THE TRANSFORMATION OF EUROPE

Twenty-Five Years on

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How Transformative Is the European Project?

TÜRKÜLER ISIKSEL

Professor Weiler's seminal 1991 essay poses two bold, enduring questions.[1] Can we view European integration as a transformative project? And if so, has it achieved the transformation it set out to achieve? The questions are deceptive in their simplicity, not least because *transformation* is a notoriously inconstant metric. The difficulty of grasping the nature of transformative politics might explain why the topic has inspired so much philosophical reflection. Emblematically, Jean-Jacques Rousseau opens *Of the Social Contract* with a promise to investigate whether 'taking men as they are and laws as they can be made to be, it is possible to establish some just and reliable rule of administration in civil affairs'.[2] Though Rousseau betrays this promise almost as soon as he makes it, it might as well be the mantra of contemporary political science: we believe that through shrewd institutional design, we can sustain cooperation among political actors who espouse disparate values, persuasions, and motives. Following Robert Wokler, I will call this the Procrustean view of political transformation, because its horizons are truncated by a modest sense of the possible.[3] Accordingly, our reformist ambitions must conform to what

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[1] J. H. H. Weiler, 'The Transformation of Europe', *Yale Law Journal*, 100 (1991), 2403–83.

[2] J. Rousseau, *The Social Contract and the First and Second Discourses*, S. Dunn (ed.) (New Haven, CT: Yale University Press, 2002), Preface to Book I, at 155.

    The ambition voiced by Rousseau is symptomatic of modern European political thought rather than transformative: Before him, Machiavelli prided himself in tending to the 'effectual truth of things' rather than 'imaginary republics and monarchies'. Similarly, Hobbes premised the *Leviathan* on an accounting of man as a complex circuit of appetites and aversions, which he proposed not to rewire, but to surround with the right kind of institutional insulation.

[3] In referring to Procrustean and Promethean approaches to political transformation, Wokler seeks to capture two distinct ways of construing 'the relation between human nature and politics'. According to Wokler, those who espouse a Procrustean approach are 'inclined … to believe that there are inescapable features of human nature which governments must somehow both control and accommodate'. By contrast, the Promethean attitude tends 'to suppose human nature malleable or perfective and governments, correspondingly, as at least potentially capable of improving their subjects'. Thus, according to Wokler, 'Ancient

is given to us in the world. We do not need to transform citizens; we only need good laws and institutions.

It is ironic that such a prudent maxim should be articulated by Rousseau, whose own social contract has been taken to task for requiring a great deal more than merely good laws. Above all, critics argue, the Rousseauian social contract calls for a wholesale moral rehabilitation of human nature, particularly as Rousseau understands the latter.[4] In Rousseau's words,

> He who dares undertake to give institutions to a nation ought to feel himself capable, as it were, of changing human nature; of transforming every individual, who in himself is a complete and independent whole, into part of a greater whole … of altering man's constitution in order to strengthen it.[5]

It is precisely because he does not expect ordinary mortals to pull off such Promethean feats that Rousseau wheels out the sublime figure of The Legislator whose own origins are, alas, never fully specified.[6] For who can give laws that 'change human nature' without himself being subject to the frailties of human nature? This approach to political transformation contrasts sharply with the Procrustean one insofar as its horizons extend beyond the existing world of human institutions, propensities, and desires.[7]

Is the transformation treated in Professor Weiler's eponymous essay of a Promethean or Procrustean sort? How far does the European integration

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constitutions, like those of Lycurgus for Sparta and Solon for Athens, as well of course as of Moses for the Jews, were conceived as predominantly Promethean gifts of divine inspiration brought by great legislators to man. Modern constitutions, like the Federalists' for America, have been more sharply tailored for a close fit to human nature, more Procrustean.' See R. Wokler, 'Democracy's Mythical Ordeals: The Procrustean and Promethean Paths to Popular Self-Rule', in G. Parry and M. Morran (eds.), *Democracy and Democratization* (New York: Routledge, 1994), 38–42.

[4] Most notably, J. N. Shklar, *Men and Citizens: A Study of Rousseau's Social Theory* (Cambridge: Cambridge University Press, 1969). For a contrasting view, see R. Wokler, *Rousseau* (Oxford: Oxford University Press, 1995).

[5] Rousseau, *The Social Contract*, Book II, Ch. 7, 181.

[6] '[H]ow would a blind multitude, which often knows not what it wishes because it rarely knows what is good for it, execute by itself an enterprise so great, so difficult, as a system of legislation? By themselves, the people always desire what is good, but do not always discern it … the public must be taught to understand what they want. Then from the public enlightenment results the union of understanding and will in the social body; and from that the close cooperation of the parts, and lastly, the maximum power of the whole. Hence arises the need of a legislator.' ibid, Book II, Ch. 6, 180.

[7] Wokler, 'Democracy's Mythical Ordeals'.

project aspire to alter the political landscape from which it arose? How far has it, in fact, altered it? These questions frame my short reflection. I will argue that both *The Transformation of Europe* and the transformation of Europe oscillate between two tendencies,[8] one transformative and the other circumspect, reaching for one without quite letting go of the other.

Three Visions of *Finalité Politique*: Unity, Community, Sovereignty

The Transformation of Europe draws a deep and lasting contrast between two competing visions of European integration, which Professor Weiler terms the 'unity' and 'community' models. The transformative quality of each of these models is thrown into high relief when considered against a third model, which is the *ex ante* of European integration: an unruly, mutually distrustful batch of states packed into a dense continent, each concerned to further their national interests. According to what I will refer to as the default 'sovereigntist' attitude, the selling point of supranationalism is that it promises to supply member states with auxiliary 'problem-solving' capacity in unwieldy policy domains. At the outset, then, European integration was designed to appeal to states as nothing more than 'an arrangement, elaborate and sophisticated, of achieving long-term maximization of the national interest in an interdependent world'.[9]

Competing visions of European integration can either work around the sovereigntist attitude or try to transform it. Here, the 'unity' and 'community' models each offer up different answers as to how this should be done. In Professor Weiler's formulation, unity denotes the forging of a comprehensive supranational polity through the gradual withering away of national political institutions and the assimilation of salient national particularity. Proponents of the unity model hope for a 'United States of Europe' conceived in the traditional statist mould; that is, they see a 'full political union' on the continental scale as the *finalité politique* of integration.[10] By contrast, the community vision entails 'limiting, or sharing sovereignty in a select albeit growing number of fields' without dissipating it altogether.[11] On this view, shared sovereignty is no mere *modus vivendi*; to the contrary, it is a transformative ideal that demands, in Weiler's words, 'a

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[8] In this chapter, *The Transformation of Europe* will refer to Professor Weiler's 1991 essay. The same phrase without italics will refer to the historical process itself.

[9] Weiler, 'The Transformation of Europe', 2481.

[10] Ibid., 2479.

[11] Ibid., 2479.

type of self-limitation in [states'] self-perception, a redefined self-interest, and hence, redefined policy goals'.[12] It is guided by a principled commitment to creating a composite and variegated 'community of states and peoples sharing values and aspirations'.[13]

Although unity may seem at first glance like the more far-fetched of the two alternative scenarios for the transformation of Europe, Professor Weiler argues that the community vision is more imaginative, riskier, and perhaps more utopian than unity, which merely scales up the familiar statist blueprint. By contrast, the community model rejects enforced uniformity. Instead, it creates a supranational political sphere that must simultaneously pursue two tasks that are in tension with one another, serving both as a counterweight to, and a guardian of, the diverse and distinct national communities of Europe.[14] The community model does not ultimately aim to 'extinguish' the national self but sets out to rehabilitate, or, in Professor Weiler's terms, 'civilise' or 'tame' it through 'new modes of discourse and a new discipline of solidarity'.[15] While unity would replace one kind of state with another, community seeks to alter the reflexes, discursive structures, and self-perceptions of sovereign states. More than this, it requires patient reconstruction and de-essentialisation of our ideas about the nature of political community.

As Professor Weiler has noted in *The Transformation of Europe* and subsequent writings, the community vision entails a perpetually unresolved tension between universalistic values and national particularity. While many post-war federalists hoped for a sudden epiphany on the part of European nation-states that would eliminate this tension for good in favour of European unity, Jean Monnet opted for prudent incrementalism. The success of the transformative project would depend not on the superhuman virtue of a Rousseauean lawgiver, but on the maintenance of a quotidian discipline of togetherness by member states and supranational institutions. As the Schuman Declaration famously put it, 'Europe will not be made all at once.… It will be built through concrete achievements which first create a de facto solidarity'.[16] The very fact that the phrase

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[12] Ibid., 2480. See also K. Nicolaïdis, 'European Demoicracy and Its Crisis', *Journal of Common Market Studies*, 51, 2 (2013), 351–69; F. Cheneval and F. Schimmelfennig, 'The Case for Democracy in the European Union', *Journal of Common Market Studies*, 51, 2 (2013), 334–50.

[13] Weiler, 'The Transformation of Europe', 2479.

[14] Ibid., 2480.

[15] Ibid.

[16] Robert Schuman, *Declaration of 9 May 1950*.

'founding fathers', borrowed from American constitutional lore, translates uneasily into the European context is because Monnet, Schuman, Spaak, Spinelli, et al. were pragmatists rather than prophets.[17]

Although the European project was designed to be compatible with the traditional calculus of national interest, however, the project itself was never intended to stop at 'de facto solidarity'. If it had, we would not consider its ambitions transformative. In addition, the regimen of supranationalism was meant to sublimate the belligerence and egoism of nation-states without abolishing either the nation or the state. What Professor Weiler terms the 'community model' has a Promethean aspect insofar as it requires imagining a new, composite form of political order-ing with a distinctive ethos. Like an Aristotelian virtue, supranational-ism would initially be practised by member states out of self-regarding motives. Through sustained engagement in collective decision-making, however, member states would acquire a universalist orientation in their exercise of public power. The core of the transformative ambition of supranationalism is therefore to rework the idea of self-interest – and indeed the very idea of self – by expanding member states' scope of moral concern to include a community of peers.[18] In other words, the ambi-tions of incremental integration went beyond mechanically harnessing or containing the sovereigntist impulse. Rather, it aimed at cultivating a new form of political obligation whose source would be neither passion nor interest[19] but a deliberate, reasoned commitment on the part of nation-states and their citizens to abide by shared political principles and norms of reciprocity.

'Really Existing' Supranationalism: Calibrating Exit and Voice

The transformative thrust of Professor Weiler's community model is tem-pered by his attention to the dynamics that gradually expanded the scope

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[17] One self-styled prophetic figure in the *dramatis personae* of European integration is Valery Giscard d'Estaing, whose Philadelphian project – alas – fell embarrassingly short of its bombastic billing.

[18] In this sense, supranationalism entails a sense of what Hannah Arendt called the 'enlarged mentality' and what Tocqueville called 'self-interest well-understood'. In the *Transformation of Europe*, Professor Weiler alludes to the New England township, presum-ably with Tocqueville in mind. See Weiler, 'The Transformation of Europe', 2469.

[19] To borrow another well-known dichotomy of Albert Hirschman's. See A. O. Hirschman, *The Passions and the Interests: Political Arguments for Capitalism before Its Triumph* (Princeton, NJ: Princeton University Press, 1977).

of supranational governance in Europe. Although member states had allowed themselves to become enveloped in a dense web of supranational norms and institutions by the 1990s, this did not mean that they had been cured of their crude sovereigntist impulses. Rather, Professor Weiler's explanation draws on Albert Hirschman's incentive-based scheme that analyses the dynamics of organisational membership predominantly in terms of exit and voice.[20] Professor Weiler argues that member states allowed the ECJ to gradually tighten the fabric of supranational law (i.e., raise the costs of 'exit') in the founding period not because they had left their selfish motivations behind, but because they regarded their interests as being sufficiently protected by the power of veto (i.e., amplified 'voice') they retained in the formal legislative processes of the Community. This involved a relatively modest transformation, a process by which the ever-extending arm of supranational law created an equilibrium between exit and voice in the Community structure.

Nonetheless, Professor Weiler worried in 1991 that with the expansion of Community competences, the return of qualified majority voting, and the Court's stringent enforcement of legal obligations, the supranational structure was becoming claustrophobic for member states. Subsequent rounds of treaty-making have allayed some of these concerns by recalibrating the equilibrium between exit and voice, thereby implicitly reaffirming the primacy of these dynamics. For instance, the Lisbon Treaty introduced a *de jure* exit option in the form of a provision for member state withdrawal from the Union, which the United Kingdom has recently decided to exercise. However, Professor Weiler noted that the exit dynamic is also manifest in 'selective' and negotiated participation in a 'multi-speed Europe', Europe of 'variable geometry', or 'Europe à la carte'. This outcome sharply contrasts with the ECJ's endless exhortations for a uniform Community legal order.[21]

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[20] One often-overlooked detail in this context is the subtitle of Hirschman's book, which underlines Hirschman's concern with making sense of '*decline* in firms, organizations, states'. This adds to the Owl of Minerva feel of Professor Weiler's 1991 essay. By zeroing in on the dynamics of exit and voice in the EU context, as many contributions in this volume do, we are perhaps looking for ways to forestall its decline. A. O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, States* (Cambridge, MA: Harvard University Press, 1970).

[21] For an account that highlights the discursive role of appeals to uniformity, effectiveness, and legal certainty in the jurisprudence of the Court of Justice, see M. de S. –O. –l'E Lasser, *Judicial Deliberations: A Comparative Analysis of Transparency and Legitimacy* (Oxford: Oxford University Press, 2004).

In addition to expanding exit options, the EU has also become institutionally more multi-vocal as its competences and public profile have grown. Thanks to multiple rounds of enlargement and the widening of the Union's policy repertoire, what Professor Weiler termed Europe's 'constitutional conversation'[22] has been joined by many more voices. Moreover, member state representation is no longer the exclusive purview of national executives represented in the Council, if it ever was. En route to '[controlling] the excesses of the modern nation-state',[23] European supranationalism has to some extent disaggregated the state into its component institutions and units.[24] For the most part, when national political institutions and supreme courts foray into the European dialogue, they do so to air their concern that the EU (and often, the Court of Justice in particular) is traversing the constitutional limits it once promised to respect.[25] Anxieties over *Kompetenz-Kompetenz*, national constitutional identity, and democratic autonomy have drawn national supreme courts into an ever-louder chorus of protest against the ECJ's still resolutely federalist baritone.

It remains a matter of controversy whether greater institutional contestation confers greater legitimacy on EU decision-making by drawing upon the 'legitimacy resources'[26] of member states, or a centrifugal dynamic that could unravel the supranational enterprise. I leave this question open. What I would like to emphasise, however, is that however they are institutionalised, neither of these two dynamics (exit or voice) requires going beyond the basic assumptions of the sovereigntist model. If what is still keeping the Union together is a canny arrangement of carrots and sticks, safety valves and patch-ups, opt-outs and side payments, then more than sixty years of integration have not been that transformative, or at least not in the way that its founders had hoped.

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[22] J. H. H. Weiler, 'European Neo-constitutionalism: In Search of Foundations for the European Constitutional Order', *Political Studies*, 44, 3 (1996), 517–33, at 532.

[23] J. H. H. Weiler, *The Constitution of Europe* (New York: Cambridge University Press, 1999), 250.

[24] Many see the disaggregation of the state as a wider trend in world politics. See J. Mathews, 'Power Shift', *Foreign Affairs*, 76, 1 (1997), 50–67; A. Slaughter, *A New World Order* (Princeton, NJ: Princeton University Press, 2004).

[25] Professor Weiler pointed to *Van Gend en Loos* as furnishing the origins of a 'judicial-constitutional contract' that for decades kept the peace between the supranational judiciary and national supreme courts. See 'The Transformation of Europe', 2451.

[26] P. L. Lindseth, *Power and Legitimacy: Reconciling Europe and the Nation-State* (Oxford: Oxford University Press, 2010), at 11.

Loyalty: The Missing Element of the Community Alchemy

Hirschman writes that when an organisation disappoints its members, 'loyalty holds exit at bay.'[27] In the European context, loyalty entails a long-term commitment on the part of member states and their citizens to stick with the supranational project even when it fails to deliver the goods. Although the Monnet method of integration had asked states to buy into nothing that they could not cash out of, it did so in the hope that their pragmatic transfers of sovereignty would accumulate into political allegiance over time.

 In his essay, Professor Weiler gave a circumspect assessment of the extent to which supranationalism had succeeded in modifying the parochialism inherent in national sovereignty.[28] The primordial or affective sources of political allegiance on which member states draw (what Professor Weiler calls 'Eros') are unavailable to a polity organised along the lines of the community model. For this reason, normative scholarship on European integration has latched onto constitutionally driven and constitution-sustaining forms of loyalty as the best we can hope for in the supranational context.[29] In contrast to observers such as Jürgen Habermas,[30] David Held,[31] or David Beetham,[32] however, Professor Weiler's work is far less sanguine about whether the EU can engender its own democratic public or piggyback on domestic structures of legitimation.

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[27] Hirschman, *Exit, Voice, and Loyalty*, 77.

[28] Weiler, 'The Transformation of Europe', 2465–6.

[29] The most well-known proponent of this position is Jürgen Habermas, whose idea of uniting Europe by fostering a sense of constitutional patriotism was for a time influential on academics and policy-makers alike. In his writings of the 1990s, Habermas sought to show that a European constitution would play a 'catalytic' role in creating a vibrant European *demos* capable of sustaining meaningful democratic opinion- and will-formation at the supranational level. Habermas argued that Europe needed a new 'legal institutionalization of citizens' communication' to foster a post-national 'ethical-political self-understanding' emancipated from assumptions of ethnic or cultural identity. '[T]he communicative network of a European-wide political public sphere embedded in a shared political culture' would be 'founded on a civil society composed of interest groups, nongovernmental organizations, and citizen initiatives and movements, and will be occupied by arenas in which the political parties can directly address the decisions of European institutions and go beyond mere tactical alliance to form a European party system'. J. Habermas, 'The European Nation-State: On the Past and Future of Sovereignty and Citizenship', in J. Habermas, *The Inclusion of the Other: Studies in Political Theory*, C. Cronin and P. De Greiff (eds.) (Cambridge, MA: MIT Press, 1998), 161, 153 respectively.

[30] Ibid.

[31] See, for instance, D. Held, 'Democracy and Globalization', in D. Archibugi, D. Held, and M. Koehler (eds.), *Reimagining Political Community* (Stanford, CA: Stanford University Press, 1998).

[32] See D. Beetham, 'Human Rights as a Model for Cosmopolitan Democracy', in ibid.

The failed constitutional moment of the early 2000s, the economic crisis that ensnared Europe for the better part of a decade, and the fever of Euroskeptic populism that has yet to break appear to vindicate these misgivings. Whereas grave continental crises in the past might have renewed rather than diminished faith in the European project, recent ones have revitalised the state-centred utility calculus, making the ideals of unity and community seem like noble yet naïve illusions of yesteryear. Whereas the Schuman Declaration had promised that a 'fusion of interest' would overcome 'sanguinary divisions', there is reason to fear that interests can become unfused much more rapidly than they are fused, and that it was perhaps gratuitous to assume that the fusing of interests would lead to a redirection of allegiances. In sum, the pragmatic dynamic of exit versus voice continues to be prominent in shaping the course of European integration while loyalty, whether as a citizen or elite attitude towards European integration, has made only modest headway.

In his 2005 book, Giandomenico Majone, a steadfast proponent of a contained, apolitical, and unsentimental approach to integration, threw down the gauntlet for principled *communautaires*: 'nobody has yet convincingly explicated the value-added of a European federation – what it might realistically do that could not be achieved by less far-reaching commitments.'[33] That Majone's challenge has so far largely gone unmet highlights the paucity of public and scholarly confidence in the transformative ambition of the European project. At sixty years' remove, the European project calls to mind Alasdair MacIntyre's allegory of the forgotten civilisation:[34] Even though the supranational project is still observable in relatively functional institutions, those institutions have lost much of the background against which they made sense. During the initial decades of European integration, citizens who had lived through Europe's grim internecine conflicts understood that the significance of economic integration went well beyond giving them access to cheap imports. The gradual fading of the rich ideal of a supranational community has left us with a market-inflected scheme of cooperation that vacillates between crude national sovereignty and an equally crude form of instrumentally rational integration. As a result, of the three 'founding ideals' of European integration enumerated by Professor Weiler, namely, peace, prosperity, and

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[33] G. Majone, *Dilemmas of European Integration: The Ambiguities and Pitfalls of Integration by Stealth* (Oxford: Oxford University Press, 2005), vi.

[34] A. MacIntyre, *After Virtue: A Study in Moral Theory* (South Bend, IN: University of Notre Dame Press, 1984), 1-2.

supranationalism,[35] only prosperity resonates as a still-current value in European public discourse. Supranationalism is deeply unpopular, and the ideal of peace has mellowed into somnolence. Missing its once-robust normative core, what we are left with the institutional husk of the transformative ideal.

Elsewhere, Professor Weiler has extensively critiqued that loss of purpose. To take one example,

> The condition of Europe … is not, as is often implied, that of constitutionalism without a constitution, but of a constitution without constitutionalism. What Europe needs, therefore, is not a constitution but an ethos and *telos* to justify, if they can, the constitutional order it has already embraced.[36]

Reconstructing the *telos* of European integration usually entails either an editorialized narrative of what the founding generation aimed at, or else an account of what supranationalism has to contribute to the contemporary configuration of political power. The distinctive *telos* of Professor Weiler's idea of supranationalism is the promise of distancing the exercise of political power from parochial forms of cultural or ethnic belonging; that is, relaxing the grip of the nation on the state.

Although these aspirations are informed by the trauma of Europe's civil wars, supranationalism is also continuous with the tradition of modern constitutional revolutions that set out to curb the arbitrary exercise of sovereign power.[37] Insofar as it seeks to discipline the discretionary power of the nation-state vis-à-vis its 'others' (whether other states, foreigners, or domestic minorities),[38] supranationalism represents the most recent chapter in the history of the constitutional idea. What is therefore

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[35] J. H. H. Weiler, 'Fin de Siècle Europe: Do the New Clothes Have an Emperor?', in J. H. H. Weiler, *The Constitution of Europe* (New York: Cambridge University Press, 1999).

[36] J. H. H. Weiler, 'European Neo-constitutionalism: in Search of Foundations for the European Constitutional Order', *Political Studies*, 44, 3 (1996), 517-33, at 518.

[37] In his classic study, Charles Howard McIlwain argues that constitutional rule originates in attempts to bring about the 'legal limitation on government' and denotes 'the antithesis of arbitrary rule'. C. Howard McIlwain, *Constitutionalism Ancient and Modern* (Ithaca, NY: Cornell University Press, 1940), 24.

[38] On this point, see C. Joerges and J. Neyer, 'From Intergovernmental Bargaining to Deliberative Political Processes: The Constitutionalisation of Comitology', *European Law Journal*, 3, 3 (1997), 273–99, at 294; M. Poiares Maduro, 'Sovereignty in Europe: The European Court of Justice and the Creation of a European Political Community', in M. L. Volcansek and J. F. Stack Jr. (eds.), *Courts Crossing Borders: Blurring the Lines of Sovereignty* (Durham, NC: Carolina Academic Press, 2005).

remarkable is not the present ubiquity of constitutional language, but its virtual absence up until the 1970s because, in a crucial sense, the European project was always a constitutional project *par excellence*.

This is not to say that every invocation of constitutional terminology in discussing European integration (or other super-national regimes) can carry this normative freight. Sometimes, that terminology is used merely to denote an institutional phenotype, a 'check list' of features that resemble a constitutional mode of political ordering.[39] At other times, the insistence that European law is not mere law, but law of a constitutional sort masks a transformative ambition (or wishful thinking). For instance, when the ECJ declared that the founding treaties furnish 'the constitutional charter' of the Community,[40] it did not merely rename existing reality but reframed it through a performative utterance. At the very least, it staked a claim to a new basis of authority for supranational law (although whether it can make good on that claim remains hotly contested).

Beyond the Melian Dialogue: *The Transformation of Europe* as an Unfinished Epistemic Project

Although Professor Weiler graciously ceded credit for the constitutional thesis to Eric Stein,[41] *The Transformation of Europe* secured a bridgehead for constitutional scholarship in the study of European integration. During the 1990s, the European debate quickly adopted constitutionalism as a central category in debates about supranational political legitimacy. Since then, constitutional discourse has become the vernacular of studies on governance beyond the state.

Nonetheless, the pervasiveness of constitutional analysis is puzzlingly at odds with the dismal failure of the attempt to stage a Philadelphian 'constitutional moment' in Europe in the early 2000s. Why insist on constitutional language in academic scholarship if it failed to stick in the 'real world'?

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[39] J. L. Dunoff and J. P. Trachtman, 'A Functional Approach to International Constitutionalization', in J. L. Dunoff and J. P. Trachtman (eds.), *Ruling the World? Constitutionalism, International Law, and Global Governance* (Cambridge; New York: Cambridge University Press 2009), 9.

[40] Case 294/83 *Partie Ecologiste 'Les Verts' v. Parliament* [1986] ECR 01339.

[41] See J. H. H. Weiler, 'The House that Eric Built', in J. H. H. Weiler, *The Constitution of Europe* (New York: Cambridge University Press, 1999), 225.

I suspect that the general penchant for constitutional discourse in accounting for post-national governance has something to do with epistemic empowerment. The terminological shift is symptomatic of the conquest of new territory for legal and political theory in the disciplinary turf war against classical international relations scholarship. Scholars of norms have seized on proliferation of transnational legal regimes to wear down the realist orthodoxy according to which only sovereign states and their capacity to exert violent force 'matter'.[42] Put differently, the language of constitutionalism offers traction for normative theory and legal scholarship in a domain where their insights have traditionally been dismissed as trivial and inapplicable at best, dangerous at worst.[43] It suggests that law, as a factual and normative category, can not only shape state 'behaviour', but can also help reconfigure the unquestioned categories (such as interest, preference, or power) on which international relations scholarship is built.

How long will the heyday of post-national constitutional thinking last? A note of caution might be in order. I argued earlier that part of the European project's transformative quality lies in the attempt to open up a new chapter in the history of the constitutional idea. But what exactly is transformative about constitutionalism if, as Jack Straw quipped, even golf clubs have constitutions? Before we rush to crown constitutionalism as the most apposite category for making sense of the 'post-national constellation',[44] therefore, we must first figure out how to deploy that idea without blunting its transformative edge.[45]

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[42] As Waltz memorably put it: 'National politics is the realm of authority, of administration, and of law. International politics is the realm of power, of struggle, and of accommodation.' K. Waltz, *Theory of International Politics* (New York: McGraw-Hill, 1979), at 113.

[43] J. L. Dunoff, 'The Politics of International Constitutions', in *Ruling the World?* 204–5.

[44] To borrow Habermas' phrase.

[45] I suggest one way of doing this in T. Isiksel, *Europe's Functional Constitution. A Theory of Constitutionalism beyond the State* (Oxford: Oxford University Press, 2016).