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978-1-107-06992-3 - Transnational Legal Orders
Edited by Terence C. Halliday and Gregory Shaffer
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TRANSNATIONAL LEGAL ORDERS

This book offers a pathbreaking, empirically grounded theory that reframes the study of law and society. It shifts research from a predominantly national context to one that places transnational, national, and local lawmaking and practice within a single, coherent, analytic frame.

By presenting and elaborating a new concept, *transnational legal orders*, Halliday and Shaffer present an original approach to legal orders that affect fundamental economic and social behaviors. The contributors generate arrays of hypotheses about how transnational legal orders rise and fall, where they compete and cooperate, and how they settle and unsettle.

This original theory is applied and developed by distinguished scholars from North America, Europe, and Asia in business law (taxation, corporate bankruptcy, secured transactions, transport of goods by sea), regulatory law (monetary and trade, finance, food safety, climate change), and human rights law (civil and political rights, rule of law, right to health/access to medicines, human trafficking, criminal accountability of political leaders).

Terence C. Halliday is a codirector of the Center on Law and Globalization and a research professor at the American Bar Foundation; Adjunct Professor of Sociology at Northwestern University; and Adjunct Professor, Regulatory Institutions Network at the School of Asia and the Pacific, Australian National University. He is the author or editor of numerous books and articles on professions, globalization, law, markets, and politics. He is the winner of multiple prizes from the American Sociological Association for his 2009 book *Bankrupt: Global Lawmaking and Systemic Financial Crisis* (with Bruce Carruthers). Halliday is the 2013 recipient of the Podgorecki Prize for distinguished scholarship from the International Sociological Association's Research Committee on the Sociology of Law.

Gregory Shaffer is Chancellor's Professor of Law at the University of California, Irvine, School of Law. He is vice president of the American Society of International Law and serves as its representative to the American Council of Learned Societies. He directs the Law and Society Association's Collaborative Research Network on Transnational and Global Legal Ordering and is chair of the Association of American Law Schools Section on Economic Globalization and Governance. His publications include *Transnational Legal Ordering and State Change* (2013), *Dispute Settlement at the WTO* (2011), *Regulating Risk in the Global Economy* (2008), *Defending Interests: Public-Private Partnerships in WTO Litigation* (2003), and more than eighty articles and book chapters.

Advance praise for *Transnational Legal Orders*

“This thoughtful volume helps explode the traditional matrix that has too long artificially divided law and lawmaking into rigid domestic and international, public and private cells. Having previously explored how transnational legal ordering changes states, two innovative social scientists have enlisted an impressive stable of interdisciplinary investigators to track how transnational legal orders evolve dynamically to constrain and facilitate social conduct in the business, regulatory, and human rights spheres. Their rich selection of case studies illuminates the growing array of techniques that transnational actors now deploy to develop legal norms and foster their percolation and penetration into the architecture of complex transnational legal orders.”

– Harold Hongju Koh, Sterling Professor of International Law,
Yale Law School, and former Legal Adviser, U.S. Department of State

“This book provides an integrative frame to the study of the rise, the change, and the practice of transnational legal orders. It is theoretically innovative, interdisciplinary, and enlightening. In addition, a set of rich and rigorous case studies uses this frame in a most productive way. The outcome of this effort written from a legal perspective is something that the IR study of global governance has been missing: a major step toward an integrated theory.”

– Michael Zürn, Director at the WZB (Berlin Social Science Center)
and Professor of International Relations at the Free University Berlin

“This is a theoretical landmark of socio-legal scholarship. The empirical chapters make a persuasive case that transnational legal orders can be a more serviceable framework today than national law or global law. In a book that is a delight to read, great scholars present a clear exposition of how transnational legal orders are recursively created as they transform other local, national, and transnational orders.”

– John Braithwaite, Distinguished Professor and Founder of RegNet
(the Regulatory Institutions Network), Australian National University

“This is a milestone contribution. Shaffer and Halliday and their authors develop a powerful new framework of inquiry that brings out the best in theoretical and empirical global governance research: problem-driven with cutting-edge scholarly analysis regarding law in a global context; the changing and evolving roles of norm-creating actors, institutions, and processes; and the political implications of this emerging sphere.”

– Peer Zumbansen, Professor of Transnational Law and Director,
Dickson Poon Transnational Law Institute, King’s College London

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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.

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

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Acknowledgments

It is a rare and therefore all the more rewarding experience to develop a bold idea in thoughtful engagement with specialists in sharply different issues of international consequence, but who may never talk to each other, or talk across disciplinary barriers of theory and method. Such was the pleasure of our collaboration with international lawyers, political scientists, sociologists, anthropologists, and law and language experts in this project on a hitherto invisible phenomenon – transnational legal orders (TLOs).

A test of the verisimilitude of a new concept is to ask experts to examine, through the lens of this theoretical tool, global problems of great policy consequence, yet problems that are seldom held in juxtaposition. If the concept has the power to open new vistas, raise fresh questions, explain old problems, identify overlooked actors, reveal hidden dynamics, and open up research agendas for specialists who are already authorities on international crime or financial law or business regulation, then the concept has a musculature that inspires confidence in its wider application.

By the same token, if the nuanced understanding of specialists tests the concept and theory of TLOs, forcing its progenitors to adapt and refine it, to qualify its application or recognize its potential distortions, then the collaboration becomes a theory-building moment that is truly emergent – more than any of its contributors might have imagined alone.

For these reasons, we are most grateful to the superb contributions in writing and other exchanges of Susan Block-Lieb, Dan Bodansky, Tim Büthe, Philipp Genschel, Larry Helfer, Eric Helleiner, Paulette Lloyd, Rod Macdonald, Sally Merry, Leigh Payne, Jothie Rajah, Thomas Rixen, Beth Simmons, and Michael Waibel. We have repeatedly gone back to them, and they have repeatedly responded with insight, grace, and patience.

We have benefited from many commentators and interlocutors at conferences such as the Law and Society Association annual meetings in Denver, San Francisco, Honolulu, and Boston; the American Society of International Law mid-year

conference at UCLA; the Midwest Colloquium on International Law/International Organizations of the Center on Law and Globalization; and workshop presentations at Australia National University, Berkeley, Kings College London, Irvine, the Max Planck Institute for Studies in Society, Minnesota, Stanford, Utah, and Wisconsin.

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It is with deep admiration that we acknowledge the remarkable life and scholarship of Rod Macdonald, a distinguished Canadian scholar and legal statesman, who died as this volume went to press. Rod told us that his chapter in our book would be the last of what we know has been a distinguished line of publications reaching back decades and exerting influence across law and interdisciplinary studies throughout the world. We are glad and humbled to memorialize his remarkable life and work in this small way.

If this volume spurs an imaginative way to understand meaningfully a form of social order hitherto barely recognized, then the complementary contributions of all those named here will have generated a new scholarly path with hitherto scarcely imagined theoretical, empirical, and policy consequences.