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

Abstract 1

Alexander Ebner

Polanyi's Theory of Public Policy
Embeddedness, Commodification and the Institutional Dynamism of the Welfare State[*]

The following exploration of Polanyian thought draws on this indication of its policy relevance in terms of institutionalist theorising on the welfare state. The transformation of welfare states towards a market-oriented setting has been diagnosed as a key component in a more comprehensive institutional reorientation of capitalist economies, involving a shift of political-economic governance structures. The theoretical framework of Polanyi's approach to comparative economic systems with its reconsideration of the embeddedness of market operations in non-market institutions provides arguments for perceiving this transformation of Western welfare states as a manifestation of an evolutionary process that redefines the historically variable demarcation of the market domain once again. Thus, an exploration of Polanyian thought may provide major insights regarding the prospects and limits of social policy in the institutional evolution of capitalist market economies. This suggestion underlines the need for reconstructing Polanyi's theory of public policy, which has remained a rather neglected topic in the intellectual reception of Polanyian ideas. Its institutional substance involves an active role of the state in market creation as well as in social regulation. Thus, the state provides a decisive terrain for societal conflicts that inform particular sets of public policies.

The paper proceeds as follows. First, the Polanyian perspective on the institutional evolution of the market society is taken to the fore with an emphasis on the notion of "the economy as instituted process", which addresses diverse patterns of social integration. Second, a conceptual clarification of the Polanyian concepts of embeddedness and commodification is put forward. It highlights a definition of embeddedness as a framework that addresses the shaping of economic activities by market and non-market institutions. Moreover, it elaborates on the need for combining the matter of embeddedness with a reconsideration of the commodity status of labour. Third, Polanyi's theory of public policy is examined by underlining the active role of government in the formation of the market system. This goes together with an outline of historical perspectives on the co-evolution of states and markets. Fourth, the Polanyian notion of the double movement of market expansion and social protection in the set-up of welfare regimes is discussed in relation with the problem of policy interventions that may destabilise the economy. Fifth, current debates on the institutional transformation of the welfare state are addressed from a Polanyian point of view, in particular drawing on Esping-Andersen's work on welfare capitalism. The ensuing exploration of the role of commodification in welfare reform leads to concluding remarks on Polanyian assessments of public policy in globalisation.

[*] Chapter 2 of *Governance und Public Policy*, *Habilitationsschrift*, Universität Erfurt, July 2008.

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Abstract 2

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Who compensates the losers? Embedded liberalism, inequality and the limits of global governance

In this paper I adopt a Polanyian perspective on the division of labour between the state and the institutions of global governance. Traditionally, the state had the dual task of creating and embedding markets. Today, most markets are global in scope and created through international action, but still embedded nationally. In industrialized countries the embedding typically takes the form of social policies that compensate the losers of globalization. The resulting compromise between international liberalization and domestic welfare state development is usually called 'embedded liberalism'. An international embedding of market forces, which would be another option, has remained conspicuously underdeveloped. In this paper I highlight the often-forgotten controversies over attempts at a genuinely international embedding of markets. In the empirical section of the paper I first trace the history of the global trading regime from the beginning in the 1940s to the debates over a new international economic order in the 1970s. In a second step I compare the lessons from the field of world trade to the global policy of climate change that is marked by a commodification of the atmosphere and the development of transnational carbon markets without much regard to questions of social embedding.

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Abstract 3

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European and Global Economic Constitutions

This contribution starts out with a short reconstruction of the evolution of (societal) constitutions. Particular emphasis will be on the transformation in the function and societal status of constitutions over time. On this background the question whether the European Community once had or still has an economic constitution is raised. The reasons for its apparent disappearance will also be analysed. On this background the question is raised whether it is possible to identify (fragments of) a global economic constitution today and what the differences, if any, are to the European economic constitution.

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Abstract 4

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Gießen/Frankfurt a.M.

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.

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Abstract 5

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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.

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Abstract 6

Olga Batura

Commodification of universal telecommunications service in the liberalisation framework of the WTO and the EC

In the course of the most 20th century telecommunications services were not considered tradable and there were no international markets for them. The 1980s saw liberalisation efforts at all levels what in Polanyian terms meant that a disembedding process was in place and telecommunications services were commodified.

However, the commodification of telecommunications services was not complete as some of them – called universal telecommunications services – still enjoy special treatment under liberalisation frameworks of the WTO and the EC. The concept of universal telecommunications service in its today's form emerged in the time of monopolistic markets. The social adjustment of universal service served as a reservation for the states to protect their national markets from foreign newcomers. The developing countries adopted the universal service concept as they realised the possibility to protect their markets under WTO framework. In the EC, where creation of the Single European market was aspired, one tried to preserve national monopolies using universal service argumentation.

While analysing the attempts to keep telecommunications services socially embedded by the regulatory frameworks of the EC and the WTO, the paper argues that gradual commodification of all kinds of telecommunications services will not contradict, but on the contrary, contribute to the achievement of social objectives.

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Abstract 7

Jean-Christophe Graz

International Standards and the Service Economy

This paper explores the political implications of the growing influence of international standards on society, taking the case of the service sector as a distinct field of study. The analysis relies on global political economy approaches, which try to identify constitutive patterns of authority mediating between the political and the economic spheres on a transnational space. It extends to the area of service standards the assumption that the process of globalisation is not opposing states and markets, but a joint expression of both of them including new patterns and agents of structural change through formal and informal power and regulatory practices. It presents preliminary results of a major research project, which combines cross-institutional and sectoral analyses. The paper argues that service standards depend on conflicting definitions of quality and security requirements to promote a form of transnational hybrid authority, that blurs the distinction between private and public actors, whose scope spread all along from physical measures to societal values, and which reinforces the deterritorialisation of regulatory practices in contemporary capitalism.

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Abstract 8

Josef Falke

WTO and ILO
Can Social Responsibility be Maintained in International Trade?

The Havanna Charter for an International Trade Organisation (ITO) with its ambitious attempt to integrate social aspects into a trade agreement has failed. Labour standards as well as other fundamental social standards are not welcome as an issue on the agenda of the World Trade Organisation (WTO). The collaboration between the WTO and the International Labour Organisation (ILO) seems to be of a very formalistic nature. The World Commission on the Social Dimension of Globalisation (WCSDG) has published a major authoritative report on the social dimension of globalisation, including the interaction between the global economy and the world of work. As the report of the WCSDG says, it is essential that respect for core labour standards form part of a broad international agenda for development. Over many years, a consensus has emerged on a series of "core" labour standards as a minimum set of rules for labour in the global economy. The ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998, aims to ensure that social progress goes hand in hand with economic progress and development.

The Fundamental Principles and Rights at Work are gaining wider recognition among organisations, communities and enterprises. They provide benchmarks for responsible business conduct, and are incorporated into the ILO's own Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. The OECD's Guidelines for Multinational Enterprises emphasise them and the UN Global Compact promotes them as universal values to be achieved in business dealings around the world. A growing number of private sector codes of conduct and similar initiatives also refer to he fundamental principles and rights at work.

Corporate Social Responsibility (CSR) is a concept whereby organisations consider the interests of society by taking responsibility for the impact of their activities on customers, employees, shareholders, communities and the environment in all aspects of their operations. This obligaton is seen to extend beyond he statutory obligation to comply with legislation, and sees organisations voluntarily taking further steps to improve the quality of life for their employees as well as for the local community and society a large. The International Standardisation Organisation (ISO) is working on an ambitious guideline regarding the concept of social responsibility for economic and administrative activities worldwide.

The activities of multinational enterprises, trade unions, consumers and other parts of the so called civil society has to fill the gaps of states as well as of supranational and international organisations. Different forms of soft law function as supplements to hard law, often they refer to core labour standards. All these initiatives need transparency, publicity and the cooperation between different members of the civil society, multinational enterprises and governments. The secret catchword behind all these concepts is "embedding economic activities in concepts for growing worldwide solidarity".

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Abstract 8a

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Transnational governance in the field of CSR and the UN Special Representative on Business and Human Rights: Re-embedding or dis-embedding transnational markets?

A common suggestion is that the rise of corporate social responsibility discourses and practices and, in particular, the emergence of the concept of corporate responsibilities to respect human rights, are to be read as indicators of a countermovement tending to re-embed liberalised markets in transnational society.

The paper will interrogate this claim by scrutinising the performance to date of the mandate of the United Nations Special Representative on Business and Human Rights (UNSR), as a candidate institutionalisation of social reembedding at global level.

First, the office of the UNSR will be briefly be contextualised with respect to UN's historical engagement with the social regulation of transnational economic activity (concentrating here on the UN human rights system). Second, the actual transnational governance practices and outputs delivered by the UNSR mandate up until now will be surveyed.

Third, the notion of "embedded liberalism", coincidentally coined in the 1980s by the current holder of the UNSR mandate, Prof. John Ruggie, and its contemporary deployment by him in framing the UNSR mandate will be explored. Fourth and finally, an analysis will be advanced that suggests that, though it may have issued from a Polanyian double movement, in itself, the UNSR's mandate, both in process and substance, is more saliently seen as embodying inherent biases affecting current forms of de-juridified transnational or global governance that tend further to promote, rather than restrain, social disembedding. In turn, this finding is demonstrated to provide an important qualification or limiting condition to the mooted role of social and economic rights, on the one hand, in counteracting the commodification of labour in multi-level governance arrangements at EU level and beyond, and on the other, supporting the constitutionalisation of such arrangements via deliberative democratic means.

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Abstract 9

Olaf Dilling
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Enclosed Solutions for Common Problems? Uncertainty, Precaution and Collective Learning in Environmental Law

Until recently, for people firmly believing in progress, Karl Polanyi could perhaps have been regarded as some romantic Knight of the Sorrowful Countenance. He bemoans the loss of the medieval commons or even the primitive economy of the "noble savage", while fighting in vain - but with the fervour of the religious socialist - against the "satanic mill" of the free market. Even if Polanyi's "Great Transformation" offers a convincing historical analysis of the Industrialisation and the emergence of a market society; against the backdrop of the political triumph of market fundamentalism in the 1980s and the early 1990s, his theory seemed to offer few realistic remedies.

However, since the turn of the millennium the idea of a commons, already laid to rest by mainstream economists and most social scientists, has had an unexpected resurrection. But, as opposed to the traditional concept of commons, which was applied to natural resources, like pastures, forests or marine environments, the new commons concern shared knowledge. This also allows for a new perspective on the problem of environmental degradation. Just as the focus of the commons-problem shifted from traditional to new commons, the focus of protection has shifted from the prevention of known dangers to the precaution of uncertain risk. To enable a rational environmental policy under conditions of uncertainty, common knowledge of environmental problems has to be further developed.

But just as the traditional commons, the intellectual commons are endangered by an enclosure-movement, "the enclosure of the intangible commons of the mind" (James Boyle). The worldwide propagation of intellectual property rights, privacy regulation, and legal protection of business secrets often proves to be an obstacle rather than an incentive to learning. Furthermore, modern style environmental regulations often make use of economic incentives, which tend to establish individual responsibility for risk-management. In the case of uncertain causes and complex multi-agent constellations this can lead to a fragmentation of risk-management and to a disruption of necessary inter-organisational learning processes. In most cases, such 'enclosed solutions' are insufficient to solve common problems.

However, even if intellectual property rights and environmental regulation contribute to this "second enclosure", it would be counterproductive to put the whole blame on legalisation. Rather, in terms of the private/public-distinction, law is a double-edged sword: not only does it protect private property, but also delimits property against the public sphere.

This is rather obvious, when private intellectual property has to be balanced with public interests in legal decision making, e.g. when environmental information duties in chemicals law prevail over business secrets. But new approaches to environmental regulation even go further as they also establish comprehensive responsibilities and "basic duties"

(Grundpflichten) of proprietors, which are accompanied by rules of public (or at least inter-firm) accountability. These new approaches might open up possibilities of public deliberation about shared values and - especially in environmental law - adequate levels of risk.

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Abstract 10

Martin Herberg
Bremen

Exploring the Social Embeddedness of Markets
Insights from the Sociology of Occupations and Professions

„We are all Polanyians now" (*J. Beckert*). With the rediscovery of markets as a research object, sociology has also rediscovered the social preconditions of markets. Partly, the focus on the social embeddedness of markets is a reaction to the simplifications of classical economic assumptions, whose impact on political orientations is being noticed with growing concern, and partly, it is the processes of globalization which has demonstrated how precarious the functioning of markets is in reality.

Instead of operating in a quasi-mechanical way, markets have their foundations in institutional rules and stocks of cultural knowledge, which in principle enable parties to coordinate their action and help to prevent adverse effects for society as a whole. In the sociology of occupations, such aspects have been discussed for several decades now, and it is the aim of the paper to relate some of these thoughts to the study of markets. Three issues will be addressed in detail:

(1) Occupational sociology is a good basis to overcome many of the individualistic assumptions of orthodox economic theory. Often, firms engaging in market exchange are conceptualized as unitary actors, while on closer look, they appear as pluralistic settings with multiple professions negotiating the design of the end product. In these negotiations, managers are only one actor among others, and the influence of practitioners such like engineers can be of high relevance for aspects of environmental management and consumers' protection.

(2) The practical relevance of tacit knowledge and actors' basic assumptions has often been emphasized by occupational sociologists, and this aspect gains new topicality in the era of globalization. For example, complex technologies and products which are transferred from their context of origin to other regions can have a number of adverse effects due to cultural and institutional differences. Accordingly, from an occupational-sociological view, globalization becomes manifest as an increasing need of communicative competencies and a higher degree of reflexivity in many professions.

(3) In addition, the sociology of professions can help to conceptualize *Polanyi*'s thesis of the self-destructive tendencies of market economies in a more precise way. In fact, under certain conditions, professionality may be absorbed by market rationality, resulting in the abuse of expert power, in different forms of ritualism, and in the McDonaldization of key professions such as medicine, teaching, and the judiciary. For the nation state, rather than regarding professions as cartels or relics from ancient times, the challenge is to protect professionality as an important basis of societal self-regulation.

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Abstract 11

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Embedding Others
International Investment Law and Market Regulation

International law of foreign investments has been transformed radically over the last few decades, from a norm protecting investments against nationalisation to a norm of non-discrimination to, most recently, a putative general norm of regulatory transparency and fairness. Interestingly, this transformation has largely been accomplished by arbitration tribunals, changing their own role in the process from one of protecting property rights against popular revolutions to one of prescribing 'fair and equitable' regulatory frameworks. This paper proposes to inscribe these developments in theoretical debates about the changing relationships not just between nations exporting and importing capital, but between law, markets and politics generally.

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Abstract 12

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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

It is a well-known and much explored fact that capital market regulation has had a larger share of activity and visible success within the process of European integration than the long-standing efforts towards the establishment of harmonized rules in the area of corporate governance. While a unified, harmonized or effective market-wide corporate governance regime was identified early on as one of the building blocks of the European project, the historically grown, path-dependent varieties in national corporate law systems proved – for the longest time – resistant to ambitious Europeanization efforts. This paper argues that precisely at the time when companies' financing structures were being adapted to globally available and moveable capital, corporate governance rules came under immense pressure to address the interests of world-wide operating investors, and that this development resulted in a disembedding of the corporation. The corporation at the end of the 20th century was no longer primarily seen as an organizational entity, but had become a financial vehicle, operating in a regulatory framework largely out of control of domestic company law legislation. This emerging regulatory environment consists of supra-national legislation directed at increased efficiency of regional and global financial markets on the one hand and increasingly incentive-oriented, indirect regulation of corporate governance rules, placed to a large degree within the discretion of market actors. The financialization of corporate governance and the emergence of a transnational legal pluralist regime of applicable rules and standards provides a particular challenge to Karl Polanyi's identified 'double movement' in the regulation of increasingly disembedded markets.

And, yet, this is only the first of two analytical steps that must be made to understand the present regulatory challenge. As the study of capital market law and corporate governance in the European Union illustrates, the emerging regimes cannot adequately be represented as either national or international. As they are both and yet neither exclusively, the represent examples of what Saskia Sassen calls 'global assemblages' and what I shall here study as transnational legal pluralism. While Sassen's concept provides for a powerful illustration of the autonomy of self-constituting spaces that comprise human, institutional and technological, digital elements, this framework needs to be complemented by a specifically legal perspective on the evolving forms of regulatory approaches and instruments that are present here.

Key words: European Corporate Law, Financial Market Regulation, Corporate Governance, Varieties of Capitalism, Embeddedness, Global Assemblages, Legal Pluralism, Transnational Law.

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Abstract 13

Sol Picciotto
Lancaster University Law School

Disembedding and Regulation
The Paradox of International Finance

The breakdown of the Bretton Woods system in the early 1970s unleashed a process of liberalisation and internationalisation of finance, and a shift away from relationship-based to market-based finance, led by the UK and the US, acting in tandem as the dominant centres of global finance. Although often described as a period of deregulation, the disembedding of finance through liberalisation was mediated by an enormous growth of formalised regulation, through which the competitive and dynamic processes of change were contested. Although the growing plethora of regulation was national in focus, it developed as an international process, through networks of regulators and specialists, who developed principles and standards, changing rapidly, usually under the impact of scandals and crises.

Financial regulation has focused on trying to limit the damaging effects of financial globalisation, rather than tackling at their roots the dangers it posed. It is therefore hardly surprising that, in a period of rapid liberalisation which has created ever wider and more open markets, regulatory failure has been endemic. The response has been to create new regulatory institutions and networks which have grown ever more complex, despite all efforts to improve their coordination. In the face of the best efforts of the regulators, the increasingly globalised financial system has generated new forms of risk and instability with ever-wider effects. Indeed, financial crises have been a recurring feature since the emergence of the eurodollar market in the 1970s, culminating in the great financial crash of 2007-8. The paper will outline the main features of international financial regulation, especially banking, and the institutions involved, and conclude with some suggestions for a new alternative approach.

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Abstract 14

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Bremen

The Transnational Dimension of Constitutional Rights

The contribution examines the necessity and possibility of constitutionalizing the transnational governance regimes that evolve beyond national and international law and for which the self-organized normative infrastructure of the Internet is a prime example. Although unable to make rules that are generally binding, the contractual agreements reached within these regimes may expose distributive traits and significantly impact on third party interests. Hence, horizontal endangering of freedom seems to be their sore point. If this analysis proved convincing, a horizontal expansion of constitutional rights both in their reach to private transnational actors and in their application by a community of national and international courts could be a remedy. This conception of constitutional rights draws on two on two recent developments in international law scholarship. On the one hand, it corresponds with public international law scholars' observation of a mutual openness among "liberal states" in which a common core of constitutional rights is assumed to be protected in every potential forum. On the other hand, it relies on private international law scholars' vision of a "cosmopolitan pluralist" approach to conflict of laws according to which judges in an interconnected world owe their allegiance to a transnational system of norms and not simply to their own domestic law. The envisaged "transnational dimension of constitutional rights" should then be understood as a sort of "collision rule" neither referring to a particular legal order nor formulating a universal substantive norm but allowing each legal regime to spell out its own version of a transnational ordre public. Allegedly, this approach most adequately reflects the heterarchical character of global legal relations blurring the boundaries between the national and the international, the public and the private, market and organization.

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Abstract 15

Marc Amstutz
Universität Freiburg

The Double Movement in Global Law
The Case of European Corporate Social Responsibility

One of Karl Polanyi's major achievements is the finding of a continuing tension in the construction of self-regulating economies. This finding stresses that there is an enduring conflict between the government's efforts to establish, maintain, and spread a self-regulating market and the society's "protective reaction" to counteract the consequences that the self-regulating market spawned. Polanyi called this tension the "double movement". Yet, this thesis is, in spite of its ingenuity, limited in two respects. First, as a writer of the middle of the 20th Century, Polanyi could not be aware of modern globalization and formulated his thesis in terms fitted merely for the nation-state. Second, Polanyi understood the double movement as an indefinite social force and did not specify how this force is institutionalized in society. In particular, he remained elusive as to the question whether the double movement is carried out through law.

The paper addresses these two issues which have been left open in Polanyi's double movement thesis. On the basis of the European efforts to design a Corporate Social Responsibility of companies (CSR) it will show in a first step how the double movement thesis has to be reformulated in order to adapt to the conditions of a globalized society. In a second step, it will identify the internal changes that law has to experience in order to back such a "global double movement". Incidentally, this analysis will also shed light on the structure of a global law, i.e. a law able to match the logic of societal globalization.

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Abstract 16

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Law and/or Economics?
Transnational Economic Constitutions in the Making

In this paper, the "social embeddedness of transnational markets" (conference title) will be spelled out in two dimensions: a normative dimension referring to the regulation of transnational markets and a cognitive dimension relating to the rationalization of transnational economic constitutions. Whereas 'regulation' mostly points to the legal foundations of markets but less so to the economic foundations of the law, 'rationalization' hints at the reciprocal/reflective construction of law and economy. In matching legal constructions of (transnational) markets and economic constructions of (transnational) law, scientific representations are deemed of paramount importance. These include different strands of law, on the one hand, and economics, on the other hand, – the more so as they deal with each other. Putting 'law and economics' (broadly understood) in its context thus offers a road to the sociology of transnational economic constitutions as part of the economic sociology of law.

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Abstract 17

Christian Joerges
Bremen

Conflict of Laws as "Constitutional Form" in Transnational Settings?

We are currently witnessing intense efforts to understand the "social emebddedness" 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".

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Abstract 18

Karl-Heinz Ladeur
Bremen/Hamburg

Global or international administrative law? Transnational administrative law beyond the state?

The debate on the concept of „global (or international) administrative law“ is by itself a global phenomenon. In the choice of its conceptualization a theoretical option is implied: in the US the former alternative („global“) is preferred, in Germany some authors opt for the second option because they are convinced that the state as a form of integration of administrative action cannot be neglected even at the transnational level of administrative action beyond the limits of the nation state.