

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

Joint conference of CRC 597 and RECON

Bremen, 5-7 February 2009

### **Abstract 14**

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#### **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.