

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

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### **Abstract 4**

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#### **Re-embedding the Market Through Law? On the Legalisation of the International System**

In describing the historical differentiation of the economic and political spheres and the development of capitalism Karl Polanyi came to a surprising conclusion:

With the emergence of the market economy, the market sphere ceased to be embedded in the life of society. This has affected social life enormously. The relation between capitalism and society was turned upside down. The function of market economy was no longer to serve the people but social processes and social institutions were shaped to meet market requirements. This brought about the need for a politics which would re-embed the market into the market society and compensate for the negative effects of the unleashed market. Social regulations, welfare services and social protectionist measures were created to trigger a process of re-embedding economy.

Polanyi did not have the chance to analyze the globalization of the market and politics and their effects on society. However, one question that interested him intensely is still crucial for today's political and legal research: What are the mechanisms and instruments, if any, that allow for re-embedding the global market into society? Based on Polanyi's historical analysis and question, the paper argues first, that the current global market is organized by transnational law whose development is best characterized as ambivalent. On the one side, the legal codification (Verrechtlichung) that can lead to a hegemonic international law that lacks legitimacy; that paradoxically creates extralegal spheres; promotes the 'privatization' of political areas, and by this, reduces the competences of states. On the other side, legal codification can also function as a motor of transnational democratization and a barrier to an unhampered growth of transnational administrative and executive power.

Current works on the idea of legitimacy in law and on transnational governance in political and law theory have to reflect these aspects of market economy on a world scale. In a second part of the paper, the author shows that three prominent approaches to these issues (Neo-marxism, some approaches of 'system theory', and a network approach) have serious flaws: They do not offer - in Polanyi's terms - an adequate empirical diagnosis of the de-embedding of the market economy and of international law, nor do they provide convincing ideas about re-embedding global markets and international law into world-society.

The author shows that the way is paved for a dialectical position which offers a critical analysis of legal codification processes as well as a realistic notion of democratic governance. This demonstrates how the containment albeit not the re-embedding of global market economy may work.