

Ludis, lex Sportiva, lex Mercatoria: A comparative analysis of informal legal orders in a globalized world

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Abstract

This article looks at the development and interaction of three types of law: ludis (playful culture), lex sportiva (the sporting law), and lex mercatoria (commercial law). Though each arose to meet particular social and economic purposes – from sociability to sporting control to trade – these legal systems exhibit autonomic regulation, dynamic creation of norms, and arbitration of disputes. Based on historical analysis, theoretical review, and current practices, this study establishes how non-state legal systems have contributed to legal pluralism and still affect the global legal systems. It concludes by identifying the potential and difficulties of combining these systems within the formal state structures in an increasingly interconnected world.

Keywords: Ludis, Lex Sportiva; Lex Mercatoria; Informal Legal Systems; Legal Pluralism; Globalization

1. Introduction

Law is generally associated with the state; however, many important regimes of regulation are not incorporated into the governmental structure. This article discusses three such regimes: ludis, lex sportiva and lex mercatoria. Although they are implemented in different contexts – cultural games, sports, and business – they demonstrate how people can establish and enforce their rules and procedures without the involvement of the state.

The purpose of this study is to

- Examine the historical and theoretical aspects of ludis, the concept of play that has informed human interaction.
- Examine the specificity of lex sportiva as a type of legal system that specializes in sports, with a particular emphasis on the speed of its development and the degree of its autonomy.
- Examine lex mercatoria, a form of flexible transnational commercial law that has developed with globalization.
- Thus, the article compares and contrasts these regimes and discusses their implications for legal pluralism in the contemporary world.

2. The Concept of Ludis: Historical and Theoretical Analysis

2.1. The History of Play in Ancient Societies

The term ludis is derived from the Latin word ludus, which means game or play. Play was also an important part of the life of ancient civilizations. From gladiatorial contests in Rome to games played by the populace in ancient Greece, ludic activities served several purposes: they supported social hierarchies, celebrated religious celebrations, and offered a

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way to negotiate social roles. The first games were rule-based, and the rules were developed through the collective practice, which was a basis for later forms of informal law.

2.2. Theories of the Play

The study of play has been ongoing for a long time, and scholars have agreed on its importance in human culture. In his book *Homo Ludens*, Johan Huizinga stated that play is as natural to man as language or ritual. According to Huizinga, play is enclosed in a 'magic circle' where the normal order of things is to some extent broken and rewritten. This idea of a separate legal and normative space is further developed in later structures such as *lex sportiva* and *lex mercatoria* which have their own set of laws and means of enforcement.

2.3. The origins of informal order and the concept of *ludis*

Playful norms are not just a part of recreational life; they are a training ground for social interaction and solving conflicts. In many ways, the informal rules of the *ludis* encouraged the principles of equity, reciprocity, and voluntary engagement that underpin later forms of self-governance. Thus, the analysis of *ludis* offers important insights into the development of law beyond the state and how people establish and sustain laws through practice.

3. Lex Sportiva: Sport's Legal System

3.1. Evolution and Characteristics

Sporting activity is controlled by *lex sportiva*, which is the set of rules, regulations, and methods of settling disputes in sports. Unlike codified law, *lex sportiva* is less defined, more fluid, and more adaptable. Sports organizations that are often international in their structure have created their own set of rules to address issues such as doping and match fixing. Such frameworks are usually managed by certain organizations, for instance, the Court of Arbitration for Sport (CAS) which understand athletic culture and apply legal principles.

3.2. The institutional structures and the emergence of global standards.

The modern sports governance comprises of international and regional institutions such as FIFA, the International Olympic Committee (IOC) and various professional leagues that prescribe general rules on fair play. These institutions adopt the principles of *lex sportiva* through the development of codes that can address new challenges (for instance, globalization and technological advancement) and enforce accountability without resorting to state institutions. This model of self-governance improves the working of dispute resolution and enhances the credibility of sports as a global activity.

3.3. Challenges and Critiques

Despite its successes, *lex sportiva* comes with several challenges. Lack of accountability and, at times, transparency is an issue that has been raised especially when decision making is said to be authoritarian or biased towards the commercial interests. It is argued that the closed structure of sports governance may lead to regulatory capture where the interests of the elite athletes and powerful clubs override other ethical and legal norms. Nevertheless, the critics of *lex sportiva* argue that the flexibility and contextual knowledge of *lex sportiva* are crucial in dealing with contemporary sports.

4. Lex Mercatoria: Merchant Law in the Global Economy

4.1. Origins and Historical Development

The *lex mercatoria* or the merchant law appeared in the medieval Europe as a set of customary law of traders who needed to have a legal system through which they could transact business across different legal systems. In a world where state authority was not centralized, these customary norms had to be followed in order to create trust, fairness and the easy resolution of disputes. The *lex mercatoria* focused on principles like good faith, reasonableness and the protection of commercial deals which are still significant in the modern international trade law.

4.2. Modern Adaptations and Institutionalization

As trade across borders increased, so did the need for *lex mercatoria* to address the changing world. The development of international arbitration and other forms of dispute resolution has integrated the principles of merchant law into a more general legal system. State law is not codified; instead, *lex mercatoria* is a non-written set of principles that can be

applied to each particular economic situation. Its decisions are quick, final and specific to the matter at hand, which makes it vital in the regulation of business transactions.

4.3. Self-Regulation and Transnational Commerce

The third central idea of the *lex mercatoria* is self-regulation. Merchants, in the absence of a centralized authority, have always been forced to fall back on their own set of rules and practices. This model has been quite resilient and has helped merchants to resolve their disputes through arbitration rather than through the courts. The *lex mercatoria* is a reflection of the more general trend towards legal pluralism in the global economy, in which state law shares rule-making power with many other regulatory regimes.

5. Comparison and Comparison: The Differences and Similarities

Common Principles of Self-Regulation In their essence, both *lex sportiva* and *lex mercatoria* show the potential of self-governance. They are formed by the communities that value flexibility, expert assessment, and the ability to define the rules for themselves. In each case, the rules are not dictatorial; they are developed spontaneously to address the particular needs of the group. This decentralized system of governance is the evidence of the potential of informal legal systems to deal with specific problems better than the traditional state institutions.

5.1. Differences in the Scope and Function.

Despite these similarities, there are still many differences. First, the *lex sportiva* is concerned with the honorable conduct of sports, which include athletic performance, integrity, and business concerns. On the other hand, *lex mercatoria* is practiced in the business world and tackles the problems of contractual relations, trade controversies, and market behaviour. Although both systems are based on arbitration and mediation, there is a clear distinction in the nature of practice in sports law which entails knowledge of doping or game rules as opposed to the commercial knowledge required in trade disputes.

5.2. Informal Norms and the Current State of the Legal Systems.

The comparison of these regimes in the context of legal theory and scholarship reveals one general tendency: the growth of non-state, informal legal systems in the modern world. Sport and business are becoming more international and thus there is a growing need for regulatory systems that can apply across national borders. The interaction between state law and these informal systems pose fundamental questions on the validity of law, accountability and the future of dispute resolution.

6. Legal Pluralism and Global Regulation

The Emergence of a Pluralistic Legal Landscape. The co-existence of different legal systems within the same society is one of the characteristic features of the modern world. The coexistence of state law with *lex sportiva* and *lex mercatoria* shows how different systems of law can coexist, at times in harmony and at other times in conflict. This plastic landscape is the reality of a world in which different social groups create their own laws to meet their needs.

6.1. Advantages and Disadvantages of Pluralism

The main advantage of the pluralist approach is that it promotes the generation of new and relevant solutions. Informal legal systems are often more flexible and more adaptive than state law and thus can easily address new challenges and seize new opportunities. However, the very same flexibility may result in uncertainty and inconsistency especially when informal norms compete with the formal law. To exploit these advantages and overcome these disadvantages is one of the main tasks for policymakers and legal theorists seeking to incorporate these systems into a coherent regulatory system.

6.2. Toward Hybrid Models of Regulation

One possible way to address the best and the worst of the formal and informal legal systems is to develop hybrid models. Such models could integrate the specialized knowledge and the fast dispute resolution mechanisms of *lex sportiva* and *lex mercatoria* with the accountability and legitimacy of state judicial systems. In this way, the policymakers could take the best from each system and come up with a better system to deal with the complex challenges of the global village.

7. International Sports Disputes

This is one of the most explicit examples of the application of *lex sportiva* in practice, especially if we consider the activities of the Court of Arbitration for Sport (CAS). This institution has assumed an important role in this area and has resolved cases that have involved doping, disputes between athletes and their clubs, and other issues. The capacity of the CAS to function effectively and to understand the nature of sports organizations and activities is evidence of the efficiency of a self-governed legal system in sport.

7.1. Global Trade and Merchant Arbitration

In the area of commerce, *lex mercatoria* has been used to develop the practice of arbitration in the modern world. Major business disputes among state and multinational companies are settled through international arbitration institutions that are based on merchant law. These cases show how a set of norms that can be accepted and followed by both parties to a transaction can help reduce the costs of doing business across borders.

7.2. Hybrid Regulatory Models: Some Lessons

Recently, there have been a number of efforts to combine the advantages of informal and formal legal systems. For instance, some sport governing bodies have also introduced state-like measures such as audit, accountability and transparency while retaining the *lex sportiva* style of governance. In the same manner, commercial arbitration practices are now working in conjunction with national courts with an aim of making their decisions both context specific and legally binding. These hybrid models offer important implications for the future of regulatory policy in both domains.

8. Challenges, Critiques, and Future Directions

8.1. Issues of Accountability and Integrity

A major criticism of both the *lex sportiva* and the *lex mercatoria* is that there is a lack of information on how these two concepts are applied. This isolation is useful in the sense that it allows the communities to make adjustments that are hard for the formal system to emulate, but sometimes the decisions made are not very accountable to the public.

8.2. Issues of Flexibility versus Legal Sanction

This paper presents that the flexibility of informal legal systems is a two-edged sword. On the one hand, it helps these systems to respond quickly to new issues. On the other hand, it may lead to legal ambiguity and discrepancies making it difficult to reconcile with the statutory laws of formal systems. Further work and policy making should also aim at providing more direction on how these regimes can be linked to reduce ambiguity while still allowing for flexibility.

8.3. Prospects for Integration

Despite these challenges, the current trend of legal pluralism and hybrid forms of governance suggests that the integration between formal and informal legal systems is both possible and necessary. Improvement in technology, globalization, and cooperation between different countries may lead to the development of new and improved transparent, efficient, and accountable regulatory frameworks that embrace both *lex sportiva* and *lex mercatoria*.

9. Policy Implications and Recommendations

9.1. For Sports Governance

For instance, policymakers and sports managers should recommend the following measures that would increase transparency and accountability in *lex sportiva*: Establishing independent committees to oversee the organizations, establishing standard procedures for reporting, and having regular assessments of the regulations. Such changes would not only increase the public confidence but also would help sports governance to meet international standards.

9.2. For Commercial Arbitration

In the commercial arena, the combination of *lex mercatoria* and formal judicial system could provide the best of both worlds – consistency and validity. This might include setting up partially formal and partially informal arbitration tribunals that would work closely with the national courts to ensure that the decisions are appropriate to the

circumstances and may also be challenged by other institutions. The International Chamber of Commerce and other similar organizations could take the lead in proposing guidelines for such collaboration to be adopted globally.

9.3. Broader Regulatory Reforms

The experience gained from the study of these informal legal systems should be taken and used in other debates on legal changes in the globalized world. Acknowledging the existence of non-state laws and how they can be made to interface with state law produces legal systems that are not only more adaptable, but also more inclusive and efficient. It is therefore recommended that policymakers consult and incorporate findings from cross-disciplinary research and multiple stakeholder engagements in the formulation of laws that address the dynamic global society we live in.

10. Conclusion

Analysis of the concepts of *ludis*, *lex sportiva* and *lex mercatoria* shows that communities can generate viable legal systems based on practice and voluntary compliance rather than state power. Although they are applied to specific spheres of life – play, sports, and business they, at their core, showcase the possibility of non-formal legal systems to address the present issues in the global world.

The article has shown that the development of these regimes is a result of the search for flexibility, adaptability, and expert knowledge. At the same time, the combination of these systems with the formal legal systems is still significant. In the course of globalization, more and more spheres of legal and economic relations are coming under regulation; therefore, the future regulatory frameworks must combine the advantages of informal legal structures and the credibility of state institutions.

In order to promote legal pluralism and hybrid models, scholars and practitioners can help to create a more fair and flexible system of legal rules that not only looks back at the concept of *ludis* but also looks forward to the future of sports, business, and other activities.

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