

## CONTENTS

<i>List of Figures</i>	x
<i>Preface</i>	xi
<i>Acknowledgments</i>	xiv
<b>1 A Theory of WTO Law</b>	1
1.1 Why a Theory?	1
1.2 The Outline of a Theory	4
1.2.1 A Theory of Community	5
1.2.2 A Theory of Justice	9
1.2.3 A Theory of Law	17
1.3 Of Relationships and a System	24
1.4 A Theory as Theory	28
1.5 The Structure of This Book	46
1.6 Conclusion	48
<b>2 The WTO Agreement as Community</b>	55
2.1 A Theory of Community	55
2.2 GATT 1947 and the WTO Agreement	60
2.2.1 GATT 1947	60
2.2.2 The WTO Agreement	66
2.3 Text and Context	76
2.4 On Interdependence	91
2.5 A Great Uncoupling	96
2.6 Conclusion	106
<b>3 The WTO Agreement and Justice</b>	108
3.1 The Nature of Justice	108
3.2 Theories of Justice	112
3.2.1 Equality and Fairness	113
3.2.2 Justice in New Forms	119
3.2.3 A Communitarian Theory	122
3.3 The WTO Agreement and Justice	134
3.3.1 Distributive Justice	144

3.3.2	Corrective Justice	154
3.3.3	Transformative Justice	166
3.4	Beyond Transformation	178
3.4.1	Perfect Justice	179
3.4.2	Global Justice	184
3.4.3	Compliance	189
3.4.4	Legitimacy	191
3.5	Justice: A Communitarian Idea	194
<b>4</b>	<b>The WTO Agreement as a Law of Obligations</b>	<b>198</b>
4.1	Introduction	198
4.2	A Law of Equality	199
4.3	A Law of Obligation	203
4.3.1	A Law of Obligations	203
4.3.2	A Constitutive Law	230
4.3.3	A Law of the Future	240
4.3.4	A Deductive Law	245
4.4	Conclusion	253
<b>5</b>	<b>The WTO Agreement as a Law of Rights</b>	<b>256</b>
5.1	Introduction	256
5.2	A Law of Fairness	258
5.3	A Law of Right	265
5.3.1	A Law of Rights	265
5.3.2	A Contractual Law	296
5.3.3	A Law of the Past	303
5.3.4	An Inductive Law	307
5.4	Nonviolation	313
5.5	Implementation	318
5.6	Conclusion	322
<b>6</b>	<b>The WTO Agreement as a <i>Sui Generis</i> Legal System</b>	<b>326</b>
6.1	Introduction	326
6.2	A Just Law	328
6.3	A Legal System	335
6.3.1	A <i>Sui Generis</i> Legal System	336
6.3.2	A Contractual Constitution	342
6.3.3	A Law of the Present	347
6.3.4	An Abductive Reasoning	352
6.4	Transforming the Law	358
6.4.1	Correlation	359
6.4.2	Subordination	360
6.4.3	Transition	361
6.4.4	Integration	364

## CONTENTS

ix

6.4.5 Transformation and Idea-Complexes	366
6.5 Conclusion	368
<b>7 A Communitarian Theory and International Investment Law</b>	<b>370</b>
7.1 Introduction	370
7.2 An International Law of Investment	374
7.2.1 Fair and Equitable Treatment (FET)	379
7.2.2 Full Protection and Security (FPS)	382
7.2.3 Arbitrary or Discriminatory Behavior	383
7.2.4 National Treatment (NT)	384
7.2.5 MFN Treatment	385
7.2.6 Expropriation	387
7.2.7 Necessity and Fundamental Change of Circumstances	388
7.2.8 Appraisal	389
7.3 Law and Investment	390
7.3.1 Doing Fairness	392
7.3.2 Rights Redux	401
7.3.3 A Contractual Ethos	406
7.3.4 Looking Back	412
7.3.5 Induction and Empiricism	415
7.4 A Lesser Unification	419
7.5 Conclusion	426
<b>8 Some Concluding Thoughts</b>	<b>428</b>
8.1 A Substantive Theory	428
8.2 A General Theory?	434
8.3 Some Unanswered Questions	439
8.4 Theory in the Anthropocene	443
8.5 WTO: Predictions and Prescriptions	450
8.6 Conclusion: Biology as Ideology	460
<i>Bibliography</i>	461
<i>Index</i>	487