

Cambridge University Press

978-1-107-02611-7 - Transnational Legal Ordering and State Change

Edited by Gregory Shaffer

Frontmatter

[More information](#)**TRANSNATIONAL LEGAL ORDERING AND STATE CHANGE**

Law can no longer be viewed through a purely national lens. Transnational legal ordering affects the boundary of the state and the market, the allocation of power among national institutions, the role of professions and their expertise, and associational patterns that provide new normative frames. This book breaks new ground for understanding the impacts of transnational legal ordering within nation-states in today's globalized world. The book addresses the different dimensions of state change at stake and the factors that determine these impacts. It brings together leading scholars from sociology and law who study the effects of transnational legal ordering within different countries. Their case studies illustrate how transnational legal ordering interacts with national law and institutions in different regulatory areas, and cover anti-money laundering, bankruptcy, competition, education, intellectual property, health, and municipal water law and policy in different countries. The book explains the extent and limits of transnational legal ordering in today's world.

Gregory Shaffer is the Melvin C. Steen Professor of Law at the University of Minnesota Law School and Affiliated Professor in the Department of Political Science. His other publications include *Dispute Settlement at the WTO: The Developing Country Experience* (with Ricardo Meléndez-Ortiz, 2010); *When Cooperation Fails: The International Law and Politics of Genetically Modified Foods* (with Mark Pollack, 2009); *Defending Interests: Public-Private Partnerships in WTO Litigation* (2003); *Transatlantic Governance in the Global Economy* (with Mark Pollack, 2001); and more than seventy articles and book chapters.

Cambridge University Press

978-1-107-02611-7 - Transnational Legal Ordering and State Change

Edited by Gregory Shaffer

Frontmatter

[More information](#)

---

Cambridge University Press

978-1-107-02611-7 - Transnational Legal Ordering and State Change

Edited by Gregory Shaffer

Frontmatter

[More information](#)

## CAMBRIDGE STUDIES IN LAW AND SOCIETY

*Cambridge Studies in Law and Society* aims to publish the best scholarly work on legal discourse and practice in its social and institutional contexts, combining theoretical insights and empirical research.

The fields that it covers are studies of law in action; the sociology of law; the anthropology of law; cultural studies of law, including the role of legal discourses in social formations; law and economics; law and politics; and studies of governance. The books consider all forms of legal discourse across societies and are not limited to lawyers' discourses alone.

The series editors come from a range of disciplines: academic law, sociolegal studies, sociology, and anthropology. All have been actively involved in teaching and writing about law in context.

### **Series Editors**

Chris Arup

*Monash University, Victoria*

Martin Chanock

*La Trobe University, Melbourne*

Sally Engle Merry

*New York University*

Susan Silbey

*Massachusetts Institute of Technology*

### **Books in the Series**

*Diseases of the Will* Mariana Valverde

*The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State* Richard A. Wilson

*Modernism and the Grounds of Law* Peter Fitzpatrick

*Unemployment and Government: Genealogies of the Social* William Walters

*Autonomy and Ethnicity: Negotiating Competing Claims in Multi-Ethnic States* Yash Ghai

*Constituting Democracy: Law, Globalism and South Africa's Political Reconstruction* Heinz Klug

*The Ritual of Rights in Japan: Law, Society, and Health Policy* Eric A. Feldman

*The Invention of the Passport: Surveillance, Citizenship and the State* John Torpey

*Governing Morals: A Social History of Moral Regulation* Alan Hunt

(continued after Index)

Cambridge University Press

978-1-107-02611-7 - Transnational Legal Ordering and State Change

Edited by Gregory Shaffer

Frontmatter

[More information](#)

---

Cambridge University Press

978-1-107-02611-7 - Transnational Legal Ordering and State Change

Edited by Gregory Shaffer

Frontmatter

[More information](#)

# Transnational Legal Ordering and State Change

Edited by

**GREGORY SHAFFER**

University of Minnesota Law School



**CAMBRIDGE**  
UNIVERSITY PRESS

Cambridge University Press

978-1-107-02611-7 - Transnational Legal Ordering and State Change

Edited by Gregory Shaffer

Frontmatter

[More information](#)

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town,  
Singapore, São Paulo, Delhi, Mexico City

Cambridge University Press

32 Avenue of the Americas, New York, NY 10013-2473, USA

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781107026117](http://www.cambridge.org/9781107026117)

© Cambridge University Press 2013

This publication is in copyright. Subject to statutory exception  
and to the provisions of relevant collective licensing agreements,  
no reproduction of any part may take place without the written  
permission of Cambridge University Press.

First published 2013

Printed in the United States of America

*A catalog record for this publication is available from the British Library.*

*Library of Congress Cataloging in Publication Data*

Transnational legal ordering and state change / Gregory C. Shaffer.

p. cm. – (Cambridge Studies in Law and Society)

ISBN 978-1-107-02611-7

1. Law and economics development – Congresses. 2. State, The – Congresses. 3. Comparative law – Congresses. 4. Law and Globalization – Congresses. I. Shaffer, Gregory C., 1958–

K3820.A6173 2013

341.26–dc23 2012029080

ISBN 978-1-107-02611-7 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or  
third-party Internet Web sites referred to in this publication and does not guarantee that any content on  
such Web sites is, or will remain, accurate or appropriate.

Cambridge University Press

978-1-107-02611-7 - Transnational Legal Ordering and State Change

Edited by Gregory Shaffer

Frontmatter

[More information](#)

---

*I dedicate this book to my wife Michele Goodwin, and our children  
Brooks and Sage, whose love and sustenance ease life and make it  
joyful and rewarding.*

Cambridge University Press

978-1-107-02611-7 - Transnational Legal Ordering and State Change

Edited by Gregory Shaffer

Frontmatter

[More information](#)

---



Contents

<i>Notes on the Contributors</i>	<i>page</i> xi
<i>Acknowledgments</i>	xv
<b>1 Transnational Legal Ordering and State Change</b> Gregory Shaffer	<b>1</b>
<b>2 The Dimensions and Determinants of State Change</b> Gregory Shaffer	<b>23</b>
<b>3 Similar in Their Differences: Transnational Legal Processes Addressing Money Laundering in Brazil and Argentina</b> Maíra Rocha Machado	<b>50</b>
<b>4 Architects of the State: International Organizations and the Reconstruction of States in East Asia</b> Terence C. Halliday	<b>89</b>
<b>5 Neoliberalism, Transnational Education Norms, and Education Spending in the Developing World, 1983–2004</b> Minzee Kim and Elizabeth Heger Boyle	<b>121</b>
<b>6 Access to Medicines and the Transformation of the South African State</b> Heinz Klug	<b>148</b>
<b>7 The Limits of Transnational Transformations of the State: Comparative Regulatory Regimes in the Delivery of Urban Water Services</b> Bronwen Morgan	<b>180</b>

Cambridge University Press  
978-1-107-02611-7 - Transnational Legal Ordering and State Change  
Edited by Gregory Shaffer  
Frontmatter  
[More information](#)

x	<i>Contents</i>	
8	<b>Conclusion: The Study of Transnational Legal Ordering</b> Gregory Shaffer	212
	<i>References</i>	217
	<i>Index</i>	241

Cambridge University Press

978-1-107-02611-7 - Transnational Legal Ordering and State Change

Edited by Gregory Shaffer

Frontmatter

[More information](#)

## Notes on the Contributors

**Elizabeth Heger Boyle**, Professor of Sociology and Law at the University of Minnesota, studies the role of international laws and policies in children's survival and development around the world. She has written extensively on the impetus for, and impact of, laws related to female genital cutting. Her current research is a cross-national study of abortion policies and teen birth rates. Professor Boyle's research has been supported by the National Science Foundation and the National Institutes of Health and appears in many outlets, including *Law & Society Review*, *Law & Social Inquiry*, and *Social Problems*. Professor Boyle received a J.D. from the University of Iowa in 1987, practiced law for several years, and then received her Ph.D. in sociology from Stanford University in 1996.

**Terence C. Halliday** is Research Professor, American Bar Foundation; Co-Director, Center on Law and Globalization; Adjunct Professor of Sociology, Northwestern University; and Adjunct Professor, School of Regulation, Justice and Diplomacy, Australian National University. Halliday directs several research programs on law and globalization. The most recent volume in his long-standing research program on the politics of lawyers, *Fates of Political Liberalism in the British Post-Colony: The Politics of the Legal Complex* (Cambridge University Press 2012), includes studies of lawyers' struggles for basic legal rights in South Asia, South East Asia, and Africa. A book-in-progress with Susan Block-Lieb, *Global Legislators*, analyzes global lawmaking for international trade. A collaboration with Sida Liu, University of Wisconsin, is funded by the National Science Foundation and involves wide-ranging fieldwork and media analysis in China on criminal defense lawyers and their struggles to protect basic legal freedoms. Halliday and Gregory Shaffer currently are editing a volume on transnational legal orders.

**Minzee Kim** is a lecturer in the School of Social Science and a research Fellow in the Institute for Social Science Research at the University School Queensland. Her scholarship lies at the intersection of globalization, law, and women and children.

Cambridge University Press

978-1-107-02611-7 - Transnational Legal Ordering and State Change

Edited by Gregory Shaffer

Frontmatter

[More information](#)

She is interested in explaining cross-national variations in, and outcomes of, state policies for women and children. Her research appears in *Law & Society Review*, *Law and Social Inquiry*, *Journal of Marriage and Family*, *New Directions for Research on Child and Adolescent Development*, and others. Her dissertation research integrates global and state institutional factors to explain not only levels of women's employment worldwide but also the quality of that employment. Her current research includes an examination of adolescent fertility and abortion in developing countries in relation to the emergence of adolescent reproductive health as a global child rights and women's rights issue.

**Heinz Klug** is Evjue-Bascom Professor of Law, Associate Dean for Research and Faculty Development, and Director of the Global Legal Studies Center at the University of Wisconsin Law School. He is also an Honorary Senior Research Associate in the School of Law at the University of the Witwatersrand, Johannesburg, South Africa. Growing up in Durban, South Africa, he participated in the antiapartheid struggle, spent 11 years in exile, and returned to South Africa in 1990 as a member of the ANC Land Commission and researcher for Zola Skweyiya, chairperson of the ANC Constitutional Committee. Professor Klug has published numerous articles and books, including *Constituting Democracy* (Cambridge University Press 2000) and *The Constitution of South Africa: A Contextual Analysis* (Hart 2010).

**Maíra Rocha Machado** is Associate Professor of Law at Getulio Vargas Foundation Law School, Brazil. She teaches courses on Criminal Law, Criminology, and Sociology of Law. She graduated in Law from the University of São Paulo (1997) and obtained her Ph.D. in philosophy and theory of law at the University of São Paulo (2003). Her current research focuses on sentencing, corruption, and transnational organizations. She is the author of *The Internationalization of Criminal Law* (Editora 34 2004) and co-editor of *Money Laundering and Asset Recovery: Brazil, Nigeria, the United Kingdom and Switzerland* (Editora Quartier Latin 2006); *New Directions in the Governance of Justice and Security* (Ministério da Justiça 2006) (all in Portuguese); and *La rationalité pénale moderne: réflexions conceptuelles et explorations empiriques* (Presses de l'Université d'Ottawa 2012).

**Bronwen Morgan** is Professor of Socio-legal Studies at the University of Bristol, United Kingdom, and take up a Future Fellowship at the University of New South Wales, Australia, in October 2012. Her research focuses on global governance; regulation, especially in relation to sustainable development; and the intersection between regulation and socioeconomic human rights. Her most recent book is *Water on Tap: Rights and Regulation in the Transnational Governance of Urban Water Services* (Cambridge University Press 2011), which explores the patterns of social protest generated by private sector participation in urban water services in six different national contexts. Earlier publications include *Social Citizenship in the Shadow of Competition* (Ashgate 2003), *An Introduction to Law and Regulation* (with

Cambridge University Press

978-1-107-02611-7 - Transnational Legal Ordering and State Change

Edited by Gregory Shaffer

Frontmatter

[More information](#)

*Notes on the Contributors*

xiii

Karen Yeung, Cambridge 2007), and editorship of *The Intersection Between Rights and Regulation: New Directions in Socio-legal Scholarship* (Ashgate 2007).

**Gregory Shaffer** is Melvin C. Steen Professor of Law at the University of Minnesota Law School and Affiliated Professor of the Department of Political Science at the University of Minnesota. Professor Shaffer's work applies a socio-legal approach to international and transnational law. A recipient of two National Science Foundation awards, he is the author of more than seventy articles and book chapters, as well as the books *When Cooperation Fails: The International Law and Politics of Genetically Modified Foods* (Oxford University Press 2009) and *Defending Interests: Public-Private Partnerships in WTO Litigation* (Brookings Institution Press 2003); he edited the volumes *Dispute Settlement at the WTO: The Developing Country Experience* (Cambridge University Press 2010) and *Transatlantic Governance in the Global Economy* (Rowman & Littlefield 2001).

Cambridge University Press

978-1-107-02611-7 - Transnational Legal Ordering and State Change

Edited by Gregory Shaffer

Frontmatter

[More information](#)

---

Cambridge University Press

978-1-107-02611-7 - Transnational Legal Ordering and State Change

Edited by Gregory Shaffer

Frontmatter

[More information](#)

## Acknowledgments

This book was developed through an iterative process. Each of the contributors participated in the Collaborative Research Network of the Law and Society Association entitled Transnational Legal Orders, and they presented earlier drafts of the papers at the annual meetings of the Law and Society Association in Baltimore, Berlin, Montreal, Denver, Chicago, San Francisco, and Honolulu from 2006 to 2012. Terry Halliday, Heinz Klug, and Minzee Kim and Liz Boyle presented revised versions of their papers at a seminar I organized at the University of Minnesota Law School with the same title. Earlier versions of five of the papers appeared as a special symposium issue of *Law and Social Inquiry*. Our thanks go to that journal's fabulous editor Laura Beth Nielsen, its editorial board, and its anonymous reviewers. The manuscript was then revised, extended, and submitted to John Berger at Cambridge University Press and has been produced under his wonderful care. We are extremely grateful to him for publishing the book as part of the Cambridge Studies in Law and Society series. We thank their anonymous reviewers.

Many people commented on the analytic framework set forth in Chapters 1 and 2 of the book, and I am personally extremely grateful to them. They include Bobby Ahdieh; William Alford; Karen Alter; Elizabeth Boyle; Jeffrey Dunoff; Bryant Garth; Tom Ginsburg; Terence Halliday; Minzee Kim; Heinz Klug; Bronwen Morgan; Leigh Payne; Judith Resnik; Brian Tamanaha; Lucie White; five anonymous reviewers; the participants at workshops at Harvard Law School, the Sandra Day O'Connor College of Law at Arizona State University, the University of Minnesota Law School, and the University of Wisconsin Law School; and panels at meetings of the American Political Science Association, the American Society of International Law, the Law and Society Association, the Society for the Advancement of Socio-Economics, and the Society of International Economic Law. I also thank the students of my seminar on Transnational Legal Orders from whom I learned much. All errors, of course, remain mine.