



Law and Globalization from Below

Towards a Cosmopolitan Legality

Edited by BOAVENTURA DE SOUSA SANTOS and
CÉSAR A. RODRÍGUEZ-GARAVITO

CAMBRIDGE STUDIES IN LAW AND SOCIETY

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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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CHAPTER 1

LAW, POLITICS, AND THE SUBALTERN IN COUNTER-HEGEMONIC GLOBALIZATION

Boaventura de Sousa Santos and César A. Rodríguez-Garavito

1.1 INTRODUCTION

This book arose from our puzzlement at the paradoxical state of socio-legal knowledge on globalization. The beginning of the new millennium has witnessed a groundswell of proposals for the transformation or replacement of the national and international legal institutions underpinning hegemonic, neoliberal globalization. Put forth by variegated counter-hegemonic movements and organizations and articulated through transnational networks, these proposals challenge our sociological and legal imagination and belie the fatalistic ideology that “there is no alternative” to neoliberal institutions.

The initiatives are as diverse as the organizations and networks advocating them, as the case studies in this book lay bare. Impoverished women in Tanzania as well as marginalized communities and progressive parties in Brazil mobilize to change and democratize the national and international regulatory frameworks that effectively exclude them from key political arenas such as the process of allocating public budgets (see Rusimbi and Mbilinyi’s and Santos’ chapters on participatory budgeting). NGOs, unions, consumers, workers, and other actors in the global North and South organize to challenge the market-friendly regulation of labor conditions, corporate accountability, intellectual property rights, and the environment which fuels the spread of sweatshops in the Americas, the African AIDS pandemic, and environmental degradation in Europe (see Rodríguez-Garavito’s, Shamir’s, Klug’s, and Arriscado, Matias, and Costa’s chapters).

Progressive activist-researchers, people of faith, and members of marginalized communities in the US – the “inner Third World” of laid-off industrial workers, migrants, and informal laborers – come together to collectively conceive cosmopolitan identities and legal rules in opposition to the exclusionary ideologies and laws of immigration (see Ansley’s and Larson’s chapters). Social movements involving some of the most marginalized classes in the global South – landless peasants, subsistence farmers, and indigenous peoples – strategically mobilize national courts and transnational advocacy networks (TANs) to assert their rights to the land, their culture, and the environment (see Houtzager’s, Rajagopal’s, Visvanathan and Parmar’s, and Rodríguez-Garavito and Arenas’ chapters). Articulated through now well-established regional and global mechanisms such as the World Social Forum (see Santos’ chapter), these and myriad other initiatives have shown not only that “another world is possible,” but have spurred an unprecedented effervescence of debate and experimentation in bottom-up legal reform and new international legal regimes (see Pureza’s chapter).

Against the background of such fervent experimentation and institutional creativity at the grassroots level, the paradox lies in that theories and empirical studies on law and globalization have multiplied apace while missing almost entirely this most intellectually challenging and politically compelling aspect of globalization. Indeed, the existing literature draws on a rather conventional account of globalization and global legal transformations as top-down processes of diffusion of economic and legal models from the global North to the global South. Thus, the literature overwhelmingly focuses on the globalization of legal fields involving the most visible, hegemonic actors (whose visibility is thereby further enhanced) such as transnational corporations (TNCs) and Northern states. The result is a wide array of studies on such topics as the global spread of corporation-made *lex mercatoria* (Dezalay and Garth 1996; McBarnett 2002; Teubner 1997), the expansion of the interstate human rights regime and international law at large (Brysk 2002; Falk 1998; Falk, Ruiz, and Walker 2002; Likosky 2002), the exacerbation of legal pluralism brought about by the globalization of production and new communication technologies (Snyder 2002), and the export and import of rule of law and judicial reform programs (Carothers 1998; Dezalay and Garth 2002a; Rodríguez-Garavito 2001; Santos 2002).

Therefore, law and society studies have largely failed to register the growing grassroots contestation of the spread of neoliberal institutions

and the formulation of alternative legal frameworks by TANs and the populations most harmed by hegemonic globalization. Thus, despite a strong tradition of studies on the use of law by domestic social movements (Handler 1978; McCann 1994; Scheingold 1974) and a growing literature on transnational social movements (Evans 2000; Keck and Sikkink 1998; Tarrow 2001), the role of law in counter-hegemonic globalization and the challenges that the latter poses to legal theory and practice have yet to be tackled.¹

Aware that the diagnosis of the insufficiencies of this approach was shared by numerous social scientists and legal scholars based in or deeply involved with the South (either the global South or the “inner South” in the core countries), who have themselves been participants in the global justice movement, in 2000 we decided to launch a collaborative research network (CRN) on law and counter-hegemonic globalization. The CRN was meant to serve as a meeting and discussion space for scholars and scholars/activists from around the world engaged in critical sociolegal research and legal advocacy across borders. Emphasizing the participation of researchers and activists from the global South, it brought together a core group of participants (including several of the contributors to this volume) in meetings in Miami (2000), Budapest (2001), and Oxford (2001).² The group rapidly expanded as we took the project to the sites of our own work in Latin America, Africa, Europe, and the US. It thus became a broad, loose circle that partially overlapped with other networks of sociolegal research and transnational advocacy in which the CRN members were involved.

The effort to bridge the divides between South and North and between academic work and political engagement made the process of producing this book an exceptionally challenging and stimulating transnational endeavor. Further conversations and debates among contributors to this volume took place in such venues as the World Social Forum in Porto Alegre (2003, 2005) and Mumbai (2004), the Latin American Conference on Justice and Society organized by the Latin American Institute for Alternative Legal Services (ILSA) in Bogotá (2003), the International Conference on Law and Justice at the University of Coimbra (2003), and the Conference on Global Democracy

¹ Some exceptions that confirm the rule are studies on law and “globalization from below” such as Falk (1998), Rajagopal (2003), and Santos (1995, 2002).

² The Law and Society Association sponsored the Miami and Budapest meetings. The Oxford meeting took place by invitation from the Centre for Socio-Legal Studies. We are grateful to both for financial and logistical support that made the take-off of the CRN possible.