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0521607353 - Law and Globalization from Below: Towards a Cosmopolitan Legality

Edited by Boaventura de Sousa Santos and Cesar A. Rodriguez-Garavito

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LAW AND GLOBALIZATION FROM BELOW

This book is an unprecedented attempt to analyze the role of the law in the global movement for social justice. Case studies in the book are written by leading scholars from both the global South and the global North, and combine empirical research on the ground with innovative sociolegal theory to shed new light on a wide array of topics. Among the issues examined are the role of law and politics in the World Social Forum; the struggle of the anti-sweatshop movement for the protection of international labour rights; and the challenge to neoliberal globalization and liberal human rights raised by grass-roots movements in India and indigenous peoples around the world. These and other cases, the editors argue, signal the emergence of a subaltern cosmopolitan law and politics that calls for new social and legal theories capable of capturing the potential and tensions of counter-hegemonic globalization.

BOAVENTURA DE SOUSA SANTOS is Professor of Sociology at the University of Coimbra, Portugal; he is also a Distinguished Legal Scholar at the University of Wisconsin-Madison Law School.

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Frontmatter

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Cambridge University Press

0521607353 - Law and Globalization from Below: Towards a Cosmopolitan Legality

Edited by Boaventura de Sousa Santos and Cesar A. Rodriguez-Garavito

Frontmatter

[More information](#)

Contents

<i>Notes on the contributors</i>	<i>page xi</i>
1 Law, politics, and the subaltern in counter-hegemonic globalization	1
<i>Boaventura de Sousa Santos and César A. Rodríguez-Garavito</i>	
PART ONE LAW AND THE CONSTRUCTION OF A GLOBAL ECONOMY OF SOLIDARITY	27
2 Beyond neoliberal governance: the World Social Forum as subaltern cosmopolitan politics and legality	29
<i>Boaventura de Sousa Santos</i>	
3 Nike's law: the anti-sweatshop movement, transnational corporations, and the struggle over international labor rights in the Americas	64
<i>César A. Rodríguez-Garavito</i>	
4 Corporate social responsibility: a case of hegemony and counter-hegemony	92
<i>Ronen Shamir</i>	
5 Campaigning for life: building a new transnational solidarity in the face of HIV/AIDS and TRIPS	118
<i>Heinz Klug</i>	
6 Negotiating informality within formality: land and housing in the Texas colonias	140
<i>Jane E. Larson</i>	
7 Local contact points at global divides: labor rights and immigrant rights as sites for cosmopolitan legality	158
<i>Fran Ansley</i>	

Cambridge University Press

0521607353 - Law and Globalization from Below: Towards a Cosmopolitan Legality

Edited by Boaventura de Sousa Santos and Cesar A. Rodriguez-Garavito

Frontmatter

[More information](#)

CONTENTS

PART TWO	TRANSNATIONAL SOCIAL MOVEMENTS AND THE RECONSTRUCTION OF HUMAN RIGHTS	181
8	Limits of law in counter-hegemonic globalization: the Indian Supreme Court and the Narmada Valley struggle <i>Balakrishnan Rajagopal</i>	183
9	The Movement of the Landless (MST), juridical field, and legal change in Brazil <i>Peter P. Houtzager</i>	218
10	Indigenous rights, transnational activism, and legal mobilization: the struggle of the U'wa people in Colombia <i>César A. Rodríguez-Garavito and Luis Carlos Arenas</i>	241
11	Defensive and oppositional counter-hegemonic uses of international law: from the International Criminal Court to the common heritage of humankind <i>José Manuel Pureza</i>	267
PART THREE	LAW AND PARTICIPATORY DEMOCRACY: BETWEEN THE LOCAL AND THE GLOBAL	281
12	Political and legal struggles over resources and democracy: experiences with gender budgeting in Tanzania <i>Mary Rusimbi and Marjorie Mbilinyi</i>	283
13	Two democracies, two legalities: participatory budgeting in Porto Alegre, Brazil <i>Boaventura de Sousa Santos</i>	310
14	Life, life world, and life chances: vulnerability and survival in Indian constitutional law <i>Shiv Visvanathan and Chandrika Parmar</i>	339
15	Bottom-up environmental law and democracy in the risk society: Portuguese experiences in the European context <i>João Arriscado Nunes, Marisa Matias, and Susana Costa</i>	363
	<i>Index</i>	384

Cambridge University Press

0521607353 - Law and Globalization from Below: Towards a Cosmopolitan Legality

Edited by Boaventura de Sousa Santos and Cesar A. Rodriguez-Garavito

Frontmatter

[More information](#)

Notes on the contributors

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0521607353 - Law and Globalization from Below: Towards a Cosmopolitan Legality

Edited by Boaventura de Sousa Santos and Cesar A. Rodriguez-Garavito

Frontmatter

[More information](#)

NOTES ON THE CONTRIBUTORS

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Cambridge University Press

0521607353 - Law and Globalization from Below: Towards a Cosmopolitan Legality

Edited by Boaventura de Sousa Santos and Cesar A. Rodriguez-Garavito

Frontmatter

[More information](#)

NOTES ON THE CONTRIBUTORS

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0521607353 - Law and Globalization from Below: Towards a Cosmopolitan Legality

Edited by Boaventura de Sousa Santos and Cesar A. Rodriguez-Garavito

Frontmatter

[More information](#)

NOTES ON THE CONTRIBUTORS

International Law from Below: Development, Social Movements, and Third World Resistance (Cambridge University Press, 2003).

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Frontmatter

[More information](#)

NOTES ON THE CONTRIBUTORS

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