CONTENTS

Preface to the reissue page xiii

Acknowledgements xv
List of abbreviations xvii
Introduction 1
Objectivity in international law: conventional dilemmas 16
1.1 The identity of international law: the requirements of normativity and concreteness 17
1.2 Proving the objectivity of international law 23
1.2.1 A preliminary point: international law as problem-solution 24
1.2.2 Objectivity and the practice of legal problem-solution 28
1.2.2.1 The basic position: objectivity and the judicial function 28
1.2.2.2 The revised position: the doctrine of "relative indeterminacy" 36
1.2.3 Objectivity in hard cases: the forms of modern doctrine 41
1.3 The structure of international legal argument: the dynamics of contradiction 58
1.3.1 The descending and ascending patterns of justification 59
vii

60

1.3.2 Indeterminacy as contradiction

	1.3.3 The structure of international legal argument 67
	1.4 Outline of the book 69
2	Doctrinal history: the liberal doctrine of politics and its effect of international law 71
	2.1 The emergence and structure of the liberal doctrine of politics74
	2.1.1 The structure of liberalism 76
	2.1.2 Liberalism and international law 89
	2.2 Early scholarship 95
	2.3 Classical scholarship 106
	2.3.1 Early classicists: Vattel 108
	2.3.2 The professionals 122
	2.3.2.1 Two deviationists: Austin and Jellinek 12
	2.3.2.2 Professional mainstream 130
	2.3.2.3 The coherence of professional writing: historicism and proceduralization 143
	2.4 Conclusion 154
3	The structure of modern doctrines 158
	3.1 Modern interpretations of doctrine: descending and ascending arguments confirmed 159
	3.2 Modern interpretations of practice 171
	3.3 The relations of doctrine and practice reconsidered: four versions of modern doctrine 182
	3.3.1 Rule-approach: Schwarzenberger 189
	3.3.2 Scepticism: Morgenthau 197

		3.3.3 Policy-approach: McDougal 201
		3.3.4 Idealism: Alvarez 209
	3.4	Conclusions: descriptivism 218
4	Sov	rereignty 224
	4.1	The structure of the problem: Schmitt v. Kelsen 226
		4.1.1 The "legal" and the "pure fact" approaches 228
		4.1.2 The continuing dispute about the extent and relevance of sovereignty 233
	4.2	The meaning of sovereignty 240
	4.3	The rise and fall of the legal approach: the temptation of analysis, domestic jurisdiction and the dilemma of interpretation 246
	4.4	The rise and fall of the pure fact approach: Lotus principle 255
	4.5	Constructivism: recourse to equity 258
	4.6	Example: statehood and recognition 272
	4.7	Example: territorial disputes 282
	4.8	Conclusion on sovereignty 300
5	Sou	irces 303
	5.1	Sources theory 307
		5.1.1 Consent v. justice 309
		5.1.2 Tacit consent: a reconciliation? 325
	5.2	Treaty interpretation 333
	5.3	Unilateral declarations 345
	5.4	Acquiescence and estoppel 355
	5.5	The structure of sources doctrine: examples 364
		5.5.1 Example 1: the Status of South West Africa opinion 365

	5.5.2	Examp	le 2: the Reservations opinion	368
	5.5.3	Examp	le 3: the Admission opinion	371
	5.5.4	Examp	le 4: the Arbitral Award Case	379
	5.5.5	Examp	le 5: the <i>Temple</i> Case 382	
5,6	Conc	lusion o	n sources 385	
6 Cu	stom	388		
6.1	Custo	om as ge	eneral law: two perspectives	389
6.2		dentity of	of custom: the ascending and d 397	escending
6.3		ent and	l theory: the psychological and the circularity of the argument 410	
	6.3.1	The rej	ection of pure materialism	411
	6.3.2	The rej	ection of pure psychologism	414
		6.3.2.1	The psychological element as one: collective unconscious	the material 415
		6.3.2.2	Tacit agreement 416	
		6.3.2.3	The psychological element as belief 417	will and
		6.3.2.4	The phenomenological claim a consequences of psychologism	
	6.3.3	The re-	emergence of materialism	427
	6.3.4	The re-	emergence of psychologism: the loses 431	le
6.4		lting dile	emmas: general/particular, age 438	
	6.4.1	Genera	l v. particular 438	
	6.4.2		nd customary law: the antinomy y and change 450	y of

 8.1.2 A fundamental dilemma: ideas/facts 516 8.1.3 Ideas and facts in international law: the problemmethod 519 8.1.3.1 The interpretation of facts: the relations law and society reconsidered 522 8.1.3.2 The interpretation of ideas: the problem language 527 	6.5	Strategy of closure: custom as bilateral equity 461
Variations of world order: the structure of international leargument 474 7.1 The sense of the legal project: towards community or independence? 475 7.2 The failure of legal formality: examples 484 7.3 Reversibility and the structure of international legal argument 503 Beyond objectivism 513 8.1 The unfoundedness of objectivism 513 8.1.1 The structure of legal argument revisited 5 8.1.2 A fundamental dilemma: ideas/facts 516 8.1.3 Ideas and facts in international law: the problem method 519 8.1.3.1 The interpretation of facts: the relations law and society reconsidered 522 8.1.3.2 The interpretation of ideas: the problem language 527 8.2 Nihilism, critical theory and international law 53 8.3 Routines and contexts: a tentative reconstruction 8.3.1 Routines: from legal technique to normative practice 549 8.3.2 Contexts: from interpretation to		6.5.1 Bilateralization 462
7.1 The sense of the legal project: towards community or independence? 475 7.2 The failure of legal formality: examples 484 7.3 Reversibility and the structure of international legal argument 503 Beyond objectivism 513 8.1 The unfoundedness of objectivism 513 8.1.1 The structure of legal argument revisited 5 8.1.2 A fundamental dilemma: ideas/facts 516 8.1.3 Ideas and facts in international law: the problem the method 519 8.1.3.1 The interpretation of facts: the relations law and society reconsidered 522 8.1.3.2 The interpretation of ideas: the problem language 527 8.2 Nihilism, critical theory and international law 53 8.3 Routines and contexts: a tentative reconstruction 8.3.1 Routines: from legal technique to normative practice 549 8.3.2 Contexts: from interpretation to		6.5.2 Recourse to equity 467
independence? 475 7.2 The failure of legal formality: examples 484 7.3 Reversibility and the structure of international legal argument 503 Beyond objectivism 513 8.1 The unfoundedness of objectivism 513 8.1.1 The structure of legal argument revisited 5 8.1.2 A fundamental dilemma: ideas/facts 516 8.1.3 Ideas and facts in international law: the problemmethod 519 8.1.3.1 The interpretation of facts: the relations law and society reconsidered 522 8.1.3.2 The interpretation of ideas: the problem language 527 8.2 Nihilism, critical theory and international law 53 8.3 Routines and contexts: a tentative reconstruction 8.3.1 Routines: from legal technique to normative practice 549 8.3.2 Contexts: from interpretation to		
7.3 Reversibility and the structure of international legal argument 503 Beyond objectivism 513 8.1 The unfoundedness of objectivism 513 8.1.1 The structure of legal argument revisited 5 8.1.2 A fundamental dilemma: ideas/facts 516 8.1.3 Ideas and facts in international law: the problem method 519 8.1.3.1 The interpretation of facts: the relations law and society reconsidered 522 8.1.3.2 The interpretation of ideas: the problem language 527 8.2 Nihilism, critical theory and international law 53 8.3 Routines and contexts: a tentative reconstruction 8.3.1 Routines: from legal technique to normative practice 549 8.3.2 Contexts: from interpretation to	7.1	
argument 503 Beyond objectivism 513 8.1 The unfoundedness of objectivism 513 8.1.1 The structure of legal argument revisited 5 8.1.2 A fundamental dilemma: ideas/facts 516 8.1.3 Ideas and facts in international law: the problem method 519 8.1.3.1 The interpretation of facts: the relations law and society reconsidered 522 8.1.3.2 The interpretation of ideas: the problem language 527 8.2 Nihilism, critical theory and international law 53 8.3 Routines and contexts: a tentative reconstruction 8.3.1 Routines: from legal technique to normative practice 549 8.3.2 Contexts: from interpretation to	7.2	The failure of legal formality: examples 484
8.1 The unfoundedness of objectivism 8.1.1 The structure of legal argument revisited 8.1.2 A fundamental dilemma: ideas/facts 5.16 8.1.3 Ideas and facts in international law: the problemmethod 5.19 8.1.3.1 The interpretation of facts: the relations law and society reconsidered 5.22 8.1.3.2 The interpretation of ideas: the problem language 5.27 8.2 Nihilism, critical theory and international law 5.3 8.3 Routines and contexts: a tentative reconstruction 8.3.1 Routines: from legal technique to normative practice 5.49 8.3.2 Contexts: from interpretation to	7.3	
 8.1.1 The structure of legal argument revisited 5 8.1.2 A fundamental dilemma: ideas/facts 516 8.1.3 Ideas and facts in international law: the problemmethod 519 8.1.3.1 The interpretation of facts: the relations law and society reconsidered 522 8.1.3.2 The interpretation of ideas: the problem language 527 8.2 Nihilism, critical theory and international law 53 8.3 Routines and contexts: a tentative reconstruction 8.3.1 Routines: from legal technique to normative practice 549 8.3.2 Contexts: from interpretation to 	Bey	ond objectivism 513
 8.1.2 A fundamental dilemma: ideas/facts 516 8.1.3 Ideas and facts in international law: the problemmethod 519 8.1.3.1 The interpretation of facts: the relations law and society reconsidered 522 8.1.3.2 The interpretation of ideas: the problem language 527 8.2 Nihilism, critical theory and international law 53 8.3 Routines and contexts: a tentative reconstruction 8.3.1 Routines: from legal technique to normative practice 549 8.3.2 Contexts: from interpretation to 	8.1	The unfoundedness of objectivism 513
 8.1.3 Ideas and facts in international law: the problemethod 519 8.1.3.1 The interpretation of facts: the relations law and society reconsidered 522 8.1.3.2 The interpretation of ideas: the problem language 527 8.2 Nihilism, critical theory and international law 53 8.3 Routines and contexts: a tentative reconstruction 8.3.1 Routines: from legal technique to normative practice 549 8.3.2 Contexts: from interpretation to 		8.1.1 The structure of legal argument revisited 513
method 519 8.1.3.1 The interpretation of facts: the relations law and society reconsidered 522 8.1.3.2 The interpretation of ideas: the problem language 527 8.2 Nihilism, critical theory and international law 53 8.3 Routines and contexts: a tentative reconstruction 8.3.1 Routines: from legal technique to normative practice 549 8.3.2 Contexts: from interpretation to		8.1.2 A fundamental dilemma: ideas/facts 516
law and society reconsidered 522 8.1.3.2 The interpretation of ideas: the problem language 527 8.2 Nihilism, critical theory and international law 53 8.3 Routines and contexts: a tentative reconstruction 8.3.1 Routines: from legal technique to normative practice 549 8.3.2 Contexts: from interpretation to		8.1.3 Ideas and facts in international law: the problem of method 519
language 527 8.2 Nihilism, critical theory and international law 53 8.3 Routines and contexts: a tentative reconstruction 8.3.1 Routines: from legal technique to normative practice 549 8.3.2 Contexts: from interpretation to		8.1.3.1 The interpretation of facts: the relations of law and society reconsidered 522
 8.3 Routines and contexts: a tentative reconstruction 8.3.1 Routines: from legal technique to normative practice 549 8.3.2 Contexts: from interpretation to 		8.1.3.2 The interpretation of ideas: the problem of language 527
 8.3.1 Routines: from legal technique to normative practice 549 8.3.2 Contexts: from interpretation to 	8.2	Nihilism, critical theory and international law 533
practice 549 8.3.2 Contexts: from interpretation to	8.3	Routines and contexts: a tentative reconstruction 548
	1 de la constante de la consta	
Epilogue (2005) 562	Epil	logue (2005) 562

1 A retrospective

562

2		descriptive project: towards a grammar of national law 563	
	2.1	What a grammar is 566	
	2.2	The grammar articulated: sovereignty and ources 573	
		.2.1 Sovereignty 576	
		.2.2 Sources 583	
		.2.3 Conclusions on grammar: from rules and proce to decisions 588	esse
3	The	normative project: from grammar to critique 5	89
	3.1	The nature of indeterminacy 590	
		Grammar and the social world: the role of antagonis and conflict 596	m
	3.3	structural bias 600	
4	Con	clusion 615	
B_{i}	ibliog	aphy and Table of cases 618	
A	Boo	es and monographs 618	
	A.1	Philosophy, social and legal theory and method	618
	A.2	International law and international relations: genera works 628	1
	A.3	International law: particular subjects 636	
В	Art	les 641	
C	Tal	e of cases 670	
	C.1	Permanent Court of International Justice (Series A & B) 670	
	C.2	International Court of Justice 671	
	C.3	Other cases 673	
In	dex	676	