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*The Transformation of Europe* in US legal academia and its legacy in the field of private law (2013)

Daniela Caruso\*

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## I. Introduction

Joseph Weiler's children loved transformer toys: the car that turns into a scorpion, the helicopter that morphs into a monster, and so on. The Weilers' home must have been cluttered with transformers at the time *The Transformation* was written, and perhaps inspiration for the project came first and foremost from the playroom. Of course, child play was only partly responsible for the catchy title of this masterpiece. In the American legal historiography of the time, "Transformation" – with a nod to Polanyi – was code for an extended, ambitious and critical rendition of epic legal developments. A voracious reader and himself a novelist, Joseph Weiler had learned from Ovid, Kafka and Stan Lee that a good transformation story can grip the collective consciousness, and knew that the matrix of metamorphosis, with all its evocative power, would make the story of post-WWII European legal developments particularly compelling. He was, of course, correct.

A gripping narrative is, however, only one ingredient of success. It also matters when and where the story is told. The long-lasting fame of an extraordinary piece often depends on the impact it has on its contemporaries – those who read it for the first time and choose to pass it on to their successors as a classic. *The Transformation of Europe* was published by a top US law journal at the dawn of the 1990s, and made an immediate splash. Instantly famous, it was regularly assigned in a range of American academic courses, was widely quoted and cited by US scholars across many disciplines, and became a pillar in the architecture of EU studies. Part II of this essay revisits a few traits of that place and time – US legal academia in the 1990s – and investigates the importance of *The Transformation* in that context. I suggest that, in the heat of the 'federalist revolution' wrought by the Rehnquist court, Joseph Weiler's piece performed an important role, enabling a momentary suspension of partisan assumptions about the proper division of labor between states and federal government. I further surmise that the particular synergy between this piece and US federalism jurisprudence, in a cultural and political climate conducive to transatlantic cooperation, was a fundamental reason for the rise of EU law as an autonomous discipline in US law schools.

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Part III focuses on the legacy of the transformation matrix, and applies it to a subset of EU law that hardly existed when the piece was published – namely, EU private law. Precisely because, through Professor Weiler’s lens, the process of Europeanization came across as deeply transformative of the legal landscape, *The Transformation* made me wonder why EEC law had always seemed so tangential, or perhaps altogether orthogonal, to the private laws of the member states. Among the circle of *civilistes* with whom I had been acquainted since the 1980s, Europeanization had once asserted itself in the form of a mandatory products liability regime. But not even that notable reform had prompted any real reflection on the systemic change that was happening in Brussels. How could we have missed the transformation? And how could the transformation have bypassed private law?

I began my own journey into EU law by investigating these questions, and found myself witnessing a radical change. Over the past twenty-five years, private law has moved from a parallel universe to the center stage of integration policies; and it has morphed from bulwark of state sovereignty to natural target of harmonization. Professor Weiler’s seminal article, written before the fact, gave us the tools we needed to comprehend this transformation as it unfolded.

First, *The Transformation* unearthed the philosophical premise of formal equality among individuals, which lay at the core of the Single Market agenda and allowed for the downplaying of socio-economic differences (in this sense, the integration project had much in common with the liberal civil codes of the founding member states); second, Professor Weiler’s work was a lesson in the importance of self-referential frameworks. His epistemic focus on the resiliency of thickly interwoven legal rules, insulated from political dynamics, was crucial to understanding the particular itinerary of private law within the EU architecture. Writing about the transformation of European private law in the aftermath of *The Transformation* felt like spotting new trees in a large forest, whose existence and basic bio-rules had been revealed to us with unprecedented clarity.

## II. *The Transformation of Europe* in US Legal Academia<sup>1</sup>

The rise of EU law in US legal scholarship – from international lawyers’ pet project to new fuel for comparative constitutional scholarship, and then on to self-contained subject matter with an independent *raison d’être* – is closely tied to the professional itinerary of Joseph Weiler. Under the auspices of Eric Stein and Peter Hay, EEC law developed as a discipline at the University of Michigan, and the collaboration between US legal academia and the European University Institute (EUI) grew in quality and intensity. The year 1984 saw the birth of a massive research project sponsored by the EUI and the Ford Foundation, named “Integration through Law.”<sup>2</sup> According to the vision of senior coauthor Mauro Cappelletti, the project was to map the budding European legal integration onto the lessons of a mature American federalism. The blueprint of the project had a one-way direction, portraying the United States

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<sup>1</sup> This section is adapted from D Caruso, *EU Law in U.S. Legal Academia*, 20 *Tul. J. Int’l & Comp. L.* 175, 181-189 (2011)

<sup>2</sup> *Integration Through Law: Europe and the American Federal Experience* (Cappelletti, Seccombe & Weiler eds., 1985).

as a source of “experience” and Europe as wide-eyed youth in need of inspiring examples. Joseph Weiler’s take on the project, however, was quite different. He was determined to avoid the trap of ephemeral similitude. Having identified a bed-rock of analogies, he then set out to unearth the specific dynamics that had enabled Europe’s legal change. Weiler’s own contribution to *Integration through Law*, focused as it was on Europe’s institutional uniqueness, found its natural sequel in *The Transformation*. This article explained Europe in terms remarkably intelligible to US lawyers, but avoided any direct reference to US federalism. This was, familiarly enough, a constitutional project based on a court-led orchestration of federal and state powers. Yet its internal analytics, shaped by the logic of free trade and by technocratic opacity, were sufficiently rich and peculiar to dispel any off-putting déjà vu effect.

The timing of *The Transformation* proved brilliant. Weiler’s narrative enabled transatlantic dialogue on constitutionalism at a point in US legal history when federalism came to dominate both scholarly and political discourse. In his early years on the Court, Justice Rehnquist had reminded his brethren that state prerogatives were enshrined in the Constitution (“the Tenth Amendment ... is not without significance”<sup>3</sup>) and had denounced what he perceived to be an undue growth of Congress’s power to regulate interstate commerce. In his view, decades of Washington-friendly constitutional adjudication had turned the doctrine of delegated powers into “fiction.”<sup>4</sup> Appointed to the role of Chief Justice in 1985, Rehnquist spearheaded what we now know as the “federalist revolution,” openly aimed at restoring what he (and many others) envisioned as the proper balance between state and federal government in the US constitutional design. Sandwiched between two cases that upheld federal powers, *Garcia v. San Antonio Metropolitan Transit Authority* (1985) and *Gonzales v. Raich* (2005), were a number of remarkable pronouncements aimed at keeping Congress’s legislative reach at bay. To name just a few: *New York v. United States* (1992), upholding the state’s challenge of federal legislation by breathing new life into the Tenth Amendment; *United States v. Lopez* (1995), narrowing the legislative reach of the interstate commerce clause; and *City of Boerne v. Flores* (1997), limiting Congress’s enforcement powers under the Fourteenth Amendment.

Predictably, this flurry of dramatic pronouncements energized US legal academia. In polarized academic debates, federalism grew into a sort of collective neurosis.<sup>5</sup> It is in this context that EU law gained its highest ever degree of popularity. In January 1993, in sync with the entry into force of the Treaty of Maastricht, a modern American casebook on EU law came out of the presses of West Publishing.<sup>6</sup> In 1994, the Columbia Law Review dedicated 125 pages to George Bermann’s discussion of subsidiarity (a wholly European doctrine aimed at determining, politically and perhaps judicially, the distribution of powers between Brussels, states, and sub-state entities),<sup>7</sup> and Columbia University lent

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<sup>3</sup> Nat’l League of Cities v. Usery, 426 U.S. 833, 842-43 (1976).

<sup>4</sup> Hodel v. Va. Surface Mining & Reclamation Ass’n, 452 U.S. 264, 308 (1981) (Rehnquist, J., concurring).

<sup>5</sup> See Edward L. Rubin & Malcolm Feeley, Federalism: Some Notes on a National Neurosis, 41 UCLA L. Rev. 903, 908 (1994).

<sup>6</sup> George A. Bermann et al., Cases and Materials on European Union Law (1st ed. 1993).

<sup>7</sup> George A. Bermann, Taking Subsidiarity Seriously: Federalism in the European Community and the United States, 94 Colum. L. Rev. 331, 423 (1994).

its flag to a new journal devoted exclusively to European Law.<sup>8</sup> EU federalism was mainstreamed into US constitutional discourse. Top law journals made room, without apologies, for EU law articles. EU law classes were taught by full-time faculty members who considered the subject their main area of research.

The European connection to the US federalist debate had been made structurally clear in *The Transformation*. The three main sources of the federalist revolution – the commerce clause of the US Constitution, the equal protection clause of the Fourteenth Amendment, and states' sovereign prerogatives per the Tenth and Eleventh Amendments – found adequate functional equivalents in the Treaty of Rome. These analogies made it possible, in turn, to understand what was different. And, for at least two reasons, such differences became a worthwhile field of scholarly investigation.

First, bringing the EU experience to bear on the American debate had the effect of mixing up, and thereby diffusing, the political stakes of the Supreme Court's case law. State prerogatives in the European context of the mid-1990s were often associated with a bulwark of social protection against the flood of neoliberal deregulation – in sharp contrast to the politics of similar arguments in US federalism. This was enough to cast state sovereignty in a different light. In the words of Ernest Young: "Considering issues of federalism in the context of Europe ... helps us shed some of the historical baggage hindering present debate, and it demonstrates that any number of different federal settlements may be workable and legitimate."<sup>9</sup> For those interested in de-ideologizing the federalism question and rephrasing it in doctrinal terms, EU parallels offered an extraordinary opportunity.

Second, the very effort of searching for functional equivalence in an altogether different analytical system could prompt novel taxonomies and lead to deeper insights. A wave of academic Europhilia permeated the US judiciary. Justice Breyer's dissent in *Printz v. United States* (1997) referred to the EU edifice in order to relativize the anticommandeering principle. This was by no means the first or the last reference to European law in the US Supreme Court, but it was by far the most structural. At stake was not just the possibility of transatlantic similarities between discrete rules, but a comprehensive overlap of two legal archetypes of federalism. There was more, here, than the academic discipline of comparative law had ever promised. For once, the legal orders of the old and new continent seemed to have reached sufficient structural convergence that dialogue could actually become relevant for the positivists. Europe seemed to be doing federalism by other means, i.e., by other doctrines and, more importantly, by other politics, but doing federalism nonetheless. The effort of deciphering its language was worthwhile, because it yielded fresh evidence of good or bad practices that could somehow enrich the federalist debate at home. It is in light of such payoffs, visibly enabled by *The Transformation*, that EU law became an autonomous subject with status and prestige in US law schools.

This unusual degree of US interest in the legal structure of European integration coincided with other transatlantic synergies. The 1990s, the golden age of EU law in American academia, were also years of unprecedented optimism among mainstream internationalists. The end of the Cold War and the

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<sup>8</sup> 1 Colum. J. Eur. L. (1994/95).

<sup>9</sup> Ernest A. Young, Protecting Member State Autonomy in the European Union: Some Cautionary Tales from American Federalism, 77 N.Y.U. L. Rev. 1612, 1618 (2002).

spread of the Washington Consensus had led the world to the impression that international values might at last be converging. This “long decade” nurtured the “ideal of the gradual transformation of the world into a community governed by widely-accepted internationalist principles and institutions.”<sup>10</sup> Of course, reality was more complicated, but convergence made for fashionable discourse, and the discourse recast outrageous events as unavoidable deviations from a trajectory of steady progress. In the aftermath of September 11, 2001, the French newspaper *Le Monde* proclaimed unambiguous transatlantic alliance in a famous editorial (“Nous sommes tous Américains”)<sup>11</sup> and three months later the European Council issued the Laeken Declaration (the blueprint of a Philadelphia-inspired constitutional moment for the EU). These were also years during which the EU consolidated its eastward expansion, arguably attesting to the demise of once insurmountable ideological divisions. This cultural climate enabled an unprecedented rapprochement between mainstream constitutionalists and comparative lawyers. *The Transformation* – a catalyst of transatlantic legal dialogue – found in that dialogue new life and importance.

The myths of the long decade soon crumbled, shattered by the divergence of member states’ stances on post-9/11 strategies, the implosion of the EU constitutional dream, and the bursting of many a financial bubble. The world found itself divided again, with no consensus on how to handle economic interdependence or how to secure peace. At the level of transatlantic relations, the EU’s statement of friendship in the aftermath of 9/11 proved meaningless, as the United States found itself negotiating its European allegiances one state at a time in Kissingerian mode. The EU’s inability to produce a constitution rendered federalist analogies implausible. Alternative narratives of the integration project, emphasizing its administrative and regulatory core, gained scholarly currency.<sup>12</sup> US constitutional law scholars gradually abandoned the field, and so did mainstream law journals. EU law courses saw diminishing enrollment and often came to be taught by European visitors or simply outsourced to overseas campuses in the summer. Even before the global financial crisis, the European job market became less promising to US law students due to an inward-looking transformation of multinational firms, increasingly prone to staff their European offices with local lawyers only briefly trained in the United States.

To be sure, this was not the end of US-based interest in the European experiment. EU law as an autonomous legal system with not-quite-federal features, as outlined in *The Transformation* and since complicated by further layers of law, politics and history, continued to feature in dedicated monographs, specialized law journal articles, and most importantly, political science literature. In legal academia, however, the comprehensive study of the dynamics of European integration migrated back to the fields it came from: comparative or international law. Within comparative law, the large-scale functionalism of the 1990s dried up and gave way to *bricolage* (a term aptly chosen by Mark Tushnet to indicate the scholarly technique of taking bits and pieces of a foreign system as tools for domestic legal inquiries).<sup>13</sup> The global financial crisis has certainly made the United States pay close attention to European

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<sup>10</sup>Nathaniel Berman, Intervention in a “Divided World”: Axes of Legitimacy, 17 *Eur. J. Int’l L.* 743, 745-746 (2006).

<sup>11</sup> Jean-Marie Colombani, *Nous sommes tous Américains*, *Le Monde* (Paris), Sept. 13, 2001.

<sup>12</sup> Peter L Lindseth, *Power and Legitimacy: Reconciling Europe and the Nation-State* (2010).

<sup>13</sup> Mark Tushnet, *The Possibilities of Comparative Constitutional Law*, 108 *Yale L.J.* 1225, 1228 (1999).

responses, but only in a fragmented manner and with discrete regard to its many pieces (pension reform, banking regulation, or sovereign debt monitoring). The project of European legal integration as a whole, its oscillation between unity and community, and the transformation of its ethos, must now compete for attention with other phenomena of regionalization on the world stage. In this sense, *The Transformation* is the hallmark of a period that has come to an end – a particular phase of transatlantic fame for EU law that sprang in large part from this single-authored contribution and that is now behind us. What is definitely *not* over, however, is the legacy of the piece for all those who continue – by virtue of geographic situation and/or academic pursuit – to engage in the study of EU law. What follows is an attempt to show how, now as twenty years ago, *The Transformation's* analytics continue to prove essential.

### III. The Transformation's Legacy in the Context of EU Private Law

*The Transformation* famously explained how something as intensely political as the integration of Europe could be perceived, in its foundational period and beyond, as ideologically neutral. Weiler's explanation resided in the particular institutional design of the Community, in the specific modus operandi of Commission and Council of Ministers, and in the relative isolation of legal analytics from political contestation. In the final pages of his article, however, Professor Weiler observed that the era of ideological neutrality had come to an end. By his account, Jacques Delors' White Paper for the completion of the Internal Market (1985) had marked the institutional embrace of a particular ideology – one that lent primacy to the goal of transactional efficiency and that assumed formal equality among players. In his words:

"A "single European market" is a concept which still has the power to stir. But it is also a "single European market." It is not simply a technocratic program to remove the remaining obstacles to the free movement of all factors of production. It is at the same time a highly politicized choice of ethos, ideology, and political culture: the culture of "the market." It is also a philosophy, at least one version of which -- the predominant version -- seeks ... to maximize utility [and] is premised on the assumption of formal equality of individuals. It is an ideology the contours of which have been the subject of intense debate within the Member States in terms of their own political choices. ... This need for a successful market not only accentuates the pressure for uniformity, but also manifests a social (and hence ideological) choice which prizes market efficiency and European-wide neutrality of competition above other competing values."<sup>14</sup>

This reading was of course correct and utterly perceptive: market efficiency – even though marbled by competing values – was a very specific cognitive framework, and there was nothing ideologically neutral about elevating *The Market* to a per-se goal. But in the mid-1980s the Commission saw things differently, and had no intention of putting forth an ideological manifesto. Its emphasis on markets was heralded, and perhaps even genuinely conceived, as a renewed promise of neutrality – the conceptual opposite of an ideological move. This explicit focus on rule uniformity, efficiency and – as per Weiler's

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<sup>14</sup> The Transformation of Europe, p. 2477-2478. Footnotes omitted.

observation – formal equality between individuals was a revival of 18<sup>th</sup>-century private law rhetoric. The classical private law formula that several sovereigns (most notably Napoleon) had used to build their nation-states in continental Europe was being deployed again: no state powers, no conception of the common good, no social goals would ever interfere with private property or contractual autonomy. The rules of private exchange and ownership would be distributively neutral, simple vehicles for the realization of individual (Kantian) autonomy. This portrayal of private society as animated only by forces of its own – the aggregate results of individuals’ self-interested agendas – had allowed the nascent states of the Old Continent to promote themselves as mere enablers of multiple pursuits of happiness. The sovereign’s respect for the autonomy of private transactions had been deployed as proof of self-restraint, and had therefore contributed to legitimizing the sovereign’s power. In 18<sup>th</sup>- and 19<sup>th</sup>-century Europe, the conceptual separation of private law rules from politics had performed an essential state-making function. The Single Market agenda, like classical private law, could now serve the goal of solidifying the supra-nation.

It was not yet obvious, at the end of the 1980s, that deepening European integration would bring the Commission to venture into the heart of Continental legal systems –namely their private laws of contract and property, whose positive differences stood in the way of seamless market transactions. For a long time, European integration had seemingly remained on the ‘public’ side of the private/public divide: it had concerned itself mostly with trade barriers erected by national executives (a matter of state sovereignty) and agricultural or industrial policies. Both of these functions concerned background allocative choices and were therefore traditionally orthogonal to a classical understanding of private law rules. The 1985 Product Liability Directive<sup>15</sup> – admittedly a major break with the private-law principle of fault-based liability – had passed without much fanfare because it was in line with the spirit of the time,<sup>16</sup> and had not yet manifested its transformative potential.<sup>17</sup> But in the 1990s, the impact of the Single Market agenda on national private laws became obvious, and Professor Weiler’s intuition proved dramatically true: the Single Market *was* an ideological project that risked flattening private law under the paradigm of formal equality; and it *was* a project at odds with the reality of 20<sup>th</sup>-century private law – now a historically mature and nuanced platform for private autonomy, informed (in some states more than others) by solid mechanisms for the protection of weaker parties.

The tone of the debate was indeed reminiscent of the analytics of *The Transformation*, which centered on the relative insulation of law from political contestation. But there was something unique, and irreducible to the pattern of incremental constitutionalization identified by Professor Weiler, in the encounter between private law and Europeanization. The unassailability of national private law was surprisingly stronger than constitutional statehood, as it relied upon entrenched fictions of horizontality

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<sup>15</sup> Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products.

<sup>16</sup> W. Boger, *The Harmonization of European Products Liability Law*, 7 *Fordham Int’l L. J.* 1 (1983-1984).

<sup>17</sup> M. Reimann, *Product Liability in a Global Context: The Hollow Victory of the European Model*, 2003 *European L. Rev.* 128. The impact of the product liability reform on state law would become obvious with such decisions as *González Sánchez v Medicina Asturiana SA* (C- 183/00) [2002].



and closure, had history in its side, and was firmly rooted in western legal thought.<sup>18</sup> States' civil codes had survived, with little change, profound constitutional upheavals, and might be equally resilient to Maastricht.

It is against this bulwark of resistance that the transformation of private law had to be mobilized. The White Paper of 1985 gave the Commission the mandate of building *the market*, and the Commission needed an argumentative strategy that would make its new inroads into private law seem normal and unobjectionable. This strategy was to be built on the foundations of classical private-law rhetoric. Like the coins of the late Roman Empire, private law had two sides. One side emphasized the horizontality of private exchange, its insulation from power, its apparent neutrality, and its theoretical indifference to politics. This picture was of course terribly out of date at the end of the 20<sup>th</sup> century, but in the necessarily simplified private-law parlance of supranational fora, it was somehow acceptable and perfectly compatible with the neoliberal initiative. In the nascent debate about the harmonization of private law, the Commission kept flashing this side – and this side only – of the coin. Private law's self-contained indifference to shifts in power, as well as its philosophical origins, allowed the Commission to promote the harmonization project as an ideologically neutral no-brainer.

The other side of the coin, by contrast, referred to the role that private law had played in Continental state-making: by guaranteeing their subjects full autonomy in inter-private relations, sovereigns had justified their own rise to power, their own legitimacy, and their very existence. Private law's structural closure, internal coherence, and quasi-constitutional status armed state legislators with arguments for resisting harmonization.

The 1990s witnessed serious clashes between the Commission's market agenda and national resistance, often motivated by social justice concerns in private law. Iconic episodes of this saga include the French reluctance to transpose the Product Liability Directive, which could (and would) reduce the protection of accident victims;<sup>19</sup> and the Social Justice Manifesto, an influential academic protest against the neoliberal bent of Commission proposals in contract law matters.<sup>20</sup> In the course of these clashes, many fictions imploded, and the two sides of the private law coin – neutrality and authority – became welded to one another. The openly political tone of parliamentary debates concerning the implementation of private law directives brought to the surface the many ideological choices hidden in private law rules – as applied by the courts in characteristically opaque judgments. The allegedly close and self-referential analytics of civil codes gave way to the realization that many different regulatory goals could be – and had been – pursued under cloak of neutrality.

The scene of private law harmonization looks different today. All parties have learned from past mistakes. States no longer deploy arguments of doctrinal closure, and have come to accept that, like almost everything else, private law is now appropriate material for supranational compromise. Scholars

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<sup>18</sup> D Caruso, *The Missing View of the Cathedral: The Private Law Paradigm of European Legal Integration*, 3 Eur. L. J. 3 (1997).

<sup>19</sup> D Caruso, *The Missing View*, supra, note 18.

<sup>20</sup> Study Group on Social Justice in European Private Law, *Social Justice in European Contract Law: A Manifesto*, 10 EUR. L.J. 653 (2004).

are more attuned to stake-holders' voices and are fully aware of the politics of private law reform. Most importantly, the Commission has grown sensitive to the fact that Gierke's social oil facilitates consensus around private law proposals.<sup>21</sup> Much to the chagrin of efficiency-minded observers,<sup>22</sup> the Commission's lodestar is no longer the *deregulation* of private autonomy in the name of untrammelled commerce, but rather the uniformity of private law *regulation*. The new instruments of private law harmonization – such as the Consumer Rights Directive<sup>23</sup> – are replete with mechanisms that protect the presumptively weaker party against the perils of uneven bargaining power. The philosophy of the new instruments is no longer the neoliberal presumption of equality, but rather – as in the private law of the member states – a dynamic compromise between efficiency goals and social justice.

And yet, Joseph Weiler's above-quoted prediction – that the Single Market would entail “a highly politicized choice of ethos, ideology, and political culture,” that it would seek “to maximize utility” and would be “premised on the assumption of formal equality of individuals” – proves totally accurate in light of the current state of private law harmonization. The logic of the market, as interpreted by the Commission, demands that private law be uniform across the Union, with no regard for structural asymmetries between North and South, or East and West. Private law rules are meant to impose identical regulatory costs on businesses in every corner: those who can pass such costs onto consumers, and those who can't. Supranational rules of private exchange may be well suited to redress the bargaining imbalance between two parties, but they may also produce perverse distributive effects when applied, with no adjustment, to the socio-economic periphery of the Union.

It is a well known fact in international law and politics that uniform social regulation imposes uneven burdens on struggling economies, and that corrective mechanisms (in the form of trade concessions or rule relaxations) may be necessary to redress the asymmetric costs of compliance. Within the Union, by contrast, the asymmetric costs of uniform private laws have not yet gained adequate salience, obscured as they are by the win-win narrative of harmonization. The governments whose citizens have more to lose, or less to gain, from private-law uniformity are particularly eager to embrace it: uniformity signals health, legal maturity, and readiness to compete. The result is *déjà vu*. The fiction of formal equality between private actors controls, today as at the birth of the nation-state, the writing of private law for the supra-nation. The uniformity of private law raises important questions of distributive justice, yet it continues to be heralded as per se progress ('uniformity will drive down the cost of doing business'). Professor Weiler's take on the Single Market agenda – the prediction that it would “[prize] market efficiency and European-wide neutrality of competition above other competing values” – has a very contemporary flavor and survives the apparent demise of neoliberal rhetoric. *The Transformation's* emphasis on the power of self-referential legal frameworks is to this day affirmed by the history of EU private law, and by countless other stories of European integration.

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<sup>21</sup> N Jabko, *Playing the Market: A Political Strategy for Uniting Europe, 1985-2005* (Cornell UP 2006).

<sup>22</sup> See eg Richard Epstein, *Harmonization, Heterogeneity and Regulation: Why the Common European Sales Law Should Be Scrapped* (2012).

<sup>23</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights.