

## The jurisprudence of British Euroscepticism: A strange banquet of fish and vegetables

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### Abstract

Parliamentary sovereignty, meaning that the validity of Acts of Parliament cannot be challenged in the courts, has long been a core principle of the uncodified British Constitution. Much of the political controversy in the 1960s and '70s about UK membership of the European Communities focused on the transfer of law-making functions to the EC Commission and the Council of Ministers. The role of the European Court of Justice, and the possibility that both the ECJ and the UK's own domestic courts might entertain challenges to domestic primary legislation, on the grounds of its incompatibility with EC law, was largely overlooked. It was not until the mid-1980s that British 'Eurosceptics' began to realise that the courts might pose a challenge to parliamentary sovereignty. A turning point was the *Factortame* litigation, in which the ECJ reaffirmed that domestic legislation that conflicts with EC legal obligations must be disapplied. A decade later, in the *'metric martyrs'* case, a British court, without referring the issue to the ECJ, decided an important principle of EC law. Both these cases – the focus for much political lobbying – underline the extent to which the courts have acquired a much higher political profile in the UK than they have had in the past.

### Keywords

United Kingdom; European Community law; European Court of Justice; Constitutional law; sovereignty; Euroscepticism

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