ESSAY

The Recovery of the City of London's Competitive Advantage in Global Capital Markets: Renouncing Inherited EU Law to Restore English Common Law

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In the aftermath of Brexit, British Prime Minister Boris Johnson and the ruling Conservative Party have formulated an ambitious political agenda called "Global Britain," which calls for making the City of London the world's most competitive global financial services center and making the United Kingdom (UK) pivotal in international trade. The Global Britain agenda is predicated upon the restoration of full national sovereignty. Granted, the UK can now take back control of its law-making, but inherited European Union (EU) law remains part of the legal system and acts as a roadblock to Britain's newly set ambitions.

Soft power may help the UK achieve its global goals at the political level, but English common law has proven over the centuries to be Britain's most powerful tool of economic statecraft. Unless the UK renounces EU law legacy that encumbers English common law, it may hinder the success of the City of London as a global center for financial services and undermine its Global Britain agenda.

This Essay explains how and why English common law has helped the UK build a competitive advantage in the financial services sector, allowing it to punch above its weight in international trade. It also illustrates the correlation between legal systems and capital market efficiency. Finally, it calls for the restoration of English common law in full.

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I. INTRODUCTION

Brexit, the United Kingdom's (UK) exit from the European Union (EU), has far-reaching political and legal implications, but the UK government has so far focused only on its political priorities. Prime Minister Boris Johnson and the ruling Conservative Party have formulated an ambitious foreign policy agenda, "Global Britain." Global Britain aims to establish a central role for the UK in global affairs by leveraging the City of London as the world's leading financial services center and restoring the British competitive advantage in international trade in order to broker the attempted redistribution of economic power from West to East.

However, the legal implications of Brexit are equally important. Over the centuries, English common law has proven to be the most powerful tool of economic statecraft custodied in the British arsenal. The UK's rise to an Empire was built upon international trade. International trade, in turn, was conducted at common law. The Empire was kept together by the economic stability provided by trade and the legal stability provided by English common law.

Having been used in carrying out international trade across the Commonwealth and ruling an Empire, English common law has developed unique features that have resisted the challenges of changing times, and are so intertwined with British history as to not be vulnerable to replication. English common law has been a legal system capable of meeting the needs of an economy spread across five continents. It is thus not only invaluable, but also a fundamental factor in the British economy's competitive advantage.

During forty years of membership in the EU, the UK had to import EU law into its legal system based on English common law. The English judiciary and the British regulatory bodies have since done an excellent job at keeping a balance between domestic and European law, but have been facilitated in their endeavors by the high degree of influence that the British diplomacy has been capable of exercising at the European level. Common law paid a price to European law: the legal system had to accept the contamination of European legislation and the jurisdiction of the European Court of Justice in matters of European law. However, the price paid by the legal system has been compensated by the UK's access to the European common market, a free trade area of 450 million consumers, offsetting damage.

Brexit has changed this paradigm, however, because the UK has lost access to the European common market. Yet, after 40 years of coexistence, there is a body of law produced in Brussels and imported into the UK by way of European legislation that flies in the face of the Global Britain

agenda. EU law has always aimed at harmonizing the legal landscape across Europe; in doing so, it has eroded some of the most distinctive features of English common law, reducing its competitive advantage outside of the twenty-seven-nation bloc. To successfully execute its Global Britain agenda, the UK government should hence focus on removing EU legacy from the domestic legal system and restoring English common law in full.

II. THE CORRELATION BETWEEN LEGAL SYSTEMS AND MARKET EFFICIENCY

Among the prospective benefits of Brexit, one, in particular, is not being sufficiently prioritized by policy-makers. Following Brexit, the restoration of full jurisdictional sovereignty means that the British government now has the power to return to the past by deviating from, and even entirely unpicking, the impositions of EU law.

This power is of critical importance. For nearly 800 years, the City of London, a local authority of 716.80 acres inside the territory of the Greater London Authority (GLA), has enjoyed a regime of special administrative autonomy within the GLA and the UK. Its autonomy has been instrumental in allowing it to become a global financial services center, on par with, and oftentimes more prominent than, New York. The City of London's financial services industry was dubbed the "Square Mile" to highlight the massive scale of its operations vis-à-vis its tiny size. With UK's accession to the EU, the City of London has been engaged in a forty-year-stunt to maintain its administrative autonomy against the constraints introduced into the UK by EU law.

As a result of Brexit, EU law is no longer applicable in the UK. The Square Mile can revert to the old legal regime and be governed only by English common law, rather than a combination of EU and English law, as was the case over the last forty years.

A recent work by Reynolds, head of the financial services practice at global law firm Shearman & Sterling, highlights that the UK built its competitive advantage in the financial services sector before the encroachment of EU rules.[1] A well-known joint academic study by Macey, a corporate law scholar at Yale University, and O'Hara, a financial economist at Cornell University, shows that there is a direct correlation between organization and efficiency. In other words, market infrastructure, i.e., the sum of legislation, regulation, supervision, size, reach, liquidity, transparency, and knowledge, matters for market efficiency,[2] the degree to

1. BARNABAS REYNOLDS, RESTORING UK LAW: FREEING THE UK'S GLOBAL FINANCIAL MARKET 6-7 (Sheila Lawlor ed., 2021).

2. Jonathan R. Mace & Maureen O'Hara, *The Law and Economics of Best Execution*, 6 J. FIN. INTERMEDIATION 188, 189 (1997).

which market prices reflect all available and relevant information. Market efficiency is the key factor in a market's success, as it allows the minimization of the incongruence between market price and actual value, thereby optimizing the allocation of capital in the economy.

In the case of the UK, the particular features of the English legal system in place before the UK's accession to the EU were paramount in building the Square Mile's market infrastructure, which led to the consolidation of the City of London as the world's pre-eminent global financial center.

III. COMMON LAW V. CIVIL LAW: A TALE OF TWO WORLDS

There are two major legal architectures globally: one of Anglo-Saxon origin, *common law*; and the other of European origin, *civil law*, the latter articulated in the Napoleonic and Roman-Germanic systems.[3]

The common law systems, adopted in the UK, the United States, and throughout the Commonwealth, are based on case law, narrow statutory supplementation, and the principle of contractual freedom.[4] According to leading legal scholar Pound, former Dean of Harvard Law School, these peculiarities of common law are grounded in English history and stem from feudalism, puritanism, and libertarianism, in particular.[5] In common law jurisdictions, rules are formed bottom up from judicial precedents and based on decisions made in individual cases brought before the courts.[6] Law thus originates from adjudication.

By contrast, civil law systems, which are in force in most EU member states and adopted by the EU itself, are based on written codes that attempt to superimpose a rationalist framework on commerce and promote contractual uniformity.[7] In civil law jurisdictions, courts are not allowed to make the law of the case at issue. Instead, rules are formed top down and based on legislative prescriptions.[8] Law thus originates from legislation.

As Baratta, a law professor at University of Rome III and former general counsel to the Italian mission to the EU, noted, the complexities of civil law systems increase over time, especially where the political system becomes more focused on the short-term, as has been the case in the EU, to a greater

3. *See generally* MATHIAS REIMANN & RENHARD ZIMMERMANN, THE OXFORD HANDBOOK OF COMPARATIVE LAW (Oxford University Press ed., 2008); KONRAD ZWEIGERT & HEIN KOEZ, AN INTRODUCTION TO COMPARATIVE LAW (Oxford University Press ed., 1998).

4. *Id.*

5. Roscoe Pound, *The Spirit of the Common Law*, 1 COLL. OF L., FAC. PUBL'NS 166, 193 (1921).

6. Joseph Dainow, *The Civil Law and the Common Law: Some Points of Comparison*, 15 AM. J. COMP. L. 419, 435 (1966-67).

7. REYNOLDS, *supra* note 1, at 8.

8. Jeffrey J. Rachlinski, *Bottom-up versus Top-down Lawmaking*, 73 U. CHI. L. REV. 933, 964 (2006).

extent, over the last twenty years.[9] In the twenty-seven-nation bloc, the complexity is particularly amplified by the system of EU supranational law which, at the EU level, seeks to harmonize the legislation of its member states by pre-empting or complementing.[10]

Downward directionality is the core of the problem: legislative predetermination is an approach designed to manage the stability of the status quo through deference to the central authority.[11] Civil law systems hence codify a closed universe of protected interests. Law is then the instrument to achieve political purposes formalized in legislative activity.

But this approach conflicts with a dynamic economy. Deciding cases which involve novel concepts or previously untried innovations becomes a challenge in which the judge must seek to fit a round peg into a square hole.[12]

Common law, on the other hand, merges pragmatic and predictable decision-making with the ability to evolve.[13] This is done through an incremental legislative process and a sophisticated judiciary which has the power to make the law starting from the individual case when legislation fails to address the question.[14]

IV. EU LAW: LOOKING BACK TO THE FUTURE

The civil law approach is detrimental to financial services because it is too heavily reliant on taxonomies. Taxonomies are inherently backward-looking as opposed to being forward-looking. They place undue constraints on market participants and stifle innovation.[15]

A prime example of this approach is Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment, "EU Taxonomy Regulation," which was published in the Official Journal of the EU on June 20, 2020, following its adoption by the European Parliament on June 18, 2020 and its entry into force on July 12, 2020. "The taxonomy is a classification system for sustainable activities devised by a technical expert group (TEG) to facilitate €175-290 billion in annual investments

9. Roberto Baratta, *Complexity of EU Law in the Domestic Implementing Process*, 2 THEORY PRAC. LEGIS. 293, 308 (2014).

10. Marcus Klamert, *What We Talk About When We Talk About Harmonisation*, 17 CAMBRIDGE Y.B. EUR. LEG. STUDIES 360, 379 (2015).

11. REYNOLDS, *supra* note 1, at 10.

12. Bepi Pezzulli, *A Round Peg in a Square Hole: Untangling The UK Financial Sector from EU Law*, LONGFINANCE (Mar. 17, 2021), https://www.longfinance.net/news/pamphleteers/round-peg-square-hole-untangling-uk-financial-sector-eu-law/.

13. Susan Haack, *The Pragmatist Tradition: Lessons for Legal Theorists*, 95 WASH. U. L. REV. 1049, 1082 (2018).

14. Jack G. Day, *Why Judges Must Make Law*, 26 CASE W. RES. L. REV. 563, 593 (1976).

15. Pezzulli, *supra* note 12, at 10.

necessary to achieve the 2015 Paris Climate Agreement's goals."[16] It is essentially a set list of economic activities and performance criteria measured vis-à-vis six environmental goals: (1) climate change mitigation; (2) climate change adaptation; (3) sustainable use and protection of water and marine resources; (4) transition to a circular economy, water prevention and recycling; (5) pollution prevention and control; and (6) protection of healthy ecosystems. In short, the EU Taxonomy Regulation describes what is green and what is not.

In doing so, the EU Taxonomy Regulation immediately created uncertainty and instability with respect to nuclear power. As reported by global law firm Linklaters, "Proponents argue that [nuclear power] should be included because it is a low-carbon source of energy, whilst critics claim the problems associated with radioactive waste mean it does not meet the 'do no significant harm' principle under the Regulation." To accommodate the possible inclusion of nuclear power in the taxonomy later on, Linklaters explained, "…the Commission has said it would consider amending the delegated act on the TSC…"[17] Even so, according to Ene, an environmental engineering scholar, "…adherence to the Taxonomy Regulation may often differ between countries, depending on the local markets, resources, and conditions. . . . [Nuclear energy] is considered sustainable in . . . France, while Germany is making extensive efforts towards gradually removing it."[18]

The EU Taxonomy Regulation controls one of the fastest growing segments of the economy—the Environmental, Social, and Governance (ESG) sector—and implements one of the most strategic, transformational projects of the EU, namely the European Green Deal. As such it should be state-of-the-art and exemplary of innovation. Yet, its combination of primary legislation, technical standards, and State-level inconsistencies illustrates the inherent problem with the EU codified law system and its inherent inability to stay ahead of the curve.

The ESG sector is of particular concern to the UK in this regard. The UK was the first major economy in the world to sign into law a target to reach net zero greenhouse gas emissions by 2050.[19] The UK also introduced

16. Filipe Wallin Albuquerque, *EU Taxonomy – Room for Improvement*, NORDSIP (Oct. 10, 2019), https://nordsip.com/2019/10/10/eu-taxonomy-room-for-improvement/.

17. Sara Feijao, *EU Taxonomy Regulation: What Does It Do and What Happens Next?*, LINKLATERS (Sept. 22, 2020), https://www.linklaters.com/en/insights/blogs/linkingesg/2020/september/eu-taxonomy-regulation-what-does-it-do-and-what-happens-next.

18. Iulia Georgiana Ene, *The EU Taxonomy Regulation and Its Implications for Companies*, 2030BUILDERS (Sept. 15, 2020), https://2030.builders/articles/eu-taxonomy/.

19. *UK Enshrines New Target in Law to Slash Emissions by 78% by 2035*, DEP'T FOR BUS, ENERGY & INDUS. STRATEGY (Apr. 20, 2021), https://www.gov.uk/government/news/uk-enshrines-new-target-in-law-to-slash-emissions-by-78-by-2035.

a landmark environmental bill, which places environmental ambition and accountability at the very heart of the government's focus.[20]

In connection with its ESG strategy, the UK is also promoting the transformation of the financial system to ensure that climate and environmental factors are fully integrated into mainstream financial decision-making across all sectors and asset classes.[21] In April 2021, the UK Centre for Greening Finance and Investment, with physical hubs in Leeds and London, was launched in partnership with a number of UK institutions including the University of Oxford, the University of Leeds and Imperial College London.[22] The research hubs in the two cities will provide data and analytics to financial institutions and services such as banks, lenders, investors, and insurers around the world to better support their investment and business decisions by considering their impact on the environment and climate change. The UK plan to develop global leadership in green finance would be severely harmed if the regulatory environment were to be affected by legal uncertainty and instability of the kind the EU is bringing upon itself.

V. PRICING RISK AS THE CORE BUSINESS OF THE LEGAL SYSTEM

For capital markets to fulfill their function as a source of funding for the economy, three basic conditions are needed: transparency, integrity, and innovation. Transparency breeds trust,[23] integrity ensures customer protection,[24] and innovation spurs competition.[25] This ultimately results in a more efficient allocation of capital, greater liquidity, and better prices, much to the benefit of wealth distribution and economic growth.[26]

Cruz, Coleman and Salkin, econometrists at Imperial College London, explain that capital markets must also be able to price risk, including legal risk, accurately.[27] Finance is the business of pricing risk, its basic tenet being "more risk, more reward." In financial services, businesses need to manage

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20. *Environment Bill 2020*, DEP'T FOR ENV'T, FOOD & RURAL AFFAIRS (Jan. 30, 2020), https://www.gov.uk/government/publications/environment-bill-2020.

21. DEP'T FOR BUS, ENERGY & INDUS. STRATEGY, GREEN FINANCE STRATEGY (2019), https://www.greenfinanceplatform.org/sites/default/files/downloads/policy-database/Green%20Finance%20Strategy-%20Transforming%20Finance%20for%20a%20Greener%20Future.pdf.

22. *Leeds and London Set to become Global Centres of Green Finance*, DEP'T FOR BUS., ENERGY & INDUS. STRATEGY (Feb. 15 2021), https://www.gov.uk/government/news/leeds-and-london-set-to-become-global-centres-of-green-finance.

23. Yuki Sato, Opacity in Financial Markets (May 29, 2014) (unpublished research paper), file:///Users/areviksargsyan/Downloads/SSRN-id2371384%20(1).pdf.

24. Janet Austin, *What Exactly is Market Integrity? An Analysis of One of the Core Objectives of Securities Regulation*, 8 WM. & MARY BUS. L. REV. 215, 221-26 (2017).

25. *See generally* JOSEPH A. SCHUMPETER, THE THEORY OF ECONOMIC DEVELOPMENT (1934).

26. Stijn Claessens, *Competition in the Financial Sector: Overview of Competition Policies* 6-7 (Int'l Monetary Fund, Working Paper No. 45, 2009).

27. Marcelo Cruz et al., *Modeling and Measuring Operational Risk*, 1 J. OF RISK, 1, 64-66 (1998).

various types of risk such as market risk, credit risk, liquidity risk, and operational risk. Legal risk is a part of operational risk as litigation, regulatory sanctions, compliance investigations, and reputation fallouts have a price. Businesses set aside funds, known as "reserves," to pay this price in due time. Because reserve funds cannot be used for business operations, the higher the reserves, the lower the profitability of a business. That is precisely because markets need to price legal risk accurately.

The legal system's transparency, and its corollaries—predictability and effectiveness—foster deeper financial markets which are capable of attracting more participants with sovereign credit ratings of jurisdictions that are frequently better.[28] A joint academic study by Columbia University's behavioral finance scholar Huberman, and University of Illinois' economist and research fellow at the Federal Reserve Bank of St. Louis Kahn, implies that the protection afforded to customers and private property by transparency, predictability and effectiveness facilitates economic recovery after recessionary cycles, because the renegotiation, restructuring and reallocation of non-performing loans and breached contracts can be carried out privately by the economic agents much to the benefit of capital efficiency and risk mitigation.[29] In the long run, innovation helps to counteract the formation of oligopolies and/or sectoral monopolies that may arise over time for various reasons, such as technological change, regulation or, indeed, lack of financial market development.[30]

Common law is better able to serve these requirements. The doctrine of fair disclosure, developed at equity, and anti-fraud provisions, developed through the law of tort, protect transparency and integrity.[31] Crucially, the common law principle of contractual freedom allows markets to continually scale up their abilities to produce new solutions, meet the needs of the day, and encourage innovation.[32]

The opposite is true for civil law systems. By limiting the extent to which economic interests may be privately regulated by contract, civil law introduces risks into the financial system which are difficult to model and assess, and which therefore end up being completely overlooked until it is

28. *Establishing Viable Capital Markets,* BANK FOR INTERNATIONAL SETTLEMENTS, COMMITTEE ON THE GLOBAL FINANCIAL SYSTEM (2019), https://www.bis.org/publ/cgfs62.htm.

29. Gur Huberman & Charles Kahn, *Limited Contract Enforcement and Strategic Renegotiation*, 78 AM. ECON. REV. 471, 471-84 (1988).

30. Raghuram G. Rajan, The Greenspan Era: Lessons for the Future, Speech at Federal Reserve Bank of Kansas City Symposium: Financial Markets, Financial Fragility and Central Banking (Aug. 27, 2005).

31. Steven R. Salbu, *A Critical Analysis of Misappropriation Theory in Insider Trading Cases*, 2 BUS. ETHICS Q. 465, 465-77 (1992).

32. Hanoch Dagan & Michael Heller, *Contractual Freedom*, *in* THE CHOICE THEORY OF CONTRACTS 67-78 (2017).

too late for the parties to remedy, or which compel the posting of constant capital buffer top ups to cope with operational uncertainty.[33]

VI. COMMON LAW'S SUPERIOR ROLE FOR AN EVOLVING ECONOMY

Derivatives, risk management, and crypto-finance are three areas where the comparative advantage of common law over civil law is most evident.

Derivatives are financial instruments, whose value depends, i.e., "derives," from the price moves of underlying assets. Options, futures, forwards, and swaps are widely diffused derivative financial instruments. Like all financial instruments, derivatives are developed, structured and documented by contract.

The derivative market is a single global market; derivative financial instruments have been developed to shift risks around the world. Economic agents may need to hedge their forex exposure to exotic currencies used to do business in remote countries of operation. Or they may need to lock in now the future price of oil sourced in Saudi Arabia. Or they may want to bet on the rise of the price of gold in response to rising inflation in the United States. For these reasons, the financial services industry has globalized the legal documentation used to execute derivative contacts. Such documentation, known as the ISDA Master Agreement, is in large measure governed by English law and adopted around the world as sophisticated legal jurisdictions will not upset the "choice of law" of the parties to a derivative contract.

However, because in most cases derivatives lack all the elements which civil law codes prescribe in their definitions of financing contracts, they often fall within the scope of gambling rules and are treated in the courts of civil law jurisdictions in the same way as betting. A few civil law countries even see a conceptual similarity between speculation and gambling, an issue that has been examined in depth by clinical psychologists Arthur, Williams, and Delfabbro in relation to securities trading.[34]

Given these problems, Germany, as an example of a prominent economy and sophisticated jurisdiction, has abandoned the ISDA Master Agreement governing derivatives markets and issued its own standard form for the documentation of derivative contracts — the *Rahmenvertrag für Finanztermingeschäfte* — which is governed by German law as opposed to

33. Bepi Pezzulli & Raffaella Tenconi, *Servizi finanziari: il recupero del vantaggio competitivo della City di Londra*, DIRITTOBANCARIO (June 9, 2021), http://www.dirittobancario.it/news/finanza/servizi-finanziari-il-recupero-del-vantaggio-competitivo-della-city-di-londra.

34. Jennifer N. Arthur et al., *The Conceptual and Empirical Relationship Between Gambling, Investing, and Speculation*, 4 J. BEHAV. ADDICTIONS 580, 580-91 (2016).

English law.[35] As a result, the German derivative market has been segmented from the global wholesale risk market governed by the ISDA Master Agreement.

Carving a market segment to sever a global pool of money ("liquidity") is not a good economic move. The fragmentation of liquidity neutralizes economies of scale and results in persistent additional costs for everyone: companies, financial investors, and, at the bottom of the value chain, the taxpayer.[36] On the other hand, fragmentation does not serve any worthy economic purposes. In particular, it does not prevent moral hazard, which is a lack of incentive to guard against risk because one is protected from bearing the full costs of that risk. It also does not prevent negligence, the behavior maximizing individual benefit when the economic agent bears less risk than society as a whole in the bargain.

Risk management raises even more fundamental issues. Pension funds in many European jurisdictions struggle to hedge interest rate risk. Because codes equate risk with loss, pension funds are forced by many European regulators to hedge the notional value of their fixed income portfolios. Clearly, in financial terms, the risk posed by a 30-year bond with a 29-year tenor is not the same as a 30-year bond of the same nominal value with a 1-year tenor.[37] The notional hedging requirement causes managers to import duration risk into their portfolios. But if portfolio managers cannot neutralize specific risk, only merely replace one risk with another, their risk management purposes cannot be achieved. The consequences of this are harsh and cause the economy to suffer; in places like Italy, pension funds are underdeveloped, the pension system lacks a credible second pillar, and the cost of maintaining an extensive network of social benefits in the face of the secular trend of an aging population is becoming astronomical and putting public finances under enormous strain.[38]

Similar issues arise with crypto-finance. Because crypto-assets cannot be defined as commodities, securities, or currencies under codified law, uncertainty arises regarding their legal status. This too has serious economic consequences. European Securities and Markets Authority (ESMA), the European financial markets regulator, notes that there is no "legal definition" of crypto-assets.[39] Thus, in the EU, bitcoin transactions take

35. *The German Master Agreement for Financial Derivatives Transactions*, BANKENVERBAND (Sept. 4, 2018), https://bankenverband.de/media/files/drv_2018_annotated_version04_09_2018.pdf.

36. Bruno Biais, *Price Formation and Equilibrium Liquidity in Fragmented and Centralized Markets*, 48 J. FINANCE 157, 157-85 (1993).

37. John C. Cox et al., *Duration and the Measurement of Basis Risk*, 1 J. BUS. 51, 51-61 (1979).

38. Pezzulli & Tenconi, *supra* note 33.

39. *Advice: Initial Coin Offerings and Crypto Assets*, EUROPEAN SECURITIES & MARKETS AUTHORITY, Annex I (2019), https://www.esma.europa.eu/sites/default/files/library/esma50-157-1391_crypto_advice.pdf.

place in legal limbo. Compare this to the common law approach and, as an example, the seminal *Howey* case of 1946. Having to rule on an investment in land, the U.S. Supreme Court established an analytical framework and a test which, broadly speaking, markets may use to assess whether or not an investment qualifies as a financial instrument in a particular case and, hence, is subject to the rules on transparency and integrity set forth in the securities regulation.[40] A legal precedent set down in a case in 1946 and untampered by the legislature facilitates the execution of crypto-transactions in 2021. The *Howey* case illustrates the flexibility of the common law.

Crypto-finance epitomizes the digital transition of the global economy and is its most iconic application. However, the digital transition is significantly more complex than legislators can see. It involves very deep information asymmetries.[41] Crypto-finance eliminates financial intermediaries from the exchange of financial assets. Transactions can take place peer-to-peer (P2P). This phenomenon is referred to as economic "disintermediation." Crypto-finance, however, is a double-edged sword: By creating enormous potential for the global exchange of disintermediated services on a P2P basis, the digital transition also intensifies inequalities of income[42] and differentials of visibility for market participants.[43] Crypto-finance needs legislators and policy makers to be ahead of the curve. Legislative and regulatory actions should happen quickly, as digitalization and financial markets move at a faster pace than the real economy. Common law is therefore a more appropriate instrument to manage this historical transition.

Moreover, according to the theories of management scholar Logue and option pricing scholar Merville,[44] to the extent civil law is not able to catch up with global markets, a problem of expectations will arise. If economic agents expect that legislation will be up to speed, they will make financial choices conducive to economic growth. Conversely, if policy makers do not act with sufficient insight and ambition, especially in times of economic recession, they will come under strong political pressure. Taxpayers will require redistribution either through tax hikes or additional regulation, adding legal uncertainty and fragmentation.

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40. Securities and Exchange Commission v. W. J. Howey Co., 328 U.S. 293, 301 (1946).

41. Miranda Kajtazi, *Information Asymmetries in the Digital Economy*, *in* PROCEEDINGS OF THE IEEE INTERNATIONAL CONFERENCE ON INFORMATION SOCIETY 135-142 (2010).

42. *See* Nicholas Economides, *Network Economics with Application to Finance*, 2 FIN. MKT. INST. & INSTRUMENTS 89-97 (1993).

43. *See* Nicholas Economides, *The Impact of the Internet on Financial Markets*, 1 J. FIN. TRANSFORMATION 1, 8-13 (2004).

44. Dennis E. Logue & Larry J. Merville. *Financial Policy and Market Expectations*, 1 FIN. MGMT. 37, 37-44 (1972).

VII. CONCLUSION

The idiosyncrasies of codified law are toxic to the financial services sector. They produce fragmentation, reduce liquidity, lead to less transparency, and ultimately damage the efficiency of capital markets. On the other end, common law has proven over the centuries to be a powerful tool of economic statecraft, capable of meeting the evolving needs of the economy.

Conclusively, for the UK, the return to a domestic legal system of pure English common law restores the City of London's competitive edge in the global capital markets. Brexit offers the UK government the opportunity to wipe out the legacy of EU law, which encumbers its sovereign ambitions. Doing so is necessary to lend credibility to the Global Britain agenda. London ought to act sooner rather than later.

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