

THE SOCIOLOGY OF LAW AND THE GLOBAL TRANSFORMATION OF DEMOCRACY

This book provides a new legal-sociological account of contemporary democracy. This is based on a revision of standard positions in democratic theory, reflecting the impact of global legal norms on the institutions of national states. Chris Thornhill argues that the establishment of fully democratic, fully inclusive governance systems in national societies was generally impeded by inner-societal structural factors, and that inclusive patterns of democratic citizenship only evolved on the foundation of global legal norms that were consolidated after 1945. He claims that this process can be best understood through a transposition of key insights of classical legal sociology onto the form of global society. Extensive analysis of select case studies in different regions illustrate these claims. Thornhill offers a sociological theory of global law to explain contemporary processes of democratic integration and institutional formation and contemporary constructions of citizenship and political rights. This title is also available as Open Access.

CHRIS THORNHILL is Professor in Law at the University of Manchester. He is the author of several books on the sociology of law, especially on the sociology of constitutions. His books and other writings have been translated into many languages. He is a member of the Academia Europaea.



GLOBAL LAW SERIES

The series provides unique perspectives on the way globalization is radically altering the study, discipline and practice of law. Featuring innovative books in this growing field, the series explores those bodies of law which are becoming global in their application, and the newly emerging interdependency and interaction of different legal systems. It covers all major branches of the law and includes work on legal theory, history, and the methodology of legal practice and jurisprudence under conditions of globalization. Offering a major platform on global law, these books provide essential reading for students and scholars of comparative, international and transnational law.

Series Editors

M.E.A Goodwin *Tilburg University* Randall Lesaffer *Tilburg University* David Nelken *King's College London* Han Somsen *Tilburg University*

Books in the Series

Intimations of Global Law Neil Walker

 $Legalized\ Families\ in\ the\ Era\ of\ Bordered\ Globalization\ {\bf Daphna\ Hacker}$

Transnational Sustainability Laws Phillip Paiement

The Sociology of Law and the Global Transformation of Democracy Chris Thornhill

Authority and the Globalisation of Inclusion and Exclusion Hans Lindahl



THE SOCIOLOGY OF LAW AND THE GLOBAL TRANSFORMATION OF DEMOCRACY

CHRIS THORNHILL

University of Manchester





CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314-321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi - 110025, India

79 Anson Road, #06-04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107199903

DOI: 10.1017/9781108186049

© Chris Thornhill, 2018

This work is in copyright. It is subject to statutory exceptions and to the provisions of relevant licensing agreements; with the exception of the Creative Commons version the link for which is provided below, no reproduction of any part of this work may take place without the written permission of Cambridge University Press.

An online version of this work is published under a Creative Commons Open Access license CC-BY-NC-ND 4.0 which permits re-use, distribution and reproduction in any medium for non-commercial purposes providing appropriate credit to the original work is given. You may not distribute derivative works without permission. To view a copy of this license, visit https://creativecommons.org/licenses/by-nc-nd/4.0

All versions of this work may contain content reproduced under license from third parties.

Permission to reproduce this third-party content must be obtained from these third-parties directly.

When citing this work, please include a reference to the DOI 10.1017/9781108186049

First published 2018

Printed in the United Kingdom by Clays, St Ives plc

A catalogue record for this publication is available from the British Library.

Library of Congress Cataloging-in-Publication Data

Names: Thornhill, C. J. (Christopher J.), 1966- author.

Title: The sociology of law and the global transformation of democracy /

Chris Thornhill, University of Manchester.

Description: Cambridge, United Kingdom; New York, NY, USA: Cambridge University Press, 2018. | Series: Global law series | Includes

bibliographical references and index.

Identifiers: LCCN 2018009340| ISBN 9781107199903 (hardback) | ISBN 9781316649060 (paperback)

Subjects: LCSH: Sociological jurisprudence. | Law—Political aspects. | Democracy—Social aspects.

Classification: LCC K370 .T545 2018 | DDC 340/.115—dc23 LC record available at https://lccn.loc.gov/2018009340

ISBN 978-1-107-19990-3 Hardback

ISBN 978-1-316-64906-0 Paperback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.



For Atina, Grace and John





CONTENTS

	Acknowledgements ix	
	Introduction 1	
1	The Paradox of Democracy and the Sociology of Law	39
2	National Democracy and Global Law 134	
3	Before the Law? 203	
4	Politics Becomes the Law 277	
5	The Reconstruction of Democratic Agency 420	
	Conclusion 497	
	Bibliography 503 Index 569	





ACKNOWLEDGEMENTS

Research for this book was very generously funded by the European Research Council (ERC) (Advanced Grant 323656-STC). I owe a great debt of gratitude to the ERC for this funding, which made it possible for me to conduct extensive research in different countries and in some of the world's great cities, notably Bogotá, Brasilia, Frankfurt, La Paz, London, Moscow, Nairobi and Saint Petersburg. Additionally, I wish to thank everyone who has assisted me with my research in connection with this book. In particular, my thanks are due to Maria Smirnova and Carina Calabria, who for several years provided both excellent company and extensive information concerning Russian law and the legal systems of different Latin American countries. All analysis of Russian law set out in the book is indebted to Maria Smirnova, who has been a truly magnificent co-researcher over recent years. Some aspects of Chilean and Colombian case law were explained to me by Rodrigo Cespedes, and Dominic Dagbanja and Elizabeth O'Loughlin helped me with questions concerning Ghanaian and Kenyan law. In Bogotá, Juan Barrero, Jorge González and Julieta Lemaitre showed great generosity in taking time to clarify for me the finer points and broader implications of Colombian constitutional law. Colleagues at the Institute of Legislation and Comparative Law under the Government of the Russian Federation in Moscow were extremely helpful in sharing their knowledge of the complexities of Russian public law. Also very fruitful were discussions in which I participated at conferences and colloquia held in Aarhus, Bogotá, Bremen, Cardiff, Edinburgh, Moscow and Tel Aviv, and I am grateful to all participants in these events. Discussions in my postgraduate seminars at the University of Brasilia in October 2016 will stay in my mind for a long time, and I am grateful to all the students there for their intellectual company. Students who took my course on the Sociology of Law at Manchester University in 2017 also contributed immeasurably to the book, as their questions forced me to rethink many of my claims. In November 2016, I spent a month at the



ACKNOWLEDGEMENTS

Max-Planck-Institut für europäische Rechtsgeschichte in Frankfurt, where I wrote some of the historical sections of the book. The Institute in Frankfurt was always a wonderful place to work, and I am grateful for the opportunities it offered me over many years, up to 2016. More informal discussions with Guilherme de Azevedo, Paul Blokker, Hauke Brunkhorst, Emilios Christodoulidis, Jean d'Aspremont, Pierre Guibentif, Gorm Harste, Poul Kjaer, Aldo Mascareño, Ben Morris, Jiri Priban, Darrow Schecter, Gunther Teubner and Neil Walker were also very enlightening, and they fed into the book indirectly. Atina Krajewska discussed many of the ideas in the book with me, and she put me right on many points. As ever, I am extremely grateful to Finola O'Sullivan and other colleagues at Cambridge University Press for supporting my research.