Editorial

Europe and UK Sovereignty

"EC 'rewrites' British constitution" thundered the front page of *The Independent* on June 20, quoting the alleged comment of an unnamed "Luxembourg source" on the previous day's ruling by the European Court of Justice in the *Factortame* case (see p. 223 *post*). On the same day, Mr Richard Shepherd, joining a chorus of MPs who stridently but unsuccessfully urged the Speaker to grant an emergency adjournment debate on the case, claimed that "this ruling of the European court has set aside the British constitution as we have understood it for several hundred years".

The *Factortame* ruling followed last year's reference to the ECJ by the House of Lords under Article 177 of the EEC Treaty, of the question whether a national court which, in a case before it concerning Community law considered that the sole obstacle that precluded it from granting relief was a rule of national law, must disapply that law. In this instance – concerning the "quota hopping" restrictions introduced, to the detriment of Spanish fishing companies registered in Britain, by the Merchant Shipping Act 1988 – the House of Lords had held, notwithstanding the merits of the plaintiffs' case, that it was unable to grant an interim injunction against the Crown and that an Act of Parliament was presumed to conform with Community law until the ECJ ruled otherwise. On considering the matters referred, the ECJ held that the common law rule preventing the grant of an interim injunction against the Crown had to be set aside if it were the sole obstacle to the granting of relief.

The shock-horror headlines and parliamentary anguish that initially greeted the ruling was seriously misplaced. As many media commentators and correspondents, and sundry legal pundits and politicians, have subsequently observed, the *Factortame* judgment is no constitutional revolution, but a natural consequence that follows from our longstanding obligations under the EC treaties. A measure of sovereignty was traded off when Britain joined the European Communities in the early 1970s. Some thought (and many still think) that the decision to do so was seriously misconceived. But the deed is done, and it is silly to pretend otherwise.

Factortame will certainly prove to be an important landmark in the development of public law remedies. It may also help dispel some of the clouds of self-delusion that have shrouded so much public discussion about the realities of national sovereignty. And it gives food for thought about wider constitutional issues. We should, for instance, take serious note of Lord Scarman's observation that the decision, "exposes once again the necessity for a properly drawn written constitution and a supreme court . . . charged with the duty to interpret and apply the constitution".