THE IMPACT OF BRITAIN'S ACCESSION TO THE EUROPEAN COMMUNITIES ON THE COMMON LAW

On January 22, 1972 Great Britain signed the Treaty of Accession to the European Economic Communities. Thereby Great Britain undertook to become a member of the new political unit which is being formed in Europe, with equal status to France, Italy and the Federal Republic of Germany. This is a historical decision of momentous character, comparable to the Act for the Union of England and Scotland of 1706, which came into operation on May 1, 1707. It is an irretrievable step. The Treaty of Rome, which by its accession Great Britain has undertaken to honour, does not provide for a withdrawal of a member state by giving notice to the others but, on the contrary, provides in article 240 that "this Treaty is concluded for an unlimited period". The Parliament of the United Kingdom has relinquished its sovereignty over a great area of activities and cannot resume it without committing a breach of an international obligation. In matters of interpretation of the Treaty and the Community legislation, the English courts are no longer the ultimate arbiters but have to accept the ruling of the European Court in Luxembourg. A new era, full of hope and anxiety, has begun for Britain.

It is apposite to examine the impact which this development is likely to make on the common law which England shares with the Provinces of Canada, except Quebec, with other countries of the Commonwealth, with the United States and other nations. The examination will be restricted to the appraisal of the effect of the accession of Britain to the European Communities on English law; it is obvious that the effect on the laws of the other common law countries can only be indirect and will be much weaker.

THE PROVISIONS OF THE TREATY OF ROME

The approximation of laws is a declared aim of the Treaty of Rome, as far as this is necessary for the achievements of the aims of the Community.

Article 3 of the Treaty of Rome provides:

> ". . . the activities of the Community shall include, on the conditions and in accordance with the time-table provided in this Treaty:
>
> . . .
>
> (h) the approximation of the laws of the Member States to the extent required for proper functioning of the common market;
>
> . . ."

This object is then elaborated in articles 100 to 102, of which only the following passages need be quoted:

> "Article 100
>
> The Council shall, by an unanimous decision, on a proposal from the Commission, issue directives for the approximation of such provisions imposed by law, regulation and administrative action in Member States as directly affect the setting up or operation of the common market.
>
> . . .
>
> Article 101
>
> Where the Commission finds that a discrepancy between the provisions imposed by law, regulation and administrative action in Member States is interfering with competition within the common market and consequently producing distortion which needs to be eliminated, it shall consult the Member State concerned.
>
> If such consultation does not result in an agreement eliminating the distortion in question, the Council shall, on a proposal from the Commission, adopt the necessary directives for this purpose, unanimously during the first stage and thereafter by a qualified majority. The Commission and the Council may take any other appropriate measures provided for in this Treaty."

Relevant also is article 220 of which the following may be quoted:

> "Member States shall, so far as necessary, enter into negotiations with each other with a view to ensuring for the benefit of their nationals:
>
> . . .
>
> — the mutual recognition of firms or companies as defined in article 58, second paragraph, the maintenance of legal personality in the event of transfer of the registered office from one country to another, and the possibility of mergers between firms or companies which are subject to different domestic laws;
>
> — the simplification of the formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals and of arbitration awards."

Lastly, article 235 provides in general terms:

> "Where action by the Community appears necessary to achieve, in the course of operation of the common market, one of the objectives of the Community, and where the Treaty has not provided for the necessary powers of action, the Council shall, by unaimous decision, on a proposal from the Commission and after the Assembly has been consulted, take the appropriate steps."

The objects of approximation of law appear at the first glance to be strictly defined in articles 3(h) and 100, viz. approximation is only to be pursued "to the extent required for the proper functioning of the common market" and as far as national legislation or administrative action "directly affect the setting up or operation of the common market". But the common market is more than a customs union; it is conceived by the founding fathers of the new Europe as a single domestic market in which a free, i.e. unrestricted by national laws, circulation of goods, labour, services and capital can take place. This wide conception of the common market indicates that, narrow as the definition of the approximation of law in those articles appears to be, it covers in effect a wide area of activities. Added thereto is the power given to the Community by article 235. This article provides prima facie a *carte blanche* for the extension

of Community powers, as the Community itself expands but it has the built-in safeguard that a single member state can veto a measure founded on that article; moreover, the ultimate decision whether a measure can be founded on that article or is ultra vires the Council, rests with the European Court which would have to consider, in particular, two aspects, viz. whether the measure is "necessary" and whether it has to be taken "to achieve one of the objectives of the Community." It follows that the powers of the Treaty of Rome to approximate the laws of the member states are wide but not unlimited.

The measures by which an approximation can be carried out are a directive by the Council under articles 100 or 101, or a regulation under article 235, or a Convention under article 220. All these measures have, in practice, been used or are in the process of being used.

The measures by which an approximation can be carried out are the directive by the Council or a Convention between the member states. An illustration of a Council directive is the First Council Directive on Company Law Harmonisation of March 9, 1968.[1] This directive, however, is not founded on article 100 but on article 54(2) which is to be found in the section dealing with the right of establishment. The proposed introduction of the European Company will be carried out by a Council directive significantly founded on article 235. As regards Conventions, Convention on Jurisdiction and the Enforcement of Civil and Commercial Judgments was signed on September 27, 1968 but has not come into effect yet; it was concluded for the purpose of implementing the provisions of article 220. On February 29, 1968 the then member states of the Community signed a Convention for the Mutual Recognition of Companies and Corporations, which likewise has not come into force yet; this Convention was also based on the provisions of article 220.

By the Treaty of Accession the United Kingdom undertook to give effect to the Community legislation already in force. In performance of that obligation the European Communities Act 1972 was passed.[2]

The impact which Community legislation by directive or Convention will make on English common law will be considerable as time goes on but, although directing the common law into new channels, it will not affect its fabric. It may be a considerable factor in the modernisation of English common law. A similar though less spectacular influence will be exercised by the case law of the European Court.

1. See Eric Stein, **Harmonisation of European Company Laws**, Bobbs-Merrill Company Inc., 1971, 515.
2. For a comment on that article, when it was still a Bill, see [1972] J.B.L. 85, 162.

THE MAINTENANCE OF THE FABRIC OF ENGLISH COMMON LAW

It need not be feared that the approximation of law within the European Community will affect what the British people and lawyers regard as essential in their legal system. The Treaty of Rome does not demand a unification of law, and certainly not a unification of law on the basis of civil law concepts which are alien to British political and legal thought. There is no doubt that the political achievements which have stamped their characteristics on English law will be left unimpaired. Habeas corpus will continue to protect the personal liberty of the citizen, the jury system in criminal cases will be retained although, as is well known, the requirement of unanimity of the jury was modified in England by the Criminal Justice Act 1967, s. 13—a measure entirely unconnected with Britain's accession to the Common Market and not of fundamental importance, particularly if one considers that unanimity was never a requirement of Scots law. Further, the method of appointing judges from the ranks of distinguished practitioners will be continued in England; there is no need to adopt the European continental system of the career judge, although, of course, great changes in the organisation of the English courts were introduced by the Courts Act 1971, but they were again unconnected with Britain's accession to the Common Market and motivated by our desire to make our court system more efficient. We need not introduce the European system of administrative law and administrative courts organised on the model of the *Conseil d'Etat*, as can be seen from the fact that we modernised our own system by the Tribunals and Inquiries Act 1971. The adversary system of procedure typical of English law will not give way to the continental procedure of inquisitorial character; the doctrine of precedent will continue to apply, although it has been greatly modified in England, as far as the Court of Appeal is concerned by *Young* v. *Bristol Aeroplane Co. Ltd.*[3] and as far as the House of Lords is concerned by the Practice Statement (Judicial Precedent) of 1966,[4] but it has been recently reasserted with vigour in *Broome* v. *Cassell & Co.*[5] There is no intention of codifying English law as a whole on the pattern of continental law, although more areas of that law will be expressed in statutory form, particularly when the great work on which the Law Commission in England has been working for some time, the codification of the Law of Contract, is concluded and translated into law. English law will continue to be a law developed by practitioners and not by professors, it

3. [1944] K.B. 718.
4. [1966] 1 W.L.R. 1234.
5. [1972] 2 W.L.R. 645.

will retain its pragmatic character and will not adopt the continental deductive method. Naturally it will continue to evolve and change; the modern English lawyer is very conscious of the defects in his legal system and desirous of remedying them, but that reform will, apart from the areas to which reference will be made presently, be conditioned by the rapidly changing social conditions of his own country rather than by the desire to carry out a fundamental change in order to comply with the legal development of the other member states in what before long will be a new political unit, the United Europe. The fundamental affinity of English law with the other systems of the common law will thus be preserved and England will continue, as before, to be a member of the common law legal family.

THE IMPACT OF COMMUNITY LAW ON ENGLISH CONSTITUTIONAL LAW

On the other hand, in many areas of English law the influence of Community law will be considerable. The accession of Britain to the Communities means, essentially, that English law will cease to be a one-tier law and become a two-tier law, as the law of most federal states. Before the accession, the English legal system was one of comparative simplicity; the practising lawyer was only concerned with one legal system, namely his own. He had not even to take notice of international obligations into which the Government of the United Kingdom had entered because, as international treaties and conventions are not self-executory in English law, he could wait until they were introduced into his municipal law.

This simplicity of English law is now lost. In many fields the lawyer will have to consider two legal systems, municipal law and Community law. To him Community law will become as important as municipal law and he cannot advise his client competently unless he masters both legal systems.

This dualism will make itself particularly felt in the field of constitutional law. Questions will arise whether any of the Community organs, the Commission or the Council, have acted within the powers conferred upon them by the Treaty of Rome or whether a particular measure can be challenged in the European Court as being ultra vires. Even more important is the question whether a contract or arrangement or a United Kingdom statute or statutory instrument contravenes a provision of the Treaty, a question which can arise incidentally in every type of litigation in an English court. This raises the problem whether the court in which

this issue arises can be asked to state a case for the decision of the European Court. Article 177 provides that the European Court shall have jurisdiction to give preliminary rulings concerning:

> "(a) the interpretation of this Treaty;
> (b) the validity and interpretation of measures taken by the institutions of the Community;
> (c) the interpretation of the statutes of bodies set up by a formal measure of the Council, where those statutes so provide,"

The article further states that any court or tribunal of a member state *may* ask for such a preliminary question to be considered by the European Court but that if a question of the nature indicated above arises in a court or tribunal "from whose decisions there is no possibility of appeal under internal law" that court or tribunal *shall be bound* to state a preliminary question for the decision of the European Court. These are novel problems for the English lawyer but problems with which the Canadian or American lawyer is conversant. The addition of Community law will thus introduce a new dimension into English constitutional law.

Further, some measures enacted by the Community authorities will become automatically operative in the United Kingdom, in that respect Community law is self-executory. According to article 189, the Council and the Commission of the EEC may act by issuing regulations, directives, decisions and recommendations or opinions. A regulation "shall take direct effect in each member state". A directive is addressed to the Governments of the member states, leaving it to them to choose the form and method of giving effect to it. Decisions are only binding upon the parties to the dispute, and recommendations and opinions are not binding at all. The regulations of the Community organs have to be published in the official journal of the Community and, unless otherwise provided, will come into operation on the twentieth day following their publication. Here, then, is a new source of law which will influence English law directly and mould its character.

THE IMPACT OF COMMUNITY LAW ON REVENUE LAW, IMMIGRATION LAW AND THE LAW AFFECTING THE PROFESSIONS

In these areas Community law will also make a direct impact on English law. The present purchase tax of the United Kingdom will be abolished and a system of value added tax (v.a.t.) will have to be introduced. All member states of the Community will have to adopt that tax sytem. The proceeds of that tax will have to be handed over to the Com-

mission and used for the financing of the Community. While the basis of this turnover tax will be identical in the Community countries, the rates of taxation may vary. Naturally the customs laws providing for import duties from the other countries of the Community have to be altered and these duties have to be removed, at least after the transitional period. At the same time, the imperial preference system founded on the Ottawa Act 1938 and continued by the United Kingdom Import Duties Act 1958 has to be abolished and will cease to exist after the transitional period, which will mean that from that time onwards imports from the other countries of the Commonwealth will cease to enjoy preference as to import duties in the United Kingdom. The exchange control regulations protecting the sterling currency will have to be abolished, as far as the Community countries are concerned, and the sterling area will have to be dismantled; in fact, a beginning has been made with this already by providing, for the first time, that certain transfers of sterling to other members of the sterling area shall require Treasury permission; the newly controlled area within the sterling area is called the external account area. These measures are obviously necessary to constitute a single tariff area and a single capital market.

In addition, the British immigration statutes will have to be modified. Articles 48 to 84 of the Treaty provide for the free movement of persons, services and capital. Article 48(2) states:

> "[Freedom of movement] shall entail the abolition of any discrimination based on nationality between workers of the member states, as regards employment, remuneration and other conditions of work and employment."

The United Kingdom Immigration Act 1971 is not reconcilable with the regulations made by the Community.[6] Professor K. R. Simmonds says:[7]

> "There are two main reasons for immediate and serious concern over the unhappy position. The first relates to what may well be a fundamental misunderstanding by the British Government of the Community's novel and autonomous legal order. The second derives from a fear that the British Government may, when faced directly with the need to bring its legislation into line with Community requirements, both continue to assert that the latter's system of freedom of movement is 'dominated by economic and social factors, rather than by regulations' and to persist in the view that immigration control and the free movement of Community workers present essentially disparate and separate problems."

As regards members of the professions, including lawyers, there is no doubt that the provisions on the right of establishment relate to them, so that, at least in theory, a member of the French Bar would be entitled

6. K. R. Simmonds, "Immigration Control and the Free Movement of Labour: A Problem of Harmonisation", in **International and Comparative Law Quarterly**, 1972, 307.

7. Pp. 317-318.

to establish himself in England and have the right of audience in the English courts and vice versa. Article 55 provides, however:

> "The provisions of this Chapter shall not apply, so far as any given Member state is concerned, to occupations which involve in that state, even occasionally, the exercise of official authority.
> The Council may, by qualified majority decision on the proposal from the Commission, decide that the provisions of this Chapter shall not apply to certain occupations."

In order to facilitate access and pursuit of self-employed professions, article 57 provides that the Council shall issue directives for the mutual recognition of diplomas, certificates and other evidence of qualifications, but in the case of the medical, para-medical and pharmaceutical professions the progressive removal of restrictions shall depend upon the co-ordination of the conditions for exercising them by the member states. It cannot be envisaged that the realisation of these principles will be carried out in the near future and, if accepted, that it will be carried out without qualifications.

THE IMPACT OF COMMUNITY LAW ON COMPETITION LAW AND COMPANY LAW

In these two areas the impact of Community law on English law is particularly strong, as the provisions of sections 9 and 10 of the European Communities Act 1972 indicate. The competition provisions of the Treaty of Rome are contained in articles 85 to 90 and are supplemented by several important regulations issued by the Commission, of which the most important are Regulations 17 of 1962 and 67 of 1967. Numerous cases of the European Court deal with competition law, particularly the following: *Grundig-Consten*,[8] *G E M A*,[9] *Continental Can*,[10] *Beguelin*,[11] *and I C I*.[12] Community competition law is not only different in conception from the British Monopolies and Restrictive Trade Practices Act but it is also much stricter. The Community authorities are bent to create a single market in the territory of the Community and will not tolerate any compartmentalisation into national markets. They pursue this aim with utmost severity as can be seen from the *ICI* case[12] in which they assumed extraterritoriality from the competition rules of the Treaty and fined ICI, a British company,[13] £50,000 for contravening

8. Decision of September 23, 1964, published in Journal Officiel of October 20, 1964, 2545.
9. Decision of June 2, 1971, published in J.O. of June 20, 1971, p. 15.
10. Decision of December 9, 1971, published in J.O. of January 8, 1972, 25.
11. Decision of November 25, 1971, (Case 22/71).
12. Decision of July 14, 1972 (Case 48/69).
13. At the time of this judgment Great Britain was not a member of the European Economic Communities yet.

the prohibition of "concerted practices" which might result in the distortion of the common market. Only in case of insignificant infringements and as far as small enterprises are concerned, have the authorities shown some leniency. In course of time Community competition law will be of greater significance to British enterprises than internal British competition law which at present is being reformed in order to correspond to the provisions of Community law. Companies outside the Community which wish to do business in Community territory through subsidiaries or branches or sole distribution agreements, are well advised to keep themselves informed of the Community regulation and not to infringe them because such an infringement may be a costly affair.

In company law only one directive of the Council, that of March 9, 1968,[14] is already in operation but several others exist in draft form and indicate the shape of things to come. In order to comply with the First Directive of the Council section 9 of the European Communities Act 1972 provides considerable amendments of the Companies Acts 1948 and 1967.[15] The ultra vires rule, although not abolished, has been considerably restricted and can no longer be relied upon by the company against a third party acting in good faith, and "good faith" means in this connection actual notice; constructive notice of any restrictions of the company's powers is excluded. Consequently, *Ashbury Railway Carriage and Iron Co.* v. *Riche*[16] and *Re Jon Beauforte (London) Ltd.*[17] will cease to be law, but *Parke* v. *Daily News Ltd.*[18] will remain good law. Further, the restrictions on the rule in *Turquand's* case[19] which earlier cases have imposed on that rule will no longer apply and third parties will be able to rely on the authority of the directors to act on behalf of the company. Further, the Registrar of Companies must cause to be published in the London Gazette an official notification of important events in the life of the company, such as its incorporation, amendments of its memorandum and its articles of association, and its winding up, and these events cannot be relied upon by the company against a third party who does not have actual notice of them, except when fifteen days have elapsed after the official notification in the Gazette.

It is not intended to analyse here in detail the various draft directives on harmonisation of company law within the Community which have been published and are being discussed at present. They concern such matters as harmonisation of accounts, the law of internal mergers, the

14. See note (1), ante.
15. See Editorial note in [1972] J.B.L. 85-87.
16. (1875) L.R. 7 H.L. 653.
17. [1953] Ch. 131.
18. [1970] Ch. 199.
19. Royal British Bank v. Turquand (1856) 6 E. & B. 327.

structure of the company and groups of companies. It is sufficient to indicate here the general trend of the development.

The Community authorities are evidently guided by two considerations. In a society, such as a free market society, which exists in all countries of the Community, the creation of a single market is only possible if the company laws of the member states are essentially identical. In those countries the economy is essentially founded on the legal form of the company, and if there is to be a single market that form must be more or less identical in the various member states. If it were different, there would be a flight of companies to a particular national unit in the common market, as is the case in the United States of America where Delaware has become the company haven, owing to its lenient company laws. Europe wants to avoid Delawares, and as the Treaty does not provide powers to unify the various systems of national company laws—which, perhaps, was a shortcoming of the Treaty—the only way open to the Community authorities is to prescribe harmonisation by directive. The result will be that, although the company laws of the member states will not be identical, they will at least be similar in outline, and thus the temptation of companies to transfer the registered office or the *siège social* to a particular country within the Community will be reduced. It is not easy to achieve this goal. European national company laws differ considerably in many aspects and some definite areas of conflict are discernible. First, there is the fact that English and Dutch company law do not prescribe a minimum capital for any type of company, whereas the company laws of the other Community countries do. Secondly, the relationship between the private and the public company is fundamentally different in the various Community countries. In Holland the private company, the *besloten vennootschap*, was introduced only in 1971, and in English law the true nature of the private company was recognised only recently as the result of *Bushell* v. *Faith*[20] and *In re Westbourne Galleries Ltd.*,[21] whereas in all other countries of the Community the nature of the private company as a form of business sui generis has always been recognised. Thirdly, the organisation of the board of directors is in issue; the German system of a dual board, viz. a managerial board and a board of supervision, has attracted much attention in Europe; it has been adopted as an optional system by the French loi sur les sociétés par actions of 1966 and as an obligatory requirement by the Dutch statute of 1971 for companies of a certain size. Fourthly, and this is the most difficult problem, German company lawyers insist on the adoption of their system of participation and co-determination of employees on the supervisory board, a system which

20. [1970] A.C. 1099.
21. [1972] 2 W.L.R. 1289.

is not known in that form in the other Community countries although most of them have developed some form of participation or at least consultation of the employees. These are formidable problems for the company lawyers of the Community but with goodwill on all sides a compromise solution can be reached.

The second major problem which confronts the Community in company affairs is that there can be no single market if the law does not admit mergers across the frontiers. The concentration and rationalisation of industry which must take place in Europe in order to enable European industry to meet the challenge of the American giants must not be determined by national considerations but must be determined by purely managerial requirements against the background of the Community territory as a whole. That, however, is only possible if Community law admits mergers across the frontiers. It may be recalled that article 220, which was quoted earlier, requires Community measures enabling the transfer of the registered office of the company from one country to another and the possibility of mergers of companies which are subject to different domestic laws. The ultimate aim of the draft directive on internal mergers which is discussed at present by the Community authorities is to pave the way for a further measure admitting mergers across the frontiers. Clearly such mergers are only feasible if the internal merger procedures in the various member states of the Community are similar. But even if eventually mergers across the frontiers can be carried out, an emotive problem of some importance remains: if such a merger takes place, the company of one of the member states absorbs the company of another. That may raise a delicate problem of national pride. The citizens of the member states do not consider themselves at present only as Europeans but look upon themselves as Frenchmen, Germans, Italians and so forth. To avoid this dilemma, the Committee adopted a draft directive for the creation of a European Company and submitted it to the Council on June 30, 1970. Such a company, which will be known as Société Europenne or SE, will have the status of a national company in every Community country; it will be formed by registration with the European Court in Luxembourg. At present the Council of the Community deliberates on the proposal of the Commission.

Before long—and this may take scme years—the aims of the Community authority to create a non-discriminatory system of national company laws in the Community by harmonising them and to admit concentration of industry by combination across the frontiers will be achieved. These measures will totally change the present character of English company law. Here the impact of Community law will be very great. Indeed, company law, owing to the position which the company holds in the economy of all Community countries, will be the spearhead of unification of commercial law in the Community.

THE IMPACT OF COMMUNITY LAW ON COMMERCIAL LAW

Apart from the areas just discussed, relatively little activity can be discerned at present in Community circles with respect to the harmonisation or unification of commercial law. Projects are being discussed about the harmonisation of the law of bankruptcy and security for creditors, including guarantees and sureties, but they are still in a preliminary stage.

This tranquility, however, is deceptive. The formation of the Community has, in fact, produced a desire on the part of the member states to act together in matters of importance. This tendency was first noticeable when the Kennedy round of tariff reductions was negotiated; it has been evident ever since. This tendency to act as a political unit is noticeable also in the attitude of the Community members to international Conventions affecting commercial law. Before long all members of the Community will have a uniform law of sales, as far as transactions across the borders are concerned. They will all have adopted the Hague Conventions on Uniform Laws relating to the International Sale of Goods of 1964. At present these Conventions have been adopted by the United Kingdom which enacted them by the Uniform Laws on International Sales Act 1967, and by Belgium, the Netherlands and Italy; Israel has likewise adopted the First of these Conventions, viz. that on International Sales. It is perhaps a paradox that the uniform laws of the Community countries should be founded on a Convention dealing with "international" sales when they strive to cease to be international and to form a supra-national unit. But this legal regime is readily available and its adoption is better than nothing or than the negotiations of a new uniform Community sales law which would take many years to achieve. Similarly we may expect a uniform attitude of the Community countries to other measures aiming at the unification of the law of international trade at present considered by UNCITRAL, particularly the UNCITRAL Draft Convention on Limitations and Prescriptions of Claims arising from an International Contract of Sale. They will also act in unison when the new international payment instrument prepared by the International Chamber of Commerce under the aegis of UNCITRAL will be ready for acceptance. Lastly, the suggestion for a European Patent Convention is well advanced; indeed, it is reported that agreement has been reached that the seat of the European Patent Office shall be in Munich but that there shall be an ancillary office of that body in London.

The harmonisation or unification of areas of commercial law apart from the law of competition and company law is thus not the immediate concern of the Community. Taking a long term view, the more the Community becomes established and the ideal of the single market is

realised, the more the need for harmonisation of wide areas of commercial law will become evident.

CONCLUSIONS

The fact that Great Britain has joined the European Communities will not alter the essential fabric of the common law system accepted by Great Britain and the adherence of that country to the legal family of the common law will not be affected. In the English courts the decisions of the higher courts in the common law countries have the character of persuasive authority and the English courts have often emphasised the need to maintain the unity of the common law, particularly in matters of commercial law. These attitudes will remain unaltered.

On the other hand, considerable areas of English law will be directly affected by Britain's accession to the Community. These areas are constitutional law, revenue law, immigration law, law relating to the professions, above all competition law and company law, and commercial law in general. If the aims of the Community are to be achieved, there must be a considerable degree of harmonisation, if not unification, particularly in the law of contract and in commercial law, in addition to competition law and company law where the need for this movement is already generally recognised. Indeed, one may ask whether the time has not come for the creation of a European Law Commission charged with the unification of the law of contract and commercial law. Even if the English Law Commission, as is certain, will attempt to harmonise its Draft Code of the Law of Contract with continental conceptions, as far as the fundamental ideas of the common law allow, it seems futile for it to proceed in isolation. It is to be regretted that no institutional framework exists as yet in which this reform of branches of law essential for the free movement of goods, services and capital can be prepared for all Community countries.

To the common lawyer outside England the impact which Britain's accession to the Community will make on English law means this. England has opened a window to the Continent and is taking a good look at what is going on there in the legal world. Apart from the areas in which the provisions of the Treaty require alteration, English law is not in a mood to accept continental legal notions unless satisfied that they lead to an improvement of her law and can be reconciled with the fundamental concepts of her common law. England will thus become a filter through which useful continental ideas may enter the common law system. This is bound to have a radiation effect on other common law countries. This exchange of legal experience is nothing new. Bracton,

who wrote his *De Legibus Angliae* in the thirteenth century, knew a good deal of Roman law, and an American author[22] wrote of Montesquieu: "If one could name a single parent to our Constitution, it would be Montesquieu." The cross-fertilisation of legal ideas can only produce benefits for all concerned.

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22. René A. Wormser, **The Law**, New York, 1949, 220.

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