

## Contents

<i>List of Tables</i>	<i>page xi</i>
<i>Preface and Acknowledgments</i>	xiii
<b>Introduction</b>	1
<b>1 Globalization and Its Multiple Discontents</b>	9
1.1 Globalization and Absolute Gains	12
1.2 Discontents Based on Relative Gains	13
1.2.1 The Populist Discontent	14
1.2.2 The Corporate Power Discontent	15
1.2.3 The Protectionist Discontent	16
1.2.4 The Geoeconomic Discontent	17
1.3 Discontents Based on Absolute Losses	19
1.3.1 The Sustainability Perspective	19
1.3.2 TWAIL and Other Perspectives	20
<b>2 The Process of Susceptibility and Exclusion</b>	23
2.1 Illegitimacy	26
2.2 Discrimination	28
2.3 Reregulation	31
2.4 Inequality	33
<b>3 Indigenous Peoples under International Economic Law</b>	36
3.1 General Protections under International Law	39
3.2 Specific Protections in Economic Regimes	44
3.2.1 Intellectual Property	44
3.2.2 Finance	58

3.2.3	Trade	67
3.2.4	Investment	73
<b>4</b>	<b>The Experience of Indigenous Peoples under Economic Regimes</b>	<b>82</b>
4.1	A Methodological Caveat	82
4.2	Intellectual Property	84
4.2.1	The Kuna People	84
4.2.2	The San People	86
4.3	Finance	88
4.3.1	The Huave People	88
4.3.2	The Maasai People	89
4.4	Trade	93
4.4.1	The Inuit People	93
4.4.2	The Guarani-Kaiowá People	95
4.5	Investment	98
4.5.1	Two North American Tribes	98
4.5.2	The Sawhoyamaxa People	100
<b>5</b>	<b>The Recalibration of Indigenous Rights and Economic Law</b>	<b>104</b>
5.1	Normative and Jurisprudential Impacts	105
5.1.1	A Shield for Indigenous Rights	106
5.1.2	A Sword for Indigenous Rights	110
5.2	Transformative Impacts	115
5.2.1	New Standards, Metrics and Tools	116
5.2.2	The Practice of International Economic Lawmaking	119
5.2.3	Social and Development Policy	123
<b>6</b>	<b>Indigenous Interests and the Future of Economic Treaties</b>	<b>126</b>
6.1	The Synthesis of Marginalization	127
6.2	Legitimacy: Toward the Empowerment of the Marginalized	132
6.2.1	The Safeguard Role of Consultations	133
6.2.2	Minimum Procedural Standards to Achieve Protection	133
6.2.3	Self-Determination and Consent	134
6.2.4	Shared Responsibilities	135
6.3	Neutrality: Improving Indigenous-Tailored Design	135

	<i>Contents</i>	ix
	6.3.1 Tailored Exceptions	135
	6.3.2 Locking in Domestic Legal Reform	136
	6.4 Democracy: Demo-Regulation for the Rise of Equality	137
	6.5 Equality: Shared Benefits and Beyond	138
<b>7</b>	<b>Toward an Indigenous-Based Critique of Globalization</b>	141
	7.1 Beyond the Cycle of Susceptibility and Exclusion	142
	7.2 Indigenous Peoples as Core Participants of Globalization	145
	<b>Conclusion</b>	148
	<i>Index</i>	149