

INDEX

- abrogating/amending trade agreements, 159–62
- AD/CVD issues, 70
- adhesion contracts, 11, 29, 104–5
- adhesion theory, 104, 164–65, 170
- advantage-taking, 39
- agency
 - consent and, 12
 - soviet-style command economies, 132
- agency and distribution agreements
 - CAFTA and, 64, 90, 106, 124
 - in developing countries, 91
 - protections in, 89
- Agreement on Safeguards, 96–97
- Agreement on Subsidies and Countervailing Measures (SCM), 59, 98
- agriculture
 - CAFTA and, 71, 75, 142
 - concessions, 80
 - CTPA and, 75, 126, 142
 - displaced workers and, 40
 - IP law and, 151, 170
 - KORUS and, 76, 99, 142
 - macroeconomic policy coordination, 60
 - market access, 74–76
 - NAFTA and, 142
 - negotiation dynamic, 112
 - poultry industry in Colombia, 75
 - power and consent in, 67, 69
 - subsistence agriculture, 142
- The Analysis of Oppression* (Weil), 213–15
- Andean Trade Preference Program, 73
- Andean Trade Preferences Act, 120
- Anghie, Anthony, 20
- anti-circumvention provisions, 58
- arbitration process, 62–63, 91
- asymmetry
 - bargaining power, 114, 175
 - The Great Asymmetry, 176
 - multilateral trade and, 110
 - in regional/bilateral trade agreements, 109–13
 - in treaty negotiation, 91
- authoritarianism, 47
- bargaining power, 114, 175
- Barry, Brian, 9
- Bernstein, William, 18
- bilateral and regional trade agreements
 - adhesion theory, 164
 - asymmetry and, 109–13
 - bargaining power inequalities, 116
 - creative reinterpretation of, 163–66
 - of European Union, 171
 - GSP-style regional trade preference schemes, 117, 120
 - permissive withdrawal provisions in, 160
 - S&D relevance, 66
 - summary of, 209
 - treaty practice, 56
- bilateral exchange, 24–25
- bilateral investment treaty (BIT), 61–62, 169, 174, 176
- Bornschier, Volker, 168
- CAFTA (Central America Free Trade Agreement)
 - agriculture and, 71, 75, 142
 - asymmetrical trade agreements, 110–11
 - bargaining power inequality, 114–15
 - coercion and, 120, 122–23
 - dispute resolution and, 86–87, 142
 - domestic law reform, 89–93
 - duty-free access, 71–76
 - limiting abusive use of safeguards, 166
 - non-trade domestic law, 144–45

CAFTA (Central America Free Trade Agreement) (cont.)
 overview of, 64, 68–69
 rebuilding, 159
 summary of, 210
 theft and, 125
 trade remedies, 80–85
 Canada. *See* NAFTA
 capacity-building, 148
 capital market transactions, 186
 capitalism, 6, 135, 211
 Carmody, Chi, 101
 Cavell, Stanley, 19
 Chinese global engagement, 172
 coalition building, 150
 coercion. *See also* theft
 contract law and, 29, 37, 90, 119
 as distinct from voluntary agreements, 29
 dynamics in dispute resolution, 87–88
 economic flows and, 36–37
 in economic relationships, 139
 introduction to, 28–30
 as oppression, 130
 private law and, 37, 82, 123
 (re)-building trade agreements, 119–23
 Cold War, 118, 154
 collective action problems, 176
 colonialism, 35, 96, 103, 212
 freedom of commerce principles, 21
 Common Markets, 60
 communication in trade, 19
 community of knowledge, 194
 compulsory licensing, 141, 155
 consensual trade
 aim of trade agreement negotiation, 133–36
 concern over, 129
 confusion over, 128–29
 contemporary trade agreements, 66–67
 economic rulemaking through trade agreements, 147–48
 exploitation of, 115–16
 external trade relationships, 189
 global economy, 206–7
 global market society, 200–8, 211–17
 importance of, 41–50
 internal trade relationships, 189
 introduction to, 1, 16
 investigation as a transaction, 22–41
 moving toward, 127–36

oppression and, 42–50
 in other fields, 8–12
 other sectors/states within trading system, 169–72
 overview, 12–15
 private transactions in, 23–34
 provisions to protect, 140–46
 public law of consensual exchange agreements, 137
 reflective investigation of trade, 1–2
 safeguarding consent, 85, 211
 social cost of resentment, 131–32
 summary of, 50–51, 209–11
 theft and, 127
 trade as a repeat game, 129–31
 trade treaty object/purpose, 133–36
 why consent, 3–8
 consent
 agency and, 12
 contemporary trade agreements, 66–67
 convergence and, 206–7
 degrees of, 37
 investment and, 173–77
 as key to global justice, 216
 in law, 9–10
 multilateral consent, 94–105
 political theory and, 8–9, 126, 152–53, 209
 safeguarding, 85, 211
 state-level consent, 175
 substantive provisions, 140–46
 why consent, 3–8
 contemporary trade agreements
 consent and oppression in, 66–67
 free trade agreements, 56–69
 global deregulatory apparatus, 134
 introduction to, 52–53
 market access, 56–58, 67, 70–80
 overview of, 53–66
 process overview, 53–55
 substantive provisions, 70–93
 trade remedies, 80–85
 contract law
 adhesion provisions in, 163–64
 bargaining role in, 26, 91–92
 coercion and, 29, 37, 90, 119
 consensual exchange, 11
 domestic notions of fairness, 82
 private-party level, 27–28
 task in, 137
 transactional mode of justice, 205

Index

221

- convergence
 - consent and, 206–7
 - in global economy, 190–200
 - investment rules, 145–46
 - normative convergence in global economy, 189, 195–200
 - socioeconomic convergence, 191–95
 - trade agreements and, 61
 - trade law and, 168
- corporate law, 49
- cosmopolitan principles, 9
- Costa Rica, 89–93, 124
- Costa Rican Law, 166
- cross-border integration, 191
- cross-retaliation, 141
- CTPA (United States-Colombia Trade Promotion Agreement)
 - agriculture, 75, 126, 142
 - asymmetrical trade agreements, 110–11
 - market access, 150
 - overview of, 68, 73
 - poultry concessions, 106
 - summary of, 210
 - theft and, 126
 - trade remedies, 80
- Customs Unions, 57, 60

- de facto* economic regime, 143
- developing-country agency laws, 91
- development discourse, 198–200
- dispute resolution, 62–63, 67, 85–89, 140–41
- Dispute Settlement Understanding (DSU), 100–2
- distribution law, 89, 106
- Doha Declaration, 141, 155
- Doha Development Round, 150
- domestic law reform, 56, 70, 89–93, 102–5, 156
- domestic politics of trade, 5, 54, 126, 136.
 - See also* social contract of trade
- domination as trade, 20–22
- Dominican Republic–Central America Free Trade Agreement (CAFTA-DR), 67–68. *See also* CAFTA
- duress in signing treaty, 161
- duty-free access, 74

- East India Company, 20–21
- economic disparities of small economies, 88
- economic flows
 - coercion and, 36–37
 - exploitation and, 30–38
 - theft and, 35–36
- economic globalization, 134, 193, 200.
 - See also* global economy
- economic relationships, 1–2, 131, 138
- economic rulemaking through trade agreements, 147–48
- economic value, 23–24, 27, 35, 51, 58
- egregious provisions in trade agreements, 163–65
- encomienda* system, 22
- encounter as trade, 18–20
- European Union (EU), 60, 171
- ex post* contract modification, 124
- exchange
 - bilateral exchange, 24–25
 - consensual exchange, 11
 - non-economic value, 24
 - patterns of exchange, 34–41
 - public law of consensual exchange agreements, 137
 - as trade, 17–18
 - transnational consensual exchanges, 179
 - of value, 23–27
- exploitation. *See also* predation; theft
 - colonialism as, 35, 96, 103, 212
 - economic flows and, 30–38
 - in economic relationships, 138–39
 - inequality in bargaining power, 114
 - intertemporal effect on future negotiations, 116
 - negotiation and, 113–19
 - nonconsensual trade agreements, 46, 210
 - as oppression, 130
 - overview of, 30–33
 - political theory and, 31
 - private exploitation of trade agreements, 40
 - (re)-building trade agreements, 113–19
 - sanctions-based trade remedy, 101
 - trade negotiations and, 115–16
- face-to-face barter transaction, 24–25
- fascism, 3, 212
- financial transaction tax (FTT), 185–88
- food security, 78
- foreign direct investment (FDI) flows, 191
- foreign investment, 61, 173–77
- free-rider position, 99

- free trade, 2, 134
- free trade agreement (FTA)
 - dispute resolution, 62–63
 - evaluation of, 67–69
 - financial transaction tax, 186
 - introduction to, 56
 - investment, 61–62
 - law reform, 63–64
 - macroeconomic policy coordination, 60
 - market access and, 56–58
 - overview of, 55–66
 - Special and Differential Treatment, 65–66
 - trade disciplines and remedies, 58–60
- Galeano, Eduardo, 21
- game theory and trade, 44
- Gathi, James, 21
- General Agreement on Tariffs and Trade (GATT)
 - amendments to, 65
 - Enabling Clause, 57
 - multilateral trade, 94–95
 - purpose of, 133–34
- geographic boundaries and trade, 17
- global economy
 - consent and convergence, 206–7
 - consent and investment, 173–77
 - convergences in, 190–200
 - deepening of, 191–92
 - emergence of global law, 197–98
 - freedom within, 5
 - global market society, 200–8
 - international economic law, 195–96
 - introduction to, 168–69
 - normative convergence, 195–200
 - social contract of trade, 177–88
 - social relations, 193–95
 - socioeconomic convergence, 191–95
 - trade law for, 188–207
 - from trade to finance economy, 172–77
 - transactional mode, 204–6, 208, 216
 - transformation of global justice, 198–200
 - worsening of inequality, 192–93
- Global Financial Crisis (2007), 130, 135, 212
- global inequality, 192–93
- global justice
 - challenges of, 190
 - consent as key to, 216
 - integration of, 189
 - introduction to, 14
 - pluralism and, 204
 - relational mode, 204
 - summary of, 207
 - transactional mode of justice, 204–6, 208, 216
 - transformation of, 198–200
- global law, 189, 197–98, 217
- global market society, 195, 200–8, 211–17
- globalization, 22, 47. *See also* economic globalization; global economy
- The Great Asymmetry, 176
- gross domestic product (GDP), 183
- GSP-style programs, 73, 75, 117, 120, 142
- Hale, Robert, 29–30
- hard bargaining, 119
- harmonization, 60, 93
- Harris, D.P., 104–5, 170
- Held, David, 9, 194
- human freedom, 4
- Iliad (Homer)*, 212
- imperial overstretch, 215
- imperialism, 35
- implementation process, 53, 55
- industrialization, 195
- inequality in bargaining power, 114
- informal nonbinding consultations, 85
- intellectual property obligations, 56
- intellectual property rights, 102–5
- International Court of Justice, 10
- international economic law, 6, 195–96
- international law-making, 197–98
- international rule of law, 86
- international trade law, 5, 41–42, 133–34, 168, 188–207, 209
- international tribunals and adhesion law, 165
- interpretation *contra preferentum*, 164–66
- investigation of trade as a transaction, 22–41
- investment
 - agreements, 169
 - bilateral investment treaty, 61–62, 169, 174, 176
 - BITs and, 174
 - capital abroad, 174
 - consensual trade and, 175, 177, 196
 - consent and, 173–77
 - convergence and investment rules, 145–46

Index

223

- foreign direct investment (FDI) flows, 191
- foreign investment, 61, 173–77
- free trade agreement, 61–62
- multilateral agreement, 145–46
- private party investment, 173
- problematic nature of, 145
- quasi-public, 173–74
- quasi-public investment, 173–74
- stand-alone BITs, 169
- wage flattening, 192–93
- involuntary transfer of value, 24
- James, Aaron, 203, 206
- judicial supervision of disputes, 90
- justice. *See* global justice
- Kaesong outward processing zone (OP), 80
- Kant, Immanuel, 159, 167
- Kennedy, Paul, 215
- KORUS (United States-Korea Free Trade Agreement), 64, 68, 76–85
 - agricultural concessions, 76, 99, 142
 - asymmetrical trade agreements, 111, 118
 - coercion and, 122–23
 - dispute resolution and, 142
 - domestic law reform, 92–93, 145
 - limiting abusive use of safeguards, 166
 - overview of, 64
 - summary of, 210
 - theft and, 126
- lack of representation in (re)-building trade agreements, 124–27
- language and trade, 16, 19
- Latin American bargaining power, 116–17, 149
- law of duress, 137
- The Law of Peoples* (Rawls), 152–53
- Law of the Sea negotiations (1978), 155
- law reform, 63–64, 67, 144–46
- legal pluralism, 197
- liberal democracies, 153
- liberalism, 8, 13, 48–50
- limiting abusive use of safeguards, 166
- macroeconomic policy coordination, 60
- Making Globalization Work* (Stiglitz), 188
- market access
 - contemporary trade agreements, 56–58, 67, 70–80
 - CTPA and, 150
 - (re)-building trade agreements, 119–20, 142–43
- market liberalization, 94–95
- Marxism, 6, 212
- The Merchant of Venice* (Shakespeare), 18, 20–22
- Mexico, 149, 154, 157. *See also* NAFTA
- Miller, David, 31
- Miller, Richard, 94–96, 99, 120–21
- modes of justice
 - relational mode of justice, 204
 - transactional mode of justice, 204–6, 208, 216
- monopolies, 47–48
- Most Favored Nation (MFN), 57
- multilateral trade
 - asymmetry of, 110
 - bargaining power inequalities, 116
 - consent context, 94–105
 - core function of WTO, 94–96
 - dispute Settlement Understanding, 100–2
 - introduction to, 94
 - negotiations, 155–56
 - overview of, 56–57, 65
 - rule-making in trade remedies, 96–100
 - summary of, 105
 - TRIPS agreement, 102–6
- NAFTA (North American Free Trade Agreement)
 - agriculture and, 142
 - demand for international tribunal, 144
 - dispute resolution and, 86–88, 142
 - financial transaction tax, 187
 - introduction to, 63
 - oppositions during negotiations, 149, 154
 - separation of powers doctrine, 83
 - withdrawal provisions, 160
- national law-making, 197–98
- national security, 76–77
- National Treatment (NT), 57
- negotiation
 - among unequal parties, 109–13
 - asymmetry in treaty negotiation, 91
 - bargaining power, 114, 175
 - changing to promote consensual trade, 146–57
 - economic rulemaking through trade agreements, 147–48
 - exploitation and, 113–19

- negotiation (cont.)
 - inequality in bargaining power, 114
 - process, in trade agreements, 53–54
 - public opinion-shaping strategies and, 155
 - theft and lack of representation, 124–27
- neoliberalism, 13, 203–4, 213
- non-governmental organisations (NGOs), 148–49
- non-tariff barriers (NTBs), 58, 72, 84, 94, 134
- non-trade domestic law, 144–45
- non-trade law reform, 89–93
 - effect on negotiations, 156
- non-trade social costs, 45–48
- nonconsensual economic extraction, 180.
 - See also* predation
- nonconsensual trade agreements, 46, 210, 215–16
- nontariff barriers, 94
- normative convergence, 189, 195–200
- Odell, John S., 146, 149, 154
- OECD countries, 185
- O'Neill, Onora, 11
- Opium Wars, 36
- oppression
 - AD/CVD issues, 70
 - coercion as, 130
 - consent in trade and, 42–50
 - contemporary trade agreements, 66–67
 - exploitation as, 130
 - of global economy, 7
 - global market society, 211–17
 - mechanisms of, 6–7
 - privilege and, 3
 - servitude, 4, 213–14
 - social costs of, 45–46
 - socioeconomic relationships, 42
 - trade as ideal limit against, 52
 - Weil, Simone and, 3–8, 42, 52–53, 94, 158, 212
- Original Position (Rawls), 9
- pacta sunt servanda* principle, 161, 166
- Perpetual Peace* (Kant), 159
- phenomenological writing, 1
- Plato, 3
- pluralism and justice, 204
- political theory and trade
 - basic structure and, 199
 - boundaries and trade, 17
 - consent and, 9–10, 126, 152–53, 209
 - exploitation and, 31
 - introduction to, 8–9
 - liberalism, 8, 13, 48–50
 - normative political theory, 49
 - phenomenological writing *vs.*, 1
 - process of reaching consensus, 178
 - with social benefits, 153
- predation, 27–28. *See also* exploitation; theft
- premature liberalization, 65
- private bargains, 44
- private law
 - adhesion contracts, 104–5
 - coercion and, 37, 82, 123
 - as condition for agreement, 45
 - consensual exchange agreements, 137
 - duress in, 27
 - economic globalization, 200
 - enforcement of, 92
 - extra-territorial private law reform, 90
 - international treaty, 83
 - introduction to, 11
 - voluntary consent, 37
- privilege and oppression, 3
- pro-consensual strategies and game theory, 44
- protectionist dimension of trade agreements, 58
- protectionist domestic regulation, 135
- protectionist regulation, 2, 133
- protective barriers to trade, 71
- public law of consensual exchange
 - agreements, 137
- public opinion-shaping strategies and negotiation, 155
- Quad Countries (U.S., EU, Canada, Japan), 104, 112–13
- ratification process, 53–55
- rational self-interested strategies, 130
- Rawls, John, 9, 152–53, 199
- (re)-building trade agreements
 - abrogating/amending of, 159–62
 - changing negotiation of, 146–57
 - coercion, 119–23
 - creative reinterpretation of, 163–66
 - dispute resolution and rule of law, 140–41
 - economic rulemaking through trade agreements, 147–48

Index

225

- interpretation against powerful party, 163–65
- interpretation *contra preferentum*, 164–66
- introduction to, 108–9
- investment law, 145–46
- law reform, 144–46
- market access, 119–20, 142–43
- moves “at the table,” 153–57
- moves “away from the table,” 38, 93, 148–53
- moving toward consent in trade, 127–36
- non-trade domestic law, 145
- recapitulation, 157–58
- reconceptualizing trade agreements and, 136–39
- renegotiating/amending of, 162
- safeguards, 143–44
- selective non-enforcement, 163–65
- substantive provisions, 140–46
- summary, 167
- trade treaty object/purpose, 133–36
- what can be done to re-build, 158–59
- Reagan, Ronald administration, 182
- regional trade agreements. *See* bilateral and regional trade agreements
- relational mode of justice, 204
- renegotiating/amending trade agreements, 162
- Restatement Second of Contracts, 82
- rightist authoritarianism, 47, 131
- Rist, Gilbert, 199
- “robber baron” capitalism, 135
- Roosevelt, Franklin D., 158
- Roosevelt, Theodore, 158
- Rosling, Hans, 188, 210
- rule of law, 98, 140–41
- safeguarding consent, 85, 211
- sanctions-based trade remedy, 101
- sanitary or phytosanitary measures (SPS), 59
- security and trade
 - Cold War, 118, 154
 - national security, 76–77
 - overview of, 46–47
- selective non-enforcement in trade agreements, 163–65
- Sen, Amartya, 17, 217
- separation of powers, 83, 197
- services liberalization, 79
- Shakespeare, William, 18, 21–22
- Smith, Adam, 17, 217
- social contract of trade. *See also* domestic politics of trade
 - betrayal of, 181–82
 - consensual trade and global economy, 177–88
 - funding of, 185–88
 - overview, 179–81
 - restoration of, 183–85
 - trade law for global economy, 189
- social costs
 - of monopolies, 47–48
 - non-trade, 45–48
 - oppression, 45–46
 - of resentment, 131–32
- social relations in global economy, 193–95
- social welfare democracies, 181
- socioeconomic convergence, 191–95
- socioeconomic organization, 3–4
- socioeconomic relationships, 42
- Soviet-style command economies, 46, 132
- Special and Differential Treatment (S&D)
 - free trade agreement, 65–66
 - GSP-style programs, 73, 75, 117, 120, 142
 - non-reciprocity, 105
- special interest pressure, 81–82
- state-level consent, 175
- Steiner, Hillel, 31–32, 38
- Stiglitz, Joseph, 188
- subsidies and trade, 59–60
- substantive provisions, 140–46
- substantive trade rules, 53–54
- Symposium* (Plato), 3
- tariff barriers, 94, 134
- tariff reductions, 57–58, 78
- theft. *See also* exploitation; predation
 - CAFTA and, 125
 - consensual trade and, 127
 - CTPA and, 126
 - economic flows and, 35–36
 - KORUS and, 126
 - lack of representation, 124–27
 - in (re)-building trade agreements, 124–27
- trade. *See also* consensual trade; multilateral trade; social contract of trade
 - alternatives to, 27–34
 - coercion and economic flows, 36–37
 - concessions, 80–81

- trade. (cont.)
 consensual flows, 34–41
 disciplines and remedies, 58–60
 as domination, 20–22
 as encounter, 18–20
 as exchange, 17–18
 as exchange of value, 23–27
 exploitation and economic flows, 30–38
 language and, 16
 many dimensions of, 17–22
 multilateral trade, 56–57, 65
 non-trade social costs, 45–48
 as patterns of exchange, 34–41
 as private transactions, 23–34
 as public transaction, 34–41
 public transaction as, 34–41
 reflective investigation of trade, 1–2
 as a repeat game, 129–31
 security and, 46–47
 social contract of, 178
 theft and economic flows, 35–36
 unfair trade, 59
 value system and, 19
 wage flattening, 192–93
 trade adjustment assistance (TAA), 181–84, 187
 trade agreements. *See also* bilateral and regional trade agreements; CAFTA; contemporary trade agreements; CTPA; free trade agreement; KORUS; NAFTA; (re)-building trade agreements
 commercial flows, 38
 convergence and, 61
 introduction to, 10
 liberalism and, 48–50
 negotiation of, 39, 133–36, 146–57
 nonconsensual trade agreements, 46
 private exploitation facilitated by, 40
 unequal trade agreements, 43, 48, 108–13
 trade bargains, 196
 trade-displaced workers, 183
 trade disputes, 140
 Trade Facilitation Agreement, 151
 trade liberalization, 55, 77, 79, 147, 178
 trade negotiations, 115–16, 180
 Trade Promotion Authority (TPA), 181–82
 Trade-Related Aspects of International Property Rights (TRIPS), 102–6, 121, 141
 adhesion theory, 164, 170
 Doha Declaration, 155
 non-trade domestic law, 145
 trade remedies
 CAFTA and, 80–85
 concessions and, 80–81
 contemporary trade agreements, 80–85
 CTPA and, 80
 dispute resolution, 85–89
 domestic law reform, 89–93
 free trade agreement and, 67
 multilateral consent, 94–105
 summary of, 105–7
 trade sanctions, 141
 trade treaty object/purpose, 133–36
 trading system, 133
 transactional mode of justice, 204–6, 208, 216
 Transatlantic Trade and Investment Partnership (TTIP) agreement, 152
 transnational consensual exchanges, 179
 transnational law, 197, 207
 TRQ liberalization, 72

 under-regulated capitalism, 202
 unequal trade agreements, 43, 48, 108–13
 unfair trade, 59
 unilateral transaction, 24
 United States-Colombia Trade Promotion Agreement. *See* CTPA
 United States-Korea Free Trade Agreement (KORUS). *See* KORUS
 Uruguay Round negotiations, 95, 103, 112, 121
 U.S. contract law, 92

 value system and trade, 19
 Vienna Convention of the Law of Treaties, 160–62
 Vining, Joseph, 136, 205
 voluntary agreements, 29

 wage flattening and trade/investment flows, 192–93
 Washington Consensus, 202
 Weil, Simone, 3–7, 42, 152, 212–16
 international trade analysis, 215
 Wertheimer, Alan, 31
 White, James Boyd, 8, 212
 World Trade Agreement, 62
 World Trade Organisation (WTO), 52
 Agreement on Safeguards, 96–97

| | |
|---|-----|
| Index | 227 |
| Agreement on Subsidies and Countervailing Measures, 59, 98 | |
| asymmetrical agreements, 112 | |
| core function of, 94–96 | |
| Dispute Settlement Understanding, 100–2 | |
| Millennium Round of negotiations, 150 | |
| multilateral agreements, 110, 120–21 | |
| multilateral trade negotiations, 155–56 | |
| renegotiating trade agreements, 146 | |
| rule-making in trade remedies, 96–100 | |
| summary of, 210 | |
| Trade Facilitation Agreement, 151 | |
| as treaty system, 69 | |
| TRIPS agreement, 102–6, 121 | |
| Yaounde Association and unequal bargaining strategies, 154 | |
| yarn-forward approach in KORUS negotiations, 78 | |
| zero-tariff treatment, 58 | |