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Private Law 2.0: On the Role of Private Actors in a Post-National Society

Jan M. Smits

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This paper - delivered as author Jan Smits' inaugural lecture on the 2010-2011 Maastricht-HiiL Chair on the Internationalization of Law and therefore directed towards a general audience - challenges the prevailing paradigm that people's rights and obligations are primarily set by national law. The State monopoly in setting the law is rapidly being replaced by a multitude of new lawmakers, that do not only include European and supranational institutions, but also private organizations. This phenomenon leads to the normative question of how to deal with this emerging post-national private law. The approach chosen in this lecture is a functional one: the idea of codification is unpacked in terms of its functions. This means it establishes to what extent the functions national codification of private law had in the past can now be met in a different way in the future. To this end, attention is also paid to the role of legislators, private actors, and law professors.

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