

Call for Papers

Transnational Standards in the Domestic Legal Order: Authority and Legitimacy

The research project “[Architecture of Postnational Rulemaking](#)” at the University of Amsterdam, Faculty of Law, is organizing a workshop on 24 October 2014 and invites paper proposals from scholars and practitioners of law and related disciplines.

The Workshop Theme

The workshop explores the evolving interactions between transnational standards and the domestic legal order from the perspectives of **authority** and **legitimacy**.

Background

The decline of sovereign states in global governance was accompanied by the expansion of transnational standard-setting bodies, which are *not* part of treaty-based institutions. The International Organization for Standardization (ISO) develops industrial standards; the Basel Committee on Banking Supervision (BCBS) provides capital requirements; the International Accounting Standards Board (IASB) formulates accounting standards; the Forest Stewardship Council (FSC) establishes principles and criteria for forest products; and the International Commission on Radiological Protection (ICRP) recommends radiological protection standards. The standard-setting in these bodies is led not only by governmental regulators, but also by industry representatives and scientific experts.

These bodies’ transnational standards permeate national standards, domestic statutes, administrative instruments, and judicial decisions. The **interactions between transnational standards and the domestic legal order** have significantly evolved, and reduced regulatory fragmentation across states without the rigidity of concluding any formal international treaties.

The evolving interactions between transnational standards and the domestic legal order give rise to the fundamental questions about **authority** and **legitimacy**. In this workshop, authority broadly concerns an entity’s claims and others’ deference to them. Legitimacy concerns a broad normative perspective to evaluate the authority of transnational standard-setting bodies and their standards.

Authority appears to be a multi-faceted notion when it is cast against transnational

standards. On the one hand, the authority of standard-setting bodies seems to be strongly supported by the expertise of transnational bodies, the industry and scientific “consensus” they formulate at the transnational level, and pressure for regulatory harmonization across states. On the other hand, the authority of standard-setting bodies and their standards appears to be contextual, and constituted by domestic politics and legal contexts.

The authority of transnational standards further gives rise to a multi-faceted question of **legitimacy**. At the transnational level, standard-setting processes may not allow any formal governmental representation, as contrasted with the conclusion of treaties and the decision-making processes in international organizations. At the domestic level, transnational standards are not subject to parliamentary approval required for the conclusion of formal treaties. The executive organs may defer to transnational standards and avoid domestic deliberation. The technicality of industry or scientific standards makes it difficult for the wider public to review the governmental reliance on transnational standards. Overall, there is a strong indication that transnational standards may escape domestic scrutiny at multiple levels.

Extensive studies have already been produced on the role of transnational standard-setting bodies. Much less recognized are **the interactions of transnational standards with the domestic legal order**. Given that the regulatory significance of transnational standards often depends on domestic acceptance, it is important to examine the queries of how the authority of transnational standards is constituted at the domestic level, and whether the authority is legitimate.

Angles

Against this background, the workshop will address the evolving interactions between transnational standards and the domestic legal order, particularly from the following three angles:

1. Transnational standards in domestic legal practices

Transnational standard-setting bodies actively promote, if not oblige, the domestic permeation of their standards in order to achieve regulatory convergence across states. National legislatures, ministries, judges, industries, and the general public invoke transnational standards in statutes, administrative instruments, judicial decisions, and wider legal practices. What argumentative bases do relevant domestic actors invoke in adopting transnational standards in domestic legal practices? Which legal instruments are used for the domestic adoption of transnational standards? Who has invited the standards into the domestic legal order?

2. Authority of transnational standards

The concept of authority has been traditionally associated with a sovereign state and its binding domestic laws and regulations. The concept has also been employed in relation to international organizations, such as the UN, the World Bank, and the WHO, which are established by sovereign states. Is authority a useful notion to understand the regulatory relevance of transnational standards? How can we theoretically understand

the authority of transnational standards at the domestic level? What constitutes authority? How is the expertise of transnational standard-setting bodies relevant to their authority? How does the authority of transnational standards vary according to the domestic legal order in which the standards are applied? What conditions lead to the varied domestic amenability to transnational standards?

3. Legitimacy of transnational standards

Despite the fact that transnational standards have an impact on domestic legal practices, transnational standard-setting processes and domestic legal processes appear to invite only restricted input from domestic constituencies. Is the domestic permeation of transnational standards normatively problematic, and if so, in what sense? On what basis have transnational standards, and standard-setting bodies, been challenged at the domestic level? Could the expansion of transnational standards undermine domestic democracy? What role do domestic courts play in reviewing and contesting the governmental use of transnational standards? Does national contestation have any feedback on the development of transnational standards?

Papers are invited to explore these angles in a variety of legal disciplines. These three angles are interrelated, and multiple angles can be addressed within one paper.

Submission of Proposals and the Timeline

Paper proposals should include a description of maximum 500 words and the applicant's *curriculum vitae*. Submissions should cover work that has not been previously published.

At the workshop, the invited authors should present a paper of 7,000-8,000 words, excluding references. It is the intention of the organisers to publish the papers in a special journal edition.

- Paper proposals should be sent by email to:
Ms. Angela Moisl <a.moisl@uva.nl>. The deadline is **18 May 2014**.
- Selected participants will be informed by 18 June 2014.
- Each participant must submit a paper by 3 October 2014 for distribution to the other participants.
- The workshop takes place on 24 October 2014 at the University of Amsterdam.

The sponsoring organizations will cover the speakers' travelling (economy class) and accommodation expenses (2 nights).

For substantive questions, please contact Dr. Machiko Kanetake <M.Kanetake@uva.nl>.