

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

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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, they 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.