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TRANSNATIONAL LAW AND ITS HISTORICAL PRECEDENTS

1. THE MEANING OF TRANSNATIONAL LAW

Except for some federal states, the contemporary state is still being identified with the nation-state which is generally considered the essential precondition of any legal order. We simply believe that there is no law without this kind of state. The nation-state is the only lawmaker. Also most constructs of legal and political theory and even legal history are traditionally associated with the state. However, in the Middle Ages there could be a royal power in the absence of the state. As having such a power was described the Saxon dynasty of the Ottonians (919-1024)¹. But together with royal power without the state we can also imagine law without the state. This is all the more true as, according to some philosophers, within the so-called “postnational constellation” the dynamics of globalization has already undermined the dominance of the nation-state as a model of political organization².

The modern concept of law without, or beyond, the state means transnational law, a term which contemporarily remains “widely invoked but rarely defined with much precision”³. Certainly, it is neither the law of the nation-state nor international law, but a third category which lies somewhere between the two. The subjects of transnational law are not necessarily states, but also other, mostly private, entities and individuals. Such a concept of transnational law was invented by Philip C. Jessup (1897–1986), an American judge of the International Court of Justice in the Hague, in his homonymous monograph, published some sixty years ago⁴. Now we consider as transnational the legal regulation of the Internet, of multinational corporations, of sports, of international arbitration, of the proce-

¹ G. Althoff, *Die Ottonen. Königsherrschaft ohne Staat*, Stuttgart–Berlin–Köln 2000.

² J. Habermas, *Postnational Constellation*, Cambridge MA 2001, pp. 58–112.

³ R. Cotterrell, *What Is Transnational Law?*, “Law & Social Inquiry” 2012, No. 37, p. 501.

⁴ P. C. Jessup, *Transnational Law*, New Haven 1956.

ture of human rights protection and of global administrative law⁵. As the oldest transnational legal system is often mentioned the trade law of the Middle Ages called *ius mercatorum* or *lex mercatoria*.

However, I am going to present different and partially older examples. As a matter of fact, in European culture a newly born baby is immediately christened, but in history it is not at all unusual that a name emerges much later than its object. On the contrary, transnational, cross-border or transborder law⁶, called also transjurisdictional law, is considered a new kind of law which best embodies trends of the globalization age. It reflects the situation of world society that abolishes distances and ignores borders. Thus, transnational law is treated by numerous legal scholars as the synonym of global law. Nevertheless, we must remember that transnational networks are still far away from universalism and humanism, frequently generating rather inequality and injustice.

2. THE ROMAN PRINCIPLE OF PERSONALITY

The contemporary scholarship of legal history and comparative law limits generally its interest in legal regulations independent from the state, as well as in the history of legal pluralism and the germane phenomenon of transnational law, to the Middle Ages⁷. However, such reflections should be extended also to the legal systems of antiquity. As a matter of fact, the ancient and medieval principle of personality of law, as opposed to the modern principle of territoriality, is based upon the transborder applicability of legal norms and even entire legal orders⁸.

Already the oldest Roman *ius civile* meant originally a legal system reserved exclusively to the citizens (*cives*) or members of the Roman community (*civitas*). Moreover, the Romans always carried their law with them, e.g. in 59 AD apostle Paul claimed famously his personal status of *civis Romanus* in order to be exempted from a Judean territorial law (Acts of the Apostles 22, 27)⁹. At least

⁵ G.-P. Calliess, P. Zumbansen, *Rough Consensus and Running Code: A Theory of Transnational Private Law*, Oxford 2010, pp. 97–100.

⁶ F. Werro, *Is There Such a Thing as Transnational Law?*, (in:) *Suggestions for Defining the Object of Transnational Legal Studies*, (in:) S. Keller, S. Wiprächtiger (eds.), *Recht zwischen Dogmatik und Theorie: Marc Amstutz zum 50. Geburtstag*, Zürich 2012, pp. 311–330.

⁷ B. Z. Tamanaha, *Understanding Legal Pluralism: Past to Present, Local to Global*, “Sydney Law Review” 2008, No. 30, pp. 377–380; N. Jansen, *Legal Pluralism in Europe*, (in:) L. Niglia (ed.), *Pluralism and European Private Law*, Oxford 2013, pp. 109–130.

⁸ S. L. Guterman, *The Principle of the Personality of Law in the Early Middle Ages*, “University of Miami Law Review” 1966, No. 21, pp. 259–348.

⁹ S. A. Adams, *Paul the Roman Citizen: Roman Citizenship in the Ancient World and its Importance for Understanding*, (in:) S. E. Porter (ed.), *Paul: Jew, Greek, and Roman*, Leiden–Boston 2008, pp. 309–326.

in this sense of extraterritorial application Roman law may be qualified as the first transnational law in history. Certainly, during the period of the Principate, which started in 27 BC, the possibility of dual citizenship emerged¹⁰, as the citizens of Greek city-states, reduced now to the simple status of cities, could additionally acquire the citizenship of the Empire.

We must also remember that the original Roman meaning of *ius privatum* – as distinguished from the later usage in Cicero (*partitiones oratoriae* 130) and Ulpian (D. 1,1,1,2) – is not law informed by private interests, but literally “law privately made”, i.e. legal order produced autonomously by private parties without any intervention of state agencies. The Romans of the archaic period distinguished between *lex privata* and *lex publica*, in other words between private and public statute. The former meant a “regulation issued by the owner” (*lex rei suae dicta*) in the sense of a statute given by him to his own thing or property. In reference to contract law, such clauses were also often qualified as “law of the contract” (*lex contractus*)¹¹.

As opposed to the usual *lex data*, i.e. a public statute promulgated by the popular assembly of Rome, a *lex dicta* is a regulation issued by a private person for the governance of his property which could include a term in an informal contract such as sale, lease and similar or a solemn oral instruction (*nuncupatio*) to the formal legal transaction of *mancipatio*¹². According to the archaic Law of the Twelve Tables (Tab. 6,1), as one has disposed orally, so be the law (*uti lingua nuncupassit, ita ius esto*). At the end of the Republic, Cicero (*partitiones oratoriae* 130) enumerates as constituent parts of *ius privatum*, wills (*tabulae*), informal agreements (*pactum*) and formal contracts (*stipulatio*)¹³.

3. THE ROMAN “LAW OF NATIONS”

We have previously defined the old Roman *ius civile* as a privilege of Roman citizens. In consequence, even in case of martial conquest, the Romans did not even think of imposing their private law on defeated peoples and tribes. These

¹⁰ U. von Lübtow, *Das römische Volk. Sein Staat und sein Recht*, Frankfurt am Main 1955, pp. 656–657.

¹¹ M. Kaser, *Römische Rechtsquellen und angewandte Juristenmethode: ausgewählte, zum Teil grundlegend erneuerte Abhandlungen*, Wien 1986, pp. 70–83.

¹² H. F. Jolowicz, B. Nicholas, *A Historical Introduction to the Study of Roman Law*, Cambridge 1972, p. 386.

¹³ M. Kaser, “*Ius publicum*” und “*ius privatum*”, “Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung” 1986, No. 103, pp. 58–59; Z. Végh, *Ex pacto ius. Studien zum Vertrag als Rechtsquelle bei den Rhetoren*, “Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung” 1993, Vol. 110, pp. 277–280.

peoples had to use their own laws, since they were not granted access to the Roman one. However, Roman expansion during the later Republic, particularly in the period between the first (264-241 BC) and the second Punic war (218-201 BC), provoked the necessity of considering alien legal customs in Roman courts. Since *ius civile* did not apply to foreigners, in 242 BC the special office of *praetor peregrinus* was established to handle their cases, as well as litigations between them and the Romans.

Disregarding the formalities of *ius civile* the *praetor peregrinus* promoted a new legal subsystem called “the law of nations” (*ius gentium*)¹⁴. It was part and parcel of Roman law which sacrificed the ancient formalism to the needs of international trade and admitted the Greek language even in old transactions of purely Roman origin. These new rules were also later applied in transactions between Roman citizens, leading finally to a fusion of both systems. The *ius gentium*, born as customary commercial law, was particularly influential in the contractual field, primarily by strengthening the element of reciprocal confidence (*fides*) between the parties.

The last thing to consider with reference to the Roman antiquity is the republican jurists’ law which in view of its sources may be qualified as a private legal order¹⁵. As a matter of fact, the old jurists’ law of the Republic consisted mainly of the activity of advising private clients. However, it is necessary to note that all these juristic pieces of advice, as well as additional interpretations given by the jurists, were purely private opinions. Only during the Principate, was the formal right to issue opinions sanctioned in advance by the Emperor, conferred on some outstanding jurists. The fact that their activity was considered source of law is proved by their very names: *auctores* or *conditores iuris*¹⁶.

Roman private law, produced principally by the jurisprudence of the western part of the Roman Empire up until the end of the 3rd century AD, was known later on in the East only in the public law schools of Beirut and Constantinople. Their work was compiled in Byzantium during the 6th century in the law books of Justinian, called later *Corpus Iuris Civilis*. The reflection on its content and interpretation was in a certain sense continued in Europe during the late Middle Ages by the so called learned law (*droit savant*) of the jurists, since in the Holy Roman Empire lacked any imperial enactment ordering the official reception of Roman law¹⁷.

¹⁴ S. Meder, *Ius non scriptum – Traditionen privater Rechtssetzung*, 2nd ed., Tübingen 2009, p. 25; R. Domingo, *The New Global Law*, Oxford 2010, pp. 6–11.

¹⁵ A. A. Schiller, *Jurists’ Law*, “Columbia Law Review” 1958, No. 58, pp. 1226–1238; S. Meder, *Ius non scriptum...*, pp. 129–130.

¹⁶ R. Quadrato, *Gaius dixit: la voce di un giurista di frontiera*, Bari 2010, pp. 93–114.

¹⁷ N. Jansen, R. Michaelis, *Private Law and the State. Comparative Perceptions and Historical Observations*, “Rabels Zeitschrift für ausländisches und internationales Privatrecht” 2007, Vol. 71, No. 2, pp. 375–376; N. Jansen, *Das gelehrte Recht und der Staat*, (in:) R. Zimmermann (ed.), *Globalisierung und Entstaatlichung des Rechts*, Vol. II, Tübingen 2008, pp. 159–186.

4. THE MEDIEVAL ROMAN-CANON *IUS COMMUNE*

The opinion that transnational law has a glorious medieval genealogy is very common among legal historians. Therefore, in reference to the Middle Ages we are not hoping to discover many new phenomena. However, we may possibly improve their interpretation. Indeed, the conventional scholarly view usually represents the medieval legal order of “both laws”, i.e. the Roman-canon *utrumque ius*, first of all as the law common to the whole Europe during the era preceding the codifications of the 19th century. In consequence, the *utrumque ius* is treated either as a medieval forerunner of modern model projects of European private law, such as DCFR, CESL etc., or even of the world law in the sense of a cosmopolitan unitary law.

As a matter of fact, the medieval *ius commune* was a legal system common for most of continental Europe. However, already the coeval canon law, based on the ancient Roman law with whom the universal Roman Church lived by (*ecclesia vivit lege Romana*), was considered binding by all the faithful of this Church regardless of their citizenship or nationality. Obviously, if we accept Frederic W. Maitland’s (1850–1906) excellent dictum that “the medieval church was a state”¹⁸, the conclusion about canon law as law without the state would be trivially incorrect. But the *ius commune* was also, to a certain extent, considered binding in England even after its departure from the universal Church as a result of the English Reformation during the 16th century¹⁹.

In consequence, canon law should be qualified not so much the forerunner of modern model projects of European private law, but rather the first transnational law in history. According to the American scholar Harold J. Berman (1918–2007) Western legal tradition emerged during the late Middle Ages as a transnational legal culture which was admittedly pluralistic, but essentially based upon canon law²⁰. Its validity remained, indeed, independent from the subjection of its addressees to any secular power. Moreover, canon law knew not only commands, but also numerous optionals, such as admonitions, exhortations and pieces of advice (*consilia*)²¹. These forms of soft law are still typical for today’s regulatory systems of transnational nature.

By some modern scholars the independency from the state, characterizing legal norms produced and considered binding regardless of any state power,

¹⁸ F. W. Maitland, *Roman Canon Law in the Church of England*, London 1898, p. 100.

¹⁹ R. H. Helmholz, *Roman Canon Law in Reformation England*, Cambridge 1990, pp. 147–148.

²⁰ H. J. Berman, *Law and Revolution. The Formation of the Western Legal Tradition*, Vol. I, Cambridge MA–London 1983, pp. 10–11; L. Viellechner, *Transnationalisierung des Rechts*, Weilerswist 2013, pp. 15–17.

²¹ T. Giaro, *Dal soft law moderno al soft law antico*, (in:) A. Somma (ed.), *Soft law e hard law nelle società postmoderne*, Torino 2009, pp. 83–99.

is attributed even to the whole system of the medieval *ius commune*, and thus to the Roman-canon legal order of “both laws” (*utrumque ius*)²². This legal order had been based upon the ancient canonical sources and the law books of Justinian, but it was interpreted and, in the last resort, at least partially, created by medieval jurists. Moreover, it is worthwhile stressing that they constructed in particular the inalienable rights of individual subjects, inaugurating the European tradition of human rights, “primarily by limiting the sovereignty of the prince”²³.

5. PRIVATE LAW VERSUS TERRITORIAL PRINCIPLE

Even the victory of the modern territorial state over the old principle of personality did not lessen immediately the supratemporal position of private law which posed a fierce resistance to the public one. For instance the real union between England and Scotland, stipulated at the beginning of the 18th century, did not infringe the validity of the old Scots law; in a similar way hundred years later the British occupation of the Dutch colony at the Cape of Good Hope did not encroach upon the Roman-Dutch law which was there in effect previously. Even in the 1820s Friedrich Carl von Savigny (1779–1861) insisted that the destruction of the Holy Roman Empire by Napoleon in 1806 did not prejudice the validity of Roman law in Germany, exactly as the collapse of the *Imperium Occidentis* in the 5th century under the pressure of the migration of the peoples²⁴.

As a matter of fact, starting from the 1558-capitulation of the city of Tartu (*Dorpat*) before Tsar Ivan IV the Terrible during the Livonian War (1558–1583), it was a standing rule of the pre-modern public international law in Europe that in case of capitulation the free practice of local religion remained guaranteed and the existing rights and privileges of the local population used to be confirmed²⁵. In 1561 this rule was applied at the submission of Livonia under the Polish king Sigismund II Augustus, as well as of Estonia under the Swedish king Erik XIV.

²² K. Pennington, *Sovereignty and Rights in Medieval and Early Modern Jurisprudence: Law and Norms without a State*, (in:) J. Sondel, J. Reszczyński, P. Ściślicki (eds.), *Roman Law as Formative of Modern Legal Systems. Studies in Honour of Wiesław Litewski*, Vol. II, Kraków 2003, pp. 26–27.

²³ K. Pennington, *Sovereignty and Rights...*, (in:) J. Sondel, J. Reszczyński, P. Ściślicki (eds.), *Roman Law...*, p. 27; id., *The Prince and the Law 1200–1600. Sovereignty and Rights in the Western Legal Tradition*, Berkeley 1993, pp. 90–106.

²⁴ T. Giaro, *Alt- und Neuropa, Rezeptionen und Transfers*, (in:) T. Giaro (ed.), *Modernisierung durch Transfer zwischen den Weltkriegen*, Frankfurt am Main 2007, p. 295.

²⁵ J. von Ungern-Sternberg, *Europäische Kapitulationsurkunden: Genese und Rechtsinhalt*, (in:) K. Brüggemann, M. Laur, P. Piirimäe (eds.), *Die baltischen Kapitulationen von 1710*, Köln 2014, pp. 17–42.

We recognize this pattern also in the capitulations of Strasbourg to the French king Louis XIV in 1681 and in the surrender of Transylvania (*Siebenbürgen*) to the Holy Roman Emperor Leopold I Habsburg in 1692.

The Tsardom of Russia also acted according to the old patterns of the Ancien Régime during the Great Northern War (1700–1721). In the capitulations of Swedish provinces Estonia and Livonia, stipulated in 1710, Emperor Peter the Great solemnly promised to respect the local rights and freedoms which were hitherto in force on these territories²⁶. The promise concerned, however, only the Baltic German burghers and nobles to the exclusion of the Estonian and Latvian speaking population. The same model of preserving rights and freedoms was applied by the Russian Empire at the turn of the 18th to the 19th century, namely in the capitulations of Curlandia in 1795, stipulated directly after the third Polish partition, as well as of Finland, stipulated in 1809.

6. LEGAL PLURALISM OF RUSSIAN EMPIRE

In the Baltic provinces the pattern of autonomous legal order as an outcome of the above-mentioned capitulations lasted a very long time. Within this framework in 1864 a codification of provincial law, comprising a private law code was enacted. The code, drafted in German by Frederic Georg von Bunge (1802–1897), relied heavily on the Pandect-science²⁷. As the highest Russian court, the St. Petersburg Ruling Senate protected the Baltic code which at the technical-systematic level was much more sophisticated than the indigenous Collection of Laws (*Svod Zakonov*) of 1835, even if its content embodied the local tradition as opposed to the western one. In the late 19th century, the age of nationalism, however, the good old law of the Baltic Germans was increasingly questioned by the Russian central government which advocated imperial and pan-Slavic tendencies²⁸.

The list of the manifestations of legal pluralism in the Russian Empire during the 19th century is not yet complete. In the lands east of the river Bug, which during the partitions of Poland-Lithuania were incorporated into Russia, until 1840s the

²⁶ J. von Ungern-Sternberg, *Die Debatte um die baltischen Kapitulationen und Privilegien im 19. Jahrhundert*, (in:) M. Garleff (ed.), *Carl Schirren als Gelehrter im Spannungsfeld von Wissenschaft und politischer Publizistik*, “Baltische Seminare” 2013, No. 20, pp. 83–102.

²⁷ T. Giaro, *Modernisierung durch Transfer – Schwund osteuropäischer Traditionen*, (in:) T. Giaro (ed.), *Rechtskulturen des modernen Osteuropa. Modernisierung durch Transfer im 19. und frühen 20. Jahrhundert*, Frankfurt am Main 2006, pp. 307–308.

²⁸ T. Anepaio, *Die Justizreform von 1889 in den Ostseeprovinzen und das Baltische Privatrecht*, (in:) J. Eckert, K. A. Modéer (eds.), *Geschichte und Perspektiven des Rechts im Ostseeraum*, Frankfurt am Main 2002, p. 78.

Third Lithuanian Statute was in effect²⁹. Only subsequently were these territories brought under the regulations of the Russian *Svod zakonov*. Moreover, in the central part of the Polish territory the French *code civil* applied which was introduced to the Duchy of Warsaw in 1807 by Napoleon. Even when the Napoleonic reign was replaced at the Vienna Congress of 1815 by the Holy Alliance, a pan-European reactionary peacekeeping organization, the *code civil* remained in force on the former territory of the Duchy, now occupied by the Russian Empire.

7. PRUSSIA AND THE TERRITORIAL PRINCIPLE

During the 19th century, the Russian Empire was a rather backward country which correspondingly followed the patterns of conduct typical of the Ancien Régime. By contrast, the very ambitious and aggressive Kingdom of Brandenburg-Prussia had already acted at the end of the 18th century in the modern spirit of a territorial state. After the second partition of Poland-Lithuania³⁰, sanctioned by the treaty of September 25, 1793, Prussia decided to resume the final elaboration of the *Allgemeines Landrecht für die Preussischen Staaten* (ALR). This codification, common for the entire Prussian state, was nevertheless only a *Landrecht* which meant local law having a purely subsidiary force in respect to Roman law as the common law of the German Empire (*Reich*).

The Prussian code, or “The General Territorial Law for the Prussian States”, followed the doctrine of the so-called law of reason (*Vernunftrecht*), embracing not only private, but also public law³¹. Proclaimed on March 20, 1791, it was expected to enter into force on June 1, 1792, but on April 18, of the same year the Prussian king Frederic William II, who reigned in the years 1786–1797, suspended it without time limit in the framework of his conservative anti-revolutionary and anti-Enlightenment politics. However, after the second partition of Poland-Lithuania the idea of enacting the code was dusted off by Prussia, this time as a means of integrating the large territories appropriated from Poland³².

As a matter of fact, apart from Gdańsk (*Danzig*) and Toruń (*Thorn*) these territories embraced the so-called South Prussia (*Südpreußen*) together with the cities of Poznań (*Posen*) and Gniezno (*Gnesen*) which centuries ago were a cradle

²⁹ T. Giaro, *Alt- und Neuropa...*, (in:) T. Giaro (ed.), *Modernisierung...*, p. 297; S. Godek, *III Statut Litewski w dobie porozbiorowej*, Warszawa 2012, pp. 22–25.

³⁰ J. Lukowski, *The Partitions of Poland 1772, 1793, 1795*, London–New York 1999, pp. 155–158.

³¹ G. Dilcher, *Die janusköpfige Kodifikation. Das preußische Allgemeine Landrecht und die europäische Rechtsgeschichte*, “Zeitschrift für Europäisches Privatrecht” 1994, No. 2, pp. 446–469.

³² P. A. J. van den Berg, *The Politics of European Codification. A History of the Unification of Law in France, Prussia, the Austrian Monarchy and the Netherlands*, Groningen 2007, p. 79.

of the Polish state. The province of South Prussia accounted for more than 57.000 square km, being inhabited by over one million people. In this way, after some insignificant modifications, aimed in principle at satisfying conservative circles, on June 1, 1794 the *Allgemeines Landrecht für die Preussischen Staaten* eventually entered into force³³. The Polish population of the above-mentioned territories was now subject to Prussian law. The personal principle and legal pluralism was over in Prussia, as later in Germany.

8. MODERN FORMS OF TRANSNATIONAL LAW

According to the previously mentioned classical definition of Philip C. Jessup transnational law is “all law which regulates actions or events that transcend national frontiers. Both public and private international law are included, as are other rules which do not wholly fit into such standard categories”³⁴. In this sense, the position of being a global power in international arbitration, as achieved by Switzerland, contributes to make Swiss law a transnational one, not because arbitral proceedings frequently take place in Switzerland, but because Swiss law is there frequently chosen by the foreign parties and, therefore, becomes subject to an extraterritorial application³⁵. However, it is not a case of lawmaking in narrow sense.

In respect of transnational lawmaking one thinks more naturally of customary commercial law which in antiquity and the Middle Ages emerged spontaneously across the state borders. That's why also today transnational law is associated first of all with the law of international commerce. However, transnational effectiveness of legal norms is known in the meantime to many other branches of law: to the transborder regulation of the Internet, of corporate governance, sports law, international arbitration, financial law, environmental law and the procedures of the protection of human rights³⁶. Nothing more than transnational law is also the international criminal justice and the global administrative law, intensely discussed in recent times.

³³ P. Hellwege, *Allgemeines Landrecht für die Preussischen Staaten*, (in:) J. Basedow, K. J. Hopt, R. Zimmermann (eds.), *Handwörterbuch des Europäischen Privatrechts*, Vol. I, Tübingen 2009, p. 52.

³⁴ P. C. Jessup, *Transnational Law...*, p. 2.

³⁵ T. Pfeiffer, *Flucht ins schweizerische Recht?*, (in:) Ch. F. Genzow, B. Grunewald, H. Schulthe-Nölke (eds.), *Zwischen Vertragsfreiheit und Verbraucherschutz. Festschrift für Friedrich Graf von Westphalen zum 70. Geburtstag*, Köln 2010, pp. 555–567.

³⁶ G.-P. Calliess, P. Zumbansen, *Rough Consensus and Running Code...*, pp. 97–100; T. Schultz, *Transnational Legality: Stateless Law and International Arbitration*, Oxford 2014, pp. 151–184.

Taking into account not the branches of transnational law, but the geographic areas of its application, first of all the European Union must be mentioned. Due to its dense legal regulation and practice the European Union became recently a transnational legal space or even a transnational legal entity³⁷. Within this space spontaneous regulations of transnational consumer contracts and of transnational corporate governance spread very quickly. As far as the legal nature of such transnational norms is concerned, we must conclude that they are neither statutes promulgated by nation-states, nor international treaties stipulated between them, even if all three are strictly interwoven with each other.

From the viewpoint of traditional theory of legal sources some of transnational norms belong undoubtedly to the customary law, some to the judge-made law, particularly of the European Court of Justice and the European Court of Human Rights, finally some other – given the decisive role of lawyers in their formation – to the jurists' law of legal experts³⁸. It seems, moreover, that transnational law implies rather a regulatory system giving advice in form of principles and standards rather than a strictly legal system commanding by means of compulsory norms³⁹. In such a heterogeneous landscape of research, further reflection on authority and legitimacy of transnational law will be certainly needed in the next future⁴⁰.

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Summary

The concept of transnational law is by many modern scholars identified exclusively with the global law or world's law of the 21st century. However, in legal history we find much older cases of lawmaking which occurs without the intervention of state agencies or even beyond the state. From this point of view we analyze briefly the ancient Roman *ius civile*, the medieval canon law, the Roman-canon *utrumque ius*, the old-European capitulations and the cases of legal pluralism which could be found within the Russian Empire.

³⁷ G.-P. Calliess, P. Zumbansen, *Rough Consensus and Running Code...*, p. 141.

³⁸ K. Günther, *Rechtspluralismus und universaler Code der Legalität*, (in:) L. Wingert, K. Günther, *Die Öffentlichkeit der Vernunft und die Vernunft der Öffentlichkeit: Festschrift für Jürgen Habermas (suhrkamp taschenbuch wissenschaft)*, Frankfurt am Main 2001, p. 564.

³⁹ B. Arts, D. Kerwer, *Beyond Legalization?*, (in:) Ch. Brüttsch, D. Lehmkuhl (eds.), *Law and Legalization in Transnational Relations*, London–New York 2007, pp. 144–165.

⁴⁰ R. Cotterrell, *Legal Authority in a Transnational World (Autorytet prawa w świecie transnarodowym. Wykład im. Leona Petrażyckiego Wydział Prawa i Administracji UW 22 maja 2014 r.)*, Warszawa 2014, pp. 35–59.

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KEYWORDS

transnational law, *ius civile*, *ius gentium*, canon law, *utrumque ius*, principle of personality, principle of territoriality, capitulations, Russian Empire, Prussian Kingdom

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prawo transnarodowe, *ius civile*, *ius gentium*, prawo kanoniczne, *utrumque ius*, zasada personalności, zasada terytorialności, kapitulacje, Cesarstwo Rosyjskie, Królestwo Prus