CONTENTS

Preface page xi
Acknowledgements xv
Table of cases xix
List of abbreviations and acronyms xxv

1 Transformations of global governance 1
   1.1 Globalization, regulation, legalization 1
       1.1.1 Globalization or economic imperialism? 1
       1.1.2 The shift to post-industrial capitalism 5
   1.2 The emergence of multilevel governance 9
       1.2.1 Changing public–private forms and relations 10
       1.2.2 State transformations 12
   1.3 Characteristics of networked governance 17
       1.3.1 The destabilization of normative hierarchy 17
       1.3.2 The blurring of distinctions between normative forms 20
       1.3.3 Functional fragmentation, technicization and legitimacy 22

2 Liberal internationalism: strengths and limits 25
   2.1 Classical liberal internationalism 26
       2.1.1 State sovereignty and interdependence 26
       2.1.2 International law and organization 30
   2.2 Re-embedding classical liberalism 34
       2.2.1 Territoriality and jurisdiction 34
       2.2.2 Jurisdictional coordination and conflicts 39
       2.2.3 Extension and limits 46
   2.3 New legal forms 50
       2.3.1 Supranational and transnational law 50
2.3.2 Soft law: codes and guidelines 53
2.3.3 Towards world law? 56

3 From interdependence to fragmentation 61

3.1 The firm, the state and regulation 61
  3.1.1 The public and the private 62
  3.1.2 Economic liberalization and global corporate integration 64
  3.1.3 Theories of state, market and globalization 71
  3.1.4 From negative integration to regulatory interaction 79

3.2 Managing regulatory interactions 84
  3.2.1 Competition and coordination 84
  3.2.2 Regulatory arbitrage and forum-shopping 89
  3.2.3 Regulatory avoidance and havens 91
  3.2.4 'Offshore': sovereignty for sale 94
  3.2.5 Formal and informal regulatory cooperation 99
  3.2.6 Regulatory networks 105

4 Corporations and competition 108

4.1 The power of corporate capitalism 109
  4.1.1 Rise and development of the corporation 111
    4.1.1.1 Origins 111
    4.1.1.2 Combinations, cartels and incorporation 113
    4.1.1.3 Theories of the firm and financialization 116
  4.1.2 Ownership and control, governance and accountability 121

4.2 Transnational-corporations, groups and networks 127
  4.2.1 Classification and quantification 127
  4.2.2 Control forms and techniques 129
  4.2.3 Transformations of the TNC 133
  4.2.4 Global corporate networks 137

4.3 Corporatism and the regulation of competition 141
  4.3.1 From cartelization to regulated competition 141
  4.3.2 Competitive interactions in competition regulation 146
  4.3.3 Formal and informal coordination 150
  4.3.4 Regulatory coordination by expert community 153
5 Corporate rights and responsibilities 155

5.1 Liberalization, investment protection and national regulation 156

5.1.1 Liberalization and investment protection 156
5.1.1.1 Protection of foreign-owned property 157
5.1.1.2 The new Model BITs 159

5.1.2 Host-state regulation of foreign-owned business 161

5.1.3 Transnationalization of home-state regulation 164
5.1.3.1 International corruption 165
5.1.3.2 Transnational corporate liability 171

5.2 Hyper-liberalization and globalized regulation 177

5.2.1 Legalization of investment regulation 178
5.2.1.1 Regional agreements 178
5.2.1.2 The NAFTA and the new-wave IIAs 180
5.2.1.3 Business litigation against states 183
5.2.1.4 The failure of the MAI 190

5.2.2 Corporate responsibility and codes 193
5.2.2.1 Social responsibility campaigns and codes 193
5.2.2.2 Interactions of soft and hard law 200

6 International taxation 207

6.1 Taxation and governance 207
6.1.1 Fairness and income taxation 208
6.1.2 Tax reform and democracy 214

6.2 The internationalization of business taxation 216
6.2.1 Problems of tax jurisdiction 216
6.2.2 Building the international tax framework 219
6.2.3 The 'flawed miracle' of the tax treaty system 223

6.3 International tax avoidance and evasion 226
6.3.1 The grey areas and dark sides of tax avoidance 226
6.3.2 The systematization of international avoidance 228
6.3.3 Anti-avoidance measures and their limits 230
6.3.4 The transfer-pricing problem 233
6.3.5 Tax havens and the 'offshore' finance system 237

6.4 International tax reform 244
6.4.1 The crisis of income taxation 244
6.4.2 Reforming international tax coordination 248
6.4.2.1 Initiatives against harmful tax competition 248
6.4.3 Towards a new approach 252
7 Regulation of international finance 258
7.1 Transformations of international finance 258
7.1.1 From banking to financial capitalism 258
7.1.2 Liberalization and financialization 263
7.2 International re-regulation 266
7.2.1 The Basel Committee and the capital adequacy regime 267
7.2.2 Public–private regulatory networks 269
7.2.3 Financial innovation and regulatory arbitrage 276
7.3 The crash and its lessons 281
7.3.1 Responses of the regulators to the unfolding crisis 282
7.3.2 A new approach to financial regulation? 288
7.3.2.1 Effective coordination 290
7.3.2.2 Systemic risks and structural reform 292
7.3.3 Rebalancing the world economy 297
8 The WTO as a node of global governance 299
8.1 From trade agreement to governance node 300
8.1.1 GATT: broad principles and exceptions 301
8.1.2 WTO: beyond trade 308
8.1.3 The power and weakness of the WTO 313
8.2 The role of law and the problem of democracy 320
8.2.1 Deregulation and re-regulation: product standards 322
8.2.2 WTO and international regulatory networking 329
8.2.2.1 The politics and science of global standards 329
8.2.2.2 Regulatory interactions: environmental protection 332
8.2.3 Services liberalization and re-regulation 335
8.2.3.1 GATS and the right to regulate 336
8.2.3.2 Regulatory interactions: finance 341
8.2.3.3 Regulatory interactions: telecoms 342
8.3 The constitution of the WTO 347
8.3.1 Administrative legalization 349
8.3.2 Adjudication 351
8.3.2.1 Emergence of adjudication 355
8.3.2.2 Independence, accountability and formalism 361
8.3.3 Constitutionalization and human rights 367
8.3.3.1 WTO and the coherence of international law 368
8.3.3.2 Formalizing a rights-based constitution? 371
8.3.3.3 Grand visions and technical details 379
9 Intellectual property rights 382

9.1 International development of IPRs 384
   9.1.1 Birth of the modern international framework 385
   9.1.2 Post-colonial conflicts 387
   9.1.3 TRIPs and beyond 389

9.2 Patents, science and business strategies 393
   9.2.1 Conditions and scope of patent protection 393
   9.2.2 International patent protection 395
   9.2.3 Extending appropriation: isolation from nature 397
   9.2.4 Biotechnology battles 401
   9.2.5 Contesting commodification, property rights and access 404
      9.2.5.1 Bioprospecting and biopiracy 404
      9.2.5.2 Controlling access and benefit sharing 407
   9.2.6 The public domain, commons and private property 411
      9.2.6.1 Plant breeders, farmers and biodiversity 412
      9.2.6.2 Geographical indications and ethical or cultural brands 418

9.3 Copyright, creativity and communication 420
   9.3.1 Nature and scope of protection 420
      9.3.1.1 Extensions of private rights 421
      9.3.1.2 Exceptions and the public domain 423
   9.3.2 Collective licensing and the socialization of property rights 424
   9.3.3 Digital dilemmas 428
      9.3.3.1 Defending exclusivity 429
      9.3.3.2 Markets and commons: open source 433
      9.3.3.3 Open access to the world’s knowledge? 436

9.4 From exclusivity to remuneration rights 438

10 Law and legitimacy in networked governance 441

10.1 Globalization and legalization 442
    10.1.1 Perspectives on the role of law 442
       10.1.1.1 Law in heterarchy 444
       10.1.1.2 Lawyering practices 447
    10.1.2 Law and power, property and the state 450
    10.1.3 From transnational corporatism to networked governance 453