

Rough Consensus and Running Code: A Theory of Transnational Private Law (Hart Monographs in Transnational and International Law)

By Gralf-Peter Calliess, Peer Zumbansen


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As consumer transactions and corporate activities have developed with scant regard to legal and national boundaries, private law theorists have been called upon to investigate what the international law framework might look like. Moving between 'hard' and 'soft' laws - as well as official, unofficial, direct, and indirect regulation - this book constitutes the first comprehensive attempt to develop the framework for a private law regulatory regime which mediates between state-society and public-private relations on the one hand, and a fast-evolving transnational normative field on the other. Rough Consensus and Running Code describes and assesses the different law-making regimes currently observable in the transnational arena. It reassesses, in terms of its legitimacy, the transnational regulation of contracts and corporate law as undertaken by regulatory regimes which are neither purely national nor international, neither exclusively public nor private in nature. Instead the institutions and the principal actors are hybrids. The challenge for scholars of public and private international law is to incorporate the new norms into existing bodies of law and this, ultimately, is the challenge met by this new work.

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Editorial Review

Review

...a sophisticated and thoughtful effort to renew and update our understanding of law to accommodate the challenging realities of globalised regulatory processes. Alex Mills *The Modern Law Review* Volume 75, Issue 3 ...one of the most striking feature of this work is its engagement with an impressive body of literature, from legal theory to sociology, economics and social sciences in general, in an attempt to embed the project in the broader debate of law in the global space. The result is an original, rich and highly complex book, which undoubtedly will, and in fact already is, stimulating debates and discussions over the nature and making of transnational law. ... a must read for whomever wrestles in (or whomever seeks to enter) the rough arena of transnational law! Marco Rizzi *European Journal of Legal Studies* Volume 4, Issue 1 For anyone interested in how law works today, and the dynamic interaction of public and private norms and national and international processes in law's formation and application, *Rough Consensus and Running Code* is a must read. Its theorizing is rich and ecumenical in scope. The focus is on transnational private law, but the book is requisite reading for those interested in any area of law. Kudos to Calliess and Zumbansen! Gregory Shaffer, Melvin C Steen Professor of Law, University of Minnesota Law School The authors brilliantly bridge the growing gap between law and evolving transnational governance practice. They do this with great knowledge of the multiple scholarships that address the diverse elements of this rapidly expanding reality. By combining law with pertinent research from economics, sociology and anthropology, the authors expand the analytic terrain within which to address the slippery subject of global governance. Saskia Sassen, Robert S Lynd Professor of Sociology, Columbia University. Author of *Territory, Authority, Rights: From Medieval to Global Assemblages*. This path-breaking book offers an original take on the relationship between law and alternative forms of social ordering rooted in market and community activity. Engaging critically with the fast-growing literature on global legal pluralism from the vantage point of a range of disciplines, Calliess and Zumbansen take the reader beyond mere synthesis to offer nothing less than a rigorous and innovative theory of transnational law. Whilst their sub-title purports to confine the analysis to private law issues, they also address the most significant issues of public law relating to sovereignty, constitutionalism and legitimacy of supranational governance practices. Colin Scott, Professor of EU Regulation and Governance, University College Dublin Every now and then a book comes along that makes one realise how truncated and hamstrung most prior studies of a subject have been. This is such a book. Demonstrating a rare fluency in both Continental and Anglo-American traditions of jurisprudence and social thought, the authors forge illuminating new pathways through and for transnational private law. Foremost among these is that laid by the authors' ingenious reengineering of "rough consensus and running code" for their purposes; those being to engage global regulatory challenges in all their complexity and dynamism. At once ambitious and rigorous, innovative and attentive, this is legal scholarship at its most exciting. Fleur Johns, Co-Director, Sydney Centre for International Law, University of Sydney Faculty of Law *Rough Consensus and Running Code* offers an important new perspective on the role of law in global governance. By taking legal pluralism seriously, it develops a nuanced and complex theory of transnational legal regulation. This is essential reading for anyone who wants to understand how transnational law works in theory and practice. Sally Engle Merry, New York University Sovereignty is fiction. State legislators have to navigate an ever rising tide of rules, acts of authority, norms and exercises of power beyond their control. Formal law has ceased to be the primary, or the privileged tool for governing society. Under the label of "transnational law", the authors resurrect the law as a social practice, and they herald in a more timely mission for the law as an academic discipline. Christoph Engel, Director, Max Planck Institute for Research on Collective Goods, Bonn World society has long served as a hothouse for the frenzied and disorderly production of widely diverse and

disparate legal and social norms. Against the background of current scholarly attempts to understand this process, *Rough Consensus and Running Code* brings us to a new level of awareness. Taking an original approach based on a holistic view of the making, application and enforcement of law, it provides not only a comprehensive overview of the current state of global law, but also a refreshingly efficient framework for the analysis of ongoing transnational legal processes. A milestone in modern legal scholarship. Marc Amstutz, Professor of Commercial Law, Legal Theory and Sociology of Law at the University of Freiburg In a world of multiple legal norms promulgated by international, state, and non-state entities, we need legal theories that offer guidance for managing the hybrid legal spaces that inevitably emerge. Seizing on the idea of rough consensus and running code, this wide-ranging book provides both useful case studies and generative metaphors for understanding and responding to this era of legal pluralism, in a wide variety of settings. This is definitely a must-read for those interested in transnational legal theory. Paul Schiff Berman, Dean and Foundation Professor of Law, Sandra Day O'Connor College of Law at Arizona State University

About the Author

Gralf-Peter Calliess (LLB, PhD Gottingen, Habilitation Frankfurt) holds the Chair in Private Law, Comparative and International Economic Law, University of Bremen Faculty of Law. Professor Calliess is Director of the A4 Project ('New Forms of Legal Certainty in Globalized Exchange Processes') at the Collaborative Research Centre 'Transformations of the State'. Peer Zumbansen (Lic dr Paris; LLB., PhD law, Habilitation Frankfurt/Main; LLM Harvard,) holds the Canada Research Chair in Transnational Economic Governance and Legal Theory at Osgoode Hall Law School of York University, Toronto. Professor Zumbansen is the founder and director of the Critical Research Laboratory in Law & Society (www.criticalresearchlab.org) and co-founder/editor-in-chief of the German Law Journal (with Russell Miller, www.germanlawjournal.com).

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