

Contents

Preface

vii

PART I LAW AND AUTHORITY IN CYBERSPACE

1. The lawmaking authority of states	2
1.1 Framing the question	5
1.2 The authority of individual rules of law	14
1.3 Legitimizing authority and the community of the state	18
1.4 Conclusions	25
2. Non-state rule makers	26
2.1 Legal pluralism in cyberspace	27
2.2 Transnational legal institutions and authority	31
2.3 Technical rule making	38
2.4 Non-state rule-systems	44
2.4.1 ICANN and eBay	45
2.4.2 Legitimate authority and non-state rule-systems	52
3. Community, authority and rules of recognition	59
3.1 Communities and authority in cyberspace	59
3.2 Rules of recognition	63
3.2.1 Internal and external perspectives	64
3.2.2 The external perspective of cyberspace actors	66
3.2.3 Contingent authority	75
3.3 Law in cyberspace	77

PART II CONTROL, COMPETITION AND CONVERSATION

4. Control	81
4.1 Law as a system of control	81
4.2 Code as a control mechanism	86
4.2.1 The interplay between the modalities of regulation	89
4.2.2 The limits of code's control	92
4.3 Beyond control	101

5. Normative competition in cyberspace	103
5.1 Sources of norms	109
5.1.1 Service provider rules and standards	109
5.1.2 Norms as an emergent property of user interactions	112
5.1.3 Shaping of norms by technology	117
5.2 Legal norms and cyberspace norms	120
5.2.1 Aligning laws and norms	128
5.2.2 Legal norms and acceptance	135
5.3 Conclusions	137
6. Networks and nodes	139
6.1 Law, regulation and governance	139
6.2 Law as commands – from Cyberlibertarianism to Cyberpaternalism	144
6.3 Complexity, networks and (dis)obedience	152
6.4 Platforms and gatekeepers	159
6.5 Networks, regulation and law	163

PART III LEGITIMACY AND THE RULE OF LAW

7. Legitimacy and authority	169
7.1 What is legitimacy?	169
7.2 Legitimacy as a variable value	175
7.3 Addressing and communication	177
7.4 Congruence with the law's environment	183
7.5 Fair and just aims	194
7.6 Conclusions	197
8. <i>Maintaining the rule of law in cyberspace</i>	200
8.1 A modern definition of the rule of law	200
8.2 Challenging the rule of law in cyberspace	206
8.2.1 Law must be set forth in advance (be prospective)	208
8.2.2 Law must be made public; law must be general; law must be clear	212
8.2.3 Law must be stable and certain	222
8.2.4 Law must be applied to everyone according to its terms	224
8.2.5 Conclusion	225
8.3 Rethinking the rule of law for cyberspace	226
Afterword	231
<i>Index</i>	237