Brexit: The Game is Afoot

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David Cameron has announced that the British referendum on remaining in the EU will take place on June 23, 2016 and the news media are awash with comments on the pros and cons of a possible Brexit.

However, much of what his being discussed in the press about Britain's relationship with the EU leaves out many important aspects of the EU and Britain's place in it. The very basis of the British Common Law is antithetical to the legal structure and procedures in the EU. The British rules on competition are antithetical to the cosy cartels which govern much of European commerce. The continuing misuse of unaudited funds in the Common Agricultural Policy are an impediment to British international trading in agricultural products and have caused a great deal of harm to African economies. British fishermen are severely hampered in their rights to fish while allowing flotillas of foreign fishermen to fish in British waters. British scientific achievements in the production of improved crops has been impeded by the EU as have its efforts to produce shale gas and oil by a cloud of false claims and assertions by the energised Greens of the Union. The European nations have woefully degraded their military capacities over the years and have not kept up their commitments to NATO while, at the same time, engaging in military adventurism in the Middle East and North Africa which demand a British participation as part of the legacy of the EU. These points have never been raised as a part of the campaign to remain or leave the EU although they are as least as important as changes in the provision of child benefit or social welfare payments

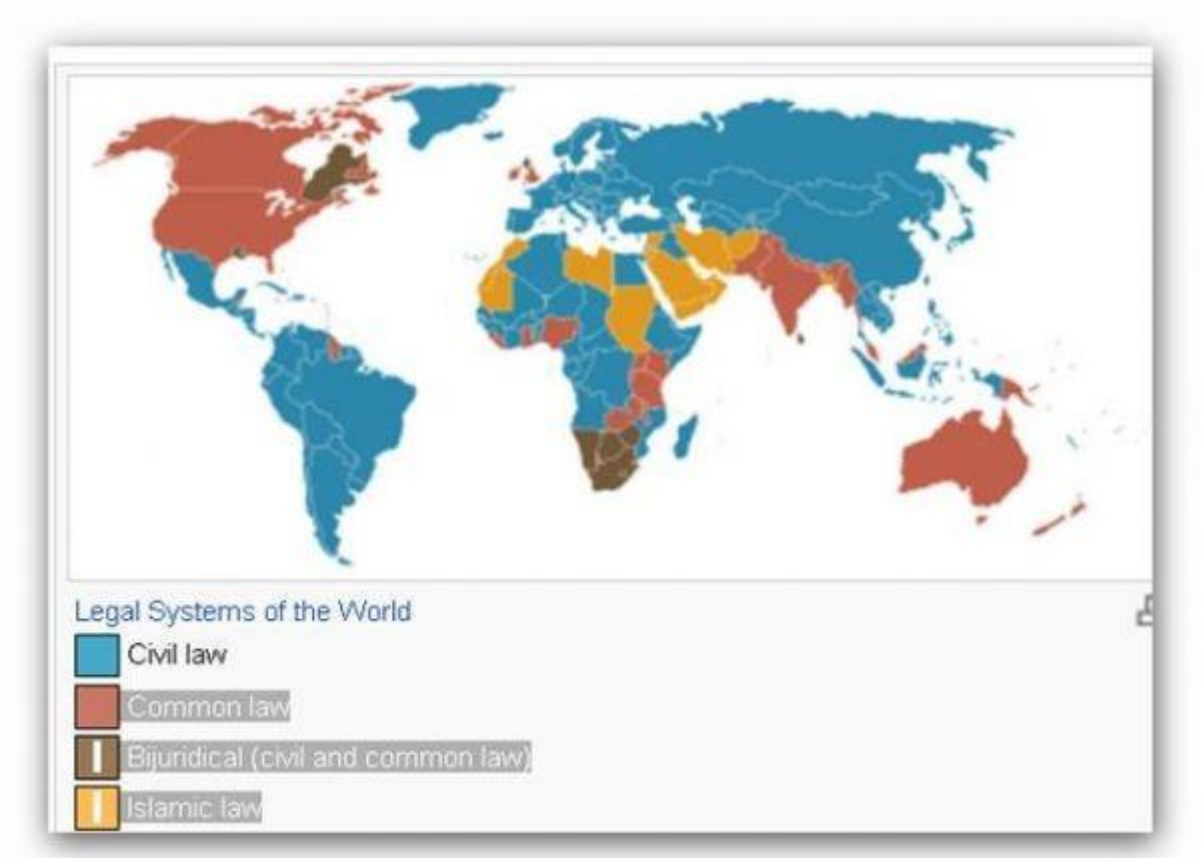
The Conflict of Laws:

There are many reasons why the European Union has failed in its task to create a system of democracy, fairness and transparency in its internal dealings. These include political corruption, economic ineptitude and the elites' adherence to the religion of federalism among states and citizens whose agnosticism to that faith is proven at every referendum. The political and economic vacuity of the European bureaucrats is a heavy burden for any organisation to bear. However, despite the manifold failings of the leadership of the EU, the root cause of its incapacity lies elsewhere.

There is a fundamental problem which has beset Britain's relationship with the European Community since its inception; the conflict between the Common Law and the Roman-Dutch civil law of the Continent. In essence, the Common Law legal systems are in widespread use, particularly in England where it originated in the Middle Ages, and in nations or regions that trace their legal heritage to England as former colonies of the British Empire. It is a system of law which is founded on case law and precedents. This Common Law was developed by judges through decisions of courts and similar tribunals rather than through legislative statutes or executive branch action. The fundamental principle is that of the continuity of the law and the root belief that it is unfair to treat similar facts differently on different occasions. The body of precedents developed through prior adjudication binds future legal decisions on similar points of law. In cases where the parties disagree on what the law is, a common law court

looks to past precedential decisions of relevant courts. If a similar dispute has been resolved in the past, the court is bound to follow the reasoning used in the prior decision (this principle is known as Stare Decisis). If, however, the court finds that the current dispute is fundamentally distinct from all previous cases (called a "matter of first impression"), judges have the authority and duty to make law by creating precedent. Thereafter, the new decision becomes precedent, and will bind future courts.

This system of Common Law is the source of law in England, the United States, Canada, New Zealand, Australia and the former British colonies in Asia, Africa and the Caribbean. This Common Law distinguishes itself from Statutory or Regulatory Law promulgated by executive branch agencies pursuant to delegation of rule-making authority from the legislature and is generally anterior to these statutory or regulatory laws. The Common Law arises from the traditional and inherent authority of courts to define what the law is, even in absence of an underlying statute, Most criminal law and procedural law; most of contract law and the law of torts; and court decisions that interpret and decide the fine boundaries and distinctions in law promulgated by other bodies relies on judges taking evidence in an adversarial proceeding and delivering a judgement which establishes the strictures of the ensuing law. This body of common law, sometimes called "interstitial common law," includes judicial interpretations of the Constitution, of statutes, and of regulations, and examples of application of law to facts.[i][i] The table below contains essential disparities (and in some cases similarities) between the European two major legal systems[ii][ii]



This Common Law system is very different that the civil law system which prevails in Europe. Common law systems place great weight on court decisions, which are considered "law" with the same force of law as statutes. For nearly a millennium, common law courts have had the authority to make law where no legislative statute exists, and statutes mean what courts interpret them to mean. By contrast, in civil law jurisdictions courts lack authority to act where there is no statute, and judicial precedent is given less interpretive weight which means that a judge deciding a given case has more freedom to interpret the text of a statute independently, and less predictably. For example, the Napoleonic code expressly forbade French judges from pronouncing general principles of law.

	Common law	**Civil law**
Other names	Anglo-American, English, judge-made	Continental, Romano-Germanic
Source of law	Case law, statutes/legislation	Statutes/legislation
Lawyers	Control courtroom	Judges dominate trials
Judges' qualifications	Experienced lawyers (appointed or elected)	Career judges
Degree of judicial independence	High	High; separate from the executive and the legislative branches of government
Juries	Provided at trial level	May adjudicate in conjunction with judges in serious criminal matters
Policy-making role	Courts share in balancing power	Courts have equal but separate power

Civil law is a legal system inspired by Roman law and whose primary feature is that laws are codified into collections which are referenced. Conceptually, it is the group of legal ideas and systems ultimately derived from the Code of Justinian, but heavily overlaid by Germanic, ecclesiastical, feudal and local practices as well as doctrinal strains such as natural law, codification, and legislative positivism. Civil law proceeds from abstractions, formulates general principles, and distinguishes substantive rules from procedural rules. It holds legislation as the primary source of law, and the court system is usually inquisitorial, unbound by precedent, and composed of specially trained judicial officers with a limited authority to interpret law. Juries separate from the judges are not used, although in some cases, volunteer lay judges participate along with legally trained career judges. European civil law relies on the notion of **codification.** The concept of codification was developed as conforming to a political ideal which required the creation of certainty of law, through the recording of law and through its uniformity.[iii][iii]

The principle of civil law is to provide all citizens with an accessible and written collection of the laws which apply to them and which judges must follow. Where codes exist, the primary source of law is the law code, which is a systematic collection of interrelated articles arranged by subject matter in some pre-specified order, and that explain the principles of law, rights and entitlements, and how basic legal mechanisms work. Law codes are usually created by a

legislature's enactment of a new statute that embodies all the old statutes relating to the subject and including changes necessitated by court decisions[iv]

There are many differences between the Common Law and civil law, much too abstruse for this analysis. For the purpose of analysing the conflict of laws within the European Union a simple concept will suffice. This was recited to me by the new head of the Legal Division of the European Economic Community in the early 1970s. I was researching and writing a television documentary for the Canadian "Windows on the World" (CTV) called "The New Europeans". The legal head of the EEC was a British lawyer. He said to me, "This European Community will never work. English law says that whatever is not 'illegal' is permitted. In Europe, if something is not specifically 'permitted' under some codified rule, then it is 'illegal'. He went on to say that not only must everything be specifically permitted it has to be permitted uniformly throughout the Community. That is why there are so many directives, guidelines and rules set up by the EU which govern all aspects of economic and political life. All these rules must be the same throughout the EU. Most of the time taken up by the EU (except for the profitable business of allocating subsidies, allowances and quotas) is spent dealing with the minutiae of governance.

This is a core reason why the EU is bogged down by pettifoggery and why the English cannot fathom what these bureaucrats are about. If it isn't illegal than one should be free to do it. It certainly makes sense to Americans, Canadians, Australians and others. This conflict of laws is equally a challenge to multinational companies attempting to pursue their aims in the EU. Much of what is taken for granted as legal and permissible in other parts of the world is differently construed in Europe. This is repeated in Africa where ex-British colonies are often in conflict with ex-French, Spanish and Portuguese colonies. This issue is an important factor in the current debate on the imposition of a tax on financial transactions. It is a dilemma for those involved.

The rise to prominence of the European Court of Justice after the Amsterdam Treaty in 1997 has created a European central court tasked with interpreting EU law and ensuring its equal application across all EU member states irrespective of their domestic legal systems and practices which may be in conflict with the constructs of European civil administrative procedures. In addition, the EU has created a European Court of Human Rights which hears applications alleging that a contracting state has breached one or more of the European Convention on Human Rights concerning civil and political rights set out in the Convention and its protocols. Neither of these courts have provisions for regulating the conflicts of law between the two legal system.

The Europe of Cartels:

One of the main groups of supporters of the campaign to have Britain stay in the European Union are the large multinational businesses operating in Britain. For them, remaining in Europe is a very important issue and one which they support financially and politically. They make many assertions about the value of Britain staying inside the EU but they never mention that a key defining principle of doing business within the EU is that many, if not most, European industries operate outside the rules of free competition. Most operate as cartels; groups of businesses in the same industry which meet together and establish prices and

working relationships. They don't call this operating a cartel; the polite euphemism is "operating an orderly market". They set high prices for the goods they produce, sure in the knowledge that their cartel will prevent any other company underbidding them on price. There are EU cartels for steel, sugar, milk, transport, cement, food production, pharmaceuticals, electrical goods, paper and paper products, computers, cars, construction, mobile phones and many others. This both raises prices and inhibits innovation. The EU competition authorities are notoriously slow in prosecuting cartels but have been able to proceed against some.

EU Fines Imposed on Cartels 1990-2016

Year	Amount in €*)
1990 - 1994	539 691 550
1995 - 1999	292 838 000
2000 - 2004	3 462 664 100
2005 – 2009	9 414 012 500
2010 – 2014	8 930 678 674
++2015 - 2016++	502 320 000
total	**23 142 204 824**

There are over 25,000 paid lobbyists firms in Brussels seeking to promote the corporations and reducing fines for pursuing policies which impair competition. They are well-funded.

I have had first-hand experience with how these cartels work. My company was engaged in the international trade in cement. We traded in Africa, the U.S. and in Britain. When we established our UK operation we were approached by several producers seeking to discuss our place in the orderly marketing arrangements. We were informed that on the last Thursday of every month the European cement producers would have their monthly meeting at the Hyde Park Hotel where access to the European market and projects coming up would be discussed and contracts allocated in the "ring" of the producers. We decided that this was not the way we wanted to do business so thought we could do business without the cartel. It was not a wholly successful position to take as we faced retaliation. It was not that they companies took any action against us per se but they informed all of our cement buyers that if they bought from us they would not be able to buy sand or stone or other materials except at a very high price.

We went to Brussels to meet with Leon Brittan, the European Competition chief and told him about the cartel and what it was doing. He investigated and proceeded to examine the evidence. In an ironic turn of events the Cement Cartel had put a Swiss man from Holderbank as the secretary of the cartel. He took notes and circulated them to the attendees at the Hyde Park meetings. Being Swiss he was very efficient and thorough in his notes. When Leon

Brittan's investigators raided the offices of the largest Belgian cement producer they found the circulars sent out by the Swiss secretary of the cartel, labelled "European Cement Cartel". The Belgians had a hard time trying to explain that no such cartel existed.

The EU announced a fine of € 93 million against the various producers identified as being members of the cartel. The lobbyists were able to reduce this by more than 85%. In the spring of 2002, the German Federal Cartel Office (FCO) uncovered a hardcore cartel in the cement sector. Numerous cement producers had divided the German cement market among them, agreed on sales quotas, and fixed prices, since the beginning of the 1990s at the latest. Readymix AG disclosed the cartel agreements to the FCO and applied for leniency under the German leniency programme. In April 2003, the FCO imposed a fine totalling €702 million on 12 companies and their representatives, €660 million thereof on the six largest German producers. The lobbyists were able to get this reduced substantially and there are current proceedings seeking to reduce it further.[v]

The best descriptions of the hindrances created by EU commercial policies comes from Sir James Dyson who sued the EU for creating a standard for vacuum cleaners which was biased in favour of German manufacturers. He lost. He has recommended that Britain leave the EU for its bias and lack of receptivity to new technology. In November 2014 he stated on BBC Radio 4 "I think it's a European Union dominated by Germany, and in our particular field we have these very large German companies who dominate standards setting and energy reduction committees, and so we get the old guard and old technology supported and not new technology. I want to keep EFTA – European free trade – and free movement of peoples, but I don't see that we need to be dominated and bullied by the Germans."vi

This has been echoed by many British entrepreneurs as they face the dilatory and regressive commercial aspects of the EU market.

THE COMMON AGRICULTURAL POLICY

Perhaps one of the most controversial aspects of the EU interference in commercial markets has been the Common Agricultural Policy ('CAP') for agricultural products (including fisheries). Until recent reforms the CAP consumed almost 90% of the EU Commission's budget. It is down now to around 45%. The CAP is responsible for direct financial assistance payment for crops and land, including guaranteed lowest amount prices, tariffs and quotas on goods from outside to EU. The design of a common agricultural policy was proposed by the European Commission with the Treaty of Rome in 1957, which established the Common Market. The CAP was established as the result of a political compromise between France and Germany. German industry would have entrance to the French market; in exchange, Germany would provide assist for France's largely inefficient and small farmers.

The main element of the CAP was a price support mechanism by which the Council of Ministers set a target price that farmers should receive for each product.

a. A floor (or 'intervention') price by which, if prices fell below this level, the EU would intervene and buy some of the product to stop prices falling.

b. A ceiling (or 'threshold') price by which, if prices rise above this level, the EU would allow imports of the product, so encouraging prices to fall back towards the target.

The procedures surrounding the application caused distortions to the market. With the knowledge that the CAP would pay the farmers a minimum price for their supply, production soared. The CAP paid out billions of Euros to its farmers as subsidies even though the competitive prices were well below the intervention point. There were milk mountains, wine lakes, butter mines which stored chilled butter, to name but a few. It was a rigged market which provided lavishly for the beneficiaries. The larger, more efficient British farms were constrained from selling their surpluses at a lower price in the international market by the rules of the CAP. Soon only European countries could afford to buy European agriculture.

In addition, CAP policies designed to promote exports of European agriculture by subsidising the price charged for goods sold abroad created a market in the trade of subsidies. Milk powder was sold to Poland at a subsidised rate and the subsidies pocketed by the farmer and, in return, Poland sold meat to the EU at high prices subsidised by the CAP. In some cases (which were eventually taken to the courts), these goods didn't actually move from one country to the other; only the subsidies moved. It was one of the best international rackets available.

The first CAP Reform were made in 1992 as a result of agriculture being included for the first time in the General Agreement on Tariffs and Trade (GATT). This forced a major change in European farm support systems. European farmers were asked to produce less, get paid less for what they produce, import more food from outside the Community and in return receive direct compensatory payments from the European Union. In addition, quotas on the production of most farm produce were introduced over the years to curtail production and balance market demands. This meant that the farmers produced less but were compensated for their losses by EU subsidies paid directly to the farmers. The quota system for beef and sheep involved payments for the number of animals. There were videos of Northern Irish cattle being driven across the border with Eire to be counted as Irish cattle and then driven back north to be counted as British cattle. There were phantom flocks of sheep in Greece and pigs who multiplied in Denmark when counting took place.

In 2003 there were further changes to the CAP which removed the payments based on the number of animals counted. This regularised the system a little better and saved the animals from their semi-annual commute across borders. It was only the elected sheep of the European Parliament who were forced to migrate between Brussels and Strasbourg who carried on the tradition.

There have been additional changes in the CAP in 20013 and 2015, largely to deal with British complaints, but these have not really made a substantial change to the problems associated with the CAP. This is especially true for the British fishing fleet whose days at sea have been severely constrained by EU directives, its catches limited, and it markets constrained as well as opening British waters to large European fishing fleets.

THE COMMON AGRICULTURAL POLICY AND AFRICA

A look at the European Union's Common Agricultural Policy ('CAP') vii shows that it has several trade distorting effects which have seriously damaged African agriculture and African economies. In the beginning the CAP was made up of production subsidies, intervention buying, and export subsidies. Through several reforms with the aim of creating a more liberalised market, the production subsidies have been changed to a direct subsidies scheme and intervention prices have been lowered a bit. The production/direct subsidies and the intervention buying both create higher prices in the internal EU market. This means that too much is produced, and most overproduction is sold at world market prices only through the aid of export subsidies. The EU has regularly been accused of dumping its agricultural products into the African markets. In the opposite direction several agreements have been made to ensure African producers tariff free access to the European market. However, very high food safety and cosmetic standards have been set along with other non-tariff barriers, which prevent many African producers from actually exporting to the EU.

The most fundamental change in the CAP since 1992 has been the gradual shift from price support for EU agricultural products to income support for EU farmers. The old system of price support required a highly protective tariff regime, to prevent third-country agricultural products from flooding the high-priced EU market. However, the high prices served to stimulate production in the more efficient agricultural areas of the EU, while at the same time lowering demand for EU-produced feed products for the livestock and industrial sectors. This created large 'surpluses', which either had to be stored in the EU at considerable cost, or exported as food aid.

Under this system EU agricultural products would regularly be exported at highly subsidised prices to African markets, often in ways which disrupted local production or held back the development of local production. While this might benefit traders and processors the production effects in what are largely agrarian economies commonly outweighed these temporary consumer benefits. While under the CAP reform process EU farmers have largely been insulated from the income effects of price reductions, African exporters simply had to carry the income loss. This has served to significantly erode the value of traditional African trade preferences.viii

So, if one asks where the 'Grain Mountain' and the 'Milk Lake' of the CAP have gone, the answer is to Africa. The milk was dumped as cheap foreign aid in West Africa where it collapsed the production of milk in Mali, Chad and the Central Africa Republic. The grain was delivered elsewhere, in the Horn of Africa and Sudan, which made it cheaper to acquire than locally-produced grains. The farmers lost their domestic market and had no funds to pay back their bank loans; lost their credit and were unable to plant the next season's crop because they had no cash. The culture of aid dependence was fostered and nurtured by the CAP.

According to Oxfam, the £30bn-a-year EU agricultural subsidy regime is one of the biggest iniquities facing farmers in Africa and other developing counties. They cannot export their products because they compete with the lower prices made possible by EU subsidies to European producers. In addition, European countries dump thousands of tons of subsidised exports in Africa every year so that local producers cannot even compete on a level playing field in their own land. Meanwhile, governments of developing countries come under intense

pressure from the World Bank and the International Monetary Fund to scrap their own tariffs and subsidies as part of free trade rules."ix

World trade talks aimed at reaching agreement on subsidy reform have stalled because of the EU's intransigence over its CAP. The CAP costs British taxpayers £3.9bn a year and also adds £16 a week - £832 a year - to the average family of four's food bill. Recently the £1.34bn-a-year EU sugar regime was ruled illegal by the World Trade Organisation and European countries were found guilty of dumping too much subsidised sugar in developing countries under-cutting local farmers.

European farmers are guaranteed a price for their sugar three times higher than the world price and there are restrictions on foreign imports - backed up by import tariffs of 324 per cent. Export subsidies, meanwhile, allow surplus EU sugar to be dumped at bargain prices in African countries.

Mozambique loses more than £70m a year - equivalent to its entire national budget for agriculture and rural development - because of the trade distortions and South Africa also loses £31m a year. While chicken producers in Europe do not receive direct payments, the grain that feeds the birds is subsidised, substantially reducing the cost of farming. Kenya, Nigeria and Senegal have been hit by cheap, subsidised imports from Europe while the £30 paid to British farmers for every tonne of wheat they produce inflates the price of breakfast cereals, bread and other goods in Britain to British consumers. European preference for chicken breasts and legs means that thighs and wings are often frozen and exported to Africa where they are sold for rock-bottom prices. Chicken farmers in Senegal and Ghana used to supply most of the country's demand - now their market share has shrunk to 11 per cent because subsidised imports are 50 per cent cheaper.x In short the CAP has been a disaster for Africa.

The Role Of Military Alliances

One of the important differences between Britain and the rest of the EU relates to the provision of security for British nationals. There is a familiar theme in the EU that the creation of the EU has prevented war breaking out in Europe. That is a deeply fallacious statement as it masks the degraded and inchoate nature of European militaries. There have been no major wars in Europe for the very simple reason that half of Europe was occupied by the U.S. and the other half by the Soviet Union until 1990. The Europeans were given no choice but to follow the wishes of NATO and the Warsaw Pact when it came to going to war. Indeed, to quote Lord Ismay, the first head of NATO the goal of NATO was "to keep the Russians out, the Americans in, and the Germans down".

The U.S. has always doubted the commitment of the Europeans to their own self-defence, especially France under De Gaulle. NATO solved the problem of commitment by instituting a culture of planning. With a clearly understood mission, NATO planners (composed of representatives from all the constituent nations except France from 1968 to 1995) analysed every possible contingency. For every contingency, they generated a plan. For every plan, they allocated forces. For every force, NATO devised endless training exercises designed to

make execution as automatic as possible. The planning and exercise process, quite apart from being necessary for military preparedness, was also an instrument that psychologically and operationally locked in the actors. Under such circumstances, given the doctrine and the particular plan that applied, units in Fort Bragg, North Carolina, the Netherlands, and Sicily all went into motion. In operational terms, the goal was to make the commitment of forces as thought- free as possible.

In the early 1950s, France, Germany, Italy and the Benelux countries made an attempt to integrate the militaries of mainland Western Europe through the treaty establishing the European Defence Community (EDC). This scheme was vetoed by the French Gaullists and the French Communist Party. The Europeans tried again in 1954 with an amendment to the Treaty of Brussels. They succeeded in replacing the failed EDC by establishing the political Western European Union (WEU) out of the earlier established military Western Union Defence Organization. After the passage of the Lisbon Treaty these functions were passed to the EU.

On 20 February 2009 the European Parliament voted in favour of the creation of Synchronized Armed Forces Europe (SAFE), directed by an EU directorate, with its own training standards and operational doctrine. The EU has consistently demanded the unification of a European Defence Force, notionally within NATO but separate in terms of action. That is a polite way of saying the Europeans want an autonomous defence force but that the US should contribute two-thirds of the cost. In fact, the US is now paying 74% of NATO costs.

The notion of a European Defence Force is not dead. Angela Merkel said that Cameron's renegotiation on reforms of the EU were dependent on Cameron allowing her to promote an ambitious blueprint to integrate Europe's armed forces. Jean-Claude Juncker, president of the European Commission, said Britain wold get a deal if it gave the green light to a raft of powerful new EU institutions. He stated "If you want favours, you have to give favours. If Cameron wants a 'flexible Europe', he must let other members integrate further. Yes - opt out, opt out, opt out - and then shut up." This was raised repeatedly in the negotiations in Brussels. So, if Cameron is crowing about opting out of further integration in the EU he has conveniently forgotten that the Europeans are happy to integrate their armies without the British Army. Britain would be marginalised within NATO and the U.S. would have to turn to Berlin and Paris for its NATO allies.[xi]

The truth is that the U.S. knows it has a reliable ally in Britain. It shares the full range of intelligence with the GCHQ facilities in Cheltenham which it doesn't share with the rest of Europe. The U.S. uses it bases in Britain to carry out bombing raids in the Middle East and relies on the valuable British base in Akrotiri in Cyprus. The UK played a key role in both Iraq and Afghanistan; taking over the full security responsibilities in Helmand. Britain has always been a reliable ally of the U.S.; something which cannot be said for France, Germany and many of the other Europeans. The recent events in the Ukraine has exposed just how feeble and duplicitous the Europeans can be. It is certainly not the Europeans who have brought peace to Europe and Britain will be seriously disadvantaged by remaining in the EU as they weasel their way into creating a European united army without the UK.

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[i] Garner, Bryan A. (2001). A Dictionary of Modern Legal Usage (2nd, revised ed.). New York: OUP.

[ii] Neubauer, David W.,and Stephen S. Meinhold. Judicial Process: Law, Courts, and Politics in the United States. Belmont: Thomson Wadsworth, 2007, pg.28.

iii Smits, Jan (ed.); Dotevall, Rolf (2006), Elgar Encyclopedia of Comparative Law, "63: Sweden", Edward Elgar Publishing'

iv Neubauer, David W.,and Stephen S. Meinhold., op.cit.

v Cartel Damage Claims, 29/10/15

vi Steven Swinford, "Dyson: Britain should leave Europe to avoid being 'dominated by Germans', Telegraph 21/11/14

vii See Thomas Lassen, What are the economic consequences of the EU's CAP on trading with Africa? University of Aarhus 2009

viii Dr. Paul Goodison, Nordic Africa Institute, The Impact of Common Agricultural Policy (CAP) Reformon Africa-EU Trade in Food and Agricultural Products 2009

ix Maxine Frith, EU subsidies deny Africa's farmers of their livelihood , Independent 16 May 2006

x Ibid

xi Peter Foster and Matthew Holehouse, "Merkel 'expects Cameron to back EU army' in exchange for renegotiation", Telegraph 12/9/15