CHAPTER THREE

SOVEREIGNTY OF PARLIAMENT AND THE EUROPEAN UNION

SOVEREIGNTY OF PARLIAMENT, THE EUROPEAN (ECONOMIC) COMMUNITY [E(E)C] AND /OR THE EUROPEAN UNION [EU].

General Introduction

The most significant legal limitation on sovereign law making powers of the Westminster parliament has come with the signing of the European Treaties (most significantly **The Treaty of Rome**) and their incorporation into English Law by virtue of the **European Communities Act 1972.**

The original **Treaty of Rome** has now been extended by the **Maastricht Treaty on European Union 1991** (TEU) which altered the numbering of the articles of the **Treaty of Rome** and introduced a number of new articles and by the **Treaty of Amsterdam 1997**. If and or when the proposed new European Constitution is established, the scope of power vested in the EU will expand and the rationale for that power clarified and reinforced.

BRIEF HISTORY OF THE EUROPEAN COMMUNITY

1946 19th September : Churchill delivers Zurich Speech

1950 9th May in a speech inspired by Jean Monnet, Robert Schuman, the French Foreign Minister, proposes that France, the Federal Republic of Germany and any other European country wishing to join them should pool their coal and steel resources.

1951 18th April The 6 sign the Treaty establishing the **European Coal and Steel Community** (ECSC) in Paris.

1952 27th May The Treaty establishing the **European Defence Community** (EDC) is signed in Paris.

1954 30th August The French Parliament rejects the EDC Treaty. 23rd October Following the London Conference, agreements on a modified Brussels Treaty are signed in Paris and the Western European Union (WEU) comes into being.

1955 1-2 June The Foreign Ministers of the Six, meeting in Messina, decide to extend European integration to all branches of the economy.

1957 25 March The Treaties establishing the **European Economic Community and the European Atomic Energy Community** are signed in **Rome.**

1958 1st January The Treaties of Rome enter into force and the EEC and Euratom Commissions are set up in Brussels.

1960 4th January The Stockholm Convention establishing the **European Free Trade Association** is signed on the initiative of the United Kingdom.

1962 30th July The common agricultural policy is introduced.

1963 14th January General de Gaulle announces at a press conference that France will veto the United Kingdom's accession to the Community. 20th July An association agreement is signed between the Community and 18 African countries in Yenned

1965 8th April A Treaty merging the executives of the three Communities is signed in Brussels. It enters into force on 1 July 1967.

1966 29th January The 'Luxembourg compromise' is agreed, France resuming its seat in the Council in return for retention of the unanimity requirement where very important interests are at stake.

1968 1st July Remaining customs duties in intra-Community trade in manufactured goods are abolished 18 months ahead of schedule and the Common External Tariff (CUT) is introduced.

1969 December At the Hague Summit the Community's Heads of State or Government decide to bring the transitional period to an end by adopting definitive arrangements for the common agricultural policy and agreeing in principle to give the Community its own resources.

1970 23rd April A Treaty providing for the gradual introduction of an own resources system is signed in Luxembourg. It also extends the budgetary powers of the European Parliament. 20th June Negotiations with four prospective Member States (Denmark, Ireland, Norway and the United Kingdom) open in Luxembourg.

1972 23rd January The Treaty on the Accession of Denmark, Ireland, Norway and the United Kingdom is signed in Brussels. Within the UK itself, the **European Communities Act 1972** was passed and came into force on 1.1.1973. 24th April The currency 'snake' is set up, the Six agreeing to limit the margin of fluctuation between their currencies to 2.25%. 25 September Norway withdraws following a referendum.

1974 9-10 December At the Paris Summit the Community's Heads of State or Government decide to meet three times a year as the European Council, give the go-ahead for direct elections to the European Parliament and agree to set up the European Regional Development Fund (ERDF)

1975 28th February A first Convention between the Community and 46 States in Africa, the Caribbean and the Pacific is signed in Lomé. 22 July A Treaty giving the European Parliament wider budgetary powers and establishing a Court of Auditors is signed. It enters into force on I June 1977

1978 6-7 July At the Bremen European Council, France and the Federal Republic of Germany present a scheme for closer monetary cooperation (the European Monetary System) to replace the currency 'snake'

1979 13 March The EMS starts to operate. 28 May The Treaty on the Accession of Greece is signed. 10 June The first direct elections to the European Parliament are held. 31st October A second Convention between the Community and 58 States in Africa ,the Caribbean and the Pacific is signed in Lomé.

1984 28th February The 'Esprit' programme for research and development in information technology is adopted.

1985 2nd-4th December At the Luxembourg European Council the Ten agree to amend the Treaty of Rome and to revitalise the process of European integration by drawing up a '**Single European Act**'.

1986 1st January Spain and Portugal join the Community. 18 February The Single European Act is signed in Luxembourg.

1987 14 April Turkey applies to join the Community. 1 July The Single Act enters into force. 26 October The WEU adopts a joint defence policy platform in The Hague.

1988 25 June A Joint Declaration on the establishment of relations and future cooperation between the Community and Comecon is signed in Luxembourg.

1989 January Jacques Delors is reappointed President of the Commission for a further four years. 18 June Direct elections to the European Parliament are held for the third time. 17 July Austria applies to join the Community. 9 November The Berlin Wall collapses. 9 December The Strasbourg European Council decides to convene an intergovernmental conference. 15 December The fourth treaty (Lome IV) between the European Community and 69 countries in Africa, the Caribbean and the Pacific (ACP) is signed in Lome, Togo.

1990 29 May The Agreement establishing the European Bank for Reconstruction and Development is signed in Paris. 19 June The **Schengen Agreement** on the elimination of border checks is signed. 4th July Cyprus applies to join the Community. 16th July Malta applies to join the Community. 3rd October Germany is united once more. 14 December Two Intergovernmental Conferences, one on Economic and Monetary Union, the other on Political Union, open in Rome.

1991 1st July Sweden applies to join the Community. 21st October **The Treaty on European Union** is signed in **Maastricht**. 21 October The Agreement creating a European Economic Area (EEA) is signed by the Community and EFTA countries .22 May Maastricht European Council.

1992 7th February Treaty on European Union is signed in Maastricht. 18th March Finland applies to join the Community 23rd May Switzerland applies to join the Community.

1993 On January 1st 1993 all trade barriers were removed; one of the most important steps in creating the Single Market.

1997. Treaty of Amsterdam 1997, which came into effect in 1999, altered the article numbers of the Treaty. It updated the Maastricht Treaty to prepare for the enlargement of the EU to include Eastern European countries and strengthened the 'Social Chapter,' which includes laws on employment and discrimination.

1998 EU took its 1st formal steps towards enlargement by opening formal negotiations with Hungary, Poland, Estonia, the Czech Republic, Slovenia and Cyprus.

1999 Romania, Slovakia, Latvia, Lithuania, Bulgaria and Malta opened membership negotiations. Turkey also applied for membership. January 1999, eleven countries met the rules for adoption of the euro as their official currency on 1st January 2000.

2002 Greece met the criteria for adoption of the Euro. National currencies such as the Franc phased and replaced by the Euro. UK, Sweden and Denmark opt out of the Euro. Agreement was signed for a number of new members to join the community in 2004 including the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia, Slovakia, Cyprus and Malta. However consideration of Turkey's application to join was put on hold until 2004.

2004 Negotiations continue in a bid to reach agreement over the content of and accession to a new European Constitution drafted by Giscard D'Estaigne et al. Membership enlarged to 25 members.

The EU is now the largest political and economic partnership in the world accounting for 38% of free trade. With free movement of goods, services and people for its 375 million citizens (rising to over 500 million post enlargement).

THE AIMS AND FUNCTION OF THE E.C.

The European Community was born in 1950 following the plans of R.Schuman the French Foreign minister to integrate coal and steel production to prevent the use of economic resources for military uses.

The European Coal & Steel Community was founded in 1951 with 6 original members, partly as a mechanism to monitor the use of primary resources that were at that time central to the generation of a war machine and to prevent a repetition of the 2nd World War.

In 1957 the **Treaty of Rome** established the **E.E.C**. (now the E.C. or E.U.) to integrate the members' economies to create a single prosperous area, by abolishing restrictions on the freedom of movement of people goods and capital and the European Atomic Energy Community - **EURATOM** - for the peaceful development of nuclear energy.

The C.A.P. or Common Agricultural Policy aims to ensure that all producers receive a fair price for goods whilst ensuring there are neither gluts nor famines in agricultural products due to changing agricultural methods and economic demand. Originally it was intended for the E.E.C. to establish a series of Policies but C.A.P. was the only one to materialise. The C.A.P. has posed the E.C. with major constitutional problems since it placed the E.C. with a governmental type role since it required the E.C. to deal with two diametrically opposed aims, that of promoting free trade and that of protecting vested interests. This perhaps explains why the experiment has not yet been extended to other areas since government requires more than a simple one-goal mandate. The C.A.P. fits more neatly into the role of a governing European Parliament than the current E.U. organisation.

Article 2 Treaty of Rome - aimed to set up an economic community conducive to trade & stability.

Article 3 Treaty of Rome - dealt with the elimination of trade barriers.

Article 48(2) Treaty of Rome discussed the freedom of movement of workers.

Article 85 Treaty of Rome forbids restrictive trade practices.

Article 129 Treaty of Rome established the European Investment Bank.

INSTITUTIONS OF THE E.C.

The European Parliament (Articles 137-144) has up to date has represented a talking shop and little else since it has had little power. Greater legislative power is now accorded to it in consequence of the Single European Act 1986 and the Treaty on European Union 1993.

The European Court of Justice (Articles 164 - 188) makes judicial decisions. Members of the court are drawn from all member states. The European Commission and member states are answerable to the ECJ. The court structure has since been expanded, by virtue of the Treaty of European Union.

The European Commission (Articles 155 - 163) initiates policy and is the executive arm of the communities responsible for administration. The Commission can fine bodies for breach of Council Regulations in relation to Competition policy under Art 155.

The Council of Ministers (Articles 145-154) a political body representing the interests of member States which has the power of veto over legislative measures. It is the principal decision making body and generates enforceable Council Regulations.

The Court of Auditors (Articles 188) examines the finances and expenditure of the other institutions of the E.C.

LEGAL FRAMEWORK OF THE E.C.

The law of the E.C. comes in a variety of forms, namely treaties, regulations, directives and decisions of community organs such as the **European Court of Justice**. The regulations and parts of the treaties are directly applicable, that is they take effect as law without any need for action on the part of member states. The original impact of directives was limited in that they required national legislation before they took effect. It now appears, as discussed later, that directives may in certain circumstances attain enforceable legal status and accord rights to individual even the national legislature has failed to pass compliant local legislation.

Article 1000 Treaty of Rome allows the Council of European Communities to issue directives to member states whose legislation is not in harmony with European Community legislation on a specific matter.

RELATIONSHIP BETWEEN THE EC AND THE UK

The Council of Ministers and the Commission are empowered by the Treaties to make regulations having direct effect in the member states and to create individual rights and duties enforceable in national court.

Under **2(1) E.C.A. 1972** directly applicable community law may be implemented in the U.K. automatically. By virtue of **s2(2) E.C.A. 1972** some legislation will have to be passed in conformity with community requirements. Although this will normally be in the form of delegated legislation it will have the status of community law. Furthermore under **s2(4) E.C.A. 1972** " ... any enactment passed or to be passed other than one contained in this part of this Act shall be construed and have effect subject to the foregoing provisions of this section."

The effect of these measures is very important. Subsequent cases such as **MacCarthys v Smith**,[1] **Garland v British Rail Engineering Ltd.**[2] and **Factortame,**[3] appear to have affirmed the supremacy of community law over domestic law in a pragmatic sense if not from the point of view of strict legal theory, though depending on one's point of view, even this may have been achieved already.

Parliament's law making power has been limited by Parliament giving to the Council of Ministers and the Commission power to legislate in some areas. It has also restricted the UK Parliaments right to pass certain types of legislation. Within the Council of Ministers a limited power of veto remains so that member states have the opportunity to prevent some legislation which is unacceptable to them.

By virtue of the **Single European Act 1986** which came into force on the 1st January 1993, the legislative powers of the European Parliament has been extended so that the power of veto over legislation in some, though not all areas is more limited. This power has been further strengthened, by the Maastricht Treaty 1993, which introduced the "co-decision" procedure. The **Amsterdam Treaty** has extended the use of co-decision in a number of important areas.

1 **MacCarthys v Smith** [1981] 1 All ER 111

2 **Garland v British Rail Engineering Ltd** [1982] 2 All ER 402

3 **Factortame Ltd (No1) v Secretary of State for Transport** [1990] 2 AC 85 **: No 2** [1991] 1 All ER 70 ; **No3** [1992] QB 680 ; **No4** [1996] QB 404 ; **No5** [1999] 3 WLR 1062.

Whilst domestic Parliaments retain autonomy regarding taxation matters, the E.C has the power to implement policy decisions of the Commission through the Council of Ministers - though the European Parliament must be consulted and can advise on such legislation. The power of veto gives the Council of Ministers a limited degree of control over the manner in which the measures are implemented (thereby returning power to the Ministers of the domestic states) but an increasing number of areas are now subject to majority voting procedures.

Problems regarding interpretation of what is and what is not within the scope of the enabling power diminish the power of the Council of Ministers to act against the new powers of the European Parliament.

The summer of 1994 saw two major political battles in respect of the E.C. John Major tried to ensure that Jaques Delors was replaced as E.C. President by a conservative minded person as opposed to a radical federalist. The attempt failed since Jaques Santer, the person Major supported, turned out to be an ardent federalist, as was been his successor, Romano Prodi of Italy.

John Major also tried to ensure that the minimum veto number was not raised significantly. A compromise was reached whereby the number was raised (23 - 27) but by less than originally proposed (30). The lower the minimum number is the easier it is for a number of like minded states to combine together to prevent a measure being passed. The problem is that as the number of member states increases the pressure grows to constantly upgrade this figure to prevent a small number of states from defeating the agreed aims of the majority. This makes it increasingly difficult for the UK to garner sufficient support to block measures opposed by the UK Government. Once the new members fully enter in 2004 the UK power of veto will decrease substantially.

Since the Scandinavians joined the European Union in 1995 Britain has needed to seek the support of even more nations to veto legislation. The current political position is very confused. Jaques Chirac, the French President initially appeared to be more of a pragmatist and less of a Federalist than his predecessor. The Franco-German pro-federalist alliance is under severe domestic political pressure in both France and Germany, though both leaders were publicly committed to the creation of a single currency in 1999, which has since become a reality.

The small degree of influence over European Community decision-making wielded by the U.K became apparent during the B.S.E. crisis in 1996. The European Commission placed a world-wide ban on the export of British Beef and beef by-products. Despite phillibustering tactics adopted by British Ministers at the Florence Inter-Governmental Conference (I.G.C.) the British Government failed in its attempts to get the export ban lifted or even to secure a time table or a firm plan for its removal. Clearly, even after it was eventually lifted no one could force other nations to buy British Beef but removing the ban at least give them the option of doing so. Also, it was questionable whether or not the European Commission could legally impose a world wide ban as opposed to a Community ban. Nothing of course prevented other states such as the U.S.A. from banning British Beef.

Scope of the E.C.'s Sovereign Power

The mandate for the power of the E.C comes from the Treaties of the E.C. as confirmed by the UK Government seeking the consent of Parliament to sign Maastricht and similarly by the German Supreme Court's consent to the German Government signing the new Treaty. Theoretically, at least, the E.C. can only legislate on areas covered by the Treaties.

This was demonstrated by the U.K.'s refusal to ratify the Social Charter in the Maastricht Treaty. Ostensibly therefore, the EC could only pass regulations regarding the Social Charter for signatory states to the charter. The problem was and is how to determine, which issues fall under the purview of a particular chapter and which issues, are covered by other treaties. It is not as simple as categorising issues as social or economic. Most economic issues have an underlying social consequence and vice versa regarding social policies, which can have serious implications for the economy. Equal pay for women has been dealt with under the Treaty of Rome. Potentially this may have resulted in women being paid more. The social charter aims to introduce minimum wages levels. Both have social and economic consequences.

Problems regarding interpretation of what is and what is not within the scope of the enabling power diminish the power of the Council of Ministers to act against the new powers of the European

Parliament. This can be seen by the narrow interpretation placed on the block exemption afforded to the Transport Industries by **Regulation 4056/86** in relation to **Art 85 T.E.U.** on Competition Rules. The regulation permits cartels, shipping consortia and liner conferences even though they may have anti-competitive tendencies provided certain other requirements are fulfilled. The Commission appears however to have used the power under Art 86 in relation to an abuse of a dominant position within a market as a method of severely" restricting the scope and application of **Regulation 4056/86** as demonstrated in the **French West Africa Shipping Case in 1992.**[4]

The European Commission established a 40-hour maximum working week in 1996 on the basis of Health and Safety Legislation. John Major claimed that the length of the working week was a matter for the Social Chapter, which Britain has opted out of and so did not apply to the United Kingdom. Britain unsuccessfully challenged the applicability of the legislation to the United Kingdom with the consequence that Britain had to comply with the Regulations and thus all workers in industries not covered by exemption certificates cannot work for more than 40 hours a week unless they have consented to it. The implications for the economy and social engineering, be that good of bad, are considerable but Britain is powerless to do anything about it.

Some members of the Commission proposed in 1996 to set up an European Minimum Wage Council under the earlier Treatise so that the minimum wage would apply to the U.K despite the fact that the U.K. had refused to ratify the Social Charter. The minimum wage is a perfect example of the fact that categorisation is difficult. A central plank of the Treaty of Rome is the removal of artificial barriers to fair trade through subsidies and anti-competitive practices. If the costs of labour are lower in some member states than others then the low wage states have an '*unfai*r' advantage over the high wage states.

Factortame No3. The Common Fishing Policy established a system of allocation of fishing quotas to member states. The U.K. has been unable to establish a satisfactory mechanism for preventing vessels owned by citizens of other E.C. states from having access to the British quota. E.C. Law makes it unlawful for a member state to economically discriminate against E.C. nationals. Britain has failed to get advice from the European Commission on how to lawfully protect its quota.

Title V, Common Rules on Competition, Articles 85 - 102 T.E.U. place Union Treaty obligations on all member states to produce a level playing field and could arguably be the subject of regulations to deal with wage disparities between member states without recourse to the Social Chapter, thereby introducing a minimum wage for all citizens of member states. A problem for the level playing field notion however is that law is imperfect as an instrument of change. Apparently 70% of the Italian economy is black i.e. unofficial and so unregulated and could continue to pay low wages. Even if the E.C. insisted on the Italian government enforcing the law it could be beyond the Italian governments powers to do so even if it wanted to. The U.K. has similar problems but on a much smaller scale, as demonstrated by the rising cost of social security, which the present government finds difficult to control.

The Social Chapter provides all workers, full time and part time with equal legal rights in relation to unfair dismissal. The High Court held in two **Equal Opportunities Commission Cases**[5] that the two year period for qualifying for unfair dismissal proceedings by part time workers in the United Kingdom discriminated against women and is contrary to European Community Law because there is a higher percentage of female part time workers to men. The logic is that since more men are employed full time than women, men have more legal protection in relation to unfair dismissal than women. By allowing all part time female workers unfair dismissal rights, part time male employees become worse off than females. In order to correct this discrimination against men, all part time men must also be given the right to claim unfair dismissal. Thus the aims of the Social Chapter provision are fulfilled, with or without the UK's accession to the Social Charter.

The Commission reasserted that the Social Chapter be acceded to by all States. The Labour Government

4 **French West Africa Shipping Case** 1992.

5 **R v Secretary of State for Employment ex Pte Ms Seymour-Smith and Ms Perez** [1999] 3 WLR 460 ECJ and [2000] 1All ER 857 and **R v Secretary of State for Employment ex parte E.O.C.**

in 1997 campaigned amongst other things on a commitment to sign up to the Social Chapter, which it duly did, and thus a conflict with the EC over this issue was avoided. A problem for Mr Blair however was that he has so far resisted a call for the E.C. level of minimum wage to apply to the UK rather than a British determined minimum wage. If however the E.C. subsequently establishes its own formula for determining the minimum wage under the Social Chapter this rate would automatically apply.

This issue also provides another example of the difficulties involved in assessing how much sovereignty remains vested in domestic Parliaments. The politicians are reluctant to commit themselves openly to the public. The E.C. can be an excuse for doing something, which the politicians want to do, but which they fear is not wholly supported by the electorate.

An interesting Constitutional question arises as to whether or not a later government could resile from the Social Chapter or whether once a member state has acceded to a treaty obligation there is any going back. As a separate treaty it presumably could be resiled from without damaging the rest of the U.K.'s E.C. obligations. There is no provision in any of the E.C. Treaties for withdrawal. The U.K. and Denmark attempted unsuccessfully to introduce such provisions in the 1996 I.G.C.

It is also inevitable that with time the European Parliament will demand complete autonomy since the ultimate objective appears to be a Federal Europe.

Since the **E.C.A. 1972** is not entrenched under British constitutional theory it could be repealed. If this were done then Community Law would have no effect within the U.K. Parliament would regain the Sovereignty that it gave up when it passed the **European Communities Act 1972.** However, economic dependence may make withdrawal a practical impossibility. Entry into the E.R.M. was opposed by M.Thatcher on the grounds that economic Sovereignty would be lost. In the short period of time during which the U.K. was part of the E.R.M. the U.K. lost £10B. The collapse of the E.R.M. in 1992, at what has come to be known Black Wednesday, ironically returned a degree of financial self-regulation to the UK which it has continued to maintain.

Since then the Single European Currency has come into existence, albeit that the UK has opted out of the Euro to date. Once linked into the Single Currency withdrawal could be economically impossible at a later date. A Single European Currency has been seen as an essential precursor to a United or Federal Single European Super State, which is one reason why the federalists worked so hard to establish it.

SOVERIGNTY AND THE SINGLE CURRENCY

The creation of a Single European Currency under the control of an independent bank poses a novel problem for the sovereignty of member states that participate in the scheme. As long ago as the 17th century Parliamentarians realised that control of finance was central to the maintenance of political control. The battle for the power to regulate the financial affairs of the state and to raise tax formed the basis of the conflict between parliament and the crown, as epitomised by the many cases on finance adjudicated over by Coke.J.

With the exception of Germany which had established a very special relationship between the German State and the Bundesbank, prior to the establishment of the Euro Zone, no other modern state had given up the power to regulate its financial affairs through control of its currency. Since Germany was bankrupt at the end of the 2nd World War the Bundesbank was established without state funds. However, under the scheme all member states have been required to hand over their national reserves to the new bank. There does not appear to be any mechanism for returning the money if a member state chooses to leave.

Whilst bankers may see such a transfer as a simple financial merger transaction which would not be unusual in the business world, it appears to be a very revolutionary concept for a state to divest itself of all its economic power and wealth and place it at the disposal of an un-elected body over which it has no power or control whatsoever. When businesses merge they do so either because of bankruptcy, predatory take-overs or the like and usually the positions of the directing minds of the companies retain their stake as directors of the new company. Such an analogy cannot be drawn in respect of the Single European Currency. Business are not accountable to the electorate and do not engage in social

engineering and the governance of peoples, merely in the creation of wealth. In one respect all countries are merely businesses as seen by the I.M.F. refusing to extend credit to the U.K. in 1979. Any country that borrows money on the international money market runs the risk of being declared bankrupt by the international financial community. Currency can become unquoted if it a country has insufficient reserves to honour its debts. Managing a national debt affects a state's economy.

Member states of the single currency have given up the power to dictate interest rates and cannot slow down or heat up their economies. They cannot take measures to influence the rate of exchange of the currency and cannot therefore do anything alter import and export markets. Devaluation and revaluation of the currency is thus outside state control. Control of the fiduciary issue of a state is likewise outside the state's control. Finance can only be raised by bond issues alone but even these are subject to control by the European Bank. The central bank can order a member state to balance its accounts. These restrictions go far beyond the restrictions placed on states by international financial institutions. A free state can take measures to maintain or improve the confidence of the money market in its currency. The various methods of financial control discussed give the state the opportunity to do so. The problem can currently be seen in Germany which would like to pump prime its flagging economy but is not allowed to do so. In consequence the Germans have had to withdraw from a project involving international state cooperation in the development of a new European based civilian aircraft.

The argument in favour of the single currency is that such manipulation is bad. It places control of the economy in the hands of the money market, which can create a strong or a weak currency through favourable or unfavourable trading practices. A single currency prevents this and arguably creates a more stable currency. From this perspective sovereign power to control a currency is not important and so by transferring the responsibility to a central bank member states have nothing to loose. This argument presupposed that the Euro would be a strong stable currency. If however, the money market has no confidence in the Euro the economy of the whole of the E.C. is jeopardised. The money market contains traders from the entire world not just Europe, and at present it would appear that they prefer to buy U.S. Dollars in preference to Euros. Euro-philes claim that this is merely a short-term phenomena and that eventually the Euro will recover.

The trading strength of Sterling has benefited from the weak Euro. However the strong pound has decimated exports. If the Euro subsequently regains its strength Europe could enter a cycle of boom. However a strong euro and a weak pound would reduce the UK's ability to import from Europe whilst boosting UK exports. The European Commission could put massive pressure on the U.K. to join the Euro Zone to prevent the U.K. from taking advantage of the situation and threaten to place quotas on our exports to Europe if we did not comply. The U.K. could respond with tit for tat quotas for Europe. At this point the U.K. could be forced to leave the E.C. and perhaps rejoin the European Free Trade Association (E.F.T.A.). Alternative scenarios could see the E.C. doing nothing against the U.K. because the E.C. exports more to the U.K. than the U.K. sells to Europe and the E.C. would need to retain our markets. Similarly since the U.K. operates a trading deficit with Europe trade with the rest of the world could be sufficient to enable the U.K. to resist any demands from Europe. If however the U.K. suffered too much economically from ostracisation by Europe it could be forced to submit first to the E.R.M. and then to joining a strong Euro at disastrously poor conversion rates leaving the U.K. as the poor man of Europe.

Without a crystal ball it is impossible to predict which if any of the above events will occur. Clearly international power politics and the interplay of the international money markets will have as much to do with the eventual outcome as the decisions of the British Government. Even if the British public votes to opt out of the Single Currency the government may not necessarily be able to comply with their wishes. Similarly if the British public votes to join Britain will only be able to do so if the economy complies with the convergence criteria.

FEDERALISM AND THE EUROPEAN UNION

It is claimed in some quarters that the Single Currency is merely a better way of protecting European currencies from the vicissitudes of the money market and is not a precursor to Federalism. This may well be true but appears to be rather unlikely. Once member states loose the power to control their own currencies fiscal control will become concentrated between the Central Bank and the European Commission. The European Commission is made up of appointees from member states who, operate quite independently of their initial government sponsors. Once such enormous power is concentrated in such a small number of hands who whilst essentially un-elected political appointees have no coherent political affiliations it is inevitable that the European Parliament will seek to control the Community to return power to the representatives of the people. A failure to respond to such pressures to remedy the democratic deficit at the heart of Europe would place something akin to the old Soviet Politburo in charge of Europe. A Federal State then becomes inevitable and the European Commission would have to be abolished or evolve into either some form of upper house such as the Senate or House of Lords or as is much more likely, be remodelled into a non-political reactive as opposed to pro-active civil service body.

It is difficult to envisage a role for the Council of Ministers in a Federal system, which at present is the principal legislator in the European Community. Presumably the European Parliament would aspire to this role. A possible role for the Council of Ministers would be as an upper house similar to the House of Lords in the U.K. As with all upper houses constitutional arrangements regarding the balance of power between the two houses would also have to be addressed. By contrast however, the U.S. Senate is not selected on the basis merely of member state allegiance.

The next problem would centre on the sheer size of the franchise in Europe and how the various political parties could coalesce into large enough groups to operate effectively. The likelihood is that the European Union would be governed almost continuously by coalition parties. The chance of two single parties such as the Republican and the Democrat parties in the U.S.A. is remote. The democratic ideal could well become even more an illusion. The next round of European summit talks is in fact due to discuss the next stages of Federal evolution. Exactly what will emerge is again impossible to predict. John Major would like to limit the scope of such developments arguing that it is more important to deal with the broadening of Europe to embrace new members and that deepening the Union would make it harder if not impossible for new members to join. It is virtually inconceivable that most of the current applicants could satisfy the convergence criteria to join the single currency in the foreseeable future. If the single currency goes ahead it could be vital that preparations are made for a new model European Constitution to define where power will lie and to determine the relationship between member states of the Union with the centre. In particular, it would be necessary to consider who would exercise Sovereign powers and carry out Acts of the European State in relation to foreign affairs and develop foreign policy.

This again highlights why there is now talk of elections for the President of Europe, which could well follow the model of the United States of America. Jaques Santer called for a decisive role in the selection of European Commissioners which reflects the U.S. model of an elected President who then appoints the government administrators. However, the difference is that in the U.S. the President establishes policy and not the administrators, who exist merely to aid the President. The U.S. President is aligned to simply one of two major political parties, the Republicans and the Democrats, and the candidates are selected by way of a complicated system of primaries and hustings. Rather oddly J.Santer also demanded a role in the selection of his successor. The French and Germans are now supporting the notion of an elected Presidency.

If some such events do occur then the current theories for remodelling of the constitution of the United Kingdom, of Parliaments for Scotland and Ireland, an Assembly for Wales, the abolition of the House of Lords and the changing role of the Monarchy become virtually insignificant and highly parochial. It is very difficult to perceive what role the nation state might have in a Federal System. A major contrast that must be made between the European Union and the U.S.A. is that the European Union has adopted a very pro-active role towards to promotion of harmonisation. This emphasises

the exercise of power over a very large range of activities embracing social and economic affairs and foreign policy. The U.S. Federal Government has a much narrower remit and leaves the member states with a far greater degree of autonomy. Without this autonomy the domestic governments of member states could be reduced to the status of something akin to town councils.

Negotiations continue to legislate for a new model European Constitution. The proposed constitution, headed up by Valery Gisgard d'Estaing, an ex president of France, barely disguises the longer term objective of creating a Federal Europe. This again highlights why there is now talk of elections for the President of Europe which could well follow the model of the United States of America.

The mandate for the power of the E.C comes from the Treaties of the E.C. as confirmed by the UK Government seeking the consent of parliament to sign Maastricht and similarly by the German Supreme Court's consent to the German Government signing the new Treaty. The scope of E.C. power however is increasing all the time. There is a ratchet effect in play as demonstrated by the Amsterdam Treaty and continuing developments at the various ICG for deeper and deeper powers to be accorded to the E.C. Theoretically, at least, the E.C. can only legislate on areas covered by the Treaties but the Commission can give a broad interpretation of what is covered and such interpretations are difficult for member states to challenge.

However, it is possible that the E.C. machinery may have reached its nadir. France and Germany clearly see themselves as the guiding lights in Europe and despite Prime Minister's Blair's aspirations for the U.K. to play a significant role in the shaping of Europe, rather than being in the forefront of European development the UK appears to be very much on the side-lines. This is apparent from the conflict between the Bush / Blair alliance which led to the war against Saddam Hussein and the Franco/German opposition to that war. This has forced the UK to reassess where its loyalties lie – either with closer ties to the US and international markets or to Europe. As European Foreign policy develops with the creation of an European army, the role of NATO may be sidelined. If the UK armed forces are merged with Europe and decisions on foreign policy become centralised in the EC, the UK would lose its ability to play an independent role in international security affairs.

The UK would no longer be in a position to protect its own interests as it did during the Falklands Conflict with Argentina and the Iraq affair may turn out to be Britain's last big foreign adventure. However, given the gulf that exists between the UK's view of the world, as exemplified by the UK and European views on what is happening in Zimbabwe, this may well be a step too far for the UK.

It may also be a step too far for Europe. The German Premiership stands on a knife edge with a far more conservative opposition, which is opposed to the Euro and yearns for a return of the Mark which could seriously further damage the Euro, poised to seize control. This could see the end of the Franco/German alliance.

Nine members of the EC signed a memorandum in support of the Bush/Blair view on Iraq and in particular in support of defence proposals for Turkey which, have been held up by France, Germany and Belgium.

No United Nations mandate was given to Bush and Blair to invade Iraq. The invasion was not supported by France or Germany. The UK's relations with Europe have been severely strained by the war. The Labour Government's position has been undermined in the UK, boosting the chances of a Liberal government that would most likely take the UK into the centre of Europe, under its control, to prevent any chance of the UK going it alone again in the future.

Incorporation of E.C. Law into the U.K. legal system

s1 E.C.A. 1972 States which treaties became incorporated into U.K. law on accession.

s2(1) E.C.A. 1972 makes certain laws directly applicable in the U.K. These laws are the regulations, parts of the treaties and in certain circumstances E.C. directives and decisions of the European Court of Justice. A directive tends to be directed to a certain member of the E.C. The result are laws which impose duties and confer rights which are incorporated into the English Legal system without the sanction of parliament in Westminster, which can be enforced by the UK courts.

2(4) E.C.A. 1972. Any enactment by parliament which has been passed or which will be passed in the future shall have effect subject to the provisions of s2 E.C.A. 1972. Legislation will only be effective if it is not contradictory to directly applicable community law.

s3(1) E.C.A. 1972. For the purposes of all legal proceedings, any question as to the meaning or effect of any Treaties or as to the validity, meaning or effect of any Community instrument, shall be treated as a question of law (and if not referred to the European Court) be for determination as such in accordance with the principles laid down by the European Court.

s3(2) E.C.A. 1972. Judicial notice shall be taken of the Treaties, of the Official Journal of the Communities and of any decision of, or expression of opinion by, the European court on any such question as aforesaid; and the Official Journal shall be admissible as evidence of any instrument or other act thereby communicated of any of the Communities or of any Community institution. [6]

De Smith,[7] stated that that "Potentially at least, the importation of Community law brings with it a constitutional innovation of the highest importance." By contrast, some commentators originally thought that since the E.C. is largely an economic community only certain types of law would be affected by membership of the E.C. and that many other areas such as family law, succession etc would remain uniquely British. Is this still a valid view today in the light of the social policies being developed by the E.C. and the drive towards an integrated legal system ?

The E.C. attitude to the enforceability of Community Law

Article 234 Treaty of Rome[8] states that if the meaning of an article is uncertain it should be referred to the E.C.J for a preliminary ruling.[9] More generally where a domestic court encounters difficulties in the interpretation of E.E.C. measures it can refer the matter to the E.C.J. for a preliminary ruling on the meaning of the measure. If the court has no appeal stage after it makes a decision, of which the House of Lords is the important example, then the court must refer if it encounters difficulties of interpretation of E. C. law. **Costa v E.N.E.L.**[10] established that community law prevails over inconsistent national law.

"In contrast with ordinary international treaties, the Treaty has created its own legal system which, on entry into force of the Treaty, became an integral part of the legal systems of the member states and which their courts are bound to apply. Member states albeit within limited spheres have restricted their sovereign rights and no appeal lies to provisions of internal law of any kind can prevail over this accession of authority."

How limited are these spheres today ? Is the reverse now true, that member states retain only a limited number of sovereign rights ?

The experience of other member states is instructive since they have also experienced constitutional problems as a result of membership. Some member states[11] have implemented constitutional devices, which give primacy to E.C. Law, though Germany reserves the primacy of the German Constitution and in some situations requires ratification by the German Parliament of EC measures.

6 Regarding the methods of interpretation of European Community law see Jens Rinze, p57 Bracton Law Journal 1994. The methods are the Literal approach; the systematic or contextual approach and the teleological or historical comparative approach, which is similar to the Mischief Rule in **Heydon's Case**

7 Constitutional Law, Penguin Press

8 previously **Art 177 Treaty of Rome**

9 See D.Lasok, Use and abuse of preliminary proceedings under **Art 177**. p34 S.L.R. Autumn 1993.

10 Case 6/64, **Flaminio Costa v ENEL** [1964] ECR 585, CMLR 425,593: **Wilhelm v Bundeskartellamp** [1969] ECR 1 provides an example of one of many cases affirming **Costa v E.N.E.L.**

11 e.g. the Benelux countries

In the **Internationale Handelsgesellshaft v EVST.**[12] the German Supreme Court reserved the right after Maastricht to be consulted on any moves to deepen the community. Italy also had problems and was slow to implement E.C. policy. France has been reluctant to refer questions of Community Law to the ECJ where it anticipated an unfavourable response whereas the Netherlands has adopted a very pro-European approach to the supremacy of European Law.[13]

Italy initially had teething problems. It was slow to implement E.C. policy. V.A.T. was introduced in 1971 by the E.E.C. but only introduced 2 years later in Italy in 1973. In **Amministrazione delle Finanze dello Stato v Simmenthal SpA [No2]** [14]the ECJ stated that "Every national court must, in a case within its jurisdiction, apply Community law in its entirety and protect rights which the latter confers on individuals, and must accordingly set aside any provisions of national law which may conflict with it, whether prior or subsequent to the Community Rule." Belgium has struggled as well.[15]

De Smith had originally concluded that

1 The E.C. is not a true federation - member states retain national independence.
2. The effective policy making body of the E.C. is the Council of Ministers.
3. The E.C. is concerned with economic rather than political matters.

His conclusions, in hind-sight appear to have been somewhat premature and perhaps a little naïve.

Conflicts between E.C. and U.K. Law

What has been the reaction of firstly the U.K. government and secondly, of the UK judiciary to Sovereignty of Parliament and to E.C. law that conflicts with U.K. statutes? During the debate on entry into the EEC in 1972 Geoffrey Rippon told the commons that "directly applicable provisions [of the E.C.] ought to prevail over future Acts of Parliament in so far as they are inconsistent with them but then went on to say that "Of course nothing in this bill abridges the ultimate sovereignty of Parliament" which must have been a reference to the ability of Parliament to repeal the Act and to withdraw from Europe.

The political views of the main parties towards joining the E.C. between 195- and 1972 changed on a number of occasions and vacillation has continued right up to the present time. The Labour Party appeared to be in favour of leaving the E.C. in the 1970's. A split in opinion meant that by the time of the referendum in 1975 the Labour Party was officially supporting continued membership though it promised to abide by the decision of the electorate in the referendum and would have taken the U.K. out of the E.E.C. if the referendum had supported that course of action. Iceland is the only state that has left the EC so far, though Norway and Switzerland provide examples of States that pulled out of the entry process following anti-European plebicites.

Neil Kinnock presented himself as a Good European in his support for universal worker's rights, a minimum wage and entry into the EMS. He has subsequently become an European Commissioner. John Smith supported entry into the ERM when Margaret Thatcher was opposed to it, but the labour Party criticised John Major for the subsequent £10B loss suffered through the temporary entry and sudden exist of sterling from the ERM.

The Conservatives did not seek to leave the E.C. Thatcher sought to persuade the E.C. to adopt U.K. conservative policy. She used the sovereignty argument as a lever to oppose E.C. legislation, which strayed beyond economic issues. She opposed entry into the E.R.M. on the grounds that economic control would pass to the Bundesbank. The resignation of her Lord Chancellor and Alan Walters, her economic guru, demonstrated the equivocal nature of the government regarding the economic wisdom of further monetary integration with Europe and of the imprecision of economic science in relation to the effect the E.R.M. would have on inflation and whether or not it would result in a recession or would conversely end the 1980'ies recession.

When the U.K. joined the E.R.M the Labour Party criticised the Conservatives for doing so claiming it was merely a political ploy to gain popularity even though Labour also wanted the U.K. to join the

12 **Internationale Handelsgesellshaft v EVST** [1970] ECR 1125

13 See in particular **The Simmenthal Case** ; **The Salgoiles Case** : **The Semoules Case** and **Sabine v Defrenne**.

14 **Amministrazione delle Finanze dello Stato v Simmenthal SpA [No2]** [1978] 3 CMLR 263

15 See the **Defrenne v. Sabena** cases.

E.R.M. When entry proved to be a mistake Labour quietly forgot that it had also espoused entry.

The focus in 1993 shifted to the ramifications of signing the **Maastricht Treaty** and whether this would be tantamount to giving up more sovereignty and represented yet one more step on the road to a Federal Europe, clearly the view taken by Herr Bangemann, a senior European Commissioner. For this reason right wing Tories opposed signing the Treaty. John Major insisted that the Treaty had nothing at all to do with Federalisation. Assertions that Maastricht was irrelevant once the U.K. crashed out of the E.R.M. mask the significance of Euro member states having to abide by its criteria.

Whilst the Maastricht Treaty provided for the creation of a Single European Currency once all members have joined the E.R.M., this represented just one small part of the Treaty. The Treaty creates the mechanism to impose fines on member states who do not comply with directives and incorporate them into domestic law within the given time scale of the directive - making it financially difficult for members to ignore directives in future, which reinforces the sovereign power of the E.C. in legal terms whereas the E.R.M. simple did so in the political arena.

E.C. membership involves legal political and economic issues. Politics, the art and practice of government, is also the "Art of the Possible" and often involves creating public perceptions of reality, which are not necessarily true reflections of the way things really are. Political statements often have little relationship to legal reality, which is at its best when dealing with hard facts and fixed, decided rules. The law doesn't have to please the electorate. To remain respected and impartial it seeks to avoid political decisions. It is therefore very vulnerable when the politicians refuse to clarify what they are doing or have done.

The political conundrum at present is that all parties contain large numbers of Anti-European members. Prior to the elections in May 1997 neither Labour nor the Conservatives were prepared to state exactly what their plans were for fear of dividing their parties. Even elucidating a clear commitment to a referendum to consult the people on their wishes has proved elusive. At present there is no centre party to represent the Anti-European lobby.

No one really knows whether or not the public is really interested in Europe at all and whether or not there are any or sufficient votes in the issue. Would the electorate be prepared to switch party allegiance to support pro or anti European policies in sufficient numbers to justify a party adopting a particular stance? The reasons for the swing against the Conservatives at the 1997 election were many and Labour should be wary of concluding that it has a mandate to act in any particular way in respect of Europe though its large majority means that it can force through virtually any legislation that it might choose to adopt.

Until recently it appeared that Labour was moving slowly towards further integration and to joining monetary union before the next elections, subject to approval in a plebiscite. However, George Brown has led the anti-Euro movement within the Labour party establishing a so-called, “5 point economic convergence” criteria. The 2003 Iraq War exposed major foreign policy differences between the US aligned UK and France and Germany. Recently Blair has indicated that he is no longer pushing for entry into the Euro in the foreseeable future.

Judicial Attitudes to the EC in the UK

The courts have been faced with a dilemma. The judges had been unwilling to state in categorical terms that the U.K. Parliament was no longer sovereign. The judges saw this as a political rather than a judicial issue.

Since the **E.C.A. 1972,** like any other Act of Parliament, can be repealed by any present or future Parliament, it is possible to view the effect of membership of the E.C. as being temporary or transient. Whilst the effect of the **E.C.A. 1972** is different from any other previous Act of Parliament, nonetheless, it is not permanent or irrevocable as demonstrated by the referendum. The 1972 Act works fine for pre entry legislation, which it could repeal under traditional statutory rules.

The problem is post entry legislation, which as a post ECA Act(s) should supersede the 1972 act. How, if at all can the 1972 Act bind future Acts? It seems that the views of the judges have changed over the years, in response to a changing state of affairs, and that now the 1972 Act does bind future Acts of Parliament. The

way that this evolved through the cases is instructive and traces the way that the courts have dealt with the dilemma its application posed the judiciary. Nonetheless, the UK judges have eventually recognised the establishment of a new legal order, as is evident from the **Factortame** litigation and most notably the dicta of Lord Bridge in the House of Lords.

The legality of the government in signing the Treaty of Rome and the competence of Parliament in passing the E.C.A. 1972 has been questioned in the courts on the basis that it is not legally possible to derogate from the Sovereignty of Parliament and is contrary to the Bill of Rights. This was rejected in an obiter by Denning in **Felixstowe Dock & Railway Co & European Ferries v British Transport Dock Board,**[16] where he stated that "It seems to me that once the bill is passed by Parliament and becomes a statute, that will dispose of all discussion about the treaty. These courts will then have to abide by the statute without regard to the treaty at all.' Likewise in **McWhirter v A.G.** [17] Denning M.R. again stated in the C.A. that, "even though the Treaty of Rome has been signed it had no effect, so far as these courts are concerned until it is made an Act of Parliament. Once it is implemented by an Act of Parliament, these courts must go by the Act of Parliament." Further to this in **Blackburn v A.G.**[18] Denning M.R. in the C.A. stated that '.... in theory Mr. Blackburn is quite right in saying that no Parliament can bind another, and that any parliament can reverse what a previous Parliament has done ... nevertheless so far as this court is concerned, I think we will wait till that day comes.'

In contrast, the impact of executive action in international affairs can have an impact on the courts. **R v HM Treasury, ex p Smedley**,[19] concerned an appeal against a refusal to review a decision to sanction the payment of £120 million to the EEC by an Order in Council instead of by Act of Parliament. An agreement made by national representatives was an ancillary treaty to the Treaty of Rome. The court held that an EEC budget agreement could be implemented by an Order in Council Court. By channelling the payment through the Privy Council the executive effectively prevented a legal challenge in the courts to the payment.

Lords Denning, Kilmuir, Gardiner, Hailsham & Dilhorne have asserted that Sovereignty continues to exist. The 1972 E.C.A. can be repealed at any time. Diplock,[20] 'If the Queen in Parliament was to make laws which were in conflict with this country's obligations under the Treaty of Rome, those laws and not the conflicting provisions of the Treaty would be given effect to as the domestic law of the U.K.'

Scarman L.J.[21] 'The E.C.A. preserves of course the de jure sovereignty of Parliament. Community law has the force of law because Parliament says so ... the E.C.A. cannot be read as limiting the sovereignty of Parliament. No British court could, I suggest, go so far as to hold that Parliament today has limited the freedom of action of Parliament tomorrow without a constitutional reform that is in fact beyond the power of Parliament by statute to effect.'

Gardiner.L.[22] 'Under the British constitutional doctrine of Parliamentary sovereignty no Parliament can preclude its successors from changing the law .... there is in theory no constitutional means available to us to make it certain that no future Parliament would enact legislation in conflict with community law ... '

16 **Felixstowe Dock & Railway Co & European Ferries v British Transport Dock Board** [1976]
17 **McWhirter v A.G.** [1972] CMLR 882
18 **Blackburn v A.G.** [1971]
19 **R v HM Treasury, ex p Smedley** (1985) CA (Sir John Donaldson MR, Slade LJ, Lloyd LJ) 19/12/84
20 Diplock - ***The Common Market & the Common Law*** (1972)
21 Scarman LJ - ***The Law of Establishment in the E.E.C.*** (1973)
22 Gardiner.L House of Lords.Deb 1967

The effect of E.C. legislation

1) on prior U. K. legislation ;
2) where there is a partial conflict between E.C. & subsequent U.K. legislation ;
3) where there is a direct conflict between E.C. & subsequent U.K. legislation ;
4) on subsequent delegated and subordinate U.K. legislation.

1) E.C. legislation & prior U.K. Legislation.

Under **s1 & s2 E.C.A. 1972** all prior E.C. legislation enclosed in the Treaties, prior directives and decisions of the European Court of Justice became the most recent addition to the Law of the U.K. By the doctrines of express and implied repeal, as expressed in **Ellen St.** that body of extant E.E.C. Law took precedence over existing U.K. law. Since the **E.C.A. 1972** is not entrenched this element of the **E.C.A. 1972** involves no threat to the doctrine of sovereignty of Parliament.

Where an E.C. Law is passed after the 1st January 1973 which conflicts with existing Acts of Parliament an enabling mechanism is required so that the E.C. measure is automatically made part of UK law without further Parliamentary action. This is achieved by **s2(1) E.C.A. 1972** which states that "All such rights, powers, liabilities, obligations and restrictions from ***time to time*** created or arising by or under the Treaties, and all such remedies and procedures from time to time provided for by or under the Treaties, as in accordance with the Treaties are without further enactment to be given legal effect or used in the United Kingdom shall be recognised and available in law and be enforced, allowed and followed accordingly; and the expression 'enforceable Community rights' and similar expressions shall be read as referring to one to which this subsection applies."

s2(2) ECA 1972, subject to limitations under schedule 2 in relation to tax and criminal offences, enables Orders in Council and Statutory Instruments to be passed to implement European Community directives. **s2(4) E.C.A. 1972** applies **s2(1-3) E.C.A. 1972** provisions to 0rders in Council and Statutory Instruments made under **s(2) E.C.A. 1972** in that they must be construed and given effect to subject to the provisions of **s2(3) E.C.A. 1972.** It is difficult to know exactly what if anything this section achieves.

Denning stated in **Bulmer v Bolinger,**[23] that "the treaty is like an incoming tide ... Parliament has decreed that the Treaty is henceforth to be part of our law. It is equal in force to any statute …. We must speak and think of Community law, of Community rights and obligations and we must give effect to them." Denning further stated in **Applications de Gaz,**[24] that "In any transaction which contains an European element we must look to the treaty ... for the treaty is part of our law. It is equal in force to any statute and it must be applied by our courts." The problem here is that the concept of equality is meaningless. It is not possible to give equal status to contradictory rules. One rule must prevail and displace the other.

The European Law scrutinizing committee in the House of Lords has the job of identifying prior UK statutes that conflict with new E.C. laws. Ideally, such Acts can then be amended or repealed some time immediately before the new E.C. provision comes into force. If they fail to identify a conflict then since the new E.C. provision 'shall be given effect to' under **s2(1) E.C.A. 1972**, presumably the contradictory prior U.K. measure must not be given effect to. As under implied repeal the prior Act of Parliament must be impliedly repealed.

2) Partial conflict between E.C. legislation and subsequent U.K. legislation.

The major constitutional problem centres around the ability (or lack of) Parliament to pass legislation that conflicts with E.C. Law. If there is a conflict between later U.K. legislation and earlier E.C. law the courts have to choose which provision to follow. Clearly, the E.C. view expressed in **Costa v E.N.E.L.** is that E.C. provisions must take precedence. The attitude of the U.K. courts has not up till now been so unequivocal. There are three possible approaches that the courts might adopt.

a). If the courts apply the doctrines of express or implied repeal exemplified by **Ellen St v Minister of Health** [25] and **Vauxhall Estates v L.C**[26]. then the later U.K. provision must prevail.

Denning, by contrast, stated in **Coombes Holdings v Shields**[27] that 'If such a tribunal should find any

23 **Bulmer v Bolinger** [1974]
24 **Applications de Gaz** [1974]
25 **Ellen Street Estates Ltd v Minister of Health** [1934] 1 KB 590
26 **Vauxhall Estates Ltd v Liverpool Corporation** [1932] 1 KB 733
27 **Coombes Holdings v Shields** [1978]

ambiguity in the statutes or any inconsistency with community law, then it should resolve it by giving primacy to community law.'

b). The exact meaning of **s2 E.C.A. 1972** has been open to interpretation. One view is that the section accords primacy to E.C. Law in all circumstances where there is a conflict. This is reinforced by the view that s2(4) E.C.A. 1972 effectively places a restriction on the competence of Parliament to legislate contrary to E.C. measures.

If it does so, then the U.K. measure in so far as it conflicts with E.C. measures, is of no effect whatsoever. (Alternatively as in point 4 below it is argued this bar only concerns delegated legislation implemented to enforce E.C. directives which are not directly applicable). **s2(4) E.C.A. 1972** is very badly drafted. Its meaning is far from clear.

c). Alternatively, it has been suggested that the section merely creates a new presumption for the interpretation of statutes with an European element, to the effect that unless Parliament clearly indicates to the contrary, then the courts should presume that Parliament does not intend to legislate contrary to the principles of E.C. law and should therefore provide an interpretation which is compatible with European Law. The problem then is, 'To what extent should the courts strain the use of language to produce an interpretation which fulfils those objectives ?'

Pickstone v Freemans,[28] and **Lister v Forth Dock** ,[29] suggest that besides the Literal, Golden and Mischief Rules there is a new rule of interpretation specifically designed to permit the perversion of the natural sense of words to accord with E.E.C. measures.

Diplock in **Garland v British Rail Engineering**[30] stated that '**s2(4) ECA 1972** has created a new principle of construction or of interpretation: the words of a statute passed after a Community treaty must be construed so as to carry out the treaty obligations and the interpretation must not be inconsistent with the treaty obligations.'

E.C. measures must, according to **s3(l) E.C.A. 1972**, be interpreted within the spirit of the E.C. and can be referred to the E.C.J. for interpretation so that all members accord them the same meaning and effect. So the courts cannot strain the meaning of E.E.C. measures to accord with U.K. measures.

3) Direct conflict between E.E.C. and subsequent U.K. legislation.

It was made clear by the court in **McCarthys v Smith**,[31] that courts must give effect to directly applicable law. However, the court went on to state that if parliament expressly demonstrates that it intends to legislate contrary to community law then the courts must give effect to the statute. Subsequently however , in **Garland v British Rail Engineering** Diplock wondered, obiter, whether the courts could ever apply an interpretation inconsistent with community law, however wide a departure from the prima facie meaning of the language, without an express statement which showed that parliament intended to legislate in breach of a treaty obligation.

The UK approach tends to be dualistic (there are two legal systems working side by side), whereas some of the European states have adopted a monistic approach (the law of the nation is one law which includes E.C. law as part of it).

In **Factortame v Secretary of State for Trade,**[32] the Divisional Court granted interim relief by suspending the provisions of the M**.S.A. 1988** pending the outcome of an application to the E.C.J. for clarification as to the meaning of certain of the articles of the Treaty of Rome. The House of Lords overruled the suspension, held that the **Merchant Shipping Act 1988** was in force but that it must be interpreted in accordance with E.C. provisions.

Following a reference under **Art 177 Treaty of Rome** to the E.C.J. which held that U.K. courts must suspend U.K. legislation which contradicted E.C. provisions and provide interim relief for losses suffered from application of the domestic provisions, the House of Lords in **Factortame No2,**[33] suspended the application of the offending sections under interim relief powers granted by Art 186 Treaty of Rome.

Parliament amended the offending section of the **Merchant Shipping Act 1988** by SI 1989 No2006, so the UK Court

28 **Pickstone v Freemans** [1988]
29 **Lister v Forth Dock** [1989]
30 **Garland v British Rail Engineering**
31 **McCarthys v Smith** [1979]
32 **Factortame v Secretary of State for Trade** [1989]
33 **Factortame No2**

did not have to pronounce on the actual validity of a UK statute in conflict with E.C. provisions - thus postponing a ratio decidendi on the issue.

In **EC Commission ex Pte Spain v the UK & Ireland,**[34] the ECJ stated categorically that if a UK provision is in conflict with EC provisions the UK Act of Parliament should be totally suspended. It held that the UK was in breach of law by passing the **Merchant Shipping Act 1988** which discriminated against the ability of non British EC citizens to register a vessel on the British shipping register.

The intention of Parliament to protect local fisheries could have been achieved under EC quota regulations by the UK ministry of fisheries by refusing to grant a fishing licence to fishermen who did not have a direct economic link with the fishing port in question. Therefore the aims of the **Merchant Shipping Act 1988** were legitimate - but the method of achieving those aims was not.

According to **R v Secretary of State for Employment, ex parte Equal Opportunities Commission,**[35] **i**t appears that the correct way to proceed regarding a potential conflict between UK and EC law is to apply to the Divisional Court Q.D.B. High Court for judicial review of Primary UK legislation. The court will then determine whether or not there is a conflict. If the court finds a conflict it makes a declaration accordingly. It is then incumbent on the UK Government to introduce amending legislation. In the meantime, following the lead in **Marleasing**[36] and **Francovich**[37] persons who have suffered loss due to the failure of the UK to introduce amending legislation can apply to the ECJ for compensation.

This method throws the problem of suspending Acts of Parliament back onto Parliament and avoids the need for UK the courts to act as a constitutional court and set aside an act of parliament.

Contrary to some of the adverse views in the press regarding the ruling of the European Court of Justice, affirming the jurisdiction of the courts of member states to override national legislation if necessary to enable interim relief to be granted in protection of rights under Community law, this was not a novel invasion by a Community Institution of the sovereignty of the UK Parliament Such comments are based on a misconception. If the supremacy ... of Community law over the national law of member states was not always inherent in the EEC Treaty it was certainly well established in the jurisprudence of the European court of justice long before the UK joined the Community.Whatever limitation of its sovereignty Parliament accepted when it enacted the European Communities Act 1972 was entirely voluntary. Under the terms of the Act of 1972 it was clear that it was the duty of a UK court, when delivering final judgement, to override any rule of national law found to be in conflict with any directly enforceable rule of Community law.

Similarly, when decisions of the European Court of Justice have exposed areas of UK statute law which failed to implement Council Directives, Parliament has always loyally accepted the obligation to make appropriate and prompt amendments. Thus there is nothing in any way novel in according supremacy to rules of Community law in those areas to which they apply and to insist that in the protection of rights under Community law, national courts must not be inhibited by rules of national law from granting interim relief in appropriate cases is no more than a logical recognition of that supremacy. This is however quite a different matter from the questions as to whether or not according such sovereignty to the E.C. was wise politically or constitutionally.

Bradley and Ewing suggest that in this way, the House of Lords appears to have effected a form of entrenchment of **s2(4) ECA 1972** which thereby does what no statute has done before, namely fetter the continuing supremacy of Parliament. Sir William Wade refers to this as a constitutional revolution: "the Parliament of 1972 had succeeded in binding the Parliament of 1988 and restricting its sovereignty, something that was supposed to be constitutionally impossible."

In **R v Secretary Of State for Foreign & Commonwealth Affairs, ex p Rees-Mogg,**[38] ratification of the Maastricht Treaty was upheld as lawful and within the powers of government by the District Court.

34 **EC Commission ex Pte Spain v the UK & Ireland** [1991]

35 **R v Secretary of State for Employment, ex parte Equal Opportunities Commission** [1994] 2 WLR 409.

36 **Marleasing v La Commercial Internacional de Alimentation S.A.** 1990

37 **Francovich v Italy** [1991] ECR 1-5357 Case 6/90 & 9/90.

38 **R v Secretary Of State for Foreign & Commonwealth Affairs, ex p Rees-Mogg** (1994)

In **R v Secretary of State for Defence, ex p Perkins,**[39] it was held that the Armed Forces Policy on homosexuality was found not to be inconsistent with the present interpretation by the European Court of Justice of the Equal Treatment Directive since it did not discriminate on grounds of gender but on grounds of sexual orientation. However, if it had been held to be inconsitent, it is likely that the policy would have had to be reviewed.

4) Subsequent delegated and subordinate U.K. legislation.

It has been suggested that **s2(2)ECA 1972** and consequently **s2(4) E.C.A. 1972** deal primarily with delegated legislation, made by national legislatures to implement directives of the organs of the E.E.C. Subordinate legislation which conflicts with E.C. measures may be declared void.

s2(4) E.C.A. 1972 has been understood by various commentators in two different ways. **Firstly** as 'Statutory Instruments or Orders in Council that may be made under subsection **2(2)** include any provision that an Act of Parliament could make, excluding the imposition of tax and criminal offences and all such delegated legislation is 'any such enactment passed or to be passed' shall be subject to the **s2(1) E.C.A. 1972** limitation that E.C. Law must be given effect to so impliedly preventing such delegated legislation from derogating from E.C. Law, or **secondly** as 'Statutory instruments etc and any enactment passed or to be passed (By Act of Parliament) shall be construed and given effect to subject to the **s3(1) E.C.A. 1972** limitation that E.C. Law must be given effect to.

NON COMPATIBILITY / COMPLIANCE AND DIRECTIVES

The EC initially had problems with member states failing to incorporate directives into their domestic legislation. The EC has now adopted the practice of specifying a date by which the directive must be incorporated.

In **Marleasing v La Commercial Internacional de Alimentation S.A.**[40] it was confirmed that under **Art 189(3),** where a member state has failed to implement a directive or has done so ineptly, nonetheless the national court must interpret the national law in line with the EC directive after the expiry date of time to implement has passed. This questions the validity of **Duke v Reliance**[41] and prior cases where in the absence of or in the presence of inept UK legislation on a subject the court refused to engage in purposive constructions which did not accord with the meaning of the written words of the UK statutes. The court stated that where the failure to implement an EC directive resulted in a private individual / company suffering loss of a benefit which the directive would have afforded to that person the Domestic State must pay compensation through the ECJ to the individual. This forces compliance regarding Directives creating private interests. Maastricht reinforces this development by forcing compliance by way of fines even where no private interest arises.

Unlawful Directives.

The EC can only make regulations and directives in respect of its area of competence. If the EC goes too far and introduces an ultra vires directive can any proposal to follow that potentially unlawful directive be opposed in the courts ? In **R v Secretary of State for Health ex parte Imperial Tobacco Ltd**[42] it was held that the UK Government should not be restrained from implementing **Directive 98/43/EC** to ban tobacco advertising until after the ECJ had decided whether the Directive was valid. Applying the factors in **Zuckerfabrik Soest GmbH v Hauptzollamt Paderborn**,[43] although there was a strong case that the Directive was invalid, the applicants had not shown that they would suffer irreparable damage if the Directive had been implemented and then found to be invalid. Also, granting an injunction would interfere with the Government's freedom to legislate as it considered appropriate in the important area of public health. Leave to appeal to the House of Lords granted.

39 **R v Secretary of State for Defence, ex p Perkins** (1998) : QBD (Lightman J) 13/7/98

40 **Marleasing v La Commercial Internacional de Alimentation S.A.** 1990

41 **Duke v Reliance**

42 **R v (1) Secretary of State for Health (2) Secretary of State for Trade & Industry (3) A-G, ex p (1) Imperial Tobacco Ltd G) Gallaher Ltd (3) Rothmans (UK) Ltd (4) BAT Investments Ltd** (2000) Court: CA (Lord Woolf MR, Ward LJ, Laws LJ) 16/12/99

43 **Zuckerfabrik Soest GmbH v Hauptzollamt Paderborn** (1991) ECR I415

Individual rights and Conflict between UK legislation and EC legal provisions.

Marshall (No 1)[44] considered the effect of Employment Legislation which stated at that time that retirement for women at 60 was compulsory but that retirement for men was set at 65 by virtue of **s6(4) Sex Discrimination Act 1975**. Marshall claimed that under **Art 5 Equal Treatment Directive 76/207** she had been discriminated against unfairly. The European Court of Justice agreed. Subsequently the British government raised the compulsory retirement age of women to 65. Not all women were pleased with the result of her action.

Subsequently in **Marshall v Southampton A.H.A. No2**[45] Marshall claimed compensation. **s65(2) S.D.A. 1975** again limited compensation to a maximum of £6,250. The ECJ held that the full loss must be awarded and the statutory limitation must be removed since it prevented the plaintiff from receiving under the **Von Colson Case**[46] 'an adequate remedy' as required by **Art 6 of the Equal Treatment Directive.**

In **Francovich v Italy**[47] The ECJ provided a new approach where states failed to implement directives in this case. This is based on the liability of a member State for a failure to fulfil a Community obligation. Employees were seeking compensation against the Italian authorities regarding their failure to implement Directive 80/987/EEC, which concerned the payment of arrears of wages where an employer became insolvent. In respect of **Article 177** (now Art. 234) reference, the ECJ ruled that a member State could be required to compensate individuals for failure to implement a Directive if three conditions were satisfied. These conditions are

(a) the relevant Directive conferred rights upon the individuals;
(b) it was possible to identify those rights from the Directive's provisions and
(c) there was a causal link between the member State's failure and the damage suffered by the persons affected.

The possibility of such an action for damages against member States may well provide an incentive to them to meet their Community law obligations by implementing Directives. The wording of the ECJ judgement would appear to cover failure to implement, and faulty implementation of Directives.

Thus under the European Court of Justice ruling, if the domestic law of a member state fails to comply with EC provisions, thereby causing loss or damage to an individual, the member state is obliged to make good those losses caused by breach of Community Law provided the three conditions exist. The directive must have intended to confer a right or benefit on the individual. The individual must directly have suffered such a loss (indirect losses may occur when an opportunity to make a profit is lost because of state inaction) and the directive must be sufficiently clear so that definition of rights and conditions is not dependent on the legislative formula eventually adopted by the domestic state.

The principle of State liability for breach of Community law encapsulated by Francovich has been developed in subsequent cases. In **Brasserie du Pecheur v Germany**,[48] the breach in question was a directly applicable Treaty provision. The ECJ linked the State's liability for breach of Community law to that of the EC under the EC Treaty, provisions on non-contractual liability, and pointed out that where the legislature had a wide discretion in taking legislative decisions, then for liability to arise the breach must be sufficiently serious in that the member State had manifestly and gravely disregarded the limits upon its discretion by Community law. It seemed that the ECJ had tightened up the second of the three **Francovich** requirements.

In **R v HM Treasury, ex parte British Telecommunications Plc**.[49] British Telecommunications (BT) asserted that the UK was liable for its incorrect transposition of a Directive. While the ECJ held that this situation was covered by the Francovich principle, BT had failed to show that there was a sufficiently serious breach, as the Directive was not worded precisely and was reasonably capable of bearing the meaning given to it by the UK.

44 **Marshall (No 1) Case 152/84**
45 **Marshall v Southampton A.H.A. No2 1993.**
46 **Von Colson Case 14/83**
47 **Francovich v Italy** [1991] ECR 1-5357 Case 6/90 & 9/90
48 **Brasserie du Pecheur v Germany** [1996]
49 **R v HM Treasury, ex parte British Telecommunications Plc** [1996].

Dori v Recreb,[50] provides an example of an unsuccessful attempt to recover damages from the Italian Government for a failure to implement consumer credit legislation. If implemented borrowers would have been allowed 7 days in which to cancel credit agreements made away from the premises of the lender. Dori agreed to take an English Language Course and borrow money to pay for it. She cancelled the course a few days later. The college sold the debt to Recreb a debt collecting agency who successfully sued Dori for the money. Dori's defence, that she had a right to cancel failed because Italy had no implemented the directive. Dori then claimed the money back off the Italian Government. Her claim failed because the E.C.J held that the terms of the directive were not sufficiently clear for **Marleasing / Francovitch** type liability to apply.

In **Brasserie du Pecheur & Factortame,**[51] the European Court of Justice considered two cases at the same time which concerned the same issue. Neither Germany nor the U.K had an adequate judicial mechanism for paying compensation to individuals for successful **Marleasing** type claims. The German and UK governments respectively have admitted liability for preventing the import of French Beer into Germany and Spanish Fishermen to operate fishing vessels out of the U.K. in breach of Art 30 T.E.U. The references concerned the assessment of compensation especially in the area of pure economic loss. The Judge-Rapporteur's report indicated the Commission's submissions were likely to be accepted namely that the measures of assessment of compensation that apply to E.C. Institutions could be used by the E.C.J. in the absence of an adequate system in the respective domestic legal systems. This proved to be correct and both Germany and the UK were eventually ordered to assess and then pay compensation. Both countries were also fined for breach of EC law. Exactly why is far from clear. The ECJ judgement is full of contradictions and inconsistencies, so it would be difficult to predict how to apply the judgements in future cases.

Direct Effect and Indirect Effect : Treaty Obligations, Regulations and Directives

Treaty Obligations and European Union Regulations are immediately binding sources of law in the United Kingdom and all other member states of the Community.

European Union Directives differ in that they provide a requirement that by a certain date (the pass by date) member states should introduce domestic legislation that complies with the spirit of the directive. In the event that a member state fails to implement such legislation, the ECJ will compensate any individual intended to benefit from the directive, who has directly suffered loss as a result of the failure of that state to introduce the required legislation.

It should be noted that the directive provides a minimum standard. The state can provided it follows the spirit of the directive introduce even more stringent legislation, provided it does not place outsiders in a less favourable position than its own citizens and does not have an equivalent or quantitative, even if unintended, effect of restricting the free movement of goods or persons. The UK sadly has a record of being over zealous to the detriment of British interests. France and Germany top the 2003 list for non-compliance.

EUROPEAN TERMINOLOGY

Subsidiarity : See Art 3b. In areas outside the exclusive competence of the E.C. the community should only act to achieve community objectives where the proposed actions of the member state would be less effective than action by the Community. Community actions should not go beyond that necessary to achieve treaty objectives.

The activities of the community include the list in Art 3 but note that this is not stated to be exhaustive. Presumably anything not in the list is not governed by the exclusive competence of the Community and therefore is subject to art 3b subsidiarity, but that Art3 (a)-(t) measures are not subject to subsidiarity.

Or alternatively does exclusiveness attach to any action including things not in Art 3 (a)-(t) done to achieve the tasks set out in Art 2. Or does it refer to the Objectives of the Union set out in Art B ? What is the test by which to judge that a measure could be better achieved by community action ?

What does art 3b achieve ? If it is judged that a member sate can achieve and does achieve an objective just as well community action then the community need not act. No legal action could be mounted to challenge the community action since no one would be prejudiced by the community action. If the member state fails to achieve

50 **Dori v Recreb** 1994

51 **Brasserie du Pecheur v Germany : R v S.S. ex p Factortame**. C46/93 & C48/93.

the objective the community is justified in acting in any case.

Does the notion of subsidiarity water down the first sentence of art 3b 'The community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein.' which implies that action outside these powers and objectives is ultra vires the community ? or is the rest of the article superfluous ?

Uniformity : The notion that member state's laws through out the community have the same effect.

Harmonisation : The process of amending the laws of member states to ensure that they are in harmony with European Law.

Vertical Effect of European Law and in particular directives. The effect is vertical, from the top down, i.e. from the E.C. to the Domestic State and then in turn to the individual.

Horizontal Effect of European Law, branching out laterally to afford rights between individuals.

Regulations are directly applicable as law so the effect is that they apply to everyone. Regulations can automatically give rights to individuals against the state or impose duties on the individual to the state, and can impose rights and obligations between individuals, in the criminal and in the civil sphere.

Directives cannot impose tax or establish new criminal offences if introduced in the form of delegated legislation in the UK. Otherwise, the effect of a directive, once implemented can be horizontal in that it can give individuals rights and impose liabilities in respect of other individuals.

However, there is no horizontal effect regarding rights of action in respect of directives that have not been implemented by the domestic state. The government under **Marleasing** can be made to compensate the individual the loss of a right which the individual would have enjoyed had the directive been implemented – i.e. vertical effect, but the individual cannot sue the other individual horizontally.

How far back can a cause of action be backdated ?

Treaty obligations date back to the time the Treaty was ratified. So any claim under **Article 30 T.E.U** in UK can date back to as far as 1.1.1972.

Regulation obligations date back to the time the regulation is passed by the E.C. Directives date back to the earliest of either the actual date of domestic enactment or to the pass by date set by the E.C. Horizontal effect and the right to sue a private individual only runs from domestic enactment but the vertical action against a government for loss of right runs from the pass by date.

Beware of old copies of the Treaty which may reflect the original provisions but are out of date. See the 3rd & 4th editions of Blackstone's E.E.C. Legislation.

Art 138 d T.E.U. : Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the Community's fields of activity and which affects him or her directly.

Art 138 e T.E.U. : 1) The European Parliament shall appoint an Ombudsman empowered to receive complaints from any citizen .... concerning mal-administration of Community institutions ... the Ombudsman shall conduct inquiries ... on request or on his own initiative ... where the Ombudsman establishes mal-administration he shall inform the institution concerned ... which will have 3 months to reply .. then forward report to the European Parliament .. complainant to be informed of outcome ... annual report.

Articles 171 & 172 Treaty of Rome are replaced by new versions empowering the E.C.J. to fine member states for non compliance with treaty obligations, directives and directly applicable E.C legislation, thus extending the **Marleasing** Concept.

ACADEMIC VIEWPOINTS ON SOVERIGNTY AND EC LAW

De Smith 'The Act (1972) is a fascinating exercise in equivocation, a wilful manifestation of legislative schizophrenia. Or to vary the metaphor, the U.K. government has seated Parliament on two horses, one straining towards the preservation of Parliamentary Sovereignty, the other galloping in the general direction of Community law supremacy.'

Martin suggested that a convention of the Constitution should be developed by which primacy would be given to E.C. law. The problem with this is that it still does nothing about inadvertent mistakes and since conventions apply in the political sphere, they would not operate in relation to the judiciary for the resolution of legal problems.

Wade suggests a European Community Act every year in which the supremacy of Community Law would be reasserted. The Act could also be afforded retrospective effect.

Trindade puts forward similar solutions to the problem and recommends a committee to scrutinize legislation to ensure that there are no potential conflicts but this would not solve problems with E.E.C. law emanating from the E.C.J. There are two problems to Wade's solution. It would create a time lag. A lot can happen in 12 months. A retrospective law is probably a vice rather than a virtue.

It would involve a change to the enacting formula so that Community law prevails. This gets over the time lag issue. It still doesn't get over the fact that some community laws are intended to be directly applicable in any case.

If a statute doesn't comply with E.C. law there is still a difficulty, especially if the failure to comply is not due to inadvertence. Hood Phillips suggests a written Constitution would solve the problem. Is such a creature likely or even possible under the Doctrine of the Sovereignty of Parliament ?

The pragmatic approach of many practicing lawyers today is to accept that the E.C. is sovereign in its own fields of competence as demonstrated by the large number of articles on **Marleasing** asking what all the fuss is about. However, matter of fact acceptance of a legal reality does little to explain the vacuum into which the U.K. Constitution may have dropped if such a conclusion is justified.

A different solution would involve a change to the enacting formula so that Community law prevails. This gets over the time lag issue. It still doesn't get over the fact that some community laws are intended to be directly applicable in any case. If a statute doesn't comply with E.E.C. law there is still a difficulty, especially if the failure to comply is not due to inadvertence.

Hood Phillips suggested a written constitution would solve the problem. Is such a creature likely? The EU is recommending a Charter of Fundamental Rights to be adopted at the Nice Summit in December 2000. Will this charter be legally binding or merely a statement of political intent?

EXAMINATIONS ON SOVEREIGNTY AND THE EC

You need to draw your own conclusions on the effect of the incorporation of EC law into the UK legal system - based on legal developments.

The issue has not yet been settled conclusively - whilst supremacy of EC law may appear inevitable at present the political climate could change unexpectedly. In the meantime –

- What is the effect of EC developments on the whole theory / doctrine of Parliamentary Sovereignty ?
- Has the Doctrine been mortally wounded ?
- Is the EC an exception to express and implied repeal which only applies to EC law whilst the ECA 1972 remains on the Statute Books or has the EC destroyed express and implied repeal thus permitting legislation with formulas which limit the power of subsequent Parliaments to legislate on issues?
- Has Factortame produced more problems than it solved?

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