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## Book Reviews

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*Transnational Legal Ordering and State Change*. By Gregory Shaffer, ed. Cambridge: Cambridge Univ. Press, 2013. 251 pp. \$99.00 hardcover.

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*Transnational Legal Ordering and State Change* is an edited volume that builds upon rapidly expanding conversations among international law and sociolegal scholars about what constitutes transnational law. As the title of the volume suggests, these scholars are focused on the impact of global and transnational legal processes on state domestic legal systems and the challenges presented by legal processes not necessarily contained within or by nation-state jurisdictions. The contributors involved in the volume have been engaged in such conversations for some years through the “Transnational Legal Orders” Collaborative Research Network of the U.S. Law and Society Association, which has a flourishing and expanding global membership.

The aims of the edited volume are impressive, timely, and compelling. The first aim of the volume is to show that “one cannot understand domestic legal change and legal practice without understanding transnational legal ordering” (p. 2). Given the parochial perspective of much American legal scholarship, this aim, while seemingly obvious, should be enthusiastically applauded. Second, the volume seeks to define the concepts of “transnational law, legal process, and legal ordering” (p. 5) and explore through case studies how these concepts play out in real-life settings in five countries across six fields of regulatory activity. This objective includes examining the “source, production and change of these legal norms over time” (p. 10). The overall aim of the volume is to empirically assess the influence of transnational legal norms in terms of impacting state change, and chart how changes in state legal ordering may recursively play back into transnational arenas to form a dynamic and co-constitutive process. What is emphasized throughout is the importance of state systems despite an increasingly globalizing world. As mentioned earlier, these are impressive and lofty goals!

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Shaffer explains in Chapter 1 that transnational law is usually conceived in two ways. For conventional legal scholars, transnational law generally refers to legal norms and processes operating beyond and between states and often involves what can be thought of as international activities. These activities would include bodies of international arbitration and international private law rule-making institutions, as well as a range of civil society and commercial networks, actors, and organizations. In contrast, the concept of transnational law that the sociolegal scholars in this volume adopt is one of legal ordering that “focuses on the transnational production of legal norms and institutional forms in particular fields and their migration across borders, regardless of whether they address transnational activities or purely national ones” (p. 6). As Shaffer notes in his broad definition of transnational legal norms, these norms “can involve both hard and soft law; can be bilateral, regional, or multilateral in nature; can be constructed by states or nonstate actors; and can be directed at states, corporations, or individuals” (p. 7). Moreover, the actors involved in the “export” and “circulation” of these legal norms around the globe involve “government officials, mentions of international secretariats, professionals, business representatives, and civil society activists” (p. 8). Depending on a specific country’s economic, political, and social contexts, these legal norms may over time crystallize into a coherent regulatory system and body of rules, or in contrast, may exist as contingent, fragmentary, and subject to constant change.

Drawing on five case studies of anti-money laundering, bankruptcy, competition, education, intellectual property, health, and municipal water law and policy in primarily developing countries, this volume demonstrates the extent to which transnational legal ordering may influence domestic law and policy as well as the limits of such influences. The contributors—many of them leading sociolegal scholars—utilize both quantitative and qualitative methods to present well-argued and clearly documented glimpses into the changes wrought within certain areas of regulation over the past three decades under neoliberal policies of economic reform. As the five contributors argue in various ways, the impacts of transnational legal norms involve adaptations, accommodations, and resistances to those norms, which, in turn, may evolve into public–private hybrid forms of governance within domestic systems. These emergent fields of regulatory process speak to what Shaffer sets out in Chapter 2 as the “dimensions and determinants of state change.” *Dimensions* include changes in law and legal practices, in the boundaries between a state’s public administration and private commercial laws, in a state’s structures and institutions, in the role of expertise in domestic governance

activities, and in the legal understanding and behaviors of “elites (and potentially) broader publics” (p. 31). *Factors* determining change in any one state include the legitimacy, clarity, and coherence of transnational norms, the power relations between actors “exporting” transnational legal norms and actors within receiving states, and a state’s domestic demands, institutional capacities, internal politics, power configurations, and cultural frames.

Shaffer’s theoretical discussion and schematic modeling in Chapters 1 and 2 are extremely helpful in empirically assessing complex legal transformations. However, the approach in *Transnational Legal Ordering and State Change* does raise in my mind the following concerns. First, despite Shaffer’s claim that law is approached not as a static entity but as a dynamic process, law is still referred to as an “export” that typically moves from economically powerful countries such as the United States to developing nations. Law is not viewed as a localized cultural artifact emerging out of human social relations but rather as an already identifiable commodity that emanates primarily out of industrialized countries and travels to the developing world. Certainly, legal norms can be adapted and resisted as the case studies show, and some of these adaptations, in turn, are filtered back and modify Western legal constructs. But the premise of *Transnational Legal Ordering and State Change* reflects a conceptual bias that draws upon social sciences such as institutional economics and organizational sociology (see table 2.1), and that works within Western logics determining what constitutes the “state” and “legal norms” in the first place. What is lacking in Shaffer’s account is engagement with a growing body of sociolegal literature that draws from history, anthropology, cultural studies, and geography and brings into question established notions of states, markets, and legality (i.e., von Benda-Beckman, Benda-Beckman, & Griffiths 2009; Darian-Smith 2013; Eckert et al. 2012; Santos & Rodriguez-Gavarito 2005). Much of this literature highlights non-Western legal logics, aesthetics, and meanings and grapples with the concept of legal pluralism—a term significant when talking about relations between the global north and global south and notably absent in the volume as a whole (see Tamanaha, Sage, & Woolcock 2012). These humanistic approaches are important precisely because they point to both existing and emerging norms typically not acknowledged in industrialized societies as “legal” or “transnational,” such as indigenous practices relating to communal land management or religious-based financial institutions and exchanges not recognized by Western contract law.

My second concern relates to the first. This is that the volume is primarily engaged in elite actors involved in commercial

enterprise and neoliberal legal reform in recent decades. As the case studies show, it is largely elites who vie for political power as articulated through state institutions and networks. But elites do not represent entire nations, and, as sociolegal scholars are only too aware, the state institutions that elites fight over have never been truly inclusive. So what about factors that do not percolate to the level of state regulation and policy and which are largely absent or marginalized in a worldview dominated by economic rationale and neoliberal ideology? One only has to think of the Arab Spring to appreciate that factors such as religion, ethnicity, and gender that are framed by centuries of imperial history play an enormous part in determining the legitimacy, authority, and coherence of legal activity and so ultimately actors' receptivity within states to transnational legal norms.

*Transnational Legal Ordering and State Change* provides important insights into the receptivity and assessment of transnational legal norms on legal ordering within specific state contexts. Moreover, the volume offers a path forward in empirically assessing legal transformations that up to this point have remained rather abstract and murky in most of the literature on global and transnational law. My hope is that in the future, scholars involved in social science-based transnational legal inquiries—of which this volume is exemplary—will engage with related humanistic conversations evolving around the concept of legal pluralism to forge a truly interdisciplinary conversation about the future of our complex and intertwined sociolegal worlds.

## References

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