# Book Review

# CHIOS CARMODY, A COMMUNITARIAN THEORY OF WTO LAW (CAMBRIDGE UNIVERSITY PRESS, 2024)

***Shin-Yi Peng****

**ABSTRACT**

*Chios Carmody's **A Communitarian Theory of WTO Law** offers a compelling contribution to debates on the nature and future of World Trade Organization (hereinafter "WTO") law. Drawing on a wide range of sources and grounded in rigorous analysis, Carmody presents a nuanced account of the interdependence among the WTO's legal components. The core of the book examines WTO agreements as a law of obligations, a law of rights, and a sui generis legal system. Applying the communitarian lens, he assesses recent developments: in negotiations, interdependence is likely to advance through plurilateral initiatives; in dispute settlement, the current crisis suggests a shift from constitutionalism toward a more contractual orientation. His exploration of fairness puts forward timely insights amid today's turbulent trade order, providing both a record of the WTO's historical "golden age," now firmly in the past, and a framework for reimagining future cooperation.*

**KEYWORDS:** *WTO law, communitarian, interdependence, justice, fairness,*

* Distinguished Professor of Law, National Tsing Hua University, Taiwan. The author can be reached at: sypeng@mx.nthu.edu.tw.

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*international investment law*

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Chios Carmody's "A Communitarian Theory of WTO Law" delivers a compelling contribution to the scholarly debate on the nature and future of WTO law. Rooted in methodical analysis and enriched by a wide range of sources, Carmody presents a nuanced account of the interdependence of all components of WTO law.[1] His work is distinguished by its capacity to integrate theoretical sophistication with practical relevance, providing insights that possess enduring value for both scholars and practitioners.

The book is a work of striking originality, seamlessly weaving together complex doctrinal elements into a powerful whole. The opening chapter frames the theory through six figures, illustrating correlation, subordination, transition, and integration at the levels of both justice and law,[2] and showing how these relations support the systematic character of WTO law.[3] Professor Carmody offers a thoughtful elaboration on how the four relationships generate and distribute justice, while also pointing out their outer limits. Readers will appreciate the gradual development from Figure 1.1 to Figure 1.6,[4] moving step-by-step from simple to complex, with careful guidance leading them to the core of the theory. This chapter lays a solid foundation for understanding how the book conceptualizes the WTO legal system in a logical and coherent manner. Citing early WTO case law, such as *Brazil — Desiccated Coconut*,[5] the opening chapter reminds readers that WTO obligations and rights function cumulatively, as part of an integrated and holistic system aimed at shaping Members' behavior.

Chapters 2 and 3 examine the WTO Agreement as a community. Highlighting that the agreements are products of trade negotiations and are designed to be applied on a Most Favored Nation (hereinafter "MFN") basis, Carmody stresses that they embody both contractual and constitutive obligations. Yet, as he explains, the traditional contract/constitution distinction does not fully capture the nature of "club goods," which are exclusive and non-rivalrous.[6] In his view, WTO concessions are negotiated among members only, and a member's accession does not diminish other members' benefits.[7] Carmody then links this to the current state of the WTO: when the "good" of WTO arrangements is seen as beneficial, members value and protect it; when perceived as detrimental, they walk away from commitments. Members, he argues, join the WTO to "generate goods as a by-product of interdependence," but if doing so no longer leaves them

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[1] CHIOS CARMODY, A COMMUNITARIAN THEORY OF WTO LAW 45 (2024).
[2] *Id.* at 24-26.
[3] *Id.* at 24-27.
[4] *Id.* at 5-25.
[5] Appellate Body Report, *Brazil — Measures Affecting Desiccated Coconut,* WTO Doc. WT/DS22/AB/R (adopted Mar. 20, 1997).
[6] CARMODY, *supra* note 1, at 8, 106.
[7] *Id.* at 8.

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"better off," they will not continue.[8] Chapter 3 then turns to justice, providing an analytical framework for assessing "fairness" in WTO law. In Carmody's view, the inability of a successful complainant to obtain full recovery for economic harm reflects a "failure of corrective justice,"[9] undermining the need for interdependence.

Chapters 4 to 6 form the core of the book, exploring WTO agreements as a law of obligations, a law of rights, and a *sui generis* legal system. Using examples from MFN, National Treatment, regulatory harmonization, equivalence, and mutual recognition, Carmody shows how obligations, constitutive structuring, prospectivity, and deductive reasoning reinforce one another within the WTO regime to promote equality among members.[10] He then examines obligations through the lenses of fairness and rights, focusing on doctrines that limit "rights" in WTO law — conditionality, proportionality, and mutuality. His contextual analysis of the General Agreement on Tariffs and Trade (GATT) Article XX(a), (b), (d), the Agreement on Technical Barriers to Trade (TBT) Article 2.2, the Anti-Dumping Agreement (ADA) Article 9.2, and the Agreement on Subsidies and Countervailing Measure (SCM) Article 4.10 in relation to proportionality is particularly insightful.[11] In Chapter 5, he offers a counterpoint to Robert Hudec's 1990 assertion that "fairness makes no sense" in trade,[12] arguing instead that fairness in WTO law concerns the "fitting or appropriate exercise of rights." Chapter 6 sets forth the claim that the WTO has a distinctive legal system. One particularly interesting argument concerns the dispute settlement system's "intensive emphasis in legal thinking on the present."[13] Drawing on cases such as *China — Audiovisual Products*,[14] *EC — Sardines*,[15] *Korea — Alcoholic Beverages*,[16] *and US — Clove Cigarettes*,[17] Carmody shows how panels and the Appellate Body tended to construct a legal "present" rather than focus on the past or future, a tendency he attributes to the interdependence of obligations and rights.[18]

Chapter 7 extends the communitarian theory to international investment

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[8] *Id.* at 105-06.
[9] *Id.* at 195.
[10] *Id.* at 253-55.
[11] *Id.* at 280-90.
[12] *Id.* at 324.
[13] *Id.* at 347.
[14] Appellate Body Report, *China — Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, WTO Doc. WT/DS363/AB/R (adopted Jan. 19, 2010).
[15] Appellate Body Report, *European Communities — Trade Description of Sardines*, WTO Doc. WT/DS231/AB/R (adopted Oct. 23, 2002).
[16] Appellate Body Report, *Korea — Taxes on Alcoholic Beverages*, WTO Doc. WT/DS75/AB/R (adopted Feb. 17, 1999).
[17] Appellate Body Report, *United States — Measures Affecting the Production and Sale of Clove Cigarettes*, WTO Doc. WT/DS406/AB/R (adopted Apr. 24, 2012).
[18] CARMODY, *supra* note 1, at 350.

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law. While initially this section may feel less tightly connected to the rest of the book, its logic becomes clear on reflection. Carmody argues that while the communitarian theory can illuminate issues in investment law, the regime's emphasis on protecting investments and investors makes its "community" character less straightforward than in WTO law. This distinction underscores the theory's adaptability, but also its limits when applied beyond the trade context.

It is especially valuable that Carmody devotes a chapter to connecting his theory to current WTO realities. Although the book was published at the end of 2023 (and the manuscript likely finalized in early 2023), it covers many recent developments. For example, he applies the communitarian lens to assess the future of WTO law: in trade negotiations, interdependence will remain a driving force, though often via plurilateral initiatives such as the Joint Statement Initiatives (JSIs). On dispute settlement, he observes that the Appellate Body impasse and the use of the Multi-Party Interim Appeal Arbitration (MPIA) reflect a shift from constitutionalism toward a more contractual orientation.[19]

The book's scholarly depth is underscored by a twenty-five-page bibliography, with sources not only cited in footnotes but also substantively analyzed in the text. Throughout, Carmody engages in nuanced dialogue with other scholars, quoting their work before situating his own arguments within and advancing the broader scholarship. Particularly noteworthy is Carmody's critical examination of competing theories, accompanied by a philosophical perspective that highlights human capacities for cooperation, sharing, and evolution. Indeed, the concept of fairness, and its practical interpretation in international economic law, is among the most challenging to conceptualize and implement. This book's exploration of the meaning of fairness yields valuable insights into today's chaotic legal order of international trade, particularly in light of the disruptive impact of recent U.S. trade policies. At a time when international economic law scholarship stands at a crossroads, amid tariff wars, institutional paralysis, and questions about the WTO's relevance, this work offers both a theoretical record of the WTO's now-past "golden age" and a framework for understanding its current crisis in terms of justice and fairness. His framework also provides a way to reimagine future cooperation.

The book's most significant contribution lies in mapping long-standing struggles surrounding WTO jurisprudence into the analytical framework of a communitarian theory of law, as illustrated in Figure 1.6. Carmody's communitarian lens sharpens our understanding of why members rally to defend the system when they see value in it, and why they turn away when they do not. His theory speaks to a wide range of existing debates. At a

[19] *Id.* at 459.

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broader level, it can be situated within ongoing debates on global economic governance, as countries experience geopolitical and arguably ideological shifts alongside evolving interests.[20] At a more specific level, it can help explain why trade multilateralism has become less central in U.S. economic security strategies,[21] and why the once-assumed link between "open and collective multilateralism" and "mutually advantageous outcomes" is increasingly questioned. The book will be of great value to scholars of international law, political science, and legal theory, as well as to a broader audience. Anchored in a coherent theoretical foundation, this work presents insights whose relevance will endure, offering conceptual tools to interpret the global trading system irrespective of the institutional, political, or economic transformations it will inevitably face.

[20] Andrew Lang, *'Global Disordering': Practices of Reflexivity in Global Economic Governance*, 35(1) EUR. J. INT'L L. 93, 96 (2024).
[21] Mona Paulsen, *The Past, Present, and Potential of Economic Security*, 50(2) YALE J. INT'L L. 222, 239-40 (2025).

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