously said the UK would be at the ‘back of the queue’ for trade deals with the US, if it left the EU.”<sup>192</sup> Additionally, “[i]n a BBC interview, the US president [President Obama] said: ‘It could be five years from now, 10 years from now before we were able to actually get something done.’”<sup>193</sup> For example, one trade deal that is currently being negotiated is the “Transatlantic Trade and Investment Partnership (TTIP) deal” which would “cut tariffs and regulatory barriers between the US and EU countries.”<sup>194</sup> The purported aim of the TTIP is to “help unlock opportunity for American families, workers, businesses, farmers and ranchers through increased access to European markets for Made-in-America goods and services,” and to “help to promote U.S. international competitiveness, jobs and growth.”<sup>195</sup> Moving forward with this trade deal could have a hybrid effect in that it could be both good and bad.<sup>196</sup> The TTIP could be good for continued relations between the EU and the United States, but it may not be as good of a deal (i.e. may not expand the market for American-made goods or “promote . . . jobs and growth” as intended) without the United Kingdom being a part of the organization with which the United States is seeking to partner (because the United Kingdom was a very sizeable portion of the EU market).<sup>197</sup>

A delayed renegotiation of a trade deal with the United States would not only negatively affect the United Kingdom’s economy; it, and Brexit in general, could also have an impact on the economy of the United States.<sup>198</sup> According to the Office of the United States Trade Representative, “U.S. goods and services trade with the EU totaled nearly \$1.1 trillion in 2014 (latest data available for Goods and Services trade). Exports totaled \$495 billion; Imports totaled \$587 billion.”<sup>199</sup> If the United Kingdom is no longer

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<sup>190</sup> *Post-Brexit Trade Deal with US Could Take 10 Years, Obama warns*, *supra* note 11.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Transatlantic Trade and Investment Partnership (T-TIP)*, OFF. OF THE U.S. TRADE REPRESENTATIVE, <https://ustr.gov/ttip> (last visited Feb. 11, 2017).

<sup>196</sup> *See generally id.* (providing an overview of, and rationales for, the trade deal).

<sup>197</sup> *Id.*

<sup>198</sup> Taub, *supra* note 12.

<sup>199</sup> *European Union*, OFF. OF THE U.S. TRADE REPRESENTATIVE, <https://ustr.gov/countries-regions/europe-middle-east/europe/european-union> (last visited Feb. 11, 2017).

part of the EU, it is very possible that the total amount of exports to the EU would not be nearly as much as the \$495 billion that it was in 2014.<sup>200</sup> This could create an even greater “trade deficit” and only further complicate economic challenges for the United States.<sup>201</sup>

However, although some are worried that Brexit will harm trade and economic cooperation, other institutions, such as Fannie Mae, report that “Brexit’s economic impact on the U.S. will likely be limited, especially from a trade perspective, and should be a near-term positive for the housing and mortgage market.”<sup>202</sup> Additionally, Representative Ted Poe, Chairman of the House Committee on Foreign Affairs Subcommittee on Terrorism, Nonproliferation, and Trade, believes that Brexit could be a good thing for the United States’ economy.<sup>203</sup> Representative Poe countered President Obama’s remarks about delays for a potential trade deal with the United Kingdom, and stated that “[a] free trade agreement between the U.S. and the U.K. should not be at the back of the line, but at the front.”<sup>204</sup> In defending his line of thinking, Representative Poe asserted that “Britain’s exit from the EU should be looked at as an American opportunity. The prospect of a bilateral U.S.-U.K. trade agreement is exciting; such an agreement would promote economic freedom, champion national sovereignty, and create a new model for other bilateral trade agreements.”<sup>205</sup> Without the guarantee of the “free movement of goods” that comes with membership in the European Union, perhaps the United Kingdom will seek to expand trade with the United States in order to increase the state’s exports.<sup>206</sup> This could hasten the pace for a “bilateral U.S.-U.K. trade agreement” in the manner envisioned by Representative Poe.<sup>207</sup>

Another impact that the Brexit referendum, and the subsequent lack of effect of the “four freedoms” on the United Kingdom, could have on the United States relates to the “free movement of persons” described in the TFEU.<sup>208</sup> If people can no longer freely, or at least easily, travel to the United Kingdom to work, then it is possible that there could be an increase in these

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> Katie Penote, *Economic Growth Outlook Unchanged for Second Half of 2016, but Post-Brexit Uncertainty Casts Shadow*, U.S. FED. NAT’L MORTGAGE ASS’N (FANNIE MAE), July 19, 2016, LEXIS.

<sup>203</sup> 162 CONG. REC. E 1311 (Sept. 20, 2016) (statement of Rep. Poe); *Committees*, U.S. CONGRESSMAN TED POE, <http://poe.house.gov/committees> (last visited Feb. 11, 2017).

<sup>204</sup> 162 CONG. REC. E 1311.

<sup>205</sup> *Id.*

<sup>206</sup> TFEU, *supra* note 104, arts. 28–37.

<sup>207</sup> 162 CONG. REC. E 1311.

<sup>208</sup> TFEU, *supra* note 104, arts. 45–66; Martin, *supra* note 13.

workers seeking to travel to the United States to find employment.<sup>209</sup> However, due to the recent populist sentiments that have been espoused within the United States, and calls for tightening the United States' border and implementing more restrictive immigration policies, these individuals seeking to travel may not find welcoming opportunities in the United States either.<sup>210</sup> What is more probable perhaps is that, if non-citizens who currently work in the United Kingdom are no longer able to continue doing so, they will seek other employment opportunities in different EU member states (that may be dealing with their own populist movements as well).<sup>211</sup>

#### IV. RESOLUTION

##### *A. United Kingdom*

Despite the referendum vote, the United Kingdom still has a long way to go before a complete break from the EU is actually made.<sup>212</sup> Once “[Prime Minister] Theresa May” finally “trigger[ed] Article 50 . . . the UK [was] set to start two years of Brexit negotiations with the rest of the EU.”<sup>213</sup> As stated above, the Treaty of Lisbon enforces other various treaties concerning the European Union (such as the Treaty on European Union and the Treaty on the Functioning of the European Union).<sup>214</sup> Article 50 (derived from the Treaty on European Union and enforced by the Treaty of Lisbon) states in part that “[a]ny Member State may decide to withdraw from the Union in accordance with its own constitutional requirements,” and that, after notification to “the European Council of its intention . . . the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union.”<sup>215</sup> The negotiation “procedures” that are to be used while negotiating the “agreement” described above are laid out in Article 218 of the Treaty on the Functioning of the European Union.<sup>216</sup> After this process, “[t]he Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two

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<sup>209</sup> See TFEU, *supra* note 104, arts. 45–66.

<sup>210</sup> See Norris, *supra* note 51.

<sup>211</sup> See generally *id.* (discussing populism around the world).

<sup>212</sup> See Tim Bowler, *How Has Economy Fared Since Brexit Vote?*, BBC NEWS (Mar. 28, 2017), <http://www.bbc.com/news/business-36956418>.

<sup>213</sup> *Id.*

<sup>214</sup> Treaty of Lisbon, *supra* note 102; Treaty on European Union, *supra* note 103; TFEU, *supra* note 104.

<sup>215</sup> Treaty on European Union, *supra* note 103, art. 50.

<sup>216</sup> *Id.*; TFEU, *supra* note 104, art. 218.

years after the notification referred to . . . unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.”<sup>217</sup> As these treaty articles indicate, the exit process is not as straightforward as simply casting a vote within a member state.<sup>218</sup> To further complicate matters, the United Kingdom’s “High Court” recently “ruled that lawmakers should be involved in invoking formal exit procedures, under Article 50 of the European Union’s treaty.”<sup>219</sup> This case was then appealed to the “Supreme Court . . . to determine whether Parliament should vote before the government begins formal steps to quit the European Union.”<sup>220</sup> On that issue, the “Supreme Court . . . ruled that the UK government must hold a vote in parliament before beginning the process of leaving the European Union.”<sup>221</sup> In essence, “[t]he judges . . . said that the legal consequences of leaving the EU were great enough to require an act of parliament to start the process.”<sup>222</sup> Therefore, as stated above, it is clear that a complete break from the EU will still take some time.<sup>223</sup>

Overall, Brexit is likely to impact the United Kingdom more negatively than positively due in large part to the loss of the protection of the “four freedoms” of the EU.<sup>224</sup> Without the guarantee of the “free movement of goods,” the United Kingdom could lose its easy access to surrounding markets, and trade with the remaining EU member states could be inhibited.<sup>225</sup> Additionally, restrictions on the unhindered flow of capital and services to and from the United Kingdom have the potential to negatively impact the state.<sup>226</sup> Although the United Kingdom’s relative monetary autonomy may prevent a decrease in free-flowing capital from having substantial effects, if the flow of services is inhibited then the state may feel Brexit’s impact deeper within that industry.<sup>227</sup> Finally, restrictions on the “free movement of persons,” although perhaps seen as being mostly a matter of protecting and closing borders due to enhanced feelings of “nationalism,”

<sup>217</sup> Treaty on European Union, *supra* note 103, art. 50.

<sup>218</sup> *See id.*; TFEU, *supra* note 104, art. 218.

<sup>219</sup> Stephen Castle, *Britain’s Supreme Court Hears Legal Challenge to ‘Brexit’*, N.Y. TIMES (Dec. 5, 2016), <http://www.nytimes.com/2016/12/05/world/europe/brexit-supreme-court.html>.

<sup>220</sup> *Id.*

<sup>221</sup> Richard Allen Greene & Angela Dewan, *Brexit Ruling: UK Supreme Court Gives Parliament Article 50 Vote*, CNN, <http://www.cnn.com/2017/01/24/europe/brexit-article-50-supreme-court-ruling> (last updated Jan. 24, 2017, 7:39 AM).

<sup>222</sup> *Id.*

<sup>223</sup> *See* Bowler, *supra* note 212; Greene & Dewan, *supra* note 221.

<sup>224</sup> Martin, *supra* note 13.

<sup>225</sup> TFEU, *supra* note 104, arts. 28–37; *see* Treaty on European Union, *supra* note 103, art. 3; Taub, *supra* note 12.

<sup>226</sup> TFEU, *supra* note 104, arts. 45–66; Taub, *supra* note 12.

<sup>227</sup> TFEU, *supra* note 104, arts. 45–66; Chapple, *supra* note 33.

may very well have damaging and far-reaching impacts on the United Kingdom's "labor force" and job growth overall.<sup>228</sup> These economic impacts may arise due to a foreseeable decrease in the number of workers, brought about by the workers no longer being able to freely travel to the United Kingdom without the protection of the "free movement of persons."<sup>229</sup> In general, "there is a consensus that leaving [the EU] would hurt Britain financially, at least in the short term."<sup>230</sup> For these reasons, the United Kingdom's newly expanded independence is likely to come at a significant cost.<sup>231</sup>

### B. Europe

Due to the lengthy exit process following the Brexit referendum, the remaining EU member states are, and likely will remain, somewhat in flux until the United Kingdom actually leaves the EU.<sup>232</sup> Even so, Brexit is likely to have more negative consequences than positive consequences for Europe and the remaining EU member states.<sup>233</sup> Restrictions on the "free movement of goods" and the "free movement of . . . services and capital" have the potential to harm the remaining EU member states because these restrictions could lead to the loss of a major trading partner and source of investment: the United Kingdom.<sup>234</sup> However, it is also entirely possible that, due to the economic leverage of the United Kingdom (discussed above), the remaining EU member states will seek to maintain the economic status quo regarding their trade and monetary dealings with the United Kingdom.<sup>235</sup> Nevertheless, the potential still exists for negative impacts to arise due to the reduced exchange "of goods, services, [and] capital."<sup>236</sup> Additionally, it appears unlikely that the EU is going to make it easy for the United Kingdom to leave.<sup>237</sup> "EU negotiator Michel Barnier" has "warned Britain there would be no 'cherry-picking' on EU principles, such as access to the single market and

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<sup>228</sup> TFEU, *supra* note 104, arts. 45–66; Friedman, *supra* note 55; Taub, *supra* note 12.

<sup>229</sup> TFEU, *supra* note 104, arts. 45–66; *see* Treaty on European Union, *supra* note 103, art. 3; Taub, *supra* note 12.

<sup>230</sup> Taub, *supra* note 12.

<sup>231</sup> *Id.*

<sup>232</sup> Bowler, *supra* note 212.

<sup>233</sup> *See* Taub, *supra* note 12.

<sup>234</sup> TFEU, *supra* note 104, arts. 28–37, 45–66; Taub, *supra* note 12.

<sup>235</sup> Friedman, *supra* note 55.

<sup>236</sup> Martin, *supra* note 13; *see also* TFEU, *supra* note 104, arts. 28–37, 45–66; Taub, *supra* note 12.

<sup>237</sup> Sheena McKenzie, *UK May Only Have 18 Months to Conclude Brexit Deal, EU Warns*, CNN, <http://www.cnn.com/2016/12/06/europe/eu-brexite-negotiations-michel-barnier> (last updated Dec. 6, 2016, 1:54 PM).

freedom of movement.”<sup>238</sup> Additionally, “the EU has been assembling a formidable negotiating team for Brexit,” and Barnier has reiterated that “[m]embership of the EU comes with rights and benefits,” and “[t]hird countries can never have the same rights and benefits since they are not subject to [the] same obligations.”<sup>239</sup> Taken together, these recent actions and statements indicate that the remaining EU member states intend to preserve the “four freedoms” as a key component of what defines the organization.<sup>240</sup>

Finally, limitations on the “free movement of persons” are likely going to be the source of the greatest harm for Europe and the remaining EU member states after Brexit.<sup>241</sup> These potential limitations would prevent workers and other individuals from freely traveling from EU member states to the United Kingdom, which could have the effect of increasing the number of employees in the surrounding states, thereby placing greater strain on the European workforce (possibly driving up unemployment).<sup>242</sup> Additionally, the Brexit referendum, and the sentiments of “nationalism” that were behind it, could inspire other EU member states facing similar ideological movements to take comparable actions.<sup>243</sup> Put differently, Brexit “could give momentum to the nationalistic, anti-migrant message and policies of populist, far-right parties that are already rising across Europe.”<sup>244</sup> Therefore, Europe as a whole will likely incur negative consequences because of the Brexit referendum.<sup>245</sup>

### C. United States of America

As previously discussed, although not subject to the “four freedoms” of the EU, the United States will still have to face the impact and significance of the Brexit referendum.<sup>246</sup> Although most likely negative overall, Brexit’s impact on the United States differs from that of the United Kingdom and Europe in that it may be more positive to a certain degree. Brexit and the subsequent geopolitical “destabilization could affect the United States’ economy.”<sup>247</sup> As stated above, President Obama has warned that Brexit could

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> Martin, *supra* note 13; McKenzie, *supra* note 237.

<sup>241</sup> TFEU, *supra* note 104, arts. 45–66; see Treaty on European Union, *supra* note 103, art. 3.

<sup>242</sup> See Treaty on European Union, *supra* note 103, art. 3; TFEU, *supra* note 104, arts. 45–66; Taub, *supra* note 12.

<sup>243</sup> Friedman, *supra* note 55; Norris, *supra* note 51; Taub, *supra* note 12.

<sup>244</sup> Taub, *supra* note 12.

<sup>245</sup> See *id.*

<sup>246</sup> Martin, *supra* note 13; Taub, *supra* note 12.

<sup>247</sup> Taub, *supra* note 12.

substantially hinder the possibility of a trade deal between the United States and the United Kingdom.<sup>248</sup> However, others do not believe that trade between the two states will be significantly undermined.<sup>249</sup> In any case, due to a change in presidential administrations within the United States, it is difficult to predict the specific actions that will be taken regarding trade with the United Kingdom.

Although it is impossible to determine exactly what actions will be taken by the new administration in regard to Brexit, President Donald Trump does have ties to one of Brexit's major proponents: Nigel Farage.<sup>250</sup> "Farage, the former leader of the U.K. Independent Party and a vocal Trump backer," is one of the people who "campaign[ed] for the United Kingdom to leave the European Union."<sup>251</sup> Although President Trump and Mr. Farage have shown support for one another, the "government [of the United Kingdom] has struggled to establish relations with the Trump transition team after some senior British political figures harshly criticized him during the campaign."<sup>252</sup> Thus, it appears that Brexit has not overtly enhanced the relationship between the two states for the immediate future.<sup>253</sup>

Finally, "nationalistic" tensions that may exist within the United States could only be further exacerbated due to the Brexit referendum (and especially any resulting restrictions on the "free movement of persons"), as immigration remains a source of contention in the United States as well.<sup>254</sup> Therefore, although it has more potential to have various positive effects on the United States, Brexit will likely cast a negative shadow on the state overall.

## V. CONCLUSION

The history of, and rationales behind, the creation of the EU can act as a guide when attempting to discern what will occur as a result of the recent Brexit vote. More specifically, the "four freedoms" that frame the essence of the EU form a structure for analyzing the legal, economic, and geopolitical

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<sup>248</sup> *Post-Brexit Trade Deal with US Could Take 10 Years, Obama warns*, *supra* note 11.

<sup>249</sup> See 162 CONG. REC. E 1311 (Sept. 20, 2016) (statement of Rep. Poe); Penote, *supra* note 202.

<sup>250</sup> Rebecca Savransky, *Brexit Leader Farage to Attend Trump Inauguration*, THE HILL (Jan. 5, 2017, 8:59 AM), <http://thehill.com/homenews/campaign/312795-nigel-farage-to-attend-trump-inauguration>.

<sup>251</sup> *Id.*

<sup>252</sup> Stephen Castle, *U.K. Rejects Donald Trump's Call for Nigel Farage to Be Made Ambassador*, N.Y. TIMES (Nov. 22, 2016), <http://www.nytimes.com/2016/11/22/world/europe/uk-donald-trump-nigel-farage.html>.

<sup>253</sup> *See id.*

<sup>254</sup> TFEU, *supra* note 104, arts. 45–66; Taub, *supra* note 12; see Treaty on European Union, *supra* note 103, art. 3; Friedman, *supra* note 55; Norris, *supra* note 51.

ramifications of the Brexit referendum.<sup>255</sup> This referendum is material not only for the United Kingdom, but also for other international actors.<sup>256</sup> Because “[n]o nation state has ever left the EU,” a scenario similar to Brexit is practically unheard of.<sup>257</sup> Thus, the novelty of the referendum only adds to the precariousness that surrounds the coming months and years. Although they are inherently unknown in their entirety, the effects of Brexit will likely be harmful overall in regard to the United Kingdom, Europe (specifically the remaining EU member states), and the United States (although the impact here will likely not be quite as unfavorable).<sup>258</sup> Amidst all of the variability, one thing is undeniable: the international political landscape as we know it has changed, and will continue to change, as a result of the Brexit referendum.<sup>259</sup>

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<sup>255</sup> Martin, *supra* note 13.

<sup>256</sup> Taub, *supra* note 12.

<sup>257</sup> Wheeler & Hunt, *supra* note 5.

<sup>258</sup> Taub, *supra* note 12.

<sup>259</sup> *See id.*



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