

SOME PRELUDES FOR A CRITICAL STUDY ON LENTOS AND PRESTOS OF PRIVATE AND COMPARATIVE LAW IN THE FIRST CONCERTO OF EUROPEAN INTEGRATION PROCESS. THE CASE OF EUROPEAN CONSUMER PERSON LAW

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The introductory study (some preludes) examines the origins and evolution of the road Europe travelling along by a critical approach, revealing the political and legal metaphors used by European fighters v. National State defenders in the reconstruction and reorganisation of a new European institutional and legal asset.

The rise and evolution of a European Consumer Person¹ Law is a case study to test the pervasivity of the Community rule of law, the different role of the Commission and ECJ and the delays of the Private and Comparative Law Doctrine in perception of its strategic role in the European Integration process.

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¹ The use of a “gender neutral world” is connected not only to a “politically correct” approach but also to the remarks that the majority of consumer persons involved in consumer activities are women.

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I. ABOUT LAW, HERMENEUTICS AND MUSIC

Opening a short study on Comparative and Private Law of the European Community, a metaphorical musical² suggestion is useful to introduce the question that a significant Italian doctrinal study on the Private Law of the European Union put to private and comparative law scholars: Why were the private law doctrine, but also other branches of internal law,³ for a long time so inadequate, in Italy and in others EU MSs, compared to the importance and implications of the integration process set up in the fifties?⁴

² Connections between law and music are drawn by many ancient, Greek and Latin authors. See D. Dolci, *La legge come germe musicale (Law as musical germ)* (1993). D. Dolci was an innovative social actor in the self-education and in the fight against the Sicilian “mafia”. He cites P.E. Carapezza, *Le Costituzioni della musica* (1974): “The proems and preliminary movements...according to the rules of the art...placed before the *nomoi* are preludes: free improvisations and still formless to test the instrument and its harmony, to limber up the hand and the voice, and concentrate the mind, before “starting” the formalized piece, the proper melody”.

The connection among visual art and law is examined by A. Somma, *Introduzione* to M. Stolleis, *Das Auge des Gesetzes. Geschichte einer Metapher* (2004), It. transl. *L'occhio della legge: Storia di una metafora* 11-30 (2007).

³ See for all R. Quadri, R. Monaco, A. Trabucchi (eds.), *Commentario CEE* (1965).

⁴ A. Tizzano (ed.), *Il diritto privato dell'Unione europea* (2nd ed., I), in M. Bessone (ed.), *Trattato di diritto privato XI* (2006).

An attempt to reply needs a critical analysis of the evolutions of the ideological and rhetorical discourses developed in European political and legal culture in the first European integration period.

In a musical piece the author doesn't explain the structure and the method of the composition. But a legal metaphorical approach needs some introductive remarks. The study of collective behaviors requires a multidisciplinary approach and proper methods. The deductive method, usually employed by legal scholars to analyze the rule of law and, sometimes, the different legal systems, is not hermeneutically viable in complex and path dependent experiences.

Thus I suggest to employ different approaches connected with legal hermeneutics and critical studies,⁵ inferential descriptions of meanings of individuals and groups involved in a process,⁶ the complexity paradigm,⁷ cues from economic analysis of institutions and law studies,⁸ and rhetorical entries tricks revealing.⁹

But before starting, a meta-heuristic remark. Why employ the music metaphor to analyze and explain legal behavior? An early answer is viable. Music is strictly connected to law and in the same time it is different. It is connected for its systematic structure, rational approach to nature and reality and path dependence. It is different in kindling listeners' emotions and visions. Music urges people to move, to react.¹⁰

⁵ D. Kennedy, *A Critique of Adjudication (fin de siècle)* (1997). The tribute to French-German hermeneutical studies is emphasized in the title. H.G. Gaudier, *Wahrheit und Methode* (1960), It. transl. *Verità e Metodo* (1983), M. Foucault, *L'archéologie du savoir* (1969), P. Ricoeur, *Le conflit des interprétations* (1969), *La métaphore vive* (1975). For Italy see P.G. Monateri, "All of this and so much more". *Original Intent, Antagonism and Non Interpretivism*, *Ars Interpretandi*, *Journal of Legal Hermeneutics* 275 ff. (1998).

⁶ P. Inghilleri (ed.), *Psicologia culturale* (2009), J. St. B. T. Evans, *The Psychology of Deductive Reasoning* (1982), V. Girotto, *Il ragionamento* (1994).

⁷ E. Morin, *Introduction à la pensée complexe* (1990); It. transl. *Introduzione al pensiero complesso* (1993); A.F. De Nodi, L. Comello, *Prede o ragni. Uomini e organizzazioni nella ragnatela della complessità* (2005), G. Bocchi, M. Ceruti (ed.), *La sfida della complessità* (1985).

⁸ K.J. Arrow, *The limits of organisations* (1974), O.E. Williamson, *The Economic Institutions of Capitalism: Firms, Markets, Relational Contracting* (1985), D. North, *Structure and Change in Economic History* (1981), H.A. Simon, *Administrative behaviour* (1947). For EAL approaches R. Cooter, U. Mattei, P. G. Monateri, R. Pardolesi, Th. Ulen, *Il mercato delle regole* (1999); U. Mattei, *Comparative Law and Economics* (1995).

⁹ Ch. Perelman, L. Olbrechts-Tyteca, *Traité de l'argumentation : la nouvelle rhétorique* (1970), P. Bourdieu, *Langage et pouvoir symbolique* (2001).

¹⁰ J. J. Nattiez, *Musica e significato*, in *Enciclopedia della musica*, II, *Il Sapere musicale* 221 (2002); S. D. O'Connor, *Music and the Law*, *Western Legal History*, 18-1-2-, 41-118 (2005), D. Monderson, D.S. Caudill, *The modes of Law: Music and Legal Theory. An Interdisciplinary*

Exploring the reality through music allows to explain, without a technical meta-language, the complexity of the social dimensions of law. And for now, that's all.

II. THE UTOPIAN SEASON

1. THE FEDERALIST STRUGGLE

The first allegro to open the concerto was the “Federalist Doctrine”. In the forties of the last century Altiero Spinelli,¹¹ a former Italian communist opponent to the fascist regime, during his political confinement in Ventotene, an isolated island in front of Rome's coast, discussed with his prison mates, among them Ernesto Rossi,¹² a radical opponent, about the future of Italy after the defeat of fascism and wrote the “Ventotene Manifesto”.¹³

The political struggle¹⁴ against nationalism was founded on the use of a rhetorical metaphor¹⁵: the “*United States of Europe*”. As the American Colonies reached their independence creating and defending a Federal State, the House of Liberty, Justice and Welfare,¹⁶ the European National States, after their own half century crisis,¹⁷ would develop an economic and political area that would create a new Federal State.

Workshop, Cardozo L.R. 20, 5-6, 1325-1329 (1999). On legal and musical interpretation see G. Iudica, *Interpretazione giuridica e interpretazione musicale*, Riv. dir. civ. 467-479 (2004, II).

¹¹ A. Spinelli, *Una strategia per gli Stati Uniti d'Europa* (1989); Id., *La rivoluzione federalista* (1996); see also his biography, *Come ho tentato di diventare saggio, I, Io Ulisse* (1984); *II La gioia e la roccia* (1987).

¹² E. Rossi, *Gli Stati Uniti d'Europa*, published in Lugano, using the pseudonym of Storeno, by Nuove ed. di Capolago (1944) re-edited with introd. by S. Pistone (2004); on life in Ventotene E. Rossi, *Miserie e splendori del confino di polizia: Lettere da Ventotene 1939-1943*, M. Magini (ed.) (1981); on his political criticism to Italian reconstructed governance E. Rossi, *Il malgoverno* (1954).

¹³ As samisdat in 1941, published in 1943, anastatic edition: A. Spinelli, E. Rossi, *Il manifesto di Ventotene*, prefaced by E. Colomni, with an essay of N. Bobbio, S. Pistone (ed.) (2001). Last edition presented by T. Padoa-Schioppa, with an essay of L. Levi (2006).

¹⁴ D. Pasquinucci, *Altiero Spinelli e la sinistra europea 1950-1986* (2000), U. Morelli, *Altiero Spinelli: il pensiero e l'azione per la federazione europea* (2010).

¹⁵ P.G. Monateri, “All of this and so much more”, *Original Intent, Antagonism and Non Interpretivism*, *As Interpretandi*, Journal of Legal Hermeneutics 275 (1998), F. Galgano, *Le insidie del linguaggio giuridico. Saggio sulle metafore nel diritto* (2010).

¹⁶ See the Preamble of the Constitution of the United States.

¹⁷ M. Albertini, *Il federalismo e lo Stato federale. Antologia e definizioni* (1963).

This political Manifesto has its roots in an utopian dream glimpsed by the Enlightenment philosophical thought,¹⁸ in some economic post Great War concerns,¹⁹ and in French,²⁰ British,²¹ German²² and Polish²³ political visions²⁴ of a new Europe.

The strategic argument was founded on Hamilton's approach to the US constitutional debate,²⁵ which conceived an institutional equilibrium among two divergent political projects, one of Virginia State²⁶, about consolidating the Union, and the other of New Jersey State²⁷, representing the small States' interests, dedicated to a Federal Union protecting States' interests.²⁸

Hamilton's²⁹ strategic constitutional approach developed the "Unity in Diversity" Paradigm³⁰, which was written down in the Great Compromise reached by Connecticut³¹ and transcribed into Art. 1 and 2 of the Constitution.³²

¹⁸ I. Kant, *Zum ewigen Frieden. Ein philosophischer Entwurf* (1795).

¹⁹ G. Agnelli, G. Cabiati, *Federazione europea o lega delle nazioni?* (1918), L. Robbins, *The Economic Causes of War* (1939); L. Robbins, *Il federalismo e l'ordine economico internazionale* (1985), L. Einaudi, *La guerra e l'unità europea* (1948), on Einaudi's thought see U. Morelli, *Contro il mito dello stato sovrano: Luigi Einaudi e l'unità europea*, 1990, and P. Silvestri, *Il liberalismo di Luigi Einaudi del Buongoverno* (2008).

²⁰ G. Daurimam, *Pour les états confédérés d'Europe* (1929), V. Jancolesco, *La Petite Entente et l'union européenne* (1931).

²¹ A.W. Phillips, *The confederation of Europe* (1920), Lord Lothian, *Pacifism is not enough, nor patriotism either* (1935), L. Robbins, *The Economic Causes of War* (1939).

²² J.Ter Meulen, *Der Gedanke der Internationalen Organisationen in seiner Entwicklung*, 2 voll. (1917), P. Langen, *Über Personal und Realunion* (Thèse), (1911).

²³ W. Grzybowski, *Il senso della solidarietà europea nel pensiero politico polacco dal cinquecento in poi*, in Reale Accademia d'Italia, *L'Europa* 175-185 (1933).

²⁴ For a brief breviary on federalistic doctrine see F. Pozzoli (ed.), *Federalismo e autonomia. Dal settecento ai giorni nostri* (1997), C. Malandrino, *Federalismo. Storia, idee, modelli* (2006).

²⁵ A. Hamilton, J. Jay, J. Madison, *The Federalist*, a collection of political articles published between October 1787 and May 1788 in N.Y. newspapers, It. ed. *Il federalista* (1787), L. Levi, *Introduction* (1998); A. Hamilton, *Lo Stato federale* (1987).

²⁶ Proposed by Randolph, deputy delegate, joined by Massachusetts and Pennsylvania.

²⁷ Proposed by Patterson, joined by Connecticut, New York, Delaware, Maryland.

²⁸ See G. Maranini, *La costituzione degli Stati Uniti d'America* 137 (2003).

²⁹ *The federalist*, 1788, n.23.

³⁰ K. C. Wheare, *Federal Government* (1941), It. transl., *Del governo federale* (1949); D. J. Elazar, *Exploring Federalism* (1987), It. transl. *Idee e forme del federalismo* 52 ff. (1995) and bibl. under note 23.

³¹ S. K. Padover, *The living Constitution* 10-15 (2nd ed 1983).

³² On the nature of the federal American legal system A. Gambaro, R. Sacco, *Sistemi giuridici comparati*, in R. Sacco, *Trattato di Diritto Comparato* 193-199 (1996); U. Mattei, *Il modello di Common Law, Sistemi Giuridici Comparati* 72-83 (1996).

Transferred by analogy into the complex European post-war economic and social backdrop, the political vision, "coordinated but independent", was worked through by European Movements³³ and analyzed in historical³⁴ and political studies after the sixties.³⁵

2. LEGAL SCHOLARSHIP AND THE TREATY OF ROME

The Treaty of Rome, "Accord dynamique"³⁶ drafted by lawyers, was established to serve various national interests such as national political consensus³⁷ connected with full employment and wage rise in an enlarged market.³⁸

The first interpretation of the doctrine seems to neglect the institutional innovation as an incident or an international cooperation network.

The only doctrinal constituency of the ECM is the international law scholarship,³⁹ which discovered a new game preserve, added to the traditional international law sectors (public and private).

³³ D. Preda, A. Landuyt, *I movimenti per l'unità europea 1970-1986* (2000); L. Levi, S. Pistone (eds.), *Trent'anni di vita del Movimento federalista europeo* (1973).

³⁴ F. Chabod, *Storia dell'idea d'Europa* (1961); E. de Réau, *L'idée d'Europe au XXe siècle: Des mythes aux réalités* (1996); P. Stirk, *The Origins and Development of the European Community* (1992); S. Pistone, *L'Italia e l'unità europea* (1982). On economic history A. Vaisori, *Il cammino dell'unione economica europea*, in V. Castronovo (ed.), *Storia dell'economia mondiale IX*, 171 ff. (1996-2001). On legal history, S. Schepers, *Le droit fédéral en Europe. Un essai historique* (1991).

³⁵ E. B. Haas, *The Uniting of Europe: Political, Social and Economic Forces 1950-1957* (1958); M. Albertini, *Il Federalismo e lo Stato federale. Antologia e definizione* (1963). H. Kaelble, *Auf dem Weg zu einer europäischen Gesellschaft: Eine Sozialgeschichte Westeuropas 1880-1980* (1987), It. transl. *Verso una società europea: storia sociale dell'Europa 1880-1980* (1990); I. Ward, *The History of an Idea*, in *A Critical Introduction to European Law* 1-51 (1st ed. 1996).

³⁶ For a first sketch of the political debate J. Lecerf, *Histoire de l'unité européenne* 56-78 (1965).

³⁷ D. Preda, D. Pasquucci (eds.), *The Evolution of the Consensus to European Integration 1950-2005*, (2011).

³⁸ A.S. Milward, *L'Europa in formazione*, in P. Anderson, M. Aymard, P. Bairoch, W. Barberis, C. Ginsburg (eds.), *Storia d'Europa, I- L'Europa oggi 197-199, 205-206, 209-214* (1993); D. Pasquucci (cur.), *The evolution of the Consensus*.

³⁹ G. G. Stendardi, *I rapporti fra ordinamenti giuridici italiani e delle Comunità europee* (1958), G. Cansacchi, *Le comunità sopranazionali, gli ordinamenti comunitari e gli ordinamenti degli Stati membri*, in *Studies in honour of Emilio Crosa*, I, 314-315 (1960) G. Sperduti, *La CECA, ente sopranazionale* (1960); G. Balladore Pallieri, *Le comunità europee e gli ordinamenti interni degli Stati membri*, *Diritto internazionale* 5 (1961), F. Benvenuti, *Ordinamento della Comunità europea del carbone e dell'acciaio*, I (1961), R. Monaco, *Vox "Comunità europea del carbone e dell'acciaio"*, in *Enc. del diritto VIII* (1961), E. Vitta, *L'integrazione europea* (1962), N. Catalano, *Manuale di diritto delle Comunità Europee* (1962). In France the European institutions were

The quest of the *direct effects* of the Treaty's rules such as antitrust law (art. 85-102, now 101-109)⁴⁰ or the direct forced execution of ECJ judgements (art. 192, now 280,299)⁴¹ suggested the theory of a "quasi federal"⁴² set of rules which, after a period of political shakedown, would evolve into a federal legal system.

Private Law scholars deemed that they were cut off by the limits of the Treaty that announced and expanded only the liberties of the ECM and neglected the private effects of antitrust measures. These were, for example, the nature of agreements between undertakings, the nullity of prohibited agreements and the actions for damages, as well as the interim measures of a conservatory nature (injunction) introduced by Regulation 17/62, enforcing the doctrine of the "*effect utile*".

Systemic were the connections between art. 85 (now art.101) and industrial property rights, the legal-economic definition of the firm and the group, the interpreting instrument of the "rule of reason".

Only some attentive observers, most of all company law scholars and lawyers,⁴³ saw the importance of the new dimension introduced into Private Law by the Treaty.

3. THE RISE OF NATIONAL CONSUMER PERSON PROTECTION POLICIES

Consumer person protection was completely omitted in the Treaty. The only mentions were in art. 100 A.3, *Rapprochement des Legislations*, which had a direct impact on the establishment and functioning of the CM, among these consumer health and safety, and in art. 92, State aids to consumers.

The Directives on standardisation in the seventies⁴⁴ indirectly protected the safety and health of the user of goods and machineries, but, comparing with

analyzed in literature: J. Barman, *Les Communautés européennes et le rapprochement des droits*, *Revue intern. de droit comparé* 47 (1960), P. Reuter, *Organisations européennes* (1965).

⁴⁰ P.J.G. Kapten, P. VerLoren van Themaat, *Introduction to the Law of the European Community*, 2nd ed., 527, 578 (1990), G. Olivieri, A. Zoppini, *Contratto e antitrust* (2008).

⁴¹ Conso, *Commento all'art.192 CEE*, in R. Quadri, R. Monaco, A. Trabucchi (eds.), *Commentario CEE* (1970), O. Calliano, *L'esecuzione forzata delle sentenze della Corte di Giustizia delle Comunità Europee*, Centro europeo di studi e informazioni (1971).

⁴² The transfer of the postponement of the forced execution from the national judiciary power to the ECJ's competence (art. 192 1.4) seems, in my opinion, the litmus paper of a new dimension of the communitarian legal system. Was it a rationalisation or wishful bias?

⁴³ P. Verrucoli (ed.), *La nozione di impresa nell'ordinamento comunitario* (1977), A. Grisoli (ed.), *Imprese multinazionali e integrazione europea* (1978).

the experience of the American Consumer Person Law⁴⁵, there was a cultural, economic and legal lag.

The Thalidomide Case,⁴⁶ broken out in Northern European Countries, raised a psychological alarm and created mistrust among the consumer persons of pharmaceutical products and other complex design goods. The national political groups were pushed to introduce Regulations on pharmaceutical production and, according to this new approach, new laws on consumer person rights.

In France, after the '60s⁴⁷ a *Comité national de la consommation*,⁴⁸ an *Institut national de la consommation*,⁴⁹ a *Commission des clauses abusives*⁵⁰ were constituted and a *Ministère de la Consommation (sous-Secretariat)*⁵¹ was established. In 1993 was approved the *Code de la consommation*, a consolidated act of all legislative texts.⁵²

In the UK, unfair contract terms⁵³ were regulated and the reception of US product liability case law was worked out.

In Germany, the *Verbraucherschutzpolitik*⁵⁴ started, using the *Warentest* methods to compare products all over Europe and test them in order to find best products or best quality-price ratio products. This consumer person information policy seemed to be used, in my opinion, according to the

⁴⁴ A. Mattera Ricigliano, *Il Mercato Unico Europeo. Norme e funzionamento* 193-205 (1990), G. Caia, A. Roversi Monaco, *Amministrazione e privati nella normativa tecnica e nella certificazione dei prodotti industriali*, in *La normativa tecnica industriale*, P. Andreini, G. Caia, G. Elias, F. A. Roversi Monaco (eds.) 13-22 (1995); H. Meiket, *Europäische Rechtssetzung und strengeres autonomes Recht, Zur Auslegung von Gemeinschaftsnormen als Mindeststandard*, *RabelZ* 647-684 (1997).

⁴⁵ T. Bourgoignie, D. Trubek, *Consumer Law, Common Markets and Federalism in Europe and United States* 27-88 (1986).

⁴⁶ Marketed as a tranquillizer in UK, Germany, Sweden and other Northern European countries, thalidomide turned out to be one of the most potent causes of birth defects.

⁴⁷ Ont provoqué la prise de conscience G. Cas, *La défense du consommateur* (1975), L. Bhil, *Consommateur défends toi!* (1976),

⁴⁸ Décret n. 60/1390.

⁴⁹ Décret n. 67/1082.

⁵⁰ Loi n. 78/23, J. Ghestin, *Traité de Droit civil. Les obligations: Le contrat* 692-700 (2nd ed. 1988). Jacques Ghestin spoke of his personal experience, having been President of the CCA.

⁵¹ Décret n. 81/704.

⁵² L. 26/11/93, J. Calais-Auloy, F. Steinmetz, *Droit de la consommation* 31 ff. (2003).

⁵³ The Final Report of the *Molony Committee on Consumer Protection* (1962) and the *Law Commission* (1969) recommended that the statutory sale warranties should be made non-excludable by a business to a person dealing as a "consumer". See *Supply of Goods (Implied Terms) Act*, 1973. J. Stapleton, *Product Liability* 39-41 (1994).

⁵⁴ E. von Hippel, *Verbraucherschutz* (3d ed. 1986).

consumer person protection exceptions allowed by the Treaty (art. 30, now 36) for flanking out the Cassis de Dijon Rule on free circulation of goods in the ESM under the “mutual recognition” principle, elevating the standards of safety and quality demanded by national consumers.⁵⁵

The national doctrines of MSs started elaborating a “Consumer Protection” vision⁵⁶ and pushed the Public Authorities to run faster in exploring connections among consumer person rights and efficiency of the ESM.⁵⁷

In Italy few scholars noticed the opportunity and the risk to be left outside the European debate and started examining market control in favour of the “weak” consumer person⁵⁸ and the role of consumer person rights in asymmetric and conflicting economic relations.⁵⁹

III. TECHNOCRATS V. STATISTS

1. FUNCTIONALIST APPROACH AND SUPRANATIONALITY

The first organisational structure of the Commission, was designed transplanting⁶⁰ French and German administrative models.⁶¹

The pivotal role in the Community legal framework, albeit one subject to the jurisdiction of the EC, was shaped by the President of the first Commission

⁵¹ Consumer protection at transnational level was seen as a “bi-faced Janus” (Janus being the protector of consumers and markets) by O. Calliano, *Tutela del consumatore e neoprotezionismo: ipotesi di lavoro*, in O. Calliano (ed.), *Tutela del consumatore e libera circolazione delle merci nel commercio internazionale* 15-17 (1992).

⁵⁶ At present, in a prelude approach, *et multis* see K. Simitis, *Verbraucherschutz, Schlagnort oder Rechtsprinzip?* (1976); J. Calais-Auloy, *Droit de la consommation* (1981); C. Scott, J. Black, *Cranston's Consumers and the Law* (1985). G. Cas, D. Ferrier, *Traité de Droit de la Consommation* (1986); Th. Bourgoignie, *Eléments pour une théorie du droit de la consommation: Au regard des développements du droit belge et du droit de la Communauté économique européenne* (1988).

⁵⁷ P. Malinvaud, *La protection des consommateurs*, Dalloz 62 (1981), Chron., who affirmed on consumer protection laws and regulations: “on ne saurait sans mauvaise foi soutenir que ce but n’a pas été atteint”; G. Borrie, *The Development of Consumer Law and Policy-Bold Spirits and Timorous Souls*, 33-34 (1984), who concludes that the impact of product laws on research and development “was an issue outside the capacity and legitimate role of judges”, 124.

⁵⁸ M. Bessone, *Controllo del mercato e teoria del consumo* (1976).

⁵⁹ G. Ghidini, *Per i consumatori* (1977).

⁶⁰ A. Watson, *Legal Transplant: An Approach to Comparative Law* (1974 ; 2nd ed. 1993), R. Sacco, *La comparaison juridique au service de la connaissance du droit. Les mutations des modèles* 113-128 (1991).

⁶¹ J. Ziller, *Administrations comparées. Les systèmes politico-administratifs de l'Europe de Douze* 475 ff. (1993); S. Cassese, *The Age of Administrative Reforms*, in J. Hayward-A. Menon, (eds.), *Governing Europe*, (2003).

Walter Hallstein, professor of Civil and Comparative⁶² Law at the University of Frankfurt and director of the Institute for Comparative and Commercial Law. As a proponent of a Federal Europe with a strong Commission and Parliament⁶³, he opposed de Gaulle's vision of a "Europe des États"⁶⁴ that transformed Bruxelles proceedings, using the "Chaire Vide" (Empty Chair)⁶⁵ blackmail, into a wearing day by day sailing⁶⁶.

The battle was concluded with an armistice in 1966, under the Luxemburg Compromise, that meant that qualified majority voting was used far less often and unanimity became the norm. The incident had deep repercussions for the EC, leading to an adagio of integration, and a move towards the "Confederalist" approach favored by de Gaulle, rather than the Federalist approach favored by Hallstein⁶⁷.

After Charles de Gaulle's resignation from Presidency on 28 April 1969, following his defeat on a nationwide referendum, the "Eurocrats",⁶⁸ a new caste, developed a bureaucratic paradise,⁶⁹ introducing the "gradualistic"

⁶² For a first legal biography of Hallstein see A.Grilli, *Le origini del diritto dell'Unione europea* 59-62,78-79 n. 20 (2009) and O.Calliano, *La supranationalité comme stratagème linguistique pour la création du consensus au processus d'intégration européenne. Le rôle de la Commission et de la Cour de Justice*, in D. Pasquinucci (ed.), *The Evolution of the Consensus to European Integration 1950-2005. L'évolution du consensus à l'intégration européenne 1950-2005* (2011), n.3.

⁶⁴ A. Chiti-Batelli, *Il Parlamento Europeo. Struttura, Procedure, Codice parlamentare* (1982). S. Guerrieri, *The evolution of the European Parliament's Role before the Direct Elections (1952-1979)* in D.Preda, D.Pasquinucci (eds.), *The Road Europe Traveled Along. The Evolution of the EEC/EU Institutions and Politics* 203 ff. (2010).

⁶⁴ M. G. Melchionni, *Charles de Gaulle and Jean Monnet: Two Differing Strategies for Europe*, *The EU Review* 57 ff. (2000).

⁶⁵ C. Malandrino, "Tut etwas Tapferes": compi un atto di coraggio. *L'Europa federale di Walter Hallstein, (1948-1982)*, 173 ff. (2005).

⁶⁶ Frustrating was my experience as a young trainee in DG XXIV "Rapprochement de Legislations".

⁶⁷ His institutional approach was a "Rechtsgemeinschaft", Discourse to the European Parliament in 1965, in which he asks for compulsory and uniform rules for all MSs.

⁶⁸ J. Ziller, *Administrations compares* 849; N. Nugent, *The Government and Politics of the European Union* (1989), It. transl. *Governo e politiche dell'Unione Europea* 101-109 (3d ed. 1994).

⁶⁹ See the transfer of competence to ECJ in case of non contractual liability caused by EC officials, and the fact that the damage must be suffered directly by the Community, in front of a contractual liability maintained under National Law (art. 215, now 288). See also the autonomy of bureaucratic and judicial control of internal careers (art. 178, now 268,340). O.Calliano, *La supranationalité, La supranationalité comme stratagème linguistique pour la création du consensus au processus d'intégration européenne. Le rôle de la Commission et de la Cour de Justice*, in D.Preda, D. Pasquinucci (eds.), *The Evolution of the Consensus to European Integration 1950-2005* (2011), *passim*. Spencer describes the access to this career as a *piston*, and the role of

discourse. Concluded the “statu nascenti” phase⁷⁰, the political dream of the United State of Europe was delayed to an indefinite future, as happened for the second wave of Christian initiates⁷¹, and in the meantime the bureaucratic organisational system seized power.

This “Technocratic model” needed a new legitimation that was not expressly provided in the Treaty. Thus the necessity to be supported by a doctrine which could influence national political groups and bureaucrats. The devised theory was the renewed “Functionalistic Approach”.

The metaphoric device was the “Supranationalism”⁷² based on a “Transfer of Sovereignty” not connected with a revolutionary process (such as in the US experience)⁷³ or the creation of a systemic institutional model⁷⁴, but with a gradual appropriation of powers of supposed weak national institutional actors in front of a larger Economic European Market.⁷⁵

The use of new symbols (the Beethoven hymn, the blue flag with stars, the uniform passport) tried to create a new consistency, to legitimate direct relations among Community (i.e. Commission) and national citizenships, to develop a double loyalty, institutionalizing a new “*capital politique*”⁷⁶

The ECJ took charge of the task⁷⁷ and in *Costa v. ENEL* (Case 6/64)⁷⁸ it developed the key notion of “Supremacy” of Community Law, though

external persons as *submarines*: D. Spencer, *Staff and personnel policy in the Commission* 80-81, in E.G. Edwards, D. Spencer (eds.), *The European Commission* (2nd ed. 1995).

⁷⁰ F. Alberoni, *Movement and Institution* (1984), Engl. transl. of *Movimento e istituzione* (1977).

⁷¹ W. Schneemelcher, *Das Unbristentum* (1981), Ital. transl. *Il cristianesimo delle origini* (1987).

⁷² For an immediate criticism to this approach, A. Spinelli, *Discorso al III congresso mondiale del MFE* (1949), in S. Pistone (ed.), *L'Italia e l'unità europea* 185-191. For the rise and development of the “supra-national neologism” and its legal follow ups see O. Calliano, *La supranationalité*.

⁷³ G. Gilmore, *The Ages of American Law* (1977), It. transl. A. Gambaro, U. Mattei (eds.), *Le grandi epoche del diritto Americano* (1991). The revolutionary *forma mentis*, protracted for a generation, introduced an innovative spirit into the drafting of the Constitution.

⁷⁴ D. J. Elazar, *Exploring Federalism. The federalist devolution as world phenomenon*, Ital. transl. 91-94; see also the Review *The Federalist Debate: Papers on Federalism in Europe and the World*, Torino, promoted by the World Federalist Movement, New York.

⁷⁵ E. multès A. Quadro Curzio, *Noi, l'Economia e l'Europa* (1996). It was the case of the French revolutionary period and the Drafting of the Civil Code, R. David, *Les grands systèmes juridiques contemporains*, Ital. transl., *I grandi sistemi giuridici contemporanei*, 5th ed. R. Sacco (ed.), I *La famiglia romano-germanica*, n. 47-49.

⁷⁶ P. Bourdieu, *Langage et pouvoir symbolique*, 248-251.

⁷⁷ Collège d'Europe, *Droit communautaire et droit national - Community Law and National Law*, Préface de J. Rey, (1965). Buges forged the first wave of Community officials.

nowhere in the Treaty is it possible to find an explicit commitment to the idea that Community Law shall be supreme⁷⁹, nor to the notion that it shall be directly effective (*Simmenthal*, Case 106/77).⁸⁰ The favorable doctrine went forward elaborating the questionable theory of a *Kompetenz-Kompetenz*.⁸¹ The national reactions were brave⁸² but at great length ineffective⁸³ in front of the strong pressures of economic and business circles for the creation of European companies dimensioned for a new international competition and a set of uniform market rules in the new ESM.⁸⁴

The case *Fratelli Costanzo* (103/88) settled the dispute stating that, in case of incompatibility among national and Community rules, officials should de-enforce national law in favor of Community law.⁸⁵

2. COMPARATIVE LAW DOCTRINE'S ENTRY

The route is mapped out, but Italian doctrine and practice seem to be "impermeable" to this new Community legal order. The Private Law doctrine neglects the Community legal system, and the handbooks and treatises on Private

⁷⁸ S. Weatherill, *EC Law. Cases and Materials* 65-70 (1992); A. Tizzano, *La gerarchia delle norme comunitarie*, 1, Dir UE 57-87 (1996).

⁷⁹ The interpretative trick was found by judge La Pergola. His opinion on art.11 of the Italian Constitution is in A. La Pergola, *Costituzione e adattamento dell'ordinamento interno all'ordinamento internazionale*, 163 ff. (1961).

⁸⁰ S. Weatherill, 66-68; P. Pescatore, *The Doctrine of "Direct Effect": An Infant Disease of Community Law*, 8 ELRev. 155-177 (1983). The leading case was *Van Gend en Loos* (Case 26/62) in which the ECJ states the "direct applicability" of Community Law.

⁸¹ Th. Schilling, *The Autonomy of the Community Legal Order: An Analysis of possible Foundations*, 37 Harv. Int. Law J. 389-409 (1996), H. P. Ipsen, *Über Supranationalität*, in Festschrift Scheuner 211-225 (1972).

⁸² Italian Constitutional Court Case 7-3-1964, n.14.

⁸³ Italian Constitutional Court Case Frontini, 27/12/1973 n.183 in which, following the guidance of prof. R. Monaco, *Comunità economica europea*, Enc. del dir. 326 ff., the ICC is referring to art.11 of the Italian Constitution, which allows for limitations of sovereignty to ensure peace and justice among nations, promoting peace oriented international organizations, such as the European Community.

⁸⁴ P. Ranci, *Introduction, Il Mercato Interno Europeo* 7-14 (1988).

⁸⁵ S. Weatherill, 98-99. T. Ballarino, *Manuale di diritto dell'Unione Europea* 247 (2001). I was involved, as president of Regional Control Committee of the Torino Province, in a case of incompatibility of Italian public procurement regulations with Community Directives on public procurements. After an open and rational discussion, and an advice by the Italian Coreper member (A.Tizzano), we decided to de-enforce Italian law in favour of Community law. The decision was successful; two months later, the *Fratelli Costanzo* case stated the rule we had interpreted at our own risk.

Law do not mention the “supremacy” of EC law and the judicial power of ECJ.⁸⁶ The Comparative Law doctrine, just reviving in Italy,⁸⁷ discovers the Community reality and examines the Common European Law history⁸⁸ and the US influence on Community Law (community antitrust law,⁸⁹ judicial power of ECJ,⁹⁰ adjudication transplants,⁹¹ the Franco-Italian contract common core,⁹² property-pollution problems,⁹³ class remedies⁹⁴, and the extension of the comparative approach to Common Law legal systems⁹⁵, pointing out the need for ESM rules and European Private/Commercial Law solutions.

3. CONSUMER PERSON PROTECTION AND THE MUTUAL RECOGNITION PRINCIPLE

In the meantime the Consumer Person Protection discourse evolved. In 1973 the Assembly of the Council of Europe approved the European Consumers’

⁸⁶ Surprisingly silent is A. Trabucchi, *Istituzioni di diritto civile* 58 (7th ed., 1970); Alberto Trabucchi was an ECJ judge since 1962 and participated in the elaboration of the first judicial trend in EC case law. Two lines are in P. Rescigno, *Manuale del diritto privato italiano* 5 (1973). A paragraph on the sources of private law is in P. Trimarchi, *Istituzioni di diritto privato*, 7 (7th ed. 1986).

⁸⁷ R. Sacco, *Les buts et les méthodes de la comparaison du droit*, in *Rapports nat. italiens au IX congrès intern. de droit comp.* (1974), in the same *Rapports* O. Calliano, *Le droit islamique et sa socialisation dans les pays en voie de développement: l'exemple de l'Algérie*, in which I brought up a discourse about the influence of European law on the evolution of North African legal systems. The argument was developed in *Le code civil égyptien véhicule pour la diffusion de modèles européens en Afrique*, in G. Conac (ed.), *Dynamiques et finalités des Droits africains*, Acte du colloque de la Sorbonne “La vie du Droit en Afrique” 50-59 (1980).

⁸⁸ G. Gorla, *Diritto comparato e diritto comune europeo* (1981).

⁸⁹ P.A. Frignani, M. Waelbroeck, *Disciplina della concorrenza nella CEE* (1976); P. Verrucoli (ed.), *La nozione d'impresa nell'ordinamento comunitario* (1977).

⁹⁰ V. Grementieri, *Il processo comunitario: principi e garanzie fondamentali* (1973).

⁹¹ M. Cappelletti, M. Secombe, J. Weiler, *Integration through law: Europe and the American federal experience* (1985); on ADR in Consumer Law see O. Calliano, *Tecniche alternative di tutela del consumatore*, in P. Stanzione (ed.), *La tutela del consumatore tra liberismo e solidarismo* 289-298 (1999), and *Efficacia ed efficienza nella mediazione di consumo. Esperienze europee a confronto*, in A.M. Gambino, A. Dona (eds.), *Consumer Protection and out-of-Court Settlements-La tutela del consumatore e i rimedi stragiudiziari* (2010).

⁹² M. Lupoi, *Il debb del debitore nel diritto italiano e francese* (1969).

⁹³ A. De Vita, *La proprietà nell'esperienza giuridica contemporanea: analisi comparativa del diritto francese* (1969); A. Gambaro, *Jus aedificandi e nozione civilistica della proprietà* (1975).

⁹⁴ C. Rapisarda, *Protezione del consumatore e tecniche giudiziali e stragiudiziali di tutela*, in *L'influenza del diritto europeo*, 519, summary 705.

⁹⁵ V. Varano, *Organizzazione e garanzie della giustizia civile nell'Inghilterra moderna* (1973).

Charter, listing the Consumers' Rights to be implemented in Member States. In 1975 the Commission worked out the First Plan for a Consumer Policy⁹⁶, expressing the need to regulate this score in order to implement the harmonization of national Consumer Law rules according to the minimum standard of protection needed in the ESM following to the 1979 Cassis de Dijon rule about free circulation of goods⁹⁷ in conformity to the "mutual recognition" principle.⁹⁸

This was the second metaphoric device necessary to re-enforce the Commission lawmaking power in front of a strong difficulty to uniform the National rules in sectors not completely regulated by the Treaty and not under the control power of the EC, such as national market rules.⁹⁹

The Commission ratified the rule with an interpretative Communication (3-10-1980), extending the range of the "New Approach" to all freedom rules in the Treaty.¹⁰⁰

The era of vertical Directives on advertising practices, on consumer credit, on product liability, on package travel starts.¹⁰¹

IV. THE STRATEGIC ROLE OF THE ECJ

1. THE RISE OF AN INTER-GOVERNMENTAL APPROACH

The national resistance to a "creeping Federalism" or a "pervasive Supranationalism" was developed by French national survival. In 1951 the Treaty of Paris, conceived by Jean Monnet¹⁰² and supported by Robert

⁹⁶ Resol15-4-1975, G. Alpa, M. Bessone, *Il consumatore e l'Europa* (1980).

⁹⁷ Arising out of art. 30 (now 34).

⁹⁸ Case *Rene* 120/78.

⁹⁹ The Court held that national technical and administrative rules causing barriers to free trade as a result of diversity between member States require a justification under Community Law. *E multis* see C. L. de Leyssac, G. Parleani, *Droit du marché* (2002), who try to combine "Plague and Cholera", i.e. best allocation of resources and economic welfare, using Market Rules.

¹⁰⁰ On the freedom of professional services as opposed to the strong national resistances to uniform University curricula (except for "white Europe", doctors and similars), free establishment for banks and insurances, free circulation under the Schengen Agreement, national health care measures, *e multis* M. Fallon, *Droit matériel général de l'Union européenne* (2nd ed. 2002).

¹⁰¹ The list of national translations is in V. Kendall, *EC Consumer Law* (1994).

¹⁰² M. G. Melchionni, *Charles de Gaulle and Jean Monnet: Two Differing Strategies for Europe*, *The E.U. Review* v. 5, n. 3, 57-75 (2000); D. Velo, *Afterword*, 73-75.

Schuman,¹⁰³ created the ECSC, which in rather than being an expression of liberal free trade, sealed a series of more effective non-tariff barriers in order to protect the French economy. The post-war reconstruction was connected to restricting the capacity of German coal and steel industries, in exchange for a “new international virginity”.

The failure of the EDC¹⁰⁴ revealed that Member States would not support a high level of “harmonization”. The determination to preserve national States¹⁰⁵ within a Confederation System needed a contra factual metaphor. It was founded in Charles De Gaulle’s slogan: “*L’Europe des Nations*” that was an incoherent and mendacious oxymoron.

This approach in fact aimed to maintain a Franco-centric institutional asset¹⁰⁶ of the Communities, which organized the law making, the bureaucratic pyramid¹⁰⁷ and relations with other Countries¹⁰⁸ in a condition depending on national States. This political control system needed an antagonistic political and legal Doctrine to emphasize the role of national States, especially the main ones, and a tacit supremacy of French political power.

That goal emphasized the support to the Henry Capitant Association, “*Amis de la culture juridique française*”,¹⁰⁹ the “*Faculté internationale de droit comparé*” de Strasbourg,¹¹⁰ the creation of a set of European Law Revues in French¹¹¹ and the imposition of French as the community working language,¹¹² which raised problems in drafting and interpretation of Directives.¹¹³

¹⁰³ On Schuman’s European political thought see Acts of XIV AUSE Summer School, Genova 6-7 May 2010, *A sessant’anni dalla Dichiarazione Schuman*, forthcoming.

¹⁰⁴ D. Preda, *Storia di una speranza. La battaglia per la CED e la Federazione europea* (1990).

¹⁰⁵ A. Milward, *The European Rescue of the Nation State* 121-167 (1992).

¹⁰⁶ The seats were in French speaking cities as Strasbourg, Brussels (in fact Flemish but French speaking) and Luxemburg, using as domestic language the *lezebuurjesh* - a german dialect (L. Hjelmslev, *Sprog. En introduction*, (1963), It. transl. *Il linguaggio* (1970), for the west Germanic linguistic group 79), but the official language was French: in J. Rideau, *Droit institutionnel de l’Union et des Communautés Européennes*, 399-402 (2nd ed. 1996).

¹⁰⁷ J. Ziller, *Administrations comparées*, 477; G. Edwards, D. Spence, *The European Commission* 68-101, 103-124 (2nd ed. 1997) with Annexes on the structure of the Commission’s Services.

¹⁰⁸ J. Rideau, *Droit institutionnel*, Ch. II-III, *Les procédures des décisions dans l’Union et les Communautés européennes* 473-489.

¹⁰⁹ Of which I am silent member.

¹¹⁰ The *Faculté* formed a lot of Italian Comparative Law scholars.

¹¹¹ *Revue internationale de droit comparé*, *Revue du Marché Commun*, *Revue européenne de droit de la consommation*.

¹¹² In the case *van der Vecht* (19/67) the ECJ examined only one linguistic version of a Directive, deciding that only in case of an interpretative doubt the plurality of texts

The French legal system was the comparison litmus paper, and the Civil Code seems in to be the model¹¹⁴ for future projects of harmonization of European Law concerto.¹¹⁵

The refusal to the UK entering the EC from 1963 and the use of the “veto”, blocking any institutional development adverse to French interests, spread out bureaucratic anxiety.¹¹⁶

On the other hand, competition with US became difficult¹¹⁷, and the need for a ESM, with a common money¹¹⁸ and common rules, was pressing.

After the adhesion, in 1973, of the UK, Ireland and Denmark, the atmosphere changed. The UK negotiated its contributions to the Community budget, required English to be the first working language, imposed the most important Commissioners and Directors, and influenced, with its experience and authority in judge made law¹¹⁹, the ECJ reasoning and methods of interpretation.

The UK leader, Margaret Thatcher, who proposed the implementation of a liberalistic approach to the downturn in the UK economy, was absolutely contrary to any political development in European integration¹²⁰. Her

(Languages) must be confronted. See B. Pozzo, *L'interpretazione della Corte del Lussemburgo del testo multilingue: Una rassegna giurisprudenziale*, in B. Pozzo, M. Timoteo (eds.), *Europa e linguaggi giuridici* 388-389 (2008).

¹¹³ R. Sacco, *Langue et droit, Les multiples langues du droit européen uniforme* 175-178 (1999) analyzes cases of incorrect drafting and implementation connected with the different linguistic approaches to the structure of MS legal systems. P. Rossi, *La trasposizione delle direttive comunitarie nel diritto privato italiano: questioni di terminologia e di redazione dei testi* in B. Pasa, P. Rossi, M. Weitenberg, *Diritto contrattuale europeo tra direttive comunitarie e trasposizioni nazionali*, 89 ff. (2007).

¹¹⁴ K. Zweigert, H. Kötz, *Einführung in die Rechtsvergleichung*, Band I: Grundlagen (1984), Ital. transl. *Introduzione al diritto comparato, I principi fondamentali* 17 (1992): comparative law as “école de vérité” (freudian linguistic tribute) gives critical observers the possibility to find the “best solutions”.

¹¹⁵ S. Poillot-Peruzzetto (eds.), *Vers une culture juridique européenne?* (1998).

¹¹⁶ R. Ducci, B. Olivi, *L'Europa incompiuta* (1970).

¹¹⁷ J. J. Servan-Schreiber, *Le défi américain* (1967), stressed the Europe-US competition by national business circles, in particular the French ones.

¹¹⁸ On the evolution of European currency problems see from A. Albertini, A. Majocchi, G. Montani, D. Moro, D. Velo, *Monnaie européenne et état fédéral* (1975), to F. Prausello, *Eurozone Stability in the Aftermath of Enlargement*, *The EU Review* (vol. 9, n. 1, 2004).

¹¹⁹ For a critical reconstruction, C. Costantini, *La legge e il tempio, Storia comparata della giustizia inglese* (2007), which connects “The Sacredness of Law” and “The Priesthood of Judges”.

¹²⁰ Discours at Collège d'Europe of Bruges, in 1988, presenting her idea of a “Europe of Nations” prefiguring the “euroskeptical” approach. See I. Ward, *A Critical Introduction to European Law* 88-89 (3d ed.).

dissonances, after 1985, with the new president of the Commission, Jacques Delors, a Christian-socialist with a Federal vision,¹²¹ sponsored by France (Mitterand) and Germany (Kohl), were deafening.

After a strong political-semantic clash, the compromise was found in the SEA. Approved in 1986, it was the first amendment to the Treaty, extending the power of Community Institutions (Commission, Council, Parliament¹²²) and introducing inter-governmental co-operation. National powers maintained the control of international politics, defense and justice.

2. THE “RACK RAILWAY” ROLE OF THE ECJ

The role of the ECJ became crucial. Developing a flow of case law rules,¹²³ interpreting the Treaty with non literal techniques, elaborating non-written principles¹²⁴ for the evolution of the Community's legal system, the Court played the rôle of a “rack railway”. During the political impasse periods, the evolution of case law maintains the stress on European integration.

The battle was on methods of interpretation of national law. To avoid that national powers might use judge made law to keep their control on market rules, not only of the ESM but also of incoming global markets, the ECJ devised a new interpretation instrument, the “indirect effect”, establishing that a domestic law must be interpreted according to Community law. The success of the *Van Colson* principle¹²⁵ depends on the extent to which national courts perceive themselves as having a discretion, under their own constitutional rules, to agree to this new interpretation method, unfamiliar also to other federal adjudication systems.¹²⁶

In fact, using this instrument of the “*interprétation conforme*” national judges can enforce a Directive not yet transposed or extend national market rules.

¹²¹ Discours in 1999 defending the Federal vision of European integration.

¹²² A. Chiti-Batelli, *Il Parlamento Europeo. Strutturi-Procedure-Codice parlamentare* (1982).

¹²³ P.-C. Müller Graff, *Law Development by the European Court of Justice. The Balance in the Court's Jurisprudence between Law-Making by the Union's Political Process and the Judiciary*, *The EU Review* 43-71 (vol. 2, n.3, 1977).

¹²⁴ In an anthropological and comparative approach the non written principles are cryptotypes, non written or non verbalized values and interpretation instruments, which must be revealed. The written constitutional texts, protecting persons and their freedom, revalue the natural and spontaneous creation of private law: R. Sacco, *Il diritto non scritto, Le fontinon scritte* 42; R. Sacco, *Antropologia giuridica* 176 ff., 206-208 (2007).

¹²⁵ Case 14/83, J. Steiner, *EC Law*, 37-40.

¹²⁶ R. A. Rossum, G. A. Tarr, *Federalism and Interpretation based on Structure and Relationship, American Constitutional Law. Cases and Interpretation* 184-187 (2nd ed.).

The debate among interpretivism and non-interpretivism¹²⁷ is open.

3. AN EXPLORATION OF CONNECTIONS BETWEEN THE COMMUNITY AND ITALIAN CONSUMER LAW

Civil law scholars, who were municipal law oriented, continued to neglect this dual schema and, by doing so, fortified an apparent decline of the Nation State.

The comparatists developed an interest in the impact of Community law on Italian law. The VIIth Congress of the Italian Association of Comparative Law organized in Florence at the European Institute¹²⁸ was pervaded by comparative euro-enthusiasm and the intention of developing an analysis of different legal transplants under the Community umbrella.¹²⁹

The crescendo arrived with the Directive on product liability (85/374/EEC) that take as model the US and UK case law experiences¹³⁰, but limited the harsh rules on *strict liability* and introduced the “consumer expectation test” as an incentive to stimulate consumers’ care for reducing damages. This legal solution allows European firms to cut production, prevention and compensation costs in a recession market (e.g. automotive and chemical-pharmaceutical producers).¹³¹

This was the opening for Private Law scholars, who played new counterpoints which grew new rules, new transplants from strong, and sometimes hard,¹³² Consumer person Law experiences, such as in France, United Kingdom and Germany,¹³³ and introduced new aporias in the civil code system.

¹²⁷ G. L. McDowell, *Interpretivism and noninterpretivism*, in *The Oxford Companion to the Supreme Court of the United States* 436-437 (1992); P.G. Monateri, “All of this and so much more”: *Original Intent, Antagonism and Non Interpretivism*, Riv. crit. dir. priv. 2000, 32.

¹²⁸ A. Guarneri, *Comments*, Rivista di diritto civile 305 (1981).

¹²⁹ M. Cappelletti, A. Pizzorusso, *Proceedings presentation*, *L’influenza del diritto europeo sul diritto italiano* V-VII (1982).

¹³⁰ See my brief introduction to the subject O. Calliano, *Responsabilità del produttore, circolazione dei modelli e tutele processuali. Lezioni per un master*, in G. Autorino (ed.), in *Quaderni di diritto dei rapporti civili ed economici nei sistemi giuridici contemporanei*, 223 ff. (2000).

¹³¹ B. A. Koch, H. Koziol (eds.), *Unification of Tort Law :Strict Liability* (2002).

¹³² J. Drexel, *Die wirtschaftliche Selbstbestimmung des Verbrauchers* (1998) considers the Italian Consumer Law having weak roots

¹³³ G. Alpa, *L’uso del diritto straniero da parte del giudice italiano*, in A. Somma, *L’uso giurisprudenziale della comparazione nel diritto interno e comunitario* XXV (2001).

The first explorer, our Nobile,¹³⁴ was Guido Alpa, who scouted the connections between Community and Italian Consumer person Law.¹³⁵

V. THE NEW EUROPEAN CHANCE

1. THE MAASTRICHT TREATY AND THE EUROPE OF REGIONS AND CITIZENS

The third political prelude, allegro, in the integration process was determined by the fall of the Soviet Union system, in 1989, and the disintegration of the Comecon.

The consequent German reunification gave new problems to EU, faced with the creation of a new economic and political actor with nearly 80 millions of inhabitants, transforming the post-war internationally powerless German Federal Republic into the economically most important and most populated MS. This is reflected in the need for extension of the political issues¹³⁶ developed by Community Institutions.

On the other hand, having delegated the complex regulation of the market to “eurocracy”, MSs slip into a blind alley. Apparently irrelevant technicalities of economic decisions, lack of information to citizens on the activity of Community Institutions, lack of transparency connected with the increasing power of lobbies in a neo-corporative system¹³⁷ and the “democratic deficit” estrange citizens from European integration.¹³⁸

The Schengen Agreement of 1990, the borderline date of 1993 for the conclusion of the negative integration in the ESM and the Treaty of Maastricht raised new powers for the European Parliament¹³⁹, new European

¹³⁴ Umberto Nobile was an Italian explorer who flew, using the *Norge* Zeppelin, over the North Pole.

¹³⁵ G. Alpa, *Diritto privato dei consumi* (1st ed. 1986); G. Alpa, M. Bessone, *Tutela del consumatore, rapporti assicurativi, igiene degli alimenti*, in *L'influenza del diritto europeo* 127 ff. expressed the intention of legal scholars to participate in the European debate and to help the Italian legislator draft an Italian Consumer Law model. The proposal was neglected by Italian public authorities, who ignored the lack of negotiation power in the creation of the rules of the ESM, as opposed to other large and strong economic and legal systems.

¹³⁶ An enlargement of the EU needed an extension of institutional and political power to avoid racing the engine.

¹³⁷ P. Nanz, *Europolis. Un'idea controcorrente di integrazione politica* (2009).

¹³⁸ The Treaty of Maastricht was ratified in France with a referendum vote of 51% in favour.

¹³⁹ S. Guerrieri, *The evolution of the European Parliament's Role*, *passim*.

social politics¹⁴⁰, a new role for regions, the emersion of citizens' social and economic interests and a "new European cultural conscience".¹⁴¹

A pragmatic slogan is conceived: "*Europe of regions and citizens*"¹⁴². The introduction of the European citizenship (artt.17-22) was probably a rhetorical forcing,¹⁴³ but necessary to balance the present and future enlargements and to connect them to human rights.¹⁴⁴

The ECJ developed a set of non written principles¹⁴⁵ introducing human rights into a legal system originally based on market rules.

The Treaty of Maastricht¹⁴⁶ and the introduction of the Euro¹⁴⁷ opened the field to new dimensions¹⁴⁸ of economic and private rules.

A set of new perspectives appeared: monetary policy with a Private Law approach to money and payments; labor, welfare, health care, training policy, transports, culture, knowledge and research networks, international co-operation and respect of human rights.

2. THE RISE OF A EUROPEAN CONSUMER PERSON LAW

Consumer person Protection is acknowledged in art. 153 (now 169) of the Maastricht Treaty. Consumer person rights are recognized in connection with the Consumer's interest in health care, product safety, economic interests, information, education and the promotion of Consumer associations.

¹⁴⁰ S. Mangiameli (ed.), *L'ordinamento europeo*, III, *Le politiche dell'Unione* (2008).

¹⁴¹ P. Häberle, *Per una dottrina della Costituzione come scienza della cultura* 117 (2001).

¹⁴² V. Lippolis, *La cittadinanza europea* 25 (1994), criticizing the lack of duties in a "status".

¹⁴³ G. P. Orsello (ed.), *Il diritto dell'Unione europea* (1999); L. Bonarate, *Etica e cittadinanza in una dimensione europea*, in V. E. Parsi (ed.), *Cittadinanza e identità costituzionale europea* 35 (2001).

¹⁴⁴ A. Papasca, *Human Rights and Civil Movements: the Critical Mass for Improving European Integration*, *The EU Review* 7-11, vol.4, n. 2 (1999).

¹⁴⁵ G. Alpa, *I principi generali, Le fonti non scritte e l'interpretazione*, II, in R. Sacco (dir.), *Trattato di Diritto Civile* (1999) introducing the historical division between "*principles as values or as general rules*", 370-380 and "*hidden principles and policies*", 410-417. In an anthropological and comparative approach the non written principles are cryptotypes, non written or non verbalized values and interpretation instruments, which must be revealed. The written constitutional texts, protecting persons and their freedom, revalue the natural and spontaneous creation of private law: R. Sacco, *Il diritto non scritto, Le fonti non scritte*, 42.

¹⁴⁶ Il Politico, *L'Europa dopo Maastricht. Problemi e prospettive* (1994).

¹⁴⁷ G. Montani, *One Market, One Money. The Political Economy of Supranational Integration*, *The EU Review* 43-59 (vol. 7, n. 2 2002).

¹⁴⁸ L. Moccia (ed.) *I giuristi e l'Europa* (1997), encouraging to form a new European jurist under the comparison umbrella; see also, for a historical approach, *Comparazione giuridica e Diritto europeo* (2005).

The Commission established a new General Direction “SANCO” (Health and Consumers), with a cross competence.¹⁴⁹ These declared consumer interests are nevertheless linked, or subordinated, to the efficiency of the market¹⁵⁰, and this ambiguous meaning heralds aphibological interpretations at national or European level.

The definition of “consumer” and “professional”, for example, depends on the economic dimension of the rights the Court intends to protect.

In France the *Cour de Cassation* stated that a professional may benefit from unfair contract terms provisions¹⁵¹ if, “being beyond his own professional competence”, “he is in the same condition of ignorance as a consumer”. The interest seems to be the protection of the French SMEs, possible weak subject in the ESM.

After some fluctuations in case law and a long doctrinal debate¹⁵² the *consommateur as non professionnel* was extended,¹⁵³ with a wide interpretation, to the *personne morale*. The interest was the extension of the protection to all subjects who need a re-balance in an asymmetric relationship.

In reaction the ECJ, in Cases 541/99 and 542/99, stated that only a physical person is a consumer, according to art. 2 b of Directive 93/13 on Unfair Contract Terms, and that judge made law cannot modify the “minimal clause”. The interest protected here is the harmonic development of the rules of the ESM.¹⁵⁴

The same applies for consumer protection under the antitrust provisions. The declared interest of consumer persons in the control of competition-restricting agreements (Art. 81-3 now 101-3) is submitted to the interest of a

¹⁴⁹ Directed by an Italian Commissioner, Emma Bonino, *Quale politica per i consumatori dell'Unione europea*, Consumatori, Diritti e Mercato 8-27 (1998).

¹⁵⁰ G. Benacchio, *Diritto Privato della Comunità Europea. Fonti, modelli, regole* 263 (2008). For a general review of the problems arised by art. 153 (now 169) see N. Reich, G. Woodroffe, *European Consumer Policy after Maastricht* (1994).

¹⁵¹ Cass.1er ch. civ., 28/4/1987, Rev. trim. droit civ. 86 (1987), obs. Mestre, see last Cass.,1er ch.civ., 22/5/2002, Rév. eur. dr. cons. 137 (2/2002), obs. L. Bernardeau 138-144.

¹⁵² M. Durin, *La protection des personnes morales par le droit de la consommation*, Rév. eur. dr. cons. 3-13 (2005).

¹⁵³ Cass. 1er ch.civ., 6/1/1993, D. 237 (1993), note G. Paisant.

¹⁵⁴ ECJ 22/11/2001, Rév. eur. dr. cons. 341 (2001), obs. L. Bernardeau, *Contrats, concurrence, consommation*, janvier 32 (2002), obs. G. Raymond; Dalloz 90 (2002), obs. C. Rondey; see also A. M. de Matos, Cass.,1^{re} Civ., 5 mars 2002. La législation française sur les clauses abusives est-elle applicable a un contrat entre une personne publique et une société commerciale? Rév. eur. dr. cons. 61-67 (2002). La Cour de Cassation française prend enfin position, Rév. eur. dr. cons. 3-13 (2005).

“workable” competition in a hyper-competitive global market. The pursued interest is allowing consumer persons a fair share of the resulting benefit.¹⁵⁵

This is the case of distribution agreements, market-sharing and price control as strategic marketing techniques, which assumes consumers to be passive in an inefficient market.¹⁵⁶

After Maastricht new horizontal Directives on product safety (92/59/EC)¹⁵⁷ (modified into 2001/95/EC) and unfair contract terms (93/13/EC) regulate market production and distribution.

The unfair contract terms Directive was a turning point in community consumer person law.¹⁵⁸ It stated the extensions, and limitations, of consumer protection, defining the protection river bed, the “consumer” as a private person and the “professional”, the control only on legal and not on economic aspects of the contract, the remedies and the organizations called to ensure market efficiency.¹⁵⁹

¹⁵⁵ K. J. Cseres, *The interplay between consumer protection and competition law*, Rév. eur. dr. cons. 100-102 (2005), R. Pardolesi, *Le intese restrittive della libertà di concorrenza*, in A. Frignani, R. Pardolesi (eds.), *La concorrenza*, in G. Ajani, G. A. Benacchio, *Trattato di diritto privato dell'Unione europea*, VII, 72.

¹⁵⁶ A. Zoppini, *Autonomia contrattuale, regolazione del mercato, diritto della concorrenza*, in G. Olivieri, A. Zoppini (eds.), *Contratto e antitrust* (2008). On the «passive» role of SME in contractual asymmetry in a competitive market Ph. Fabbio, *Disparità contrattuale e abuso di dipendenza economica*, in A. Zoppini, *idem* 162 ff.; M. Bin, *La piccola impresa industriale: problemi giuridici e analisi economica* (1983).

¹⁵⁷ Caused by a wine producer's mistake (the case of metanolo wine) in Piedmont, that forced to restructure the sector, allowing to produce the best Italian wine in Europe (quoted in the canadian film “Les invasion barbares”, winner at the Cannes Festival). The mistake was “successful”, forcing the Community to elaborate Dir. 2001/95/CE, which was efficiently enforced in the “mad cow” cases (Case *National Farmers' Union* C-157/96, Case *United Kingdom v. Commission*, C-180/96, introducing the “precautionary principle” N. De Sadeleer, *The Precautionary Principle Applied to Food Safety. Lessons from EC Courts*, in S. Mahieu (ed.), *Food Trade: New Challenges and New Standards. European, American and International Perspectives* 147-169 (2009).

¹⁵⁸ Ch. Jorge, *The Europeanisation of Private Law as a Rationalisation Process and as a Contest of Legal Disciplines-an Analysis of the Directive on Unfair Terms in Consumer Contracts*, ERPL 3 (1995).

¹⁵⁹ The Comments are profluvial. See bibl. in M. Franzoni, *Codice Iperattuale del Consumo* 145-146 (2008). Community Consumer Law creates a new category of contracts: consumer contracts, different from traditional civil law contracts (not commercial contracts because the civil code regulates consumer to consumer contracts as well). In favour of the distinction, for all E. Gabrielli, E. Minervini (eds.), *I contratti dei consumatori*, in P. Rescigno, E. Gabrielli, *Trattato dei contratti* (2005). Exploring a “traditional” interpretation, P. Stanzone, A. Musio, *Introduction, La tutela del consumatore*, in M. Bessone (ed.), *Trattato di diritto privato* 3-4 (2009), express perplexities.

The subsidiarity principle (art. 5 TEU), interpreted extensively as an instrument for re-nationalization of consumer policies, allows, in my opinion, for pivotal MS Consumer Person Law experiences, to re-protect their own economic system,¹⁶⁰ their firms' strategies and their citizens in financial straits or in welfare superiority.

Its implementation sets a new doctrine legitimating the different transpositions of Community harmonizing Directives. The task is supported by national Private Law scholars, connecting EU legal innovations with national legal tradition¹⁶¹ and stimulating to reform Civil Codes, introducing the consumer law innovations into the private law system.

The entry of Sweden into the EU introduces an innovative model of consumer law, inviting the Commission to choose between high level of protection (art. 153-1 now 169-1) and minimum standard ruling.¹⁶²

VI. A TRIBUTE TO EUROPEAN DEMOCRACY

1. FROM THE ENLARGEMENT TO THE FAILURE OF THE CONSTITUTIONAL PROCESS

The last movement, presto, is connected with the enlargement of the EU¹⁶³ to countries in transition from planned economy and "soviet oriented" legal systems to market rules, accepting the "*acquis communautaire*" of consumer law

¹⁶⁰ D. Chalmers, *New Protectionism and the European Communities: A Question of Constitutionality*, in B. S. Jackson, D. McGoldrick (eds.), *Legal Vision of the New Europe* (1993).

¹⁶¹ J. Drexler, *Die wirtschaftliche Selbstbestimmung des Verbrauchers* (1998). G. G. Howells, *Interpretation of EC Consumer Law*, in R. Colonna, R. Schulze, A. Troiano (eds.), *L'interpretazione del diritto privato europeo e del diritto armonizzato* 216 (2004), who reminds that the European legal order must emerge from the gradual consensual convergence of national legal traditions, stressing the ECJ recognition that in many areas Community policy has been to leave MSs a degree of autonomy, respecting the national traditions. In France the drafting of a "*Code de la consommation*", required by consumer associations was supported by the *Ministère de la consommation (sous-secrétariat)* and sponsored by J. Calais-Auloy, *Proposition pour un code de la consommation*, La Documentation française, 1990. It was the model for similar national and European experiences.

¹⁶² J. M. Smits, *European Private Law: A Plea for a Spontaneous legal Order*, in D. M. Curtin, J. M. Smits, A. Klip, J. A. McCahery, *European Integration and Law* 80-83 (2006), suggests a systematised minimum standard directive in the area of consumer contractual rights. This opinion influenced the Commission and the project is under final debate; see www.europa.eu/consumers/rights/cons_acquis_en.htm.

¹⁶³ J. D. Hansen, *A Political Economy Analysis of the Eastward Enlargement*, *The EU Review* 113-133 (vol. 10, n.3, 2005).

but having a lot of problems in implementing and enforcing these strict regulations and rules, heavy for national firms and unknown by common people.¹⁶⁴

The enlargement needed a constitutional belt to reassure the ancient companions (the “*noyan dur*”) that the “veto power” would not to be used under pluralistic justificatory discourses¹⁶⁵ to obtain economic or political benefits. The European Constitution¹⁶⁶ re-affirmed the fundamental human rights as a base for the participation in political and economic benefits of an enlarged market and stated in capital letters the non written principles elaborated by ECJ, the supremacy of EU Law and the rôle of European judicial power.

The federalist movement re-started the campaign, but national political groups were afraid to loose the last popularity in front of an increasing economic decline due to market globalization.

The French debate underlined the “Gods’ fall” and the new metaphor was the “polish plumber” as the alien, coming from “abroad”¹⁶⁷ to take away jobs from national workers, under the Bolkestein directive.

The “romantic” national¹⁶⁸ States, such as Italy, approved the Constitution but the interests of some national States, as in the EDC failure, prevailed.

Much ado about nothing? The necessity to re-present an amended text, forgetting about the linguistic symbol of the “Constitution”, praised by Federalists, needed a new start.

The inter-governmental meeting unearths a “toponymical metaphor”, remembering the old success of Rome: the “Lisbon” location, already used to boost the European Knowledge Society under the “Lisbon Charter”. The Lisbon Treaty, rejecting constitutional dreams¹⁶⁹ but opening new governance

¹⁶⁴ C. Barettoni, *The Legal Framework as an Incentive for Strengthening Competitiveness of Small and Medium Enterprise in Central and Eastern European Countries: The Case of European Consumer Law*, in G. Tardivo (ed.), *Business Policies and Strategies in a Global Market. A Framework for SME's Cases and Studies*, 293-331 (2004).

¹⁶⁵ P. Nanz, *Europolis: un'idea controcorrente di integrazione politica*, 194 (2009). The cases of no in constitutional referendum by Ireland is exemplar.

¹⁶⁶ U. Morelli (ed.), *A Constitution For the European Union. Sovereignty, Representation, Competences, Constituent Process* (2005).

¹⁶⁷ U. Beck, E. Grande, *Das kosmopolitische Europa. Gesellschaft und Politik in der Zweiten Moderne* (2004), It. transl., *L'Europa cosmopolita. Società e politica nella seconda modernità* 174-179 (2006); Cosmopolitization is considered a power meta-play.

¹⁶⁸ J. Rifkin, *The European Dream* (2004), It. transl. *Il sogno europeo. Come l'Europa ha creato una nuova visione del futuro che sta lentamente eclissando il sogno americano* (2004), strongly supports the specificity and extensiveness of the European model.

¹⁶⁹ G. Zagrebelsky (ed.), *Diritti e Costituzione nell'Unione Europea* (2003).

powers for the Commission and enlarging legislative co-operation of the European Parliament, just in time to manage the big economic crisis, seems to open a new period of uncertainty.

2. CONSUMER RIGHTS IN AN AGE OF ECONOMIC AND CULTURAL CRISIS

Some scholars point out the deficit of consumerism in Italy, foreseeing future defeats in an enlarged and more competitive European market.¹⁷⁰ Private law doctrine emphasizes the role of European private law, also in the field of consumer person protection.¹⁷¹

Comparative law doctrine, having developed a long debate on the drafting of a European civil code,¹⁷² or a European code of contracts,¹⁷³ or a European Common Core¹⁷⁴ for a high harmonization¹⁷⁵ of European Private Law, promotes the evolution of EU institutions and market rules.

But the economic and cultural crisis has knocked at the door. Will European Consumer Law encourage economic actors to innovate and to develop a

¹⁷⁰ O. Calliano, *Il costo del non consumerismo e la formazione di un movimento consumerista strutturato in Italia*, in *Diritto dei consumi - Consumer Law* 56ff. (1997). This opinion was discussed at the creation of the CNCU -National Council of Consumers and Users, promoted by the Italian Ministry of Economic Development.

¹⁷¹ In this period some Treaties on European Private Law are conceived, N. Lipari (ed.), *Trattato di Diritto Privato Europeo*, in which, G. Chinè, *Il consumatore* (1996); V. Rizzo (ed.), *Diritto Privato Comunitario. I Fonti, Principi, Obbligazioni e Contratti, Il Lavoro, Impresa e Società* (1997). P. Perlingeri, E. Caterini, *Diritto dei consumi I-IV* (2005-2009). Two Reviews start being published: F. Galgano, M. Bin (eds.), *Contratto e Impresa-Europa* and J. Bonell, C. Castronovo, A. di Majo, S. Mazzanuto (eds.), *Europa e diritto privato*. A series of Italian Consumer Law studies is M. Bessone, P. Perlingeri (ed.) *Consumatori Oggi*, with 29 contributions; the last one is G. Cavazzoni, L. Di Nella, L. Mezzasoma, V. Rizzo, *Il diritto dei consumi. Realtà e prospettive* (2008). An up to date survey of Italian Consumer Law doctrine is in P. Stanzione, A. Musio, *La tutela del consumatore*, in M. Bessone (ed.), *Trattato di diritto privato*, XXX (2009).

¹⁷² R. Sacco, *The System of European Private Law. Premises for a European Code*, in *Italian Studies in Law*, vol. I (1993); A. S. Hartkamp, M. W. Hesselink, E. H. Hondius, C. E. du Perron, J. B. M. Vranken, *Towards a European Civil Code* (3d ed. 2004); G. Alpa (ed.), *Il codice civile europeo* (2001); V. Roppo (ed.), *A European Civil Code? Perspectives and Problems* (2005); E. Iorani Ferrari, *Codice civile europeo. Il dibattito, i modelli, le tendenze* (2006).

¹⁷³ Academy of European Private Lawyers, *European Contract Code, Preliminary Draft* (2004).

¹⁷⁴ M. Bussani, U. Mattei (eds.), *The Common Core of European Private Law. Essays on the Project* (2002).

¹⁷⁵ D. Mazeaud, *La commission Lando: le point de vue d'un juriste français*, in C. Jamin, D. Mazeaud (eds.), *L'harmonisation du droit des contrats en Europe* 141-158 (2001), who represents the wishful thinking of some French scholars for a francocentric harmonization.

producers-consumers “relational capital”, essential for a knowledge economy? Or will the economic adversities pressure national political groups to enter a neo-protectionistic era in which consumer person law will be too expensive a luxury?

VII. SOME COMPARATIVE FINAL NOTES

In the finale I will contribute to answering the opening question and make some comparative remarks drawn from the road Europe travelled in consumer person law.

First of all, social experience shows that not only technical innovations, but also economic and business ones¹⁷⁶ require legal rules and demand rapid and adequate answers.

Firms and consumers need legal strategies¹⁷⁷ to protect their own interests but also to preserve the efficiency of the market and to guarantee respect of fundamental rights, such as economic and social rights at national, supranational or global level. Consumer person Law is a field in which former national legal systems are forced to re-adapt meanings and ruling.

Scholars and lawyers need to adjust to the long term view of the innovators who drafted the Civil Code or the BGB. The future (i.e. Internet Law,¹⁷⁸ Environmental Law,¹⁷⁹ Nano-technology Law)¹⁸⁰ needs new models, new legal innovations and new transplants.¹⁸¹

¹⁷⁶ D. Corapi, *Saggi di diritto commerciale europeo* (1995). For an up to date economic approach see D. Velo (ed.), *Il governo dello sviluppo economico e dell'innovazione in Europa* (2009).

¹⁷⁷ O. Calliano, *Legal strategies* 356-358.

¹⁷⁸ First were V. Zeno-Zencovich, L. Russi, *I programmi per elaboratore. Tutela degli utenti e delle software-houses* (1988). D. Corapi (ed.), *Il diritto d'autore di fronte alle nuove tecnologie - Author rights faced with new technologies*, (1994). For an e-commerce perspective see multis G. Commandè, S. Sica, *Il commercio elettronico. Profili giuridici* (2001).

¹⁷⁹ R. Ferrara, *La tutela dell'ambiente*, in G. Ajani, G. A. Benacchio (eds.) *Trattato di diritto privato dell'Unione europea*, XIII (2006). See also *Controlli amministrativi e tutela del consumatore nell'ordinamento italiano: aspetti problematici* (1986).

¹⁸⁰ The AIDC-Italian Association of Comparative Law- discussed the links among Science and Law in the Colloquium held in Pisa in 2003, G. Commandè, G. Ponzanelli, *Scienza e Diritto nel prisma del Diritto comparato* (2004).

¹⁸¹ P. G. Monateri, *La circolazione dei modelli giuridici e le sue conseguenze per l'Unione europea*, in A. M. Petroni, *Modelli giuridici ed economici per la Costituzione europea* 115-122 (2001). A critical analysis of the traditional background of law persons and the shift from a “receptive” to a “relations bearer” jurist in M. Vogliotti, *Tra fatto e diritto: Oltre la modernità giuridica* (2007).

European Consumer Person Law is a fact. The question is: Is it still a part of general Private Law¹⁸² or is it a field in which Comparative Law can explore Community and national solutions?

This is, obviously, an unfounded question. Private law scholars interpret Community and national rules and formulate new theories. Comparative law scholars test, as "*juris perspectores*", rules and theories, and search for cryptotypes and silent or unconscious meanings.¹⁸³ The work is difficult but necessary, and in interdisciplinary co-operation is unavoidable.

The question at European level is: Is a European Consumer Person Code, a Restatement, necessary, or will the present patchwork be maintained?

The enlargement of the market, probably too rapidly achieved, created a lot of political, institutional and governance problems, and the attempts for a painless exit from the crisis worry national political bodies, and stress them to "neoprotectionist" policies. A progressive agenda is required.¹⁸⁴

In this context, new social groups,¹⁸⁵ such as Erasmus students, future European managers and professionals, civil rights networks and consumer person associations, wave the flag of a European set of rules protecting and improving general interests. The connection among these Social Players and the Academy will provoke a burst of applause.

¹⁸² G. Alpa, *Introduzione al diritto contrattuale europeo* (2007).

¹⁸³ R. Sacco, *Che cos'è il diritto comparato*, in P. Cendon (ed.) (1992).

¹⁸⁴ U. Mattei, F. G. Nicola, *A 'Social Dimension' in European Private Law? The Call for Setting a Progressive Agenda*, in *Global Jurist*, vol.7 (2007).

¹⁸⁵ A. Papăscu, *Human Rights and Civil Movements: the Critical Mass for Improving European Integration*, *The EU Review* 7-11, vol. 4, n. 2 (1999), J. Steffek, C. Kissling, P. Nanz, *Civil Society Participation in European and Global Governance. A cure for the Democratic Deficit*, (2007), M. Diani, *Nuove forme di azione collettiva e sviluppo della società civile*, in L. Sciolla (ed.), *Processi e trasformazioni sociali: La società europea dagli anni Sessanta a oggi* (2009).