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“Rights and Remedies in EU Law: A View from the Trenches”

If one had to evaluate a country with regard to its respect for the rule of law, one of the first items on any check list would be the extent to which that country granted rights to individual citizens and how its legal system provided remedies to protect those rights. The purpose of my lecture this evening is to show that, in those respects, Community law, almost entirely as a result of certain landmark judgments of the Court of Justice, achieves high marks, not only in relation to the checks on the legality of laws, but also on the ability of citizens to enforce individual rights and on the availability of remedies. In many ways it is far advanced of UK law, which is having to play “catch up”. These are personal views, not from the Olympian heights of a judge, but from the more lowly position of a foot-soldier from some of the battles and from a veteran (in, I hope, the American sense of the word).

In the first few years after the signing of the Rome Treaty, there must have been very few commentators who foresaw the extraordinary revolutions which we, Community lawyers, now take for granted. It was a few great landmark cases which established that revolution. Before *Van Gend en Loos*, there must have been very few commentators who foresaw the way in which the Court of Justice would approach the concept of direct effect; before *Simmenthal*, there must have been very few commentators who foresaw the width of the concept of supremacy of Community law, and before *Factortame* there certainly were very few who foresaw the possibility of Community law providing for damages for the introduction of national legislation.

The Judges of the Court of Justice in each of those cases had a clear choice namely whether to rule in favour of the rule of law and thus create a Community of law designed to protect individuals, or whether to adopt a much more cautious, and possibly a negative, approach. There was a legal basis for taking either of those courses, either of which could have been justified without much difficulty. The Judges in each of those cases had a choice which would either have had the result of making Community law simply a matter for dispute between States and Institutions or making it something of real significance for the individual. They had a choice between making Community law an off-shoot of public international law, or making it a legal system which, in its field of application, would be capable of providing rights and remedies for individuals. The important thing to appreciate is that at all times the choices that the Court made were consistently in favour of the protection of the rights
of the individual. It was these choices that makes Community law such an extraordinarily rich legal system.

Of course I entirely accept that none of this is rocket science. Each and every step was in fact firmly based in Treaty law and precedent, but that does not mean the result in any of the cases was a foregone conclusion. I remember after *Factortame I* discussing this at a conference with one of the Advocates General. He told me that he considered that *Factortame I* was not a particularly significant case, for it was merely the application of pre-existing case law. Of course that was right, as one can see from the judgment itself. But my reply was that when man first got to the moon, that was also the result of the application of pre-existing technology. It did not make the successful landing any less remarkable.

The starting point for any consideration of these arguments inevitably has to be Case 26/62 *Van Gend en Loos* [1963] ECR1. That case concerned the importation of ureaformaldehyde from Germany into the Netherlands and a challenge to the rate of duty which had in fact been increased after the date when the EEC Treaty came into effect. The matter was referred to the Court of Justice by the Dutch Customs Court. In their Written Observations, all the intervening Member States (Netherlands, Belgium and Germany) objected on the basis of admissibility and on the substance. They all contended that according to the Treaty, which after all they had only signed some five years before, this obligation to pay customs duty was not a matter for Community law but merely for internal law. They also contended that the Article in question only cast a duty upon Member States, as was clear from its terms, and that it could not be relied upon by individuals in national courts, but only in actions brought in the Court of Justice by the Commission or other Member States. This was the classical public international law situation. They contended that individuals only gained rights from their own internal laws and from their own constitutional laws. The Advocate General (Mr Roemer) was of the same view. However the Court, notwithstanding the force of these arguments, unequivocally rejected that view and reached the same position as advanced by the Commission, that is to say that the Article in question created rights which were enforceable by individuals. This was the birth of the doctrine of “direct effect”. Moreover the Court did not reach its conclusion based on some minor technical argument of construction of the Article itself but based itself on the whole spirit and scheme of the Treaty. All this was an unequivocal choice in favour of the rights of the individual. The Court based itself on the objectives of the Treaty and the reference to individuals in the preamble. The Court relied upon the establishment of institutions which affected individuals, including the European Parliament and the Economic and Social Committee and also upon Article 177 (now Article 234) procedures as references to the Court of Justice can be invoked by individuals before their National
Courts. The Court reached these conclusions in paragraphs of the judgment of the greatest importance, which need to be repeated in full:

“The objective of the EEC Treaty, which is to establish a Common Market, the functioning of which is of direct concern to interested parties in the Community, implies that this Treaty is more than an agreement which merely creates mutual obligations between the contracting states. This view is confirmed by the preamble to the Treaty which refers not only to governments but to peoples. It is also confirmed more specifically by the establishment of institutions endowed with sovereign rights, the exercise of which affects Member States and also their citizens. Furthermore, it must be noted that the nationals of the states brought together in the Community are called upon to cooperate in the functioning of this Community through the intermediary of the European Parliament and the Economic and Social Committee.

... The conclusion to be drawn from this is that the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals. Independently of the legislation of Member States, Community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the Treaty, but also by reason of obligations which the Treaty imposes in a clearly defined way upon individuals as well as upon the Member States and upon the institutions of the Community.

.... The vigilance of individuals concerned to protect their rights amounts to an effective supervision in addition to the supervision entrusted by Articles 169 and 170 [now Articles 230 and 231] to the diligence of the Commission and of the Member States.

It follows from the foregoing considerations that, according to the spirit, the general scheme and the wording of the Treaty, Article 12 must be interpreted as producing direct effects and creating individual rights which national courts must protect.”

It was not just the result of the case which was of significance but the way in which the Court expressed itself that makes this case of such fundamental importance. The Court used great constitutional language. The breadth and depth of the wording of the Judgment provided a bridge-head for further movement forward and ensured that there never could be any turning back. Community law thereafter became an essential internal part of the legal systems of all Member States.
The next great case of dramatic significance in this review is Case 106/77 Simmenthal [1978] ECR629. The issue there was also, as in Van Gend en Loos, a relatively trivial dispute for it concerned the fees charged by health inspectors for inspections of meat. It involved only a few thousand pounds. The issue in this particular reference was whether the Magistrate in Italy could give effect to a previous judgment of the Court of Justice or whether it was a matter which could only be resolved by the Italian Constitutional Court, as internal Italian law required. The case itself, in its result, did not create any particular surprises, but the wording of the Court was again dramatic, and expressed in constitutional terms. In my experience it has always been, as with Van Gend the starting point for any submissions made in cases challenging the compatibility of national law with Community law. On first hearing its wording, it always causes the national judge the greatest surprise as to the impact of Community law upon national law and the extent of his duties should he find incompatibility. In order to show this, it is necessary to quote from a few selected paragraphs (17, 18, 21, 22 and 23) of the judgment.

“Furthermore, in accordance with the principle of the precedence of Community law, the relationship between provisions of the Treaty and directly applicable measures of the institutions on the one hand and the national law of the Member States on the other is such that those provisions and measures not only by their entry into force render automatically inapplicable any conflicting provision of current national law but – in so far as they are an integral part of, and take precedence in, the legal order applicable in the territory of each of the Member States – also preclude the valid adoption of new national legislative measures to the extent to which they would be incompatible with Community provisions.

Indeed any recognition that national legislative measures which encroach upon the field within which the Community exercises its legislative power or which are otherwise incompatible with the provisions of Community law had any legal effect would amount to a corresponding denial of the effectiveness of obligations undertaken unconditionally and irrevocably by Member States pursuant to the Treaty and would thus imperil the very foundations of the Community.

... It follows from the foregoing 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 provision of national law which may conflict with it, whether prior or subsequent to the Community rule.

Accordingly any provision of a national legal system and
any legislative, administrative or judicial practice which might impair the effectiveness of Community law by withholding from the national court having jurisdiction to apply such law the power to do everything necessary at the moment of its application to set aside national legislative provisions which might prevent Community rules from having full force and effect are incompatible with those requirements which are the very essence of Community law.

This would be the case in the event of a conflict between a provision of Community law and a subsequent national law if the solution of the conflict were to be reserved for an authority with a discretion of its own, other than the court called upon to apply Community law, even if such an impediment to the full effectiveness of Community law were only temporary.”

The natural and inevitable consequence of the terms of the statements by the Court of Justice in Van Gend and Simmenthal, can probably best be seen in Case 213/89 Factortame I. The United Kingdom had adopted a law, the Merchant Shipping Act, which effectively expelled Spanish owned ships from fishing against the UK quota. It required the majority of the investors to be nationals of and be resident in and be domiciled in the United Kingdom. Some of the vessels in question had re-flagged well before Spain joined the Community, others were United Kingdom flagged vessels which had been bought, with their licences, from United Kingdom owners. The Spanish fishermen challenged the Act of Parliament and its applicability to them in the English Courts.

As a matter of United Kingdom law, the position of the Spanish was hopeless. Everyone knew that Parliament was sovereign and that you cannot challenge the lawfulness of an Act of Parliament. It was clear that the Act achieved exactly what Parliament, in performance of its sovereign rights, sought to achieve. Further, everyone knew that national law could not suspend the operation of an Act of Parliament, and injunctions could not be obtained against the Crown in such circumstances, and that unless and until the Act of Parliament had been overturned there would be a presumption of legality in the interim period. Again everyone knew the damages could never be obtained against the Government for enacting an Act of Parliament, even if it subsequently turned out to be unlawful. Everyone had learnt all these things at law school, if not at University.

The matter first came before the Divisional Court, not as an interim application, but for a substantive hearing. The Divisional Court referred the substantive fishing and establishment issues to the Court of Justice, as was inevitable, but the question was what to do in the meanwhile – a gap which conventionally would take about eighteen months to two years
to resolve. The interim position was of critical importance, for the applicants would be forced to sell their vessels if the Act was not suspended and they were bound to suffer significant damage which, as the law then stood, could not be recovered.

The Divisional Court [1989] 2CMLR 353, notwithstanding all these difficulties, in fact granted an injunction applying Community law principles. The Order of the Divisional Court was to disapply the Act, so far as the Applicants were concerned, pending the decision of the Court of Justice. This caused outrage in the press. One headline I remember at the time was “Spanish Fishermen 1 : UK 0”. Perhaps more correctly that should be the other way round as, for the Spanish it was an “away” game, although it should be said at once that at no time did that fact ever make itself felt in any of the extensive court appearances over the next 10 years or so of litigation. The Court of Appeal heard the matter the next week and set aside the Order, although recognising that at a final stage, on the basis of Van Gend and Simmenthal (which cases they quoted from extensively), they would have to make an appropriate Order. The Court of Appeal stated they did not think that the Divisional Court recognised “the constitutional enormity”, as the law then stood, on what they had done. The House of Lords, whilst referring the matter of the interim protection to the Court of Justice, reached the same conclusion. It is worth-while considering the terms in which the question was asked, which made clear the national obstacles to the grant of any interim protection and the unavailability of damages.

“(1) Where

(i) a party before the national court claims to be entitled to rights under Community law having direct effect in national law (the “rights claimed”),

(ii) a national measure in clear terms will, if applied, automatically deprive that party of the rights claimed,

(iii) there are serious arguments both for and against the existence of the rights claimed and the national court has sought a preliminary ruling under Article 177 as to whether or not the rights claimed exist,

(iv) the national law presumes the national measure in question to be compatible with Community law unless and until it is declared incompatible,

(v) the national court has no power to give interim protection to the rights claimed by suspending the application of the national measure pending the preliminary ruling

(vi) if the preliminary ruling is in the event in favour of the rights claimed, the party entitled to those rights is likely to have suffered irremediable damage unless given such interim protection,

does Community law either

(a) oblige the national court to grant such interim protection of the rights claimed; or
(b) give the Court power to grant such interim protection of the rights claimed?

(2) If question 1(a) is answered in the negative and Question 1(b) in the affirmative, what are the criteria to be applied in deciding whether or not to grant such interim protection of the rights claimed? ...

The Court of Justice, in a very short judgment, quoted extensively from Simmenthal, and relied on the principle of the efficacy of the preliminary reference procedure. The Court of Justice, basing itself on Van Gend and Simmenthal ruled:

“...the full effectiveness of Community law would be just as much impaired if a rule of national law could prevent a court seised of a dispute governed by Community law from granting interim relief in order to ensure the full effectiveness of the judgment to be given on the existence of the rights claimed under Community law. It follows that a court which in those circumstances would grant interim relief, if it were not for a rule of national law, is obliged to set aside that rule.

That interpretation is reinforced by the system established by Article 177 of the EEC Treaty whose effectiveness would be impaired if a national court, having stayed proceedings pending the reply by the Court of Justice to the question referred to it for a preliminary ruling, were not able to grant interim relief until it delivered its judgment following the reply given by the Court of Justice.

Consequently, the reply to the question raised should be that Community law must be interpreted as meaning that a national court which, in a case before it concerning Community law, considers that the sole obstacle which precludes it from granting interim relief is a rule of national law must set aside that rule.”

The Opinion of Mr Advocate General Tesauro (in a learned Opinion, particularly significant for his analysis of interim prohibition in the differing Member State legal systems) was to the same effect. Again the Court of Justice had a choice and it ruled in favour of the rights of the individual. It is worth pointing out that this judgment of the Court of Justice was delivered with exceptional, possibly unique in recent times, expedition, taking only some twelve months from the date when it was first received by the Registry to delivery of the judgment.

Before the matter came back to the House of Lords, the Commission had taken action against the United Kingdom. Before even starting proceedings in the national Court, the representatives of the Spanish fishermen had had a meeting with the relevant Commissioner in charge of fishing in order to try to encourage the Commission to take action. The main concern of
the fishermen was that national proceedings would be very expensive. I remember well the Commissioner advising the fishermen that the Commission was probably not the best champion to choose in order to take this case forward, for the Commission was always exposed to political pressure. If the fishermen really wanted to be sure that their interests were always considered first, they would have to take action themselves in the English courts. With regard to costs, the Commissioner, in memorable words, told the fishermen that fishermen had expenses. They had to buy a boat, they had to buy fuel and nets. They also had to have lawyers. If they could not afford any of these things, then they should not be fishing. However notwithstanding this, the Commission did in fact, rather belatedly, take action against the United Kingdom and apply for interim measures in the Court of Justice. The Commission for some reason only attacked the nationality requirements of the Act in its request for interim measures and not the residence or the domicile requirements. The President granted the interim measures, but following that Order there were only a very few vessels which were able to become registered on an interim basis for there were very few for whom only the nationality requirement alone (and not the residence or domicile requirement) was an obstacle. However the importance of the Order of the President was that the Order itself and in particular the conclusions of the President, improved considerably the prospects of the Spanish succeeding on the substance. That was going to be a crucial matter insofar as interim measures in the English Courts were concerned. It would also (as it subsequently turned out) add to the prospects of the Applicants succeeding in their claim that they be entitled to damages.

The matter then came back before the House of Lords. The speech of Lord Bridge contains a strong defence of the Courts against an allegation, which had been made repeatedly in the press, that the Courts were denying the sovereignty of Parliament. He pointed out quite correctly that the European Communities Act 1972 made it clear that the Courts had to apply Community law and that included the concept of supremacy of Community law. This statement forms an important element in the debate as to whether Factortame I was a revolution in the constitutional law of this country (a “big bang”) or merely a small ripple caused by the application of the law. As a result of the judgment of the Court of Justice on the reference, the House of Lords had now to ignore the obstacles which had previously seemed insuperable. They found that the Applicants’ case, in the light of the President’s Order, was now sufficiently firmly based for interim measures to be considered, and that the detriment to the public interest of suspending the application of the Act did not outweigh the irremedial loss to the fishermen if they succeeded. Accordingly the law was disapplied with regard to the Applicants and injunctions ordered. So the Divisional Court had been right all along, but of course in the meanwhile the fishermen had suffered damage.
Such a result was of course, so far as United Kingdom law was concerned, a fundamental departure from all constitutional and legal principles. Such an Order would have been inconceivable in terms of national law. What had in fact been a constitutional enormity now became something which was constitutionally orthodox. The world had changed. United Kingdom law, following Community law, had, at least where Community law was concerned, recognised the rights of individuals and had disregarded fundamental concepts in order to secure the protection of individual rights and to grant on an interim basis the appropriate remedies, here an interim injunction.

What then of the claim for damages? The Applicants in *Factortame I*, right from the start, had claimed damages in their application for judicial review. At the time of the original reference from the Divisional Court, the Applicants had proposed a question raising the question of the availability of damages for unlawful legislation. At the time of the reference, there had not been any case in which the Court of Justice had had to consider the issue of State liability of a Member State for the introduction of legislation inconsistent with Treaty provisions. The Government opposed the reference of such a question. After considerable thought, the lawyers for the Spanish decided not to pursue this issue at this stage. In fact this turned out to be a very wise decision, because the whole case preceded on an interim basis on the assumption that damages could not be recovered in national law and therefore that any damage suffered would be irreparable. At that time the Court had not given judgment in *Francovich*.

Once the Court of Justice had ruled in favour of the Spanish fishermen in the substantive fishing case in Case 221/89 *Factortame II*, [1991] ECR3905 and on the Commission’s substantive case, Case 246/89 [1991] ECR4585, the question then turned to damages and the possibility of recovering them. The existence of damage was never disputed. Case C-48/93 *Factortame III* was accordingly referred back to the Court of Justice by the Divisional Court and was joined with another case, Case C-46/93 *Brasserie du Pecheur*. This was the third reference in the same case. The claim for damages was for losses suffered as a result of the enactment of the Merchant Shipping Act and to cover the period between the time when the Applicants were forced to give up fishing and the time when the boats were able to fish again. In English law the only possible way of succeeding would have been to allege misfeasance in public office, but that would have been impossible to establish in relation to legislation introduced by Parliament, and in any event there would be major obstacles to making a claim on such a ground for purely financial loss. *Francovich* [1991] ECR I-5357 however now offered a way forward. It is not the purpose of this lecture to discuss in detail the course of that reference or to analyse all the findings of the Court of Justice as to what is necessary in order to establish liability, but I should like to
emphasise certain aspects of the findings of the Court.

Here again the Court [1996] ECR I-1029 took the courageous view in support of the rights of individuals. The Court rejected the argument advanced by the German Government that damages for State liability was only something which could be introduced by a Treaty amendment and not as part of “the law” by the Court. It rejected the arguments of the German, the Irish and the Dutch Governments that damages were only applicable when, as in *Francovich*, one was dealing with provisions which were not of direct effect. The Court stated that the right to reparation is a necessary corollary of a provision being of direct effect whose breach caused the damage sustained. As in *Francovich*, the Court held that the principle of State liability is inherent in the system of the Treaty, which must be uniformly applied. The Court then set out the conditions under which the State incurred liability for legislative acts and the extent of the reparation, which was to be full. However the important thing to appreciate is that even at that stage there were arguments which the Court could have accepted and which would have been legally justifiable, but which did not provide for the possibility of damages for the individual. However it rejected such possibilities and opted yet again for full effective remedies as an essential part of Community law. It was always going to be interesting to see if the European Courts (ECJ and CFI) apply such tests to the liability of the Community with regard the legislation or administrative acts. It has always been in the past well nigh impossible to recover damages from the Community under the earlier tests. It would seem that the Court of Justice has indeed done this: see Case C-352/98 *P Bergaderm S.A. v. Commission*, Judgment of 4 July 2000. This development is greatly to be welcomed.

The case then came back to the Courts in England to decide whether the test of liability could be established. This was done in *Factortame IV* [1997] EuLR 475 (Divisional Court), [1998] EuLR 456 (Court Appeal) [2000] EuLR 40 (House of Lords). Disclosure of documents had been completed and many sensitive documents, including Cabinet Minutes and Advices of Law Officers, had been disclosed. All eleven Judges (there were three in the Divisional Court) were unanimous that the breach was manifest and grave and that liability was established. The matter subsequently came on for the assessment of damages and it ended up with the Government having to pay some £55 million damages and also many millions in costs. That was a dramatic and expensive demonstration of the importance of the recognition of rights and the need for remedies, all of which would have been unthinkable under national law.

The final case of the Court of Justice of landmark significance in considering the availability of remedies is Case G-453/99 *Courage v. Crehan*, Judgment of 20 September 2001. Here the issue was whether, assuming a breach of Article 81, a party to an unlawful agreement can claim damages. As a matter of
English law, following *Tinsley v. Milligan* [1994] 1AC 340 (as long as that case remains the law) such damages would be irrecoverable because the claimant would have to rely on the unlawful agreement in order to establish his claim, and English law prohibits that. In *Courage* the Court of Justice stressed the importance of rights of individuals and the importance of damages claims in the maintenance of effective competition in the Community. Most importantly for this lecture, the Court stated clearly that the mere fact that a claimant is party to an unlawful agreement cannot by itself exclude a claim for damages and could only do so if the Claimant had been significantly responsible for the distortion of competition. The Defendant could not rely on the rule of national law which excluded the right to claim damages, however innocent the claimant might have been of the illegality. Yet again Community law arrived at an answer inconsistent with what national law regards as a fundamental principle, and yet again such principles have to be set aside. It is yet a further statement of the Court of Justice in favour of rights and remedies.

Having considered these cases and how the Court of Justice has opted consistently in favour of rights for individuals and in favour of remedies for individuals, the interesting thing is to see how the English Courts have reacted to these decisions. Of course there should be no difficulty when the matter is covered by Community law, for in that case the national Courts will have to, and indeed do, loyally apply Community law as an integral part of national law. But the interesting aspect for my lecture is the extent to which developments in Community law have led to an alteration in purely national law. In this respect the developments are, I would suggest, remarkable and clearly the law in this respect is "on the move". This is what I have previously described as "catch up". I should like to give a few examples.

(1) Very shortly after the House of Lords had granted an interlocutory injunction against the Government in *Factortame I* an identical issue arose in *M v. Home Office* [1984] 1 AC 377. In that case the House of Lords reviewed its earlier case law on the issue and came to the conclusion that there never had been an impediment to granting such a remedy, although that had been one of the impediments referred to in the questions referred by the House of Lords and which had to be disapplied in *Factortame I*. It is generally accepted that the result in *M v. Home Office* owes much to the decision in *Factortame I*.

(2) In *Woolwich Equitable Building Society v. Inland Revenue Commission* [1993] 1 AC 177 the House of Lords accepted for the first time by applying the law (and without the need for legislation) that restitution was possible if based on mistake of law. One of the arguments for accepting this radical change was the
fact that in Community law, restitution in such circumstances was possible relying, in particular, on Case 199/82 *San Georgio* [1983] ECR 3595.

(3) In *Factortame III* and *IV* it was decided that damages would be recoverable for legislation which conflicted with Community law if the breach was “manifest and grave”, and damages were in fact awarded. Administrative acts also give rise to a liability for damages if the breach is “sufficiently serious”. In *Factortame IV* the Court of Appeal ([1998] EuLR 456 at 469) left open the question whether in purely national law there would be a remedy of damages in respect of legislation for a breach of a superior legal rule. The same will no doubt apply for administrative acts. The fact that the Court of Justice found that the right to damages in Community law arises from an application of “the law” and did not require a Treaty amendment, will clearly be used against those who argue that in this country damages in such a case would not be available without legislation. In such cases, no doubt the wide discovery by the Crown as in *Factortame IV* will become the norm (as in *R (Bancoult) v. Secretary of State of the Foreign and Commonwealth Affairs* [2001] 2 WLR 1219).

(4) In *Courage v. Crehan*, the ECJ has made it clear that in the circumstances of that case the rule in *Tinsley v. Milligan* must be ignored. I have no doubt that that rule will soon be revisited and I suspect varied to allow for a result such as reached by the ECJ in *Courage*.

(5) Substantive legitimate expectations owe their arrival as part of UK administrative law almost entirely to EU law. In *Hamble Fisheries* [1995] 1 CMLR 533, Sedley J basing his decision on EU authorities, found that there was a principle of substantive legitimate expectation in national law. In *Hargreaves* [1997] 1 WLR 906 that was described by the Court of Appeal as “heretical”, but in *Coughlan* [2000] 2 WLR 622, the Court of Appeal (including Sedley L.J.) rejected the “heretical” description and followed *Hamble Fisheries*. Everyone accepts that substantive legitimate expectations is still developing and I have no doubt that it will end up identical to the rule as applied in Community law.

(6) Following EU law, the law of proportionality is on the verge of forming part of UK law, and also *Wednesbury* as a concept where “irrationality” is the test, is under attack. As a result, the review of administrative decisions will almost inevitably become more intensive, particularly when based on manifest errors of fact (see the House of Lords in *Alconbury* [2001] 2 All E.R. 929). See also *R v. Secretary of State for the

The common law method of development was once described as being crab-like. EU law is causing the common law to make progress, even in fields where it is not directly relevant, in a game of “catch up”. The crab has turned into a kangaroo.

I hope that you can now see that Community law is in fact rich in rights and remedies and that it is fact influencing the development of purely national law. This means that lawyers, who have no immediate interest in Community law, cannot afford to be ignorant of its basic concepts, for those basic concepts may form the basis of the development of national law and procedures. So you can see that what happens in Luxembourg today will almost certainly affect what is likely to occur in the future in the United Kingdom Courts, even in fields to which Community law has no application.