

Contents

<i>Foreword</i>	vii
<i>Preface</i>	ix
Introduction	1
1. Law's Elusive Boundaries	11
I. Border Crossings.....	11
II. Towards a Legal Critique of Transnational Governance Institutions	17
III. Law's Elusive Empire?	19
2. Towards A Theory of Transnational Private Law	27
I. Seeing the (Global) World Through a Private Lawyer's Eyes	27
A. Crucial Intersections: <i>Lex mercatoria</i> and Legal Pluralism	28
B. Communities of Interest and Private Governance Regimes: The Conundrum of Transnational Commercial Law	35
C. Markets as Regulators: It's the Economy, Stupid—Or, is It?	59
D. Law and the Transformation of State Regulatory Functions....	64
II. Ubiquitous Law	67
A. Normativity versus Realism: Law versus Power	67
B. The Transnational: A Realm of Borderless Self-Regulation? ...	76
C. Private Ordering and Public Authority: Scrutinising Democratic versus Economic Functions of Law.....	80
III. A Theory of Transnational Private Law.....	96
A. Co-ordination versus Regulation: Revisiting the Public-Private Divide	96
B. The Hybrid Character of Transnational Law Regimes	109
C. The Governance Mode of Transnational Law Regimes	112
(i) Mapping Economic Governance.....	113
(ii) The Recombinant Governance Mode of Transnational Commercial Law.....	119
D. Soft Law, Hard Law, and Legitimacy.....	123
E. Rough Consensus and Running Code.....	134
(i) Internet Governance: Legitimising Open Technical Standards	135
(ii) Private Law Harmonisation.....	139
(iii) Modern Customary Law	143
(iv) The Making of Transnational Private Law	145

3. Transnational Consumer Contracts.....	153
I. Private Ordering in B2C E-Commerce	153
A. Online Reputation	154
B. Trustmarks and Codes of Conduct	155
C. Online Dispute Resolution.....	157
D. Method of Payment and Credit Security.....	160
II. Transnational Law Regimes: the Role of Virtual Marketplaces	163
III. Reflexive Consumer Protection Law	166
A. Reflexive Trustmarks: Contractual Standards of Hybrid Organisations.....	169
(i) Secondary Trustmarks at the National Level	169
(ii) Supranational Standardisation via Co-Regulation?.....	170
(iii) Global Linkage	173
B. Law-Consumer Protection: ODR Standards and their Implementation.....	174
(i) Guidelines for providers of ODR Procedures	175
(ii) The Implementation of Global ODR Standards.....	176
IV. RCRC in the Making of Transnational Consumer Contract Law.....	179
4. Transnational Corporate Governance	181
I. Corporate Governance Codes	181
A. Corporate Governance	187
B. Corporate Governance and Political Economy	189
C. Law-Making in Corporate Governance	194
(i) The German Corporate Governance Code as an Example of RCRC.....	196
(ii) Who Makes Company Law?	200
(iii) Corporate Law Making Between State and Society	207
(iv) The Reform of German Corporate Governance: The Intricacies of Rough Consensus and Running Code	208
II. Transnational Corporate Governance and Executive Compensation.....	212
A. The Transnational Embeddedness of European Corporate Governance Regulation	213
B. ‘New’ and ‘Experimentalist Governance’ in European Corporate Law Regulation: RCRC as Transnational Legal Pluralism.....	219
(i) The Polarities of EU Governance: Global Competitiveness and Political-Economic Integration	220
(ii) Reflexive Corporate Governance.....	223
(iii) European Corporate Governance Regulation and RCRC.....	225

C. The Case of Executive Compensation.....	227
(i) Breaking the Political Deadlock: Governance by Expertise.....	230
(ii) Executive Compensation: Governance by Transparency	232
D. ‘Germany Inc’ and Executive Compensation	234
(i) The Political Economy of Corporate Governance Reform in Germany.....	236
(a) Governing ‘Germany Inc’	236
(b) Hybridisation of Law-Making: The Return of the State?.....	240
(ii) Transnational Corporate Governance as Spatio-Temporal Assemblage.....	242
E. Transnational Corporate Governance Regulation as RCRC	246
5. Rough Consensus and Running Code in Context	248
I. Law and Social Norms.....	248
II. Soft Law	255
A. Asking the Right Questions?.....	255
B. Soft Law as Embarrassment.....	258
III. Customary International Law (And Its Limits)	261
A. Elements of Customary International Law	262
B. Ships Passing in the Night?.....	265
C. The Attack on Customary International Law	266
D. Customary International Law in the Making of Global Law.....	270
IV. Transnational Private Law: Hard Law, Soft Law, Reflexive Law and the Conditions for Private Law-Making.....	274
<i>Bibliography</i>	278
<i>Index</i>	347