



CAMBRIDGE STUDIES IN LAW AND SOCIETY

Law Against the State

Ethnographic Forays into Law's Transformations

EDITED BY JULIA ECKERT,
BRIAN DONAHOE, CHRISTIAN STRÜMPELL
AND ZERRIN ÖZLEM BİNİR

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LAW AGAINST THE STATE

This collection of rich, empirically grounded case studies investigates the conditions and consequences of 'juridification' – the use of law by ordinary individuals as a form of protest against 'the state'. Starting from the actual practices of claimants, these case studies address the translation and interpretation of legal norms into local concepts, actions and practices in a way that highlights the social and cultural dynamism and multivocality of communities in their interaction with the law and legal norms. The contributors to this volume challenge the image of homogeneous and primordially norm-bound cultures that has been (unintentionally) perpetuated by some of the more prevalent treatments of law and culture. This volume highlights the heterogeneous geography of law and the ways boundaries between different legal bodies are transcended in struggles for rights. Contributions include case studies from South Africa, Malawi, Sierra Leone, Turkey, India, Papua New Guinea, Suriname, the Marshall Islands and Russia.

JULIA ECKERT is Professor of Social Anthropology at the University of Bern and head of the research group 'Law against the State' at the Max Planck Institute for Social Anthropology, Halle/Saale, Germany. Her research interests are in legal anthropology, the anthropology of the modern state, social movements, the anthropology of crime and punishment, and changing notions of responsibility and justice.

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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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Edited by Julia Eckert, Brian Donahoe, Christian Strümpell and Zerrin Özlem Biner

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INTRODUCTION: LAW'S TRAVELS AND TRANSFORMATIONS

Julia Eckert, Zerrin Özlem Biner, Brian Donahoe and Christian Strümpell

INTRODUCTION

The contributors to this volume start from the premise that in the use of law, law transforms those who use it, their understanding of the world, of their conflicts and their normative orientations – in other words, their political subjectivities. At the same time, the essays trace the ways that law itself is transformed in iterative processes. These transformations are historically contingent on the dialectic between the transformations of social relations and subjectivities that law can effect, on the one hand, and the transformations in the meaning of laws produced by the interpretations of those who mobilise law for their particular social, political or economic struggles, on the other hand. This dialectic reflects the two sides of the sociality of law: first, law's formative impact on social perceptions; and secondly, its very constitution in the social. Attention to these dynamics opens our eyes to the creation of new legal understandings – *jurisgenesis*, to use Robert Cover's (1992) term – that result from the active use of existing law.

THE GLOBALISATION OF LAW

Law travels, and there are different ways in which it does so. It matters to normative processes whether law is imposed by colonial rule or imported by a national elite as a component of the modernisation and development project; whether it is propagated by activists to claim rights or by nation-states to legitimise their power; whether it is transmitted via

rumours among laypersons who hope it might help them attain justice or via networks of experts trying to achieve international standardisation and global 'harmonisation' (Benda-Beckmann *et al.* 2005). These different forms of law's travels rarely come alone. As David Westbrook has elaborated, 'the imperial, the fashionable, the systemic and the tribal' forms of law's travels 'are interrelated' (Westbrook 2006: 504). Law's travels are almost always at one and the same time a matter of export and import, of imposition and adoption, of expert knowledge and lay rumour. These modes of the spread of law and the dynamics between them are central to the phenomenon of 'juridification', a term that refers to a variety of social processes entailed in the proliferation of law.

In recent years, we have been observing an increasing juridification of social and political protest worldwide. The global 'rights discourse' has projected law, particularly human rights law, as the internationally intelligible and acceptable language of voicing demands, providing categories of global scale and linking local concerns with international forums. Analyses of these processes of juridification have often examined governmental and commercial actors who propagate the activation and implementation of legal norms, such as international organisations (e.g. Li 2009), NGOs (e.g. Keck and Sikkink 1998; Merry 2006; Levitt and Merry 2009), law firms (e.g. Garth and Dezalay 1996) and judicial institutions such as the International Criminal Court (e.g. Anders, this volume; Clarke 2010). Considering the economic and political impact that these actors have, analyses of the ways they promote law and the networks within which they operate are indispensable for an understanding of law in current global relations.

Boaventura de Sousa Santos and César Rodríguez-Garavito, however, assert that such 'realist' analyses of law's travels only take into consideration the top-down processes of the globalisation of law, that which Upendra Baxi in this volume and elsewhere has called the politics of human rights. Santos and Rodríguez-Garavito hold that such a focus on the top-down processes of the globalisation of law reproduces the silencing of those subjected to the processes in question: 'Missing from this top-down picture are the myriad local, non-English-speaking actors ... [T]hese subaltern actors are a critical part of processes whereby global legal rules are defined' (Santos and Rodríguez-Garavito 2005: 11). We argue that such analyses of the top-down processes of globalisation of law, important as they are, do more than just dismiss the voices of those marginalised. They also assume a unidirectional change and thereby render impossible any analysis of the dialectic between the implementation