

Transnational Transformations of the State Law and Society Association International Research Collaborative

*Coordinators: Gregory Shaffer, Loyola University Chicago School of Law
(gshaffe@luc.edu) and Damian Chalmers, London School of Economics
(D.Chalmers@lse.ac.uk)*

Background: Supranational organisations and more informal transnational governance networks, be they regional or global, have grown in number and variety, and they govern public and private interactions more extensively and intensively than ever before. This research project will address how, and under what conditions, supranational organisations and transnational networks create new relations between national administrations and enable them and constituencies with which they work to promote interests and policy goals that may otherwise be not possible to achieve. We define “transnationalism” to include supranational institutions and transgovernmental networks of government officials, the latter of which sometimes includes non-state actors.¹

Interesting questions arise about how participation in supranational organisations and transnational networks has transformed national administrations and the contexts in which they operate. Transnationalism has triggered processes which prompt and institutionalise further transformations. This project will explore the extent to which new tasks, relations, insider/outsider constellations, ‘infranational’ identities, and demands have been created within States as a result of participation in supranational organizations and transnational networks.

Methodology/Questions Posed: The research will be comparative in nature. It will examine the extent to which transnational networks and supranational economic/regulatory organizations, such as the WTO, the EU, NAFTA, and Mercosur have transformed domestic institutional contexts. The research will focus on three dimensions in particular, and address the following questions within each dimension.

(i) Transformation in the Substantive Tasks of the State: Have supranational organisations and transnational regulatory networks led to the State doing new things? Have they changed who is responsible, domestically, for performing certain tasks? Are the changes associated with differentiation and specialism, and, if so, what form do these take? Have they led to a growth in administration? of ‘contracting out’? or of public-private hybrid governance mechanisms? If so, why?

(ii) Transformation of Relations and Institutional Structures within the State: What new relations are created by supranational organisations and transnational networks? Do alliances with counterparts in other ministries or executives abroad displace or

¹ National administrations are central actors in supranational organizations and transnational networks, be they regional or global ones, just as they are within States. In the highly developed EU framework, for example, administrative exchange through comitology committees, COREPER and other networks are of central importance.

alter domestic ones? How does distillation of diffuse viewpoints into the 'national interest' affect opportunity structures for different agencies and private constituencies? Does transnationalism centralize or diffuse power within the State? How does it change relations between public and private actors? Are foreign private actors ever allowed possibilities of representation in national decision-making that affects them? Are relations fluid and one of convenience or do they provoke strong processes of socialization?

(iii) Transformation of Legitimacy Claims and Expectations within the State: How does participation in transnational organizations shift the boundaries of domestic contestation and support for the administration? How does 'foreign' approval – benchmarking, recommendations, etc – shift domestic expectations? Are the terms of the debates reconfigured? Are winners and losers counted in different ways? Does transnationalism 'subvert' local democracy through unpopular decisions being taken elsewhere? Does it expand accountability mechanisms to protect parties outside a State who are affected by a State's decisions (and, vice-versa, parties within a State affected by a foreign State's decisions)? What challenges and opportunities does transnationalism pose? To what extent does transnationalism offer a legitimating or delegitimizing discourse?

The purpose of this comparison will be to discern patterns and explain differences within the EU, United States and one or more large developing countries (such as Brazil and India) within a single framework. That is, the overall goal will be three-fold. First, we will build an understanding of how transnationalism affects domestic politics and regulatory structure and activity. Second, we will examine how transnational regimes affect one another. We will look, for example, at when institutional aspects and policies of the EU and NAFTA models have been taken up by other regimes, and how these have been taken up. Finally, building on these understandings, we will generate a framework that addresses the challenges that transnationalism poses in terms of new forms of constraints that it imposes; new forms of legitimation and emancipatory opportunities that it raises through the creation of new political processes and structures and the disruption of pre-existing political cartels; and new perceptions of actors of their roles and of the social and political environment around them that transnationalism spurs.

Instruments: We plan to organize 2 or more inter-disciplinary workshops in relation to the Law and Society Association annual meetings in 2006 and 2007 and outside of them. The workshops will involve at least 3 experts from multiple jurisdictions, such as the US, the EU, Brazil, India and South Africa. The first workshop will be held at the Law and Society Association annual meeting in Baltimore in July 2006. The second would be built from the first, and will be held at the Law and Society Association annual meeting in Berlin in July 2007. Pending funding, we may also organize one or more additional workshops. From the workshops, we hope to produce an edited volume and/or one or more symposium issues. The LSA workshops are intended to provide valuable feedback and exchange for individual and collaborative projects.

The workshops will include specialized case studies which examine how transnationalism has affected different sectors in different jurisdictions, as noted below, as well as cross-cutting papers. The case studies could focus on one issue in

multiple jurisdictions, or alternatively, we could facilitate the coordination of parallel case studies on the same issue, each covering different States. Here is a list of issues that could be addressed in relation to the project, as the number of participants grows:

Framing paper to be drafted.

Other more general cross-cutting papers.

We invite empirical studies involving any issue area, including without limitation:

(i) Risk Regulation

- food safety, genetic engineering, etc
- chemicals
- air pollution, water pollution

(ii) Rights and social policy

- women's rights
- minority rights
- non-discrimination
- labour
- pension reforms
- immigration policy

(iii) Economic Regulation: Capital Markets, Corporate, other

- money laundering
- corruption
- banking controls
- bankruptcy
- requirements of transnational capital movements
- corporate governance
- IP: patents, copyrights, trademarks, etc
- competition law

(iv) others to be determined by participant interest

- policing

We invite papers investigating the issues described above in any jurisdiction. Initial papers, for example, include developments in the US, EU, Brazil, India, South Africa and West Africa in specific policy areas.