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John Jackson has written a fascinating and challenging book about a complex, contested and highly topical issue – the nature and imperatives of international cooperation. It is an honest book, carrying no claim of authoritative interpretation, or of new and all-encompassing theoretical insights. Indeed, the author admits with disarming frankness that this is a book about queries, not theories. And those queries range widely, raising many matters in need of further reflection and research. One wonders, though, whether some of the questions posed in the book – such as the 'source' of international law or the meaning of sovereignty – can ever be answered with a degree of authority that would come within spitting distance of consensus among those who think and write about these things.

We need look no further than the use of the word 'legitimacy' for an example of how elusive precision can be in analyses of this kind. In so much policy discourse this word is wheeled out without any real explanation of what it means. Oftentimes, it is drenched in advocacy, and to assert illegitimacy simply denotes dislike. It may be one's own, or the alleged dislike of others. The same applies, of course, when something is deemed legitimate. Neither the author of this book, nor for that matter this reviewer, is entirely innocent of talking about legitimacy without a proper specification of how it should be understood. But we are by no means alone.

A particular strength of the book is its use of the WTO as a case study of the evolution of international relations and the complexities governments and non-state actors must address in forging effective cooperation in a rapidly changing world. Professor Jackson brings life-long expertise to his analysis of an institution that he believes is one of the most impressive examples in history of cooperation among a multiplicity of diverse nations. But the book is about a good deal more than the GATT/WTO. It examines the fundamental tenets underpinning joint international action and the sources of authority for such cooperation.

The core premise of Jackson's analysis rests on the by now unexceptionable observation that the world has changed a great deal in the last several decades. At the same time, the conceptual foundations of international institutions, modes of interaction among polities, and older notions of the principles of international governance have been left behind or become outmoded. They no longer do the job – a job whose importance has become more central because of rising interdependency among nations. In discussing our changed world, Jackson struggles like so many authors to settle upon a workable definition of globalization – that nebulous, amorphous concept that has spawned forests of books and articles in recent years.

For Jackson, growing mutual dependence among less than fully joined up states and societies has been driven largely by technological advances, especially in transport and communications, and by the development of modern military weapons. The collapse of communism and triumph of market economics have increased interdependence, but at the same time created a popular anti-globalization backlash – an accentuation of 'them and us' politics. The rise of non-governmental actors reflects in large measure

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disillusionment with governments, and NGOs have become a force that cannot be disregarded. Globalization has made it harder for governments to control their own jurisdictions and to deliver for their constituents. Power relationships have shifted and power has also become more diluted across nations and regions, making it less plausible than in certain periods of the past to rely on hegemonic authority to impose or orchestrate international order.

In the face of all this change, along with the growth of stronger inter-linkages across the globe, Jackson argues that a greater need than ever exists for viable cooperative arrangements among sovereignties. Incentives for governments and citizens in different jurisdictions to deal with one another are stronger than ever. So outmoded international law concepts, structures, and arrangements are a serious problem, as are some old ideas about sovereignty that continue to have currency in certain quarters.

In his discussion about what is wrong with the way international law is designed and operates, Jackson goes back to basics. He examines first-principle assumptions of international law and institutions and argues that globalization has visited new challenges upon legal systems for a range of reasons. These include the fragmentation of some states and the fusion of others, which seemingly raises new jurisdictional and hierarchy questions. At the same time, many new national agencies have emerged with international law implications. Another issue pinpointed by the author is that because of globalization, international law has become increasingly concerned with matters of policy that were previously more comfortably regarded as a domestic domain. What, in other words, should the role of international law be 'behind the borders'? This raises questions of legitimacy as well as design. How far is it appropriate to push harmonization through international obligations? Related problems concern the dual questions of how international law should be written into domestic law and how far the application of domestic law can be 'extraterritorial' in application.

Similarly, how should international law and its practice interact with NGOs? Again, a legitimacy issue raises its head, since one is bound to ask how representative NGOs are of public interests, and therefore how loud should be their voices in decision-making. The same question applies, of course, to governments. Jackson argues that because this question about who represents whom is applicable to states 'perhaps it can be concluded that on balance the NGOs do more good than harm' (page 28). He also distinguishes between profit (multinationals) and non-profit NGOs and argues that international legal norms have not kept up with new realities associated with the power and reach of multinationals. But we receive little guidance on what updating the law would mean in real terms.

The author also discusses what he characterizes as excessive treaty rigidity, which refers both to the application and interpretation of international law. The problem seems to apply especially to customary law. Particular reference is made to the Vienna Convention on the Law of Treaties. The critique here is a variant of the oft-heard criticism of arrangements allegedly based on a 'one size fits all' approach that (wrongly) assumes the appropriateness of uniformity in a world of diversity.

The thorniest issue is the very interesting discussion in Chapter 2 about how international law relates to the fundamental question of the source of the law. It is that legitimacy issue once again. What is the authority for international law? The 'baker's dozen' list of considerations drawn up by Schachter and quoted by Jackson speaks

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volumes of the difficulties we confront in supplying a definitive account of the source of authority for international law. The list ranges from what many would consider obvious sources, such as state consent and customary practice to much more nebulous notions like a sense of 'rightness', and intuition. The end of the Schachter quotation asks whether it is practically significant to worry about the source, or whether the diversity of opinion on the matter reveals a 'radical weakness in the conceptual structure of international law' (page 37). Professor Jackson does not choose explicitly between those diametrically opposed ways of looking at the issue, but he does suggest we might instead be guided by empirical observation of 'what is' in addressing the source issue. That position seems rather close to a functionalist view of the world that risks blessing the *status quo* as legitimate because it is the *status quo*.

The other knotty problem that this book addresses head-on is how we should think about sovereignty. This is obviously a fundamental question in the absence of world government. The author takes us through the older concepts of sovereignty ('Westphalian' notions) and explains why these are unrealistic today. The underpinning of the old view is that states have full and uncontested authority over the legitimate use of force internally, over all movements across state borders and over all foreign policy matters. Additionally, a sovereign state is recognized by other states as a fully independent entity free from any threat of external intervention. This 'realist' characterization of sovereignty has the virtue of clarity, but that is where the virtue ends. As Jackson clearly points out, interdependence among nations in the modern world is a very practical matter that makes this notion of sovereignty sound quaint, even if occasionally one hears echoes of such reasoning from governments under siege for behaviour regarded by others as unacceptable.

But if we can agree that this old notion of sovereignty will not do, where do we go next? Professor Jackson quotes Henkin and Krasner, whose criticisms are damning to the point of dismissing the very idea of sovereignty as an organizing principle for the analysis of international relations. Krasner refers to sovereignty as 'organized hypocrisy'. Jackson does not think we have to go that far. He speculates about the possibility of 'slicing' sovereignty in a disaggregated 'balanced and balancing' approach, favouring case-by-case reasoning that presumably must depend on the specificities of circumstance and the way these are interpreted by those that observe or are affected by them. The sheer pragmatism of this approach is appealing, but it is an implicit admission of the absence of an authoritative theoretical conceptualization of sovereignty or related ideas that could help us understand and order our thinking about the essence of international cooperation.

Once we let go of a pure and well-defined definition of sovereignty – an obligation in deference to the real world – we have to address the question that truly underlies the discussion; namely, how power is allocated among nations. As Jackson points out, for example, the idea of 'state consent' under the old sovereignty idea, where the nation state is the highest authority, has been constructed on the precept of 'equality of nations'. If Professor Jackson was less scholarly in these matters, he may have been tempted to refer to this idea as another manifestation of organized hypocrisy. He does, however, provide a good real-world example of his idea of sliced sovereignty in the WTO, where governments have agreed voluntarily to forego the consensus rule in dispute settlement proceedings at the stage of adoption of a panel report or

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an Appellate Body finding. This modification of the dispute settlement system[1] under the Uruguay Round negotiations reflected acceptance by governments that the system made blocking tactics by affected parties too easy, leading to dysfunctional international law. Instead, governments pre-committed to decision-making arrangements which closed off any possibility of recourse to the old sovereignty logic. This is certainly a good example of an 'unequal' division of power among nations, but, as in Jackson's overall approach, it is closely tied to the specifics of circumstance. In short, the author believes we need analysis, with a view to eventual adoption, of good governance techniques for determining participation and transparency in the ordering of international relations, and these arrangements must be backed up with suitable checks and balances. It is hard to argue with this, but it still leaves a lot of room for competition in the market for good ideas.

A key element in Professor Jackson's thinking about how to move beyond the complexities he so well identifies in the analysis of international cooperation rests on a notion of 'constitutionalism'. The author clearly sees 'constitutionalism' as a way out of the conundrums underlying source of authority, legitimacy, and power allocation questions. It is not so much that 'constitutionalism' gives us theoretical or authoritative answers to these puzzles – rather, it seems that the appeal is motivated essentially by pragmatism. To quote Jackson, 'constitutionalism':

> could be the rubric with a flavour of approval and promise, to cover present and further necessary study and activity designed to examine the 'gesalt' of the international legal system. 'Constitutionalism' thus may be a good approach to developing replacements or substitutes for the many existing perplexities and challenges to the overall international system. 'Constitutionalism' could [blend] eventually into general practice, substitute for the problematic concepts of 'sovereignty' and their corollaries. (pp. 224–225)

The author notes that the idea of 'constitutionalism' has diverse meanings, but its attraction seems to reside in the conviction that constitutionalism is 'the practice of being guided by and restrained from easy change of structure and purpose' (page 223). So what is constitutionalism offering us? Is it more than an environment in which governments and non-government actors work among themselves iteratively towards compromise and consensus – establishing structures that embody credible and consistent pre-commitment to norms and approaches? And more importantly, does constitutionalism mean when unforeseen outcomes emerge that are not to the liking of one or more parties, such outcomes nevertheless remain uncontested? If this is what constitutionalism offers, it is certainly a recipe for harmonious international cooperation, provided the parties can arrive at first base and agree the initial (and of course evolving) ground rules and procedures. But it still does not entirely satisfy the optimists among us that would like answers to the bigger and more basic questions raised in the book about the motivations and nature of international cooperation and the mechanisms for allocating power among nations.

It is easy and unfair to criticize a book like this one for only lightly treating or disregarding insights from different disciplines that might help explain motivations for international cooperation. Nevertheless, it seems that we need to be eclectic in the

1 More precisely, what the modification amounted to in practice was a requirement that a ruling would *not* be adopted only if all parties agreed.

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search for convincing answers to such big and fundamental questions as those posed in this book. The economists have something to say about the terms-of-trade argument for international cooperation, which is an application of the game theoretic prisoner's dilemma. They also analyze other kinds of international spillovers (externalities) that might induce cooperative behaviour or create problems if it is absent. Some political economy models use the prisoner's dilemma framework as well and they also incorporate considerations relating to the distributional consequences of cooperation, including in respect of the political market for influence and lobbying activity. In reciprocal trade negotiations, for example, governments may help one another to shift the balance of pressure politics in the direction of market-opening.

International relations insights are also instructive, even if their theoretical constructs do not necessarily lend themselves to empirical testing and refutation. These theories remind us that governments can have very different motivations for engaging in cooperative international arrangements, going beyond the economist's search for efficiency or a lawyer's concern for institutional orderliness. Finally, we should not ignore the attempts of institutional theorists to explain how international institutions may serve the diverse interests of national players.

This review has said little about a central feature of this book, which is the exploration of how the GATT/WTO has sought to manage international trade cooperation. This is a well told story by one of the world's leading authorities on the multilateral trading system. It is full of careful and fascinating detail. The GATT/WTO analysis raises important issues, on some of which we glean a sense of the author's own thinking. One such issue is the WTO's decision-making procedures. Neither the constitutional provisions on one-country one-vote, nor the practice of consensus that has emerged to cover for the reality that un-weighted voting was never politically acceptable, are considered attractive features of the WTO. The challenge, of course, is to modify these decision-making rules in a way that would be acceptable to all parties. This is probably impossible, at least outside the specifics of a situation like that which emerged in the Uruguay Round with respect to the treatment of legal rulings.

A second issue of considerable significance is the role of law and legal procedure in the WTO, or the 'juridical' content of the institution. The WTO has moved further in this direction than its predecessor, the GATT. This is something that one feels Professor Jackson approves of, making for a more robust institution and greater certainty in trade relations. But there are complications, to some extent linked with the big questions of the source of law, sovereignty, and legitimacy. The balance between law and politics, or between formalism and diplomacy, is a hard one to strike. Similarly, what role is there for the WTO to offer a forum for non-litigious interaction, such as the trade policy review and different kinds of surveillance? How useful would a greater component of 'soft law' be in the WTO, in the sense of fostering greater cooperation? Or would we risk turning the WTO into another 'talk shop' where little of import occurs? These are certainly questions meriting further analysis.

In a discourse already adorned with too many labels, one hesitates to introduce yet another. But there can be no doubt that Professor Jackson is profoundly internationalist in temperament and approach. He is not only convinced of the inevitability of intensified interaction among nations on account of globalization, he also believes in iterated exchange and constructive compromise as the only road to successful

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cooperation. He further believes in the vital contribution of international law and international institutions in building the necessary infrastructure for peaceful and mutually profitable interaction. This means that governments have to surrender some independence of action and some authority to centralized agencies in a shared international endeavour to secure mutually beneficial cooperation. Against this background, it is gratifying to be reminded by Professor Jackson that we might have to live with rogue international institutions as well as rogue states – hence the need for effective checks and balances, some of which must be firmly anchored in the bosom of the nation state.

In many ways, Professor Jackson might argue that his piecemeal, pragmatist, detail-focused, empiricist approach to the big questions his book addresses is vindicated by the history of the GATT/WTO – its institutional and legal evolution, and the development of the dispute settlement mechanism. The GATT/WTO's development has certainly been piecemeal, pragmatic, detailed, and built on past experience. If, then, the GATT/WTO story is considered a success, perhaps after all we should think twice about investing time in the possibly forlorn search for the holy grail of an authoritative, convincing, and widely shared framework of reference for understanding what drives international cooperation and specifying the ingredients of successful cooperation.

All serious analysts must regard these matters as an extraordinary mass of multi-faceted complexity. Rendering this mass tractable is a difficult and far from complete multi-disciplinary enterprise. But if we stop trying, will we not miss the opportunity of doing better than we have in the past, and fail to face the new challenges of the present and future? The answer must be affirmative. It is in this spirit that John Jackson's book makes a valuable contribution. It does not dodge the hard questions, nor sweep detail into a dark corner in order to render abstraction more elegant. This book is a serious rendition of thoughtful observations about the intellectual challenges and complexities we face in understanding international cooperation. And it is written by an eminent and very experienced scholar. For this we should be grateful.

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