THE IMPACT OF GLOBALIZATION ON THE CONCEPT OF LAW

1st PURPOSE

- Legal challenge: Evaluate why-how globalization should be taken into account to evaluate the current climate for the transnationalization of law.

- Challenge of PIL: Economic globalization and transnationalization of commercial law.
2nd PURPOSE

- Legal challenge: Evaluate the process of transnationalization of law itself.
- Challenge of PIL: Transnationalization of commercial law.

DEFINING KEY CONCEPTS

- GLOBALIZATION
- Fields of LAW:
  - National Law
  - International Law
  - TRANSNATIONAL LAW
- Lex Mercatoria (as example)
GLOBALIZATION

- An umbrella concept
- that seeks to capture
- the growing interconnectedness and integration
- of politics, society and economy at the planetary scale.

ECONOMIC GLOBALIZATION

- Sub-concept in the globalization debate
- Main distinct realms of discussion:
  1. Unprecedented trade across national borders
  2. Emergence of global free markets
  3. Key role of global financial integration
  4. The new role of economic actors (transnational corporations above all)
  5. The transformation of labour markets and working practices
FIELDS OF LAW

- Traditional dichotomy:
  - National Law
  - International Law

- New law-making process:
  - Transnational Law

NATIONAL LAW

- Domestic law, municipal law.

- Defining aspect: The source of its enactment:
  - National states (public authorities)
INTERNATIONAL LAW

- The source of enactment:
  - Groups of States
  - International organizations
- Fundamental dichotomy:
  - Public International Law
  - Private International Law

TRANSNATIONAL LAW (I)

- Norms
- Emerged from and for the interactions between individuals, collectivities and public authorities
- And acting beyond and across national borders
TRANSNATIONAL LAW (II)

- Defining aspect: The source of its enactment:
  - LESS public authorities
  - MORE individuals, collectivities, multinational companies, transnational companies…

TRANSNATIONAL COMMERCIAL LAW

- Autonomous law
- Created by commercial actors
- And constantly updated by them
- Example: Lex Mercatoria
LEX MERCATORIA

- **Autonomous law** of international trade
- Founded on **universally accepted** standards of business conduct
- A **common platform** for commercial lawyers from all countries

COMPLEXITY OF THE CURRENT ERA

1. The trend toward a “global civil society”
2. The erosion and irrelevance of national boundaries in markets which can truly be described as global and the **decreasing significance of sovereignty in this areas**
3. The relative decline of state power to influence or steer national or international economic developments
4. The strong trend towards **informal approaches to international rule- and decision-making**
CLASSICAL TABOOS BROKEN BY TRANSNATIONAL COMMERCIAL LAW

1. Private agreements cannot produce law without authorization or control by states
2. Law cannot exist and cannot be applied beyond the realm of domestic states and international relations without a “global rule recognition”
3. The relative vagueness and ambiguity of the principles and rules which are said to constitute the new law merchant

CONCLUSIONS

- The modern law merchant benefits from these developments
- The Transnational Commercial Law has a perfect example to go deeper into the transnationalization of its different fields: Historical evolution of Lex Mercatoria
CONCLUSIONS (II)

- Desirable aspects of the Lex Mercatoria:
  1. Universal character
  2. Flexibility and dynamic ability to grow
  3. Informality and speed
  4. Reliance on commercial custom and practice

BIBLIOGRAPHIC REFERENCES

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  http://www.transnational.deusto.es/ip2009
THANK YOU SO MUCH!!

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