Routledge
Taylor & Francis Group

Transnational Legal Theory

ISSN: (Print) (Online) Journal homepage: https://www.tandfonline.com/loi/rtlt20

Translocal legalities: local encounters with transnational law

Matthew C. Canfield, Julia Dehm & Marisa Fassi

To cite this article: Matthew C. Canfield, Julia Dehm & Marisa Fassi (2021) Translocal legalities: local encounters with transnational law, Transnational Legal Theory, 12:3, 335-359, DOI: 10.1080/20414005.2021.2012368

To link to this article: https://doi.org/10.1080/20414005.2021.2012368

Published online: 19 Dec 2021.

TRANSNATIONAL LEGAL THEORY
2021, VOL. 12, NO. 3, 335–359
https://doi.org/10.1080/20414005.2021.2012368

Routledge
Taylor & Francis Group

Translocal legalities: local encounters with transnational law

Matthew C. Canfield [a]*, Julia Dehm [b]* and Marisa Fassi[c]*

[a]Assistant Professor of Law and Society & Law and Development, Van Vollenhoven Institute, Leiden Law School, Netherlands; [b]Senior Lecturer, La Trobe Law School, Australia; [c]Lecturer in Sociology of Law, Law School, Cordoba National University, Argentina

ABSTRACT

Recent scholarship on transnational law has emphasised how the proliferation and fragmentation of normative orders, legal forms, and transnational actors are transforming the nature and authority of law in the contemporary global context. This Introduction presents what we term translocal legalities—emergent forms of normativity that are constituted through grounded encounters with local and transnational legal practices, discourses, subjectivities, and forms of resistance. By coining this new term, we seek to shift the gaze of transnational legal scholarship away from a top-down mapping of the structures of global law. Centring our analysis on the phenomenology of the encounter, we develop an analytical and empirical approach to understanding these encounters by focusing on how law is constituted not solely within traditional legal organisations and institutions, but through the everyday practices, discourses, and subjectivities of those mediating local, national and transnational norms.

KEYWORDS Legal practices; legal discourses; subjectivities; pluralism; ethnography

Introduction

In 2017, progressive lawyers were invited to a workshop funded by the Brazil Human Rights Fund and Ford Foundation intended to help local lawyers develop new legal tactics for the promotion and protection of human rights. The focus of the workshop was strategic litigation, an approach to legal mobilisation developed by the civil rights movement in the United States that has since become widespread across the world.[1] This attempt to

CONTACT Matthew C. Canfield m.c.canfield@law.leidenuniv.nl
*All authors contributed equally to this introduction.
This article has been republished with minor changes. These changes do not impact the academic content of the article.

[1] Scott L Cummings and Louise G Trubek, 'Globalizing Public Interest Law' (2008) 13 *UCLA Journal of International Law and Foreign Affairs* 1.

export a tactic and ideology of legal change to a country with a different long-established tradition of legal mobilisation, however, was not as smooth as organisers would have liked. As Mariana Prandini Assis explains, those present in the workshop identified as 'People's Lawyers', an approach to lawyering devoted not to the abstract categories of law, but rather to defending social movements engaged in political struggle. Developed during the period of the dictatorship, People's Lawyering is rooted in a different ideology of social and legal change than strategic litigation. For some of the people's lawyers present, they saw the import of legal strategies from other contexts as a threat to their more progressive tradition. However, others saw an opportunity to reframe their work in ways that connected to global resources and movements.

In 2015, Social Compliance Service Asia Ltd, a for-profit company based in Hong Kong undertook an audit of a factory in China that produced goods for Nike. The audit was part of Nike's adherence to the Fair Labor Association's (FLA) Code of Conduct, which requires ongoing audit of its production sites to ensure compliance with their commitment to corporate social responsibility. The auditor found that many union 'representatives' were in fact part of management, and few of the workers knew they were part of a union. Based on over eighty interviews, the auditor had to make a complex assessment about the application of the Code of Conduct to the context of China, where unions cover both workers and management staff, deciding that this was a violation of the Code of Conduct, while also acknowledging that an independent worker union would be unacceptable to Chinese labour law. As Philip Paiement notes, the document authorises the legal knowledge of the auditor, but displaces that of the local labour community.

In 2006, a grassroots organisation based in Be'er Sheva, Israel issued an urgent press release to protect the unrecognised Bedouin village of Al-Sira from being demolished. The release demanded the protection of *Indigenous* Al-Sira's inhabitants. It was the first time in which Bedouins adopted the language of indigeneity, a human rights identity formulated based on international law. For the immediate problem of the planned village demolishment, it was a tactic deployed to raise international awareness, but as Emma Nyhan describes, the identity of indigeneity, which was originally formulated by peoples from North and South America, also created friction for Bedouins who had to negotiate what this category meant with competing identity claims such as that of being Palestinian.

Two illegalised migrants from Tunisia meet a policeman on the streets of Bologna, Italy. The negotiations between the police and these two men about how to navigate this encounter takes place in the shadow of laws that render these men deportable and at the discretionary power of agencies of control. Yet, as Giulia Fabini argues, these men are not simply passive in the face of

these internal border control that seek to 'manage illegality'. She shows how through everyday grounded encounters between border crossers and border agents illegalised people negotiate, contest and reaffirm their presence in the jurisdiction.

These four vignettes reflect how globalisation has transformed conflicts and legal struggles worldwide. Whereas public international law once offered a global legal imaginary for a universal legal norm, we have witnessed the increasing pluralisation and fragmentation of law. Today, in addition to hierarchically ordered, state-centred forms of legality, non-legal forms of regulation including global value chains, privately-produced indicators, corporate codes of conduct, and multi-stakeholder standards have together produced an expansive legal landscape of norms that variably complete, compliment and seek to displace one another. In this global legal landscape, multi-national corporations, global foundations, states, and activists have spun a complex web of overlapping and rival forms of normativity. How these forms of normativity interact and encounter one another raises critical questions about the dynamics of power and authority in the contemporary global context.

This Special Issue examines what we term *translocal legalities*—emergent meanings, norms, and forms of authority constituted through grounded encounters with transnational legal claims, norms, and technologies of governance. By coining this new term, we seek to shift the gaze of transnational legal scholarship away from two main trends: the top-down mapping of the structures of global law and the promotion of order and stability in global legal scenarios. In doing so, we aim to pay more attention to the situated contexts in which different forms of legality encounter one another and circulate into new contexts. While numerous scholars of transnational law have evinced an increasing desire for compliance and order,[2] we foreground the heterogeneous 'contaminated diversity'[3] of transnational spaces. We posit that the interaction and encounter between increasingly plural legal orders is crucial to understanding the forms of authorisation and relations of power constituted by transnational legal processes. Encounters between different legal orderings, like chemicals, produce different reactions. They can lead to combustion, colonisation, violence or they can be precipitative, leading to emancipatory movements and claims. They can also produce subtle syntheses, re-combinations and neutralisations that mutually constitute local social orderings and transnational norms. Tsing draws on another metaphor from the physical sciences, friction, to describe the ways in which encounters across difference are open-ended and can be

[2] Harold Hongju Koh, 'Transnational Legal Process' (1996) 75 *Nebraska Law Review* 181; Gregory Shaffer, 'Transnational Legal Process and State Change' (2012) 37 *Law & Social Inquiry* 229.

[3] Anna Lowenhaupt Tsing, *The Mushroom at the End of the World: On the Possibility of Life in Capitalist Ruins* (Princeton University Press, 2015).

compromising, empowering, or a mix of both.[4] Alchemy and friction are useful metaphors for understanding transnational legal processes. Not only do they draw attention to the forms of heat or energy entailed in the production and contestation of unequal power relations, they point to the ongoing processes of negotiation that cartographies of power often overlook.

By transfixing their eyes on translocal legal scenarios within grounded locations, the authors in this Special Issue thus reveal how law is constituted not solely within traditional legal organisations and institutions, but through the everyday practices, discourses, and subjectivities of those mediating local, national and transnational norms. Through empirical studies that focus on auditors, philanthropists, activists, local police, and migrants across both the Global North and South, the authors reveal how encounters between different legal actors, discourses and practices produce not a uniform field of law, but rather open-ended, contingent, and fragile legalities that enable new complex terrains of political struggle. We thus seek to slow down this scalar project and attend to what happens when individuals, social movements, auditors, and philanthropists translocate legalities from one locale to another.

Drawing on a range of disciplines and methodologies, the authors in this Special Issue contribute to the burgeoning field of transnational law by centring the grounded encounter as a generative space for the production of new meanings, norms, and sources of authority. In empirically assessing translocal legalities, we show how these encounters challenge a notion of law based in the logic of sovereign authority that aspires to universality.

Conceptualising translocal legalities

Numerous scholars have now observed how neoliberal globalisation has fractured the territorial logics of state authority and sovereignty.[5] The formerly dominant legal imaginary of a hierarchical global legal order has slowly receded as global actors struggle for interpretive authority across multiple socio-political scales. These struggles take place within a variety of global, national, regional and local arenas and are fought over a proliferating set of legal forms. The result is a dynamic terrain of conflict that can be neither reduced to vertical nor horizontal spatial metaphors. Rather as actors translocate norms from one context to another, they do so across variegated topographies of power and in the face of rival norms and discourses.

[4] Anna Lowenhaupt Tsing, *Friction: An Ethnography of Global Connection* (Princeton University Press, 2005).

[5] Michael Hardt and Antonio Negri, *Empire* (Harvard University Press, 2000); Saskia Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Updated, Princeton University Press, 2008).

Socio-legal scholars have deployed the term 'transnational law' to describe this emerging terrain.[6] Though there exists widespread consensus that transnational law is a field of global legal pluralism,[7] analysts disagree over how best to understand how rival normative orders do and should interact in this space. While some see the emergence of a new form of transnational legal ordering,[8] others see 'transnational law' as an elusive and anarchic set of conflicts that challenge the very meaning of 'law'.[9] By contrast, the authors in this volume adopt a more reflexive approach to socio-legal analyses, understanding that the empirical legal analyst contributes to the construction of the very orders that they seek to study.[10] It is with this reflexive understanding of global socio-legal scholarship that we deploy the term *translocal legalities*.

Translocal legalities refer to the processes of translocation of legal practices, knowledges, and discourses as they circulate from one locale or scale to another and in doing so encounter other legal practices, knowledges and discourses, as well as reshape legal subjectivities. The authors in this Special Issue show how these processes occur at all scales of social life and in doing so produce often unforeseen power relations. The processes of translation they describe, rather than moving 'up' and 'down' across a hierarchical legal imaginary,[11] constitute new assemblages that shape power relations.

Translocal legalities thus draws together conversations in two disciplinary fields: one about the organisation and production of global space and another about the formation of and interaction between global normative orders and authority. Both fields are deeply concerned with the changing forms through which power operates and is exercised in an era of increasing global integration and inequality. First, geographers use the concept of *translocality* or *translocalism* to describe the circulation of people, practices, or discourses across different localities.[12] As Porst and Sakdapolrak explain, '[t]he concept of translocality seeks to provide a frame to understand

[6] Peer Zumbansen, 'Defining the Space of Transnational Law: Legal Theory, Global Governance, and Legal Pluralism' (2012) 21 *Transnational Law & Contemporary Problems* 305; Roger Cotterrell, 'What Is Transnational Law?' (2012) 37 *Law & Social Inquiry* 500.

[7] A Claire Cutler, 'Legal Pluralism as the "Common Sense" of Transnational Capitalism' (2013) 3 *Oñati Socio-legal Series* 719.

[8] Terence C Halliday and Gregory Shaffer, *Transnational Legal Orders* (Cambridge University Press, 2015).

[9] For a discussion of how 'transnational law' invites a fundamental reflection on what is to be considered 'law' see Peer Zumbansen, 'Transnational Law, Evolving' in Jan M Smits (ed), *Elgar Encyclopaedia of Comparative Law* (Edward Elgar Publishing, 2012).

[10] David Kennedy, 'Mystery of Global Governance, The' (2008) 34 *Ohio Northern University Law Review* 827.

[11] Mark Goodale and Sally Engle Merry, *The Practice of Human Rights: Tracking Law between the Global and the Local* (Cambridge University Press, 2007).

[12] Katherine Brickell and Ayona Datta, *Translocal Geographies* (Ashgate Publishing Ltd, 2011); Clemens Greiner and Patrick Sakdapolrak, 'Translocality: Concepts, Applications and Emerging Research Perspectives' (2013) 7 *Geography Compass* 373.

mobility, peoples' embeddedness while being mobile, and how mobile and immobile actors (re-) produce connectedness and thereby reshape places.'[13] For example, the Nike factory auditor described above must mediate between different forms of legal knowledge, the demands of a global political economy, and the situated context of labour law in China, in doing so, reshaping those very contexts. Unlike political and institutional accounts of contentious politics that focus on conflicts within the realm of global arenas, *translocalism* signals a different methodological and analytic stance not oriented to universal ideas of the global. In other words, we understand translocalism as part of a dynamic process whereby 'globalized localisms' and 'localized globalisms'[14] circulate through social processes that reshape situated social relations of power.

Second, we use the term translocal *legality* in an effort to draw on the creative, emergent forms of normativity and authority that are embedded in discourses and social practices. By adopting this term, we take a broader approach to law that sees state law as merely one site of socio-legal meaning-making. Ewick and Silbey describe legality, in contrast to 'law', as 'an emergent structure of social life that manifests itself in diverse places, including but not limited to formal institutional settings'.[15] In deploying the term *legality*, Ewick and Silbey seek to turn our attention away from formal sites of legality—courts, administrative agencies, legislatures, and police—and towards the everyday ways in which people confront power through oppression and domination as well as those situations in which people mobilise legal terms and ideas in creative ways. This approach echoes what Cover terms 'juris-generative practices'; the forms of normativity and authority that influence larger structures of law.[16] Finally, we pluralise legalit*ies* in order to draw attention to the multiple normative orders and rival authorities across multiple scales. We draw on this understanding of normative pluralism, emphasising those forms of normativity that are produced 'on the ground'.

Of course, one of the challenges of using the term 'local' is that it reifies binaries related to power and space. In previous scholarship, translocalism has been mobilised to signify counter-hegemonic struggles. Santos, for example, draws on this term to describe 'insurgent cosmopolitanism'—the 'aspiration of oppressed groups to organize their resistance on the same scale and through the same type of coalitions used by the oppressors to victimize them, that is, the global scale and the local/global coalitions.'[17]

[13] Luise Porst and Patrick Sakdapolrak, 'How Scale Matters In Translocality: Uses And Potentials Of Scale In Translocal Research' (2017) 71 *Erdkunde* 111, 112.
[14] Boaventura de Sousa Santos, 'Globalizations' (2006) 23 *Theory, Culture & Society* 393.
[15] *The Common Place of Law : Stories from Everyday Life* (University of Chicago Press, 1998) 23.
[16] Robert Cover, *Narrative, Violence, and the Law: The Essays of Robert Cover* (University of Michigan Press, 1992).
[17] de Sousa Santos (n 14) 398.

Similarly, Banerjee aligns the concept of translocality with resistance movements that create new political spaces made up of a plurality of local voices.[18] However, aligning localism with emancipation or empowerment obfuscates how 'localities' can also be imbricated in all sorts of oppressive power relations. As Escobar notes,

> [t]o be sure "place" and "local knowledge" are no panaceas that will solve the world's problems. Local knowledge is not pure or free of domination, places might have their own forms of oppression and even terror; they are historical and connected to a wider world through relations of power, and in many ways determined by them.[19]

Just like globalisms, localisms too may reproduce relations of oppression or domination.

By using the term 'localism' in opposition to 'nationalism' or the 'global', we also risk falling into the trap of reifying a local-global binary. Not only does this binary fail to articulate the mutually constitutive relationship between these scales, but it also often valorises the 'local' as a site of cultural difference and value as opposed to the universalising global. Therefore, like Escobar, we avoid reifying the 'local' and instead mobilise the term *local* to signal a commitment to anti-essentialism, and in our case a rejection of the universals that are part of the logics of transnational law. By using the term *local*, we thus seek to emphasise logics of value that are based on plurality and equivalence, rather than commensuration. As van Apeldoorn explains, the transnational 'does not constitute a "level"', such as the local, national, global, but is rather a 'phenomenon that *extends across, and thereby links as well as transcends different (territorial) "levels*"'.[20] Ultimately, in contrast to the 'unmoored hypermobility' of transnationalism, translocalism describes not only the relations, networks, and movements among distinct social groups that are grounded in place, but also as a way by which globality is produced.

Translocal legalities thus signifies a particular theoretical approach to global legality, as well as a methodological intervention. By adopting the 'indeterminate encounter' as a unit of analysis, rather than larger structures and systems, the authors in this Special Issue attempt to 'slow down' and attend to narratives that reveal the contingent power relations, norms, and forms of authorisation produced or crystallised through these encounters.[21]

[18] Subhabrata Bobby Banerjee, 'Voices of the Governed: Towards a Theory of the Translocal' (2011) 18 *Organization* 323.
[19] Arturo Escobar, *Territories of Difference: Place, Movements, Life, Redes* (Duke University Press, 2008) 157.
[20] Bastiaan van Apeldoorn, 'Theorizing the Transnational: A Historical Materialist Approach' (2004) 7 *Journal of International Relations and Development* 142, 144.
[21] Sundhya Pahuja, 'Laws of Encounter: A Jurisdictional Account of International Law' (2013) 1 *London Review of International Law* 63; Tsing (n 3).

Attending to the emplaced and heterogenous norms, practices, and subjectivities of the encounter contravenes against universalist and 'capitalocentric' epistemologies that underlie grander theory building projects.[22] Rather translocal legalities seeks to attend to the dynamic process of movement and interaction, while foregrounding our own role in producing the legal fields we study. In doing so, we seek to illuminate the shifting forms of operation and exercise of power that can both facilitate resistance, but also enable dominance and oppression.

The contradictory development of transnational law

The concept of 'translocal legalities' both builds on and pushes against different approaches to 'transnational law'. The emergence and development of transnational law reflects a long history of struggle between governments, corporations, and civil society over the role law in global interactions beyond the nation state, and how such forms of legal ordering should be understood. Therefore, the designation 'transnational law' holds together differing understandings, approaches and orientations to law beyond the nation state that reflect highly divergent normative commitments. For example, in its initial formulation by Jessup,[23] as we describe below, transnational law was a field that produced by hegemonic state and non-state actors to protect their assets amidst decolonisation. But in contemporary scholarship, 'there are today too many highly productive conceptualizations of a transnational law to adequately trace them all back to Jessup's original contribution.'[24] For example, transnational law has been articulated as a field and method of study to understand the interactions between different scales and forms of legality in shaping global and local power relations.[25]

Our theorisation of 'translocal legalities' builds on the latter approach. At the level of method, our approach to 'translocal legalities' is indebted to transnational legal scholarship that stresses the plurality of laws. Like contemporary approaches to transnational law, it is attentive to forms of law and normativity beyond the nation state, seeks to unsettle the posited public/private boundary and engages with a wide array of actors. In other words, it too explores how the transnational legal field is constituted through constant interaction and struggle. However, in its politics, orientation, and concerns, the focus of 'translocal legalities' departs from approaches to transnational law that are normatively committed to the

[22] JK Gibson-Graham, *The End of Capitalism (as We Knew It): A Feminist Critique of Political Economy* (Blackwell Publishers, 1996).
[23] Philip C Jessup, *Transnational Law* (Yale University Press, 1956).
[24] Peer Zumbansen, 'Introduction – Transnational law, with and beyond Jessup' in Peer Zumbansen (ed), *The Many Lives of Transnational Law: Critical Engagements with Jessup's Bold Proposal* (Cambridge University Press, 2020) 4.
[25] Zumbansen (n 6).

constitution of order and focuses on the global actors seeking to stabilise the regulatory infrastructure for global capitalist markets. Instead, our approach builds on scholarship that highlights counter-hegemonic contestation of transnational legal arrangements. This section provides an overview of the contradictory development of transnational law, in order to identify the elements of transnational law and the approaches to transnational legal scholarship we critique, but also to highlight the strands of transnational legal theory that we build on in positing 'translocal legalities' both as an effect of encounters between different legal actors within grounded locations and a methodological approach to brings such (often invisibilised) legalities into view.

The articulation and expansion of forms of transnational law initially operated primarily to ensure the protection of private interests of property and contract within an increasingly divided world. Philip Jessup is the scholar often attributed with the first articulation of the concept. In his 1955 Storrs Lectures at Yale Law School, Jessup sought to articulate a framework of law that was adequate for the 'complex interrelated world community.'[26] He proposed the term 'transnational law' to encompass 'all law which regulates actions or events that transcend national frontiers' including both public and private international law, as well as 'other rules which do not wholly fit into such standard categories.'[27] While he was not the first to use the term, his description gave a prominence to the need to analyse the role of law in governing relations between individuals, corporations, states and organisations across national boundaries. Rather than horizontal relations between formally equal (although substantively unequal) sovereign nation-states, or vertical relations between an individual and the state, 'transnational law' offered a framework to describe a bewildering array of multi-dimensional legal relations, made up of both public and private law, in an increasingly globalised world.

The new phenomenon of transnational law challenged transnational conceptions of inter-state law. More critically, however, it provided a means for operationalising compliance with certain norms, through both the interactions of public and private forms of law as well as by mobalising the interactions of a broader range of actors than those traditionally considered subjects of international law.[28] Transnational laws were grounded in a different basis of authorisation than traditional international law. In doing so, they decentred the state from the process of international law, and

[26] Jessup (n 23) 1.
[27] *ibid*, 2.
[28] Thomas Gammeltoft-Hansen and Tanja Aalberts, 'The Politics of Transnational Law' in Bettina Lemann Kristiansen, Kateřina Mitkidis, Louise Munkholm, Lauren Neumann and Cécile Pelaudeix (eds), *Transnationalisation and Legal Actors: Legitimacy in Question* (Routledge, 2019).

enabled the greater shifting of power to private actors, giving rise to new forms of private transnational authority.[29]

The jurisprudence of arbitration bodies (often rejected as 'law' by Third World states) hybridised public and private law to internationalise contracts and import 'the general principles of law recognized by civilized nations'[30] to elevate the protection of property rights outside the sphere of sovereign authority. Sornarajah has argued that while in the colonial period 'sheer force ensured the protection of investment', in later periods '[l]aw becomes a substitute for the use of force.'[31] Although these developments were presented as 'neutral', in reality 'the rules of the new system may bring about the results desired by power through power-based rules that are sustained by the mechanism of arbitration.'[32] The rise of transnational law has thus played a key role in enabling and promoting a harmful and unjust international economic order that has violent and immiserating effects.[33] While the newly decolonised states sought to transform through sovereign power the private rules of property and contract that had facilitated colonial exploitation, the hybrid space of transnational law instead operated to protect and immunise private power and 'establish that private law was not susceptible to amendment by the state.'[34] Through these processes, 'public' notions of authority have been gradually superseded by 'non-state law, informal normative structures, and "private" economic power and authority as a new transnational legal order takes shape.'[35]

It is clear now that what first emerged as 'transnational law' enabled powerful states and corporations to develop new ways of exercising authority and control at a moment when decolonisation was threatening their power in the Third World.[36] The year of Jessup's lectures, 1955, was also the year of the 'Bandung Conference' of Asian and African states—a key moment in the struggle by Third World states to remake a 'new' international law that could promote their aspirations.[37] Anghie points out that 'transnational

[29] César Rodríguez Garavito, 'Introducción. Un nuevo mapa para el pensamiento jurídico latinoamericano' in César Rodríguez Garavito (ed) *El derecho en América Latina: un mapa para el pensamiento jurídico del siglo XXI* (Siglo Veintiuno Editores, 2011), 11.

[30] Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press, 2007) 228.

[31] M Sornarajah, *Resistance and Change in the International Law on Foreign Investment* (Cambridge University Press, 2015) 81–2.

[32] *ibid*, 85.

[33] John Linarelli, Margot E Salomon and Muthucumaraswamy Sornarajah, *The Misery of International Law: Confrontations with Injustice in the Global Economy* (Oxford University Press, 2018).

[34] Anghie (n 30) 239.

[35] A Claire Culter, *Private Power and Global Authority: Transnational Merchant Law in the Global Political Economy* (Cambridge University Press, 2003) 1.

[36] Prabhakar Singh, 'The Private Life of Transnational Law: Reading Jessup from the Post-Colony' in Peer Zumbansen (ed), *The Many Lives of Transnational Law: Critical Engagements with Jessup's Bold Proposal* (Cambridge University Press, 2020).

[37] Luis Eslava, Michael Fakhri and Vasuki Nesiah (eds), *Bandung, Global History, and International Law: Critical Pasts and Pending Futures* (Cambridge University Press, 2017).

law' coincided with the period when the formerly colonised states had formal rights to enter into consensual international legal relations with other states for the first time. Just as the 'Third World' was attempting to remake the international order to contest the private law relations of property and contract that had enabled colonial exploitation, especially of natural resources, Anghie argues, transnational law served to constrain their economic self-determination.[38] By 1965, 'Third World' leaders began to describe the system in which new states had 'outward trappings of international sovereignty' yet remained controlled by outside powers as *neo*colonialism.[39]

Philip Jessup's thought was soon seized upon by those interested in reinvigorating a modern conception of *lex mercatoria* as a 'self-producing legal order among commercial actors.'[40] Indeed, these transformations in the nature and forms of transnational law occurred alongside broader global economic transformations. Although the novelty of 'economic globalisation' is often overstated, there has nonetheless been critical qualitative and quantitative shifts in the global movement of goods and services, enabled through the development of complex logistical infrastructures.[41] Since the 1970s, production has increasingly become deterritorialised, organised not within the boundaries of a single nation state but disaggregated through global production networks bound by complex contractual relations across global value chains.[42] Given that 'capitalism is a socioeconomic system structured through law'—that is, not simply a socioeconomic system but also a 'juridical regime'[43]—it is evident that changes in the forms and nature of transnational legal ordering facilitate greater global economic integration. The 'economy' is not innate[44], but as Grewal highlights, 'produces as the outworkings of legal rights and duties that offer special protections to asset-holders legitimated through a constitutional order.'[45] As such, scholars have highlighted how the transnationalisation of law has crucially operated in historical and ongoing ways to secure internationally the protection of property rights and to facilitate the cross-border flows of foreign investment and capital.[46] For example, it is now estimated that over 80 percent of global

[38] Anghie (n 30) 223–226.
[39] Deborah Cowen, *The Deadly Life of Logistics* (University of Minnesota Press, 2014); Kwame Nkrumah, *Neo-Colonialism: The Last Stage of Imperialism* (Nelson, 1965) ix.
[40] Peer Zumbansen, 'Transnational Law' in Jan Smits (ed) *Encyclopedia of Comparative Law* (Edward Elgar Publishing, 2006) 741.
[41] Cowen (n 39).
[42] Koh (n 2); Stephen Gill, 'Constitutionalizing Inequality and the Clash of Globalizations' (2002) 4 *International Studies Review* 47, 20; Raphael Kaplinsky, 'Globalisation and Unequalisation: What Can Be Learned from Value Chain Analysis?' (2000) 37 *The Journal of Development Studies* 117.
[43] David Singh Grewal, 'The Legal Constitution of Capitalism' in Heather Boushey, J Bradford DeLong and Marshall Steinbaum (eds), *After Piketty: An Agenda for Economics and Inequality* (Harvard University Press, 2017) 485–6.
[44] Timothy Mitchell, *Rule of Experts: Egypt, Techno-Politics, Modernity* (University of California Press, 2002).
[45] Grewal (n 43) 485.
[46] Cutler (n 7).

trade occurs within cross-border global value chains (GVCs) that vary in complexity, that are often shaped and governed by one or two 'lead' corporations.[47] Transnational laws, both private and public, are central to the circulation of goods and services, the articulation and global circulations of social values, as well as the movement of ideas and policies.

Yet while the transnational was a space initially constituted as a form hegemonic ordering by powerful actors, resistances and counter-hegemonic articulations of rights and justice have recently sought to leverage this space 'from below.'[48] Localised emancipatory and justice struggles have increasingly articulated their claims in global spaces and built connections transnationally. Workers, subalterns, Indigenous peoples, peasants, women and queer movements have struggled against resisted hegemonic modes of globalisation and in doing so built social movements and networks of organisations that exceed national boundaries. Not all forms of localised resistance are necessarily emancipatory—they may instead be driven by reactionary and conservative ideological commitments. Nonetheless, many oppositional struggles have articulated claims for equality, rights and justice not just within the nation state, but in global and transnational spaces. These modes of struggle and organisation by 'the multitude'[49] or 'movement of movements'[50] have been described as 'counter-hegemonic globalization'[51] or 'alter-globalization.'[52]

The field of transnational law has thus become a key terrain of political struggle, in which movements from below seek to push back against and moderate the power of transnational capital, but also develop forms of transnational private law to enforce accountability of powerful private actors. The 'transnationalization of the legal field', is as Santos observes, being driven by diverse and oppositional interests, competing demands, visions and objectives. Santos shows that these processes are neither homogeneous nor driven by monolithic interests, but promoted by 'practicing lawyers, state bureaucrats and international institutions, as well as by popular movements and NGOs.'[53] Through such struggles, law has played a critical role in counter-hegemonic globalisation, in ways that demand a critical re-

[47] UNCTAD, 'Trade and Development Report 2013: Adjusting to the Changing Dynamics of the World Economy' (United Nations Conference on Trade and Development 2013) https://unctad.org/en/PublicationsLibrary/tdr2013_en.pdf (accessed 2 October 2018).
[48] Koh (n 2); Gill (n 42); Cutler (n 7).
[49] Michael Hardt and Antonio Negri, *Multitude: War and Democracy in the Age of Empire* (Penguin, 2005).
[50] Notes from Nowhere, *We Are Everywhere: The Irresistible Rise of Global Anticapitalism* (Verso, 2003).
[51] César A Rodríguez Garavito and Boaventura de Sousa Santos, 'Law, Politics, and the Subaltern in Counter-Hegemonic Globalization' in César A Rodríguez Garavito and Boaventura de Sousa Santos (eds), *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge University Press, 2005).
[52] Michael Hardt and Antonio Negri, *Commonwealth* (Belknap Press, 2011).
[53] Boaventura De Sousa Santos, *Toward a New Legal Common Sense: Law, Globalization, and Emancipation* (Cambridge University Press, 2002) 252.

examination of the nature of processes of law, as well as of the 'transnational'. Unavoidably, transnational law has been transformed by struggle and opposition 'from below,'[54] in ways which have both moderated and expanded transnational legal arrangements.

In this struggle, social movements have not only struggled for a more emancipatory *content* of legal norms—they have also pointed to the potentialities of a different *form* of law or legality. Santos, for example, suggests that counter-hegemonic struggles enact 'different conceptions of legality and of politics of legality'[55] and 'alternative legal forms' or 'subaltern cosmopolitan legality,' thereby gesturing towards the fact that a different legality is possible. These alternative legalities arise from and have their source not in the state and positivist processes of law making, but in and through grounded practices of resistance that articulate and affirm alternative norms. They suggest that analysing such alternative legalities requires different methodological approaches that entail paying attention to the strategies (both legal and illegal) through which transnational and local movements make their claims and advance their causes. In particular, Santos highlights the necessity of an expanded frame of analysis though which to comprehend a greater 'breadth of legal actions, struggles or disputes', alongside the need for an expanded scale, an expanded understanding of legal knowledge and expertise, as well as an expanded temporal scope.[56] Ultimately, Santos and Rodríguez-Garavito also call for a different 'mode of sociolegal theory and practice suitable to comprehend and further the mode of political thought and action embodied by counter-hegemonic globalization.'[57]

There are many resonances between this analysis of 'subaltern cosmopolitan legality' and work of transnational law scholars who have sought to characterise 'transnational law' not as a new field of study, but as heralding the present emergent possibilities of new methodological approaches. Zumbansen has provocatively proposed transnational legal scholarship should not be directed towards a quest for a legal field' whose subject matter is the 'border-crossing nature of hybrid regulatory interaction'[58] but that transnational law should rather be conceived of as a '*methodological* challenge asking us to reflect on the possibility—but also the politics of "law"' that instigates a broader interrogation of what is considered to be law or not-law in different functional contexts.[59] His proposal for 'transnational legal

[54] Balakrishnan Rajagopal, *International Law from below: Development, Social Movements, and Third World Resistance* (Cambridge University Press, 2003).
[55] Boaventura de Sousa Santos, 'Beyond Neoliberal Governance: The World Social Forum as Subaltern Cosmopolitan Politics and Legality' in César A Rodríguez Garavito and Boaventura de Sousa Santos (eds), *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge University Press, 2005) 30.
[56] *ibid*, 30–31.
[57] Rodríguez Garavito and Santos (n 51) 5.
[58] Peer Zumbansen, 'Transnational Legal Pluralism' (2010) 1 *Transnational Legal Theory* 141, 148.
[59] *ibid*, 159.

pluralism' is therefore also a challenge to scholars not to respond to 'deep-running anxiety in the face of perceived lack of unity, coherence and institutional normative hierarchy'[60] by seeking to constitutionalise forms of transnational order, but rather to find ways to be more open to the messy, chaotic nature of legal interactions in transnational spaces.

Such an approach that treats transnational law as a 'methodological challenge' to rethink understandings of law, legality and normativity both within and beyond the nation state, therefore departs significantly from scholarship that exhibits a continual desire for the promotion of order and stability through the establishment of a global legal order. In recent years there has been an increased scholarly focus on social and legal ordering in contested transnational spaces and the constitution of 'transnational legal orders' through 'the institutionalization of level norms across national jurisdictions and levels of social organization.'[61] The desirability of scaling normative orders to global levels is often assumed as a positive virtue. Yet the condition for such scalability is 'shared social norms and institutions that orient social expectations, communication, and behaviour'[62] as well as a shared framing and definition of specific 'problems' and a shared commitment to various prescriptions designed to produce a specific outcome.[63] Such approaches thus tend to assume the possibility—and desirability—of such shared understandings, rather than acknowledging irreducible differences between different situated actors. Therefore, attempts to constitute order through law, especially at the global level, are necessarily engaged with managing difference and integrating and incorporating it within an overarching framework. Moreover, as Anghie has highlighted, traditional approaches to the discipline of international law that were focused on how order is promoted amongst sovereign states, tend to obscure the tensions inherent in the 'civilizing mission' and the 'problem of cultural difference'.[64] Therefore, rather than 'order' we foreground the question of 'encounter' and the conditions in which it is possible to engage or interact across difference.

Our approach therefore also differs from that adopted in the growing literature about the existence of and interaction between multiple normative orders and rival authorities in global governance. The reality of regime complexity and legal multiplicity in international and transnational legal orders is now widely recognised[65] but has sparked a range of different responses.

[60] *ibid*, 160.
[61] Halliday and Shaffer (n 8) 5.
[62] *ibid*.
[63] *ibid*, 8.
[64] Anghie (n 30) 6.
[65] Nico Krisch, Francesco Corradini and Lucy Lu Reimers, 'Order at the Margins: The Legal Construction of Interface Conflicts over Time' (2020) 9 *Global Constitutionalism* 343.

Earlier concerns that growing fragmentation would undermines the unity of the international legal system unavoidably give rise to conflict between different regimes,[66] has been supplemented by greater empirical investigation into whether internal actors experience norm collision as conflicts and the way in which such 'interface conflicts' are managed.[67] There is growing recognition too of the productive effects of such conflict, and how they may lead not just to 'uncertainty and tension' but also to 'convergence, consolidation and widespread acceptance of a new legal contestation'.[68] However, such interface conflicts are still imagined as 'not antithetical to order but creative of it'.[69]

The pieces in this special issue are methodologically oriented toward examining the productive effects of specific encounters, rather than normatively committed to the constitution of order. They are oriented towards 'acts of noticing' and interrogating global legal interconnections in ways that do not necessarily require 'imagining or making globality.'[70] There is, as Tsing has suggested 'enormous analytical promise in tracing global interconnections without subsuming them to any one program of global-future commitments.'[71] It is a framework that allows us to pay more attention to 'the making and remaking of geographical and historical agents and the forms of their agency in relation to movement, interaction, and shifting, competing claims about community, culture and space.'[72] Moreover, rather than examining how non-state modes of legality become established as new globalist and quasi-universal laws, our discussion of translocal law holds on to how norms and forms of normativity emerge from, and are specific to, particular contexts. The next section outlines some of the methodological tools we have developed to notice and critically and analytically examine the productive effects of such translocal encounters.

Analytical instrumentation: method and position in translocal legalities

This Special Issue arises out of the productive encounters the contributors and fellow travellers have had with transnational law, as well as, with one another. It is the result of collaborative and sustained research work across borders. The Translocal Law Collective was initiated at the Transnational

[66] Margaret A Young (ed), *Regime Interaction in International Law: Facing Fragmentation* (Cambridge University Press, 2012).
[67] Christian Kreuder-Sonnen and Michael Zürn, 'After Fragmentation: Norm Collisions, Interface Conflicts, and Conflict Management' (2020) 9 *Global Constitutionalism* 241.
[68] Krisch, Corradini and Reimers (n 65) 344.
[69] *ibid*, 360.
[70] Anna Tsing, 'The Global Situation' (2000) 15 *Cultural Anthropology* 327, 329; Tsing (n3).
[71] Tsing, 'The Global Situation' (n 70) 330.
[72] *ibid*.

Law Summer Institute at King's College London in 2016. The research collective draws on a team of international researchers from different continents with interdisciplinary backgrounds in law, sociology, political science and anthropology, a common attempt to study transnational legal practices in a contextualised, spatially embedded, and processual manner. From labour auditors in China to multinational corporations; from large philanthropic foundations to local translators; from migrants on the move to formerly nomadic Bedouins; the subjects and actors these contributions discuss are all encountering both local and transnational legal practices, discourses and forms of resistance, in what we refer to as 'translocal legalities.'

Translocal legalities thus offer a method and frame of vision from which to critically unpack the multi-scalar operations taking place in current social conflicts. It does not offer a grand theory or a single epistemological approach, but as the papers in this Special Issue show, can dialogue with diverse theoretical frameworks that have sought to analyse the production of relations across legal difference, including actor-network theory[73] and scholarship on practices of translation.[74]

In order to capture the effects of local encounters with transnational law, it is necessary to think critically about our scholarly methods and our ways of seeing. To bring translocal legalities into view it is necessary to be critical and self-reflective about our analytical frames of vision, what we pay attention to within these frames, and our methods of observation. While adopting an elevated epistemic position allows one to map a specific space and the actors and the processes within it, our wager is that adopting a more empirical approach to grounded legal encounters provides a more capricious and fragile image of transnational socio-legal processes. In paying attention to legal encounters, we do not aim for universal explanatory potential, but rather a deeper understanding of their specific manifestations. Such a methodological approach therefore highlights the capricious character of transnational law and alerts us to the need to contextualise processes and encounters. It therefore facilitates the comprehension of legalities in their specific context; grounded in a particular site and historical formation, whether these sites are formalised or not.

[73] Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network-Theory* (Oxford University Press, 2005); Michel Callon, 'Actor Network Theory' in Neil J Smelser and Paul B Baltes (eds), *International Encyclopedia of the Social & Behavioral Sciences* (Pergamon, 2001).

[74] Claudia De Lima Costa and Sonia E Alvarez, 'Dislocating the Sign: Toward a Translocal Feminist Politics of Translation' (2014) 39 *Signs* 557; Sonia E Alvarez and others, *Translocalities/Translocalidades: Feminist Politics of Translation in the Latin/a Americas* (Duke University Press, 2014); Sally Engle Merry, 'Transnational Human Rights and Local Activism: Mapping the Middle' (2006) 108 *American Anthropologist* 38; Ziya Umut Türem and Andrea Ballestero, 'Regulatory Translations: Expertise and Affect in Global Legal Fields' (2014) 21 *Indiana Journal of Global Legal Studies* 1; Matthew Canfield, 'Banana Brokers: Communicative Labor, Translocal Translation, and Transnational Law' (2019) 31 *Public Culture* 69.

Nonetheless, we suggest that understanding translocal legalities requires an engagement with legal pluralism, an empirical sensitivity and a critical commitment. Following the chemical metaphor, these are the '*a priori* elements', an analytical instrumentation, that allows researchers to slow down and observe grounded encounters in which translocal legalities emerge—in local, everyday engagements with legal discourses, actors, and arenas of law. First, analysing translocal legalities requires an acknowledgement of the plural, coexisting regulatory authorities in any given context as well as the interactions among them. In order to look at legal encounters within a particular space, one should first ask, 'what normative orders in addition to state law are important for understanding my particular field?'[75] This attention to pluralism brings to the forefront the 'multiple uncoordinated, coexisting or overlapping bodies of law'[76] in any specific social field.

Such an approach builds on more methodologically oriented understandings of transnational legal scholarship and necessarily decentres state law as the only source of recognition of those legal orders or bodies of law and instead seeks to empirically assess the relative authority of competing norms.[77] To do so, researchers adopting this approach: (a) embrace legal pluralism; (b) identify the various normative orders in a space to examine their power empirically in the specific context under study; and (c) are attentive to the way in which these normative orders interact, in order to pay attention to the grounded encounters between local and global norms, actors, and power relations. A translocal analysis thus calls on scholars to diversify what and how they observe the plural normativities operating in a specific context. Scholars have identified how such a 'pluralist framework [has] proved highly adaptive to the analysis of the hybrid legal spaces created by a different set of overlapping jurisdictional assertions (state versus state, state versus international body, state versus nonstate entity) in the global arena'.[78]

Once legal pluralism is incorporated as an analytic tool, unavoidable questions arise. Regardless of the legal perspective, 'legal pluralism raises important questions about power – where it is located, how it is constituted, what forms it takes – in ways that promote a more finely tuned and sophisticated analysis of continuity, transformation, and change in society'.[79] This Special Issue shows the dialogical interconnections between plural legalities at play

[75] William Twining, *Globalisation and Legal Scholarship. Montesquieu Lecture 2009* (Wolf Legal Publishers, 2011) 13.
[76] Brian Z Tamanaha, 'Understanding Legal Pluralism: Past to Present, Local to Global' (2007) 29 *Sydney Law Review* 1, 1.
[77] Zumbansen, (n 58).
[78] Paul Schiff Berman, 'The New Legal Pluralism' (2009) 5 *Annual Review of Law and Social Science* 225, 226.
[79] Anne Griffiths, 'Legal Pluralism' in Reza Banakar (ed), *An Introduction to Law and Social Theory* (Hart Publisher, 2002) 289.

in grounded legal encounters happening various locations in the global North and the global South. Paying attention to these encounters both requires, and further facilitates, seeing the grounded operations of plural normativities. Together, those encounters reveal complex power dynamics that would be obscured by traditional state-centric understandings of law and the transnational. Hence, our conceptualisation of translocal legalities departs from a procedural understanding of law and does not depend on state recognition for its valid authority. This shift makes the fieldwork and analysis more open to considering the changing but pervasive effects of transnational powers around the globe.

Second, translocal legalities privileges empirical sensitivity as a starting point to assess grounded encounters. This perspective is adaptive to various theoretical frameworks and methodologies. Nonetheless, certain analytical instruments in international law and comparative law are too tied to a Westphalian framework, and may fail to embrace the chaotic dynamics and legal plurality of translocal scenarios. In doing so, translocal legalities agenda is reflective of a broader trend towards everyday approaches to the study of global and transnational law.[80] Eslava and Pahuja extended a 'methodological invitation' to international law scholars to engage the norms and institutions of international law '[from] their roots in the material conditions of life'.[81] Such a focus on the 'everyday life of law'[82] and its concrete practices with material expressions similarly can enrich the study of transnational law. As an analytical tool, empirical sensitivity can help search for crystallisations of power, thereby making visible (un)stable distributions. Moreover, empirical outcomes 'offer a lesson of sobriety not only to conventional assimilation theory defendants but also to those who have seen in transnationalism a powerful tool for the poor and powerless in the global arena'.[83]

Third, studying translocal legalities entails a critical commitment to understanding the situated ways in which power is enacted and transformed. Analysing to translocal legalities thus requires attending to the material conditions, infrastructures, and symbolic forms of power that are unequally distributed in both the grounded encounters researchers examine, as well as in knowledge production. A critical commitment in the study of law requires recognising that our modes of describing the world, of picking social sites,

[80] Luis Eslava, *Local Space, Global Life: The Everyday Operation of International Law and Development* (Cambridge University Press, 2015).

[81] Marx (1977) cited in Luis Eslava and Sundhya Pahuja, 'Between Resistance and Reform: TWAIL and the Universality of International Law' Special Issue: Third World Approaches to International Law' (2011) 3 *Trade, Law and Development* xiii.

[82] Luis Eslava, 'Istanbul Vignettes: Observing the Everyday Operation of International Law' (2014) 2 *London Review of International Law* 3; Eslava (n 80).

[83] Alejandro Portes, 'Convergencias teóricas y evidencias empíricas en el estudio del transnacionalismo de los inmigrantes' (2005) 4 *Migración y Desarrollo*, 15.

and choosing which narratives to include in our analysis has an unavoidable co-constitutive role. It necessitates 'taking responsibility for our own role in the conduct of law and legal relations'.[84] The long-lasting debate about subjectivity *versus* objectivity or neutrality *versus* bias in social sciences has produced considerable discussion about nuanced ways of approaching research. However, feminist scholars have provided salient methodological strategies to surpass the myths of neutrality and to interrogate the ways in which knowledge is always situated and embodied.[85] Gender, class, race, emotional and cognitive experiences locate every researcher in a particular standpoint. A critical commitment requires responsible acknowledgement of that standpoint and a recognition that some are more privileged than others to produce knowledge on oppression.[86]

Research collective participants' institutional affiliations cover countries from both the Global South and North, and all continents. Each participant enriches the research group by bringing data and findings from their own previous or on-going empirical projects, embedded in plural geographies and topics. Bringing these contributions together allows a rich conversation not only about the intertwined operations of legality in contemporary global inequalities, but also about the inequal access and distribution in knowledge production and circulation of ideas in an international scholarship where English predominates and where access to many publications is restricted by paywalls. Moreover, the diversity of the research collective allowed us to slow down and not to take for granted certain assumptions or rush into conclusions drawn from a single disciplinary approach or a single fieldwork study. Looking at the various grounded encounters at the same time allowed us to acknowledge that there are processes of vernacularisation and translation, domination by expert knowledge, counterhegemonic practices, as well as negotiations and resignation.

Analysing translocal legalities: practices, discourses, subjectivities

While diverse in substance, the grounded encounters in this Special Issue are tied together through their common purpose of exploring how transnational legalities transcend territorial and conceptual boundaries and constitute the lived experiences of those involved. Building on Zumbansen's framework for mapping transnational law—actors, norms and processes—we propose another set of conceptual/methodological categories for understanding

[84] Pahuja (n 21) 66.
[85] Donna Haraway, 'Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective' (1988) 14 *Feminist Studies* 575.
[86] Sandra Harding (ed), *The Feminist Standpoint Theory Reader: Intellectual and Political Controversies* (Routledge, 2004).

translocal legalities: practices, discourses and subjectivities.[87] Below we describe these different categories and the contributions to this Special Issue.

Although analytically distinct, on the ground legal practices and the forms of knowledge and discourses that produce and are produced by law are in constant dialogue and interaction with one another. Similarly, discourses and forms of knowledge are intimately intertwined with the production of specific subjects and forms of subjectivity.

Translocal legal practices

The category of legal practices calls attention to the *how* rather than the *what* of law: that is, the doing of law and the ways in which law and legality come into being and have effect in the world. This focus proposes a shift from the 'ideal forms' of law towards 'the plural forms and practice of legal processes'[88]; which implies foregrounding the 'technology of law': what 'makes, or makes available, a certain way of doing or achieving things: a technique for conducting social and institutional life … [and how] jurisdictional practices actively craft law.'[89]

Translocal legal practices emerged as a relevant analytical category for the analysis in most grounded encounters. However, two pieces illuminate better the specific techniques and tensions that arise as these practices are transplanted from one locale to another. Assis identifies tensions between two legal mechanisms deployed to bring social change: strategic litigation *versus* peoples' lawyering. Grounded in the Brazilian context, this piece explores how philanthropic foundations from the United States meditate the encounter between transnationalised strategic litigation and local practices of popular lawyering. Foregrounding a reflexive analysis and critical commitment, her ethnographic study of meetings, workshops and events about strategic litigation in Brazil show that the rise of strategic litigation might displace and subsume the more political peoples' lawyering practices. Assis frames this translocal legal practice as a 'double-edged sword'; she writes:

> [o]n the one hand, the use of this terminology allows people's lawyers to enter a conversation that is transnational in character, thereby framing their work in a way that that resonates with the practices and discourses of other socially committed lawyers elsewhere, while also diversifying and enriching the transnational discussions with their local specific experiences.

Approaching this encounter as a translocal legal practice, she argues,

> entails understanding not only its original formulation, rooted in progressive bottom-up legal struggles in the global North, but also its later appropriation

[87] Peer Zumbansen, 'Where the Wild Things Are: Journeys to Transnational Legal Order, and Back' (2016) 1 *UC Irvine Journal of International, Transnational, and Comparative Law* 161.
[88] Shaunnagh Dorsett and Shaun McVeigh, *Jurisdiction* (Routledge, 2012) 57.
[89] *ibid*.

> and dissemination by transnational donors, followed by its encounter and interaction with original forms of legal struggle in the global South, such as people's lawyering.[90]

Shifting towards the Asian continent, Paiement in this Issue focuses on practices that make up 'audit culture' within transnational private governance of supply chains in China. His piece reveals how translocal legal practices of interpretation and adjudication in private governance are necessarily modified, transformed and mutated through their interactions with different places and local legalities. He analyses the dynamics produced in the process of Fair Labor Association (FLA) certification of labour standards in Chinese factories to explore the complex role played by auditors as 'interlocutors between the transnational instruments of [corporate social responsibility] and localized consequences of production activities'.[91] Paiement's contribution looks to the rise of transnational private governance and standard-setting by multi-stakeholder initiatives in response to 'bottom-up' demands both at the site of production for better conditions and from consumers in countries of the Global North for assurance that minimal labour and sustainability standards are being adhered to. In his analysis, Paiement focuses specifically on the critical role that auditors play in these governance regimes both as translators between different actors at different sites and scales, but also both as interpreters and makers of laws and standards. In this way he foregrounds the 'jurisgenerative' role of auditors in transnational governance.[92] He thus shows how labour auditors have become interpretative authorities in the grounded encounters between local and transnational legalities.

Both grounded scenarios, auditors in China and philanthropic foundations in Brazil, show the potential of using the category of translocal legal practices to emphasise how modes of 'doing' law, whether litigating, interpreting or adjudicating, are transformed through encounters between local and transnational legalities and actors. In these pieces, expert knowledge and discourse are revealed to be dialogically co-constituted with translocal legal practices.

Translocal legal discourses

Law is intimately and constitutively tied to the discourses and forms of knowledge that create, support and stabilise it. Darian-Smith emphasises that in global socio-legal contexts, it is important to consider:

[90] Mariana Pradini Assis, 'Strategic Litigation in Brazil: Exploring the Translocalisation of a Legal Practice' (2021) 12(3) *Transnational Legal Theory* (this issue).
[91] Phillip Paiement, 'Transnational Auditors, Local Workplaces and the Law' (2021) 12(3) *Transnational Legal Theory* (this issue).
[92] Phillip Paiement, 'Jurisgenerative Role of Auditors in Transnational Labor Governance' (2019) 13 *Regulation & Governance* 280.

> (1) whose legal knowledge is in play; (2) what cultural biases does such knowledge embody and convey; (3) and what alternative or additional forms of legal knowledge and consciousness may be present that up to now, given the historical dominance of a Euro-American formal understanding of law, have been silenced ignored or deemed irrelevant.[93]

That empirical invitation allows us to see that knowledges and forms of expertise are necessarily plural as well as place and context specific. In doing so, it challenges the way in which social science in the West has universalised contingent experiences as a general standard for both scientific knowledge and social practice.[94]

Each of the contributions to this Special Issue explores in their own specific context encounters between different forms of legal knowledge and discourses. Different forms of knowledge may emerge and contest expertise drawing upon a reinterpretation of expert knowledge from below or from experiential and contextual knowledge. Paying attention to grounded encounters suggests that the forms and nature of expertise, as well as who is considered an 'expert' and the 'right ways to deploy expertise in society' are challenged, mutated and transformed.[95] Thus, like legal practices, local knowledge and discourses are never static, but constantly transformed, mutated and subverted through their encounters with discourses coming from other locales or scales.

Translocal legal subjectivities

Law does not simply recognise specific subjects, but actively constitutes subjects. As Cotterrell points out, the concept of legal person is, in a sense, the foundation of all legal ideology by defining who or what is capable of rights and duties: 'throughout history, law has not merely defined social relations but *defined the nature of the beings involved in them*.'[96] This constitutive symbolic power of law may involve overt or covert forms of violence. In her study of colonial legal reform in Egypt, Esmeir shows the productive power of legal personhood by making explicit how power and force of colonial legal reform in Egypt attempted to juridically humanise (and not dehumanise) the colonised.[97]

The complexity of subject formation is neither exclusive nor limited to legal arrangements on who is a legal person. Subjectivity becomes a terrain on which historical transformations, societal arrangements, and authorities

[93] Eve Darian-Smith, *Laws and Societies in Global Contexts: Contemporary Approaches* (Cambridge University Press, 2013) 98.
[94] Mitchell (n 44) 7.
[95] Sheila Jasanoff and Hilton R Simmet, 'No Funeral Bells: Public Reason in a "Post-Truth" Age' (2017) 47 *Social Studies of Science* 751, 753.
[96] Roger Cotterrell, *The Sociology of Law. An Introduction* (Butterworths, 2nd edn 1992) 124.
[97] Samera Esmeir, *Juridical Humanity. A Colonial History* (Stanford University Press, 2012).

rewrite the horizons of possibilities on the ground. Moreover, interpretative authorities are rewriting subjectivities far beyond Westphalian institutions. Rather the legal subject is produced through contestation and interaction between state and non-state actors, discourses and practices enacted on the ground. Contemporary scenarios are showing forms of global law and global governance contain aspirations to declare authoritative, and with universal scope, the nature, form and categories of the legal subject. Through 'substantive performative utterance[s]'[98] they seek to provide 'global answers' to questions about: who is a Bedouin? Who are Indigenous populations? Who is a person with disabilities? Who is a worker and who is a slave in current global labour relations? Adopting a critical commitment reveal that those global governance bodies rest upon unequal distribution of material conditions, access to infrastructures, as well as decision-making processes,[99] and may find contestation, compliance or negotiations on the ground.

The various contributions to this Special Issue analyse the contestations about how different subjects are defined and the role of self-identity and, in doing so, broaden the borders of subject formation to show the production of 'translocal legal subjectivities'. Moreover, these various contributions make clear that these processes are overlaid with relations of unequal power. However, this Issue includes two papers that can significantly illustrate the processes involved.

In her contribution to this Special Issue, Nyhan tells a rich story about the ways in which local, highly place specific activism encountered international norms and the complex modes of legal claim-making and legal identification produced by this encounter. She carefully tracks how, through their activism to protect their homes and promote their rights, Bedouin village leaders strategically draw on and deploy the language of indigeneity and make claim to Indigenous rights standards. She examines al-Sira, a Bedouin village in Israel/Palestine as a 'translocal' site where the international human rights and Indigenous rights norms encounter local resistance movements against housing demolitions. She shows the ways in which her interviewees operate as mediators between the global and the local, and thus highlights the role of specific actors constituting and enabling translocal engagements. The story she tells is not only one in which international universal norms are adapted in order to speak to local contexts and needs, but rather one in which local activism on the ground also refracts back and modifies international frameworks and understandings of indigeneity. She shows how

[98] Pierre Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field' (1987) 38 *The Hastings Law Journals* 814.

[99] Janet Halley, Prabaha Kotiswaran, Hila Shamir, and Chantal Thomas, 'From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism' (2006) 29 *Harvard Journal of Law and Gender* 335.

the process in which Bedouin 'become Indigenous' is neither linear or singular, but rather that identities are necessarily always multifaceted, plural and layered. Thus, while she demonstrates how Bedouin change agents saw the adoption of Indigenous identity to be a strategic means to advance their demands for rights, her analysis also shows that Indigenous identity is just one of a multiplicity of identities that Bedouin are drawing on. As such, her critically committed account also reveals the productive effects of translocal legal subjectivity, but also offers a critique of the violence of legal categories, and the violence inherent in the way that law often requires people to enact more singular identities or only acknowledges people as subjects if they adopt and enact specific identities.

From the Negev desert to the city of Bologna, this Special Issue showcases the life and experiences of those subjects placed across legal encounters. Fabini explores '[i]llegalised migrants as translocal subjectivities' and reflects on the everyday encounter between migrants in the city of Bologna and the police. Fabini traces the way in which migrants navigate not only multiple legal orders, but also their formal and informal practice. Generating knowledge from these interactions, they develop and share knowledge which produces what she argues is a 'translocal legal subjectivity.' Through her ethnographic work, Fabini points out that subjectivity enables migrants to carve out spaces to inhabit and produce the inner borders of receiving countries, while also resisting the overlapping legal regimes that seek to deny their existence.

Thus, subjectivities are embodied maps of historical transformations; a process in which borders and transnational arrangements are now unavoidable. In this sense, translocal legal subjectivities are constituted as continuously dynamic outcomes of a series of exchanges, contestations or negotiations disputed by state and non-state actors. Focusing on translocal encounters reveals the emergence of translocal interpretative authorities who have the power of producing acts of naming and instituting the legal qualifications that will delineate legal subjectivities on the ground.

Conclusion

As the articles in this Special Issue indicate, the global legal landscape is growing increasingly dense. Rather than producing a universal global order, however, plural and overlapping legalities are diffusing across territories engendering indeterminate encounters and reactions. The dialogic examination of various grounded encounters through the lenses of translocal legalities reveals contestations and new crystallisations of power. Our use of chemical metaphors is intentional. For to notice these reactions requires attending not to the macro-sociological frame, but rather to observe the micro-social interactions produced by the translocation and transmutation

of legal discourses, claims, and practices from one context to another. Such an approach emphasises the contingencies of the encounters between translocal legalities—a feature often glossed over by top-down analyses of global legal transformations. Indeed, although there is widespread consensus about global legal pluralism, not so much attention is being paid to the frictions and alchemical interactions as these normative orders meet in grounded locations. Doing so, however, reveals the contingencies of contemporary global legalities—the 'contaminated diversities'[100] generated as people become ever more connected through technology, supply chains, and global movements. The empirical studies in this Special Issue thus pose more questions than they answer but they also offer insight into processes of legal mobilisation and resistance as people navigate translocal legalities.

This piece has introduced the concept of *translocal legalities* as emergent forms of normativity that are constituted through grounded encounters with local and transnational legal practices, discourses, subjectivities, and forms of resistance. Together with the contributors to this Special Issue and other members of the Translocal Law Research Collective, we have developed this analytical category to slow down and pay attention to the processes of translocation and transmutation of legal practices, knowledges, and discourses as they circulate from one locale or scale to another and in doing so encounter other legal practices, knowledges and discourses, as well as reshape legal subjectivities. Whilst translocal legalities emerge through encounters in the transnational legal field, we have pointed at how the questions, approach, politics and orientation informing the concept of translocal legalities departs in significant ways from existing scholarship on transnational law. Finally, we proposed an extended set of conceptual/methodological categories for understanding grounded encounters *with local and transnational legal practices, discourses, subjectivities, and forms of resistance.*

Disclosure statement

No potential conflict of interest was reported by the author(s).

ORCID

Matthew C. Canfield http://orcid.org/0000-0003-3543-7563
Julia Dehm http://orcid.org/0000-0001-9495-6705

[100] Tsing (n 3).