The Social Embeddedness of Transnational Markets
Joint conference of CRC 597 and RECON
Bremen, 5-7 February 2009

Abstract 5

Markus Krajewski
Bremen/Potsdam

Commodifying and Re-embedding Healthcare Comparing the EU and WTO Regimes

The paper aims to analyse the liberalisation of healthcare in transnational contexts (EU and WTO) using the conceptual framework of de-embedding and re-embedding services markets. It will utilise the notion of "commodification" in order to suggest that in most European countries public services in general, but healthcare in specific, had to be transformed into tradable products before processes of liberalisation and subsequent regulation could be developed and implemented.

The paper will introduce three levels of "commodification" which can be used to distinguish different stages of the creation of markets. At the first level, "rhetorical commodification" takes places when certain activities, institutions and social relationships are described and labelled in commercial terms. This level implies no actual changes but prepares the ground for the ensuing stages of the commodification process by altering the public discourse through the introduction of a new ideology. At the second level we can observe "legal commodification". This implies changes in the institutional and legal regimes, which will enable commercial and market-based relationships, but which will not necessary lead to full markets. "Substantive commodification", i.e. the actual establishment of markets as systems of voluntary exchanges of products, only takes place at the third level. Only this form of commodification accompanies processes of de-embedding. Hence, re-embedding markets in these sectors will only be attempted once the last stage has been reached.

In light of this framework, recent developments in the healthcare sector can be analysed. It will be suggested that many reforms of healthcare at the domestic level can be described as forms "rhetorical commodification". Examples would the creation of the "internal market" of the NHS under the Thatcher government in Britain or the introduction of "competition" through changes in the German system of public sickness funds. "Legal commodification" can be observed in the judgements of the ECJ regarding cross-border movements of patients *(Kohll, Smits/Peerbooms, Müller-Fauré, Watts*) and in the draft Patients' Rights Directive of the EC (COM(2008)414 final). These developments have not only framed the cross-border supply of services in commercial terms, but have also created the legal basis for a exchanges of healthcare on a transnational market. However, the extent of "substantive commodification" is still limited. Less then 1% of patients receive healthcare services abroad. The extent of de-embed markets in healthcare is hence still marginal. Consequently, attempts to re-regulate these services in order to re-embed them may still be too early.

Due to the heterogeneity of healthcare systems on a global level, the situation is different in the WTO. Here, "rhetorical commodification" existed all along as healthcare was always considered a sector of the services economy (see UN CPC classification). The GATS rules have also contributed to the "legal commodification" as GATS commitments in healthcare

sectors have created market access obligations of the WTO Members. However, the actual extent of "substantive commodification" is difficult to assess due to the lack of data. It is possible that it exceeds the EU level, but it may still not be large. The reasons for the limited amount of "substantive commodification" are manifold: Language, cultural and family bonds, insufficient funds to travel abroad etc.

The paper will end by suggesting that the actual scope of de-embeddedness of healthcare at the EU and at the global level is limited. However, the large amount of rhetorical commodification at the EU level suggests that there are powerful interests which would like to see more real competition and market structures in this sector.