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**RECON**  
**Reconstituting Democracy in Europe**

Integrated Project  
Priority: 7 - Citizens and Governance in a Knowledge-Based Society

**Deliverable No. 54**  
**Workshop on the social embeddedness of transnational markets**

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Start date of project: 1 January 2007

Duration: 60 months

Lead contractor for this deliverable:  
Partner 14 UniHB  
Centre for European Law and Politics, University of Bremen, Germany

Final Version

Project co-funded by the European Commission within the Sixth Framework Programme (2002-2006)		
Dissemination Level		
<b>PU</b>	Public	
<b>PP</b>	Restricted to other programme participants (including the Commission Services)	
<b>RE</b>	Restricted to a group specified by the consortium (including the Commission Services)	X
<b>CO</b>	Confidential, only for members of the consortium (including the Commission Services)	

## 1. Introduction

RECON Deliverable No. 54 – *Workshop on the social embeddedness of transnational markets* is part of the work package 9 ‘Global Transnationalisation and Democratisation Compared’. The overall objective of WP 9 is to examine how globalisation and transnationalisation processes shape the conditions for democracy within and beyond Europe, and to compare the European case with certain particularly relevant non-European instances of democracy and democratisation. WP 9 is divided into two collaborative sub-projects. Sub-project 1 explores the link between democratisation in Europe and globalisation in the wider international system. The core question is whether democracy as we understand it in the constitutional state can survive globalisation. Sub-project 2 examines the cosmopolitan pull on the state-centred model through comparing the EU with Canada, the latter as a possible example of ‘state-based cosmopolitanisation’, and assesses the democratic implications of these processes. The core theoretical issue here is how flexible and malleable the state-centred model is in terms of post-national democratic inclusion. Can the state become globalised but still remain democratically viable?

Work has been undertaken in the first two years of RECON to establish the theoretical frameworks for the two sub-projects. Within the first of these, the work in months 25-42 has focused on transnational governance and regulation in the fields of GMOs and chemicals, social regulation, and governance arrangements considered in terms of administrative law, legal and institutional analysis. Work has also progressed to describe the institutional structure and the legal framework of difference reconciliation in international risk regulation in trade policy (e.g. TPRM, SPS and TBT Agreement, Cartagena Biosafety Protocol).

## 2. Presentation of the workshop

The joint workshop ‘The social embeddedness of transnational markets’ was organised on the 5 and 7 February 2009 by RECON and the Collaborative Research Centre (CRC) 597 ‘Transformations of the State’ (Project A1 on ‘Trade Liberalisation and Social Regulation in Transnational Constellations’)<sup>1</sup> in Bremen. The Bremen project is concerned with transformations of social regulation and the steadily growing importance of international and transnational regimes (WTO and EC respectively) whereas the RECON project examines primarily more normative issues, in particular the conditions and prospects of democratically legitimate transnational governance arrangements. Both projects need, however, to consider approaches, which offer explanations and/or interpretations of transnational governance structures ‘embedding’ international trade. These research objectives were addressed in the conference title under the notion of ‘social embeddedness’, which indicates an attempt to understand the tensions generated by the efforts to promote free international trade on the one hand and the countermoves striving for social responsibility on the other.

Although Karl Polanyi, to whom the notion of embeddedness can be ascribed, did not develop a comprehensive theory which would predict an outcome of disembedding and re-embedding countermoves, his work is inspirational and challenging for the scholars trying to explain transnational governmental arrangements. A previous workshop on ‘Transnational Standards of Social Protection’ (RECON Report 4)<sup>2</sup> and a seminar at the University of Bremen in the

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<sup>1</sup> For more information visit <http://www.sfb597.uni-bremen.de/pages/forProjektBeschreibung.php?SPRACHE=en&ID=1>

<sup>2</sup> RECON Report No 4 ‘Transnational Standards of Social Protection: Contrasting European and International Governance’, edited by C. Joerges and P. F. Kjaer, available at: [https://www.reconproject.eu/projectweb/portalproject/Report4 TransnationalStandards.html](https://www.reconproject.eu/projectweb/portalproject/Report4%20TransnationalStandards.html)

summer term of 2008 on 'Markets as Social Institutions' encouraged the scholars of the projects mentioned above to use Polanyi's theory in order to understand 'how the globalisation of the market system as a disembedding process is to be reconciled with re-embedding moves aiming at social security and cohesion'.<sup>3</sup>

In the first section of the workshop, Alexander Ebner (Jacobs University) introduced his background paper on 'Transnational Market Governance in the Light of 'the Polanyi Problem''. Ebner's interpretation of Polanyi suggested that partial embeddedness of market in non-market affairs is necessary for sustainable market society. However, the conflict and change potentials remain in the actual relations between exchange, reciprocity and redistribution which constitute fundamental modes of social integration. In the light of current discussions about the future role of national welfare state, a specific 'Polanyi problem' can be formulated as a reconciliation of disembedding movement of globalisation of markets with re-embedding movement for social security and cohesion.

Jens Steffek (Jacobs University) applied the Polanyian perspective to embedded liberalism where internationally globalised markets are subject to domestic welfare regimes. Steffek indicated the lack of international attempts for social embeddedness, but simultaneously highlighted the controversies of such arrangements. In his contribution, Poul Kjaer (Frankfurt Cluster of Excellence 'The Formation of Normative Orders') examined the question of the transformation of the European Union's economic constitution over time, seeking for (fragments of) a global economic constitution. In the following contribution, 'Law and/or Economics? Transnational Economic Constitutions in the Making', Sabine Frerichs (University of Helsinki) introduced her ambitious theory on sociology of transnational economic constitutions as a part of economic sociology of law.

The second section of the conference was dedicated to the case studies from the domains of services liberalisation, labour market, role of professions, environment, investment law and financial markets. Drawing upon Polanyi's theory and the notion of commodification, the scholars presented their interpretation of social embeddedness in/of these fields.

Markus Krajewski (University of Potsdam) presented his development of the commodification theory as taking place on three subsequent levels: rhetorical, legal and substantial. Against this theoretical background he examined the liberalisation of healthcare services and its limits at the European and global level. Olga Batura (University of Bremen) examined the level of liberalisation of telecommunications services in the EC and WTO frameworks and its connection to the degree of legal and actual commodification of these services. Jean-Christoph Graz (University of Lausanne) then explored the growing influence of international standards on economy and society. He argued that institutional developments of service standards are likely to face compromises between further socialisation and commodification of standards.

Josef Falke (University of Bremen) presented an analysis of social responsibility regulation in international trade as laying in the regulatory interplay of several international organisations, first and foremost the ILO and the WTO, but also some civil society's initiatives. Claire O'Brien (Danish Institute for Human Rights) examined an attempt of global re-embedding of liberalised markets with the example of the United Nations Special Representative on Business and Human Rights (UNSR). She argued that, although inspired by Polanyi's double

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<sup>3</sup> See p. 45 of Alexander Ebner's paper on 'Polanyi's Theory of Public Policy: 'Embeddedness, Commodification and the Institutional Dynamism of the Welfare State'.

movement theory, the UNSR mandate, both in performance and in substance, contributes to disembedding tendencies.

Olaf Dilling (CRC 597) used the notion of commons to analyse new developments in environmental law and intellectual property rights. Martin Herberg (CRC 597) showed the relevance of some findings from the sociology of occupations for the exploration of social embeddedness of markets. Harm Schepel (University of Kent) then presented his observations on the transformation of investment law and the role of arbitration tribunals in this development, as well as the changing regulatory role of the tribunals themselves. He embedded these developments in a more general framework of theoretical debates on changing relations between law, markets and politics.

Examining the regulation of global finance and transnational corporations, Peer Zumbansen (York University Toronto) applied the theory of 'double movement' by Polanyi and the theory of 'global assemblages' by Saskia Sassen, complemented with a legal perspective. He observed the emergence of supranational legislation in this field, aimed at increasing the efficiency of regional and global financial markets and regulating transnational corporations in an incentive-oriented manner. This new legislation is largely placed within the discretion of market actors and is, thus, disembedded.

The result of the increasing disembeddedness of financial markets and inability of the regulation to provide a countermovement is the latest financial crisis. Against this background, Sol Picciotto (Lancaster University Law School) critically analysed the main features of the present international financial regulation and the institutions involved. He suggested an alternative, more sustainable and socially responsible approach to financial regulation, encompassing a separation of social savings and investment from financial market speculation, a shift to public-utilities-like treatment of banks and other savings-managing institutions and a prior approval of the instruments of financial trade used by such institutions.

The third section, dedicated to the study of transnational governance in the light of Polanyi's theory, started with a presentation by Lars Viellechner (Bremen International Graduate School of Social Sciences). Exploring the necessity and possibility of constitutionalising the transnational governance regime, he observed the Polanyian 'double movement' in the emergence of transnational governance regimes (disembedding) and horizontal expansion of constitutional rights to the transnational dimension (embedding). He outlined the complex interdependency between the transnational legal order and national law that results in blurring boundaries between national and international as well as public and private and herewith the heterarchy of global legal relations.

Marc Amstutz (University of Freiburg) identified two shortcomings in the Polanyian theory of 'double movement' when applied to transnational governance: the focus on the nation state and the institutionalisation of double movement through law. Amstutz suggested a reformulation of the theory on the model case of European regulation of corporate social responsibility. In particular, he tried to identify the elements of law and basic lines of legal structure used to institutionalise a social countermovement in the regulation of global economy. Christian Joerges (University of Bremen) continued to explore the potential of legal arrangements in contributing to the social quality of governance from the conflict-of-laws perspective. Karl-Heinz Ladeur (Bremen International Graduate School of Social Sciences) analysed separate fields of international administrative regulations (taxation, migration, etc.) and identified some typical elements of administrative law, which, however, do not suffice to

constitute global administrative law. They form a transnational legal order beyond the nation state – an international administrative law – where administrative power of the state still cannot be neglected.

Discussions initiated at the conference will be continued in a series of seminars on the main topics of the conference during the coming summer term. On that basis the papers will be further elaborated. The objective of the whole exercise is the production of a coherent volume to be edited by Christian Joerges and Josef Falke.

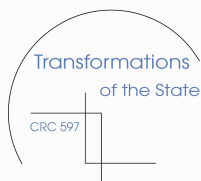
For a detailed workshop outline, abstracts and the full text of the papers, please see the RECON website: <http://www.reconproject.eu/projectweb/portalproject/BremenFeb09.html>

### 3. Participants

Marc Amstutz	University of Freiburg
Olga Batura	ZERP, Bremen
Graf-Peter Calliess	CRC 597, Bremen
Henning Deters	CRC 597, Bremen
Olaf Dilling	CRC 597, Bremen
Alexander Ebner	Jacobs University, Bremen
Josef Falke	CRC 597/ZERP, Bremen
Sabine Frerichs	CoE ‘Foundations of Europe. Law and Polity’, University of Helsinki
Jean-Christophe Graz	University of Lausanne
Isabell Hensel	ZERP, Bremen
Martin Herberg	CRC 597, Bremen
Thorsten Hüller	CRC 597, Bremen
Bogdan Iancu	ZERP, Bremen
Christian Joerges	CRC 597/ZERP, Bremen
Poul Kjaer	Frankfurt Cluster of Excellence ‘The Formation of Norm. Orders’
Lars Klöhn	University of Marburg
Ulrich Klüh	German Council of Economic Experts, Wiesbaden
Markus Krajewski	University of Potsdam/CRC 597, Bremen
Regina Kreide	University of Gießen
Karl-Heinz Ladeur	Bremen International Graduate School of Social Sciences
Jürgen Neyer	European University Viadrina, Frankfurt/Oder
Claire O’Brien	Danish Institute for Human Rights, Copenhagen
Sol Picciotto	Lancaster University Law School
Moritz Renner	CRC 597, Bremen
Florian Rödl	ZERP, Bremen
Waltraud Schelkle	London School of Economics
Harm Schepel	University of Kent at Brussels
Lars Viellechner	Bremen International Graduate School of Social Sciences
Jens Steffek	CRC 597/Jacobs University, Bremen
Peer Zumbansen	York University, Toronto

### 4. Programme

See attachment.



## **The Social Embeddedness of Transnational Markets**

Joint Conference of the  
**Collaborative Research Centre 597 “Transformations of the State”**  
(Project A 1 on “Trade Liberalisation and Social Regulation in Transnational Constellations”) and  
**RECON – “Reconstituting Democracy in Europe”**  
(WP 9 on “Transnational Governance, Deliberative Supranationalism and constitutionalism”)  
Thursday, 5 February 2009 (14:30) – Saturday, 7 February 2009 (15:00)

Venue:  
Haus der Wissenschaft  
Sandstraße 4/5  
28195 Bremen

### ***Programme*** *2 February 2009*

“Transnational governance” is the term most widely used in the current debates on the institutional frameworks of globalising markets. Our reference in the title to the notion of “social embeddedness” is to indicate that we seek to understand the tensions generated by the efforts to promote free international trade on the one hand and the countermoves striving for social responsibility in the other. Polanyi, to whom the notion of embeddedness can be ascribed, does not provide us with any comprehensive theory, which would predict the outcome of these conflictual interactions, the disembedding moves and re-embedding countermoves – and he had no theory of globalisation. Following our previous workshop on “Transnational Standards of Social Protection”<sup>1</sup> and a seminar in the summer term of 2008 on “Markets as Social Institutions” we felt we should seek to understand his work as a challenge to our efforts to explain the emergence of transnational governance arrangements, or, to rephrase this with a more conceptual and normative twist, to use it in our efforts to understand “how the globalisation of the market system as a disembedding process is to be reconciled with re-embedding moves aiming at social security and cohesion”.<sup>2</sup>

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<sup>1</sup> Available at [https://www.reconproject.eu/projectweb/portalproject/Report4\\_TransnationalStandards.html](https://www.reconproject.eu/projectweb/portalproject/Report4_TransnationalStandards.html)

<sup>2</sup> See p. 45 of Alexander Ebner’s paper on “Polanyi’s Theory of Public Policy: Embeddedness, Commodification and the Institutional Dynamism of the Welfare State”.

**Thursday, 5 February 2009**  
**14:00-18:30**

**Section 1: Theoretical Frameworks**

Chair: CHRISTIAN JOERGES

14:00-15:00 Polanyi's Theory of Public Policy: Embeddedness, Commodification and the Institutional Dynamism of the Welfare State

ALEXANDER EBNER

Jacobs University, School of Humanities and Social Sciences, Bremen

15:00-16:00 Who Compensates the Losers? Embedded Liberalism, Inequality and the Limits of Global Governance

JENS STEFFEK

Collaborative Research Center 597 and Jacobs University, Bremen

Discussant:

FLORIAN RÖDL

Centre for European Law and Politics, Bremen

16:00-16:30 *Coffee break*

Chair: KARL-HEINZ LADEUR

16:30-17:30 European and Global Economic Constitutionalism

POUL KJAER

Frankfurt Cluster of Excellence "The Formation of Normative Orders"

Discussant:

WALTRAUD SCHELKLE

London School of Economics, European Institute

17:30-18:30 Re-embedding the Market Through Law?  
On the Legalisation of the International System

REGINA KREIDE

University of Gießen

Discussant:

JÜRGEN NEYER

European University Viadrina, Frankfurt/Oder

19:00 *Dinner at Bremer Ratskeller*

**Friday, 6 February 2009**  
**09:00-18:30**

**Section 2: Case Studies**

**2.1 Services and Labour**

Chair: SOL PICCIOTTO

09:00-09:45 Commodification of healthcare in transnational contexts: The EU and the WTO compared

MARKUS KRAJEWSKI,

University of Potsdam and Collaborative Research Center 597, Bremen

09:45-10:30 Commodification of Universal Telecommunications Service in the Liberalisation Framework of the WTO and the EC

OLGA BATURA

Centre for European Law and Politics, Bremen

- 10:30-11:15    **International Standards and the Service Economy**  
 JEAN-CHRISTOPHE GRAZ  
 Institut d'études politiques et internationales , University of Lausanne
- 11:15-11:45    *Coffee break*
- 11:45-13:00    **WTO and ILO: Can Social Responsibility be Maintained in International Trade?**  
 JOSEF FALKE  
 Collaborative Research Center 597/Centre For European Law and Politics, Bremen
- Discussant:  
 CLAIRE O'BRIEN  
 Danish Institute for Human Rights, Copenhagen
- 13:00-14:00    *Lunch break*

## **2.2 Environment**

Chair: GERALF-PETER CALLIESS

- 14:00-15:00    **Enclosed Solutions for Common Problems? Uncertainty, Precaution and Collective Learning in Environmental Law**  
 OLAF DILLING  
 Collaborative Research Center 597, Bremen
- Discussant:  
 HENNING DETERS  
 Collaborative Research Center 597, Bremen
- 15:00-15:30    **Exploring the Social Embeddedness of Markets: Insights from the Sociology of Occupations and Professions**  
 MARTIN HERBERG  
 Collaborative Research Center 597, Bremen
- 15:30-16:00    **Embedding Others: International Investment Law and Market Regulation**  
 HARM SCHEPEL  
 Brussels School of International Studies University of Kent at Brussels
- 16:00-16:30    *Coffee break*

## **2.3 Financial Markets**

Chair: MARC AMSTUTZ

- 16:30-17:30    **Corporate Governance, Financial Market Regulation and the Next “Great Transformation” of Markets and States in the Transnational Space: Of Investors, Employees, Global Assemblages and Polanyi’s Double Movement**  
 PEER ZUMBANSEN  
 Osgoode Hall Law School, York University, Toronto
- Discussant:  
 ULRICH KLÜH  
 The German Council of Economic Experts, Wiesbaden
- 17:30-18:30    **Disembedding and Regulation: The Paradox of International Finance**  
 SOL PICCIOTTO  
 Lancaster University Law School
- Discussant:  
 LARS KLÖHN  
 Institut für Handels-, Wirtschafts- und Arbeitsrecht, University of Marburg



19:00      *The whole conference is invited by Stephan Leibfried – Speaker of the Bremen Research Centre on Transformations of the State and its Spiritus Rector – to his 65<sup>th</sup> birthday and non-retirement party. More directions will follow.*

**Saturday, 7 February 2009**  
**09:30-15:00**

**Section 3: Constitutionalising Transnational Governance Arrangements**

Chair: HARM SCHEPEL

09:30-10:15    The Transnational Dimension of Constitutional Rights

LARS VIELLECHNER

Bremen International Graduate School of Social Sciences

Discussant:

ISABELL HENSEL

Centre for European Law and Politics, Bremen

10:15-11:00    The Double Movement in Global Law:  
The case of European Corporate Social Responsibility

MARC AMSTUTZ

University of Freiburg i.Ue.

Discussant:

GRALF-PETER CALLIESS

Collaborative Research Center 597, Bremen

11:00-11:30    *Coffee break*

Chair: JEAN-CHRISTOPHE GRAZ

11:30-12:00    Law and/or Economics? Transnational Economic Constitutions in the Making

SABINE FRERICHES

Centre of Excellence « Foundations of European Law and Polity », University of Helsinki

12:00-12:45    Conflict of Laws as the Legal Paradigm of the Postnational Constellation

CHRISTIAN JOERGES

Collaborative Research Center 597/Centre For European Law and Politics, Bremen

Discussant:

MORITZ RENNER

Collaborative Research Center 597, Bremen

12:45-13:30    Global or International Administrative Law:  
Transnational Administrative Law Beyond the State?

KARL-HEINZ LADEUR

Bremen International Graduate School of Social Sciences

Discussant:

BOGDAN IANCU

University of Bucharest / Centre for European Law and Politics, Bremen

13:30          *Lunch at Haus der Wissenschaft*