

The Social Embeddedness of Transnational Markets

Joint conference of CRC 597 and RECON

Bremen, 5-7 February 2009

Abstract 17

Christian Joerges

Bremen

Conflict of Laws as “Constitutional Form” in Transnational Settings?

We are currently witnessing intense efforts to understand the “social embeddedness” of markets. That widely used notion makes us aware of the politicisation and moralisation of the economy and reminds us that sustainable markets arrangements presuppose institutional backing. This need is quite obvious where markets have to respond to safety and environmental concerns. The indispensability of market governance is, however, of more general importance, by no means only within consolidated legal systems but also at the European and international level.

The present paper will seek to explore the law’s potential to contribute to the “quality” of governance arrangements. It builds upon efforts to re-conceptualise European law in conflict-of-laws perspectives which differentiate between horizontal and diagonal conflicts, transnational problem-solving and the recognition of para-legal orders. These patterns cannot be copied in the evaluation of international trade. The conflict-of-laws approach may nevertheless be useful for the proper structuring of pertinent issues, in particular for the analysis and evaluation of the interdependence between state law and “factual orders”.