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John H. Jackson, the Law and Economics

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Before and after World War II, trade policy was largely dealt with, and shaped by, the communities of government economists and diplomats. Lawyers were hardly involved or in the lead. John Maynard Keynes and Harry Dexter White coined the Bretton Woods institutions. Clair Wilcox was instrumental in creating the General Agreement on Tariffs and Trade, and Joseph Viner influential in the early years of the GATT. All were economists. Harry L. Hopkins, the father of New Deal and senior adviser to President Roosevelt, entered social work and government after college. In 1944, he coined the adage, expressing the philosophy of international cooperation, which would influence subsequent generations and legal developments so strongly: 'Trade conflict breeds non-cooperation, suspicion, bitterness. Nations which are economic enemies are not likely to remain political friends for long.'

International law, at the time, still was based upon classical notions of coexistence and preoccupied with reshaping collective security and establishing human rights. The law of international cooperation was in its infancy. Cordell Hull, Secretary of State and instrumental in bringing about the United Nations, was a scholarly minded international lawyer. He strongly advanced cooperation. At the time, trade law and regulation, however, were not a proper, or even an emerging, discipline of public international law. The failure of the Havana Charter in 1948 – designed to be the third leg next to the IMF and the World Bank Group – left trade to the GATT as a minor and merely provisional executive agreement of low and rather technical standing. This did not help to establish the field. Law schools, at the time, did not deal with international trade agreements, albeit they range among the most important treaties in the history of international law. Trade law, for strange reasons, was not part of the standard curriculum and main body of public international law, and was left aside by most academics in law. The same was true in Europe and other parts of the World. John H. Jackson would change all that.

Informed by his education in international relations at the Woodrow Wilson of Public and International Affairs and in law at the University of Michigan, he turned to explore the history, principles, and rules of the GATT while he was teaching contracts at the University of California in Berkeley. Other than tied to a rigid canon of established and self-repeating chairs and subjects usual in European Law Faculties,

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he was encouraged and able to dedicate his research to what then was an almost entirely new field of law. He was perhaps the first scholar to search the archives of the GATT, leading to the founding treatise on the subject, *World Trade and the Law of GATT* published in 1969, three years after he took up work and teaching in Ann Arbor at the University of Michigan Law School.

At the time, when the GATT still was largely a matter for diplomats and economists, John introduced international law analysis to the field and steadily developed and promoted ideals of the rule of law and a rule-oriented system. He was very conscious of its limitations and its exposure to power politics, most of them domestic. His scholarship considered all of these factors. He would not advance abstract theories but remained on the ground of reality, moving step by step. Towards the end of the Uruguay Round, he inspired work on the creation of a new charter or constitution for what he called in his book *Restructuring the GATT System* (1990) '(for simplicity sake) a World Trade Organization (WTO)'. The WTO, subsequently created, has come a long way, from a mere forum of negotiations to an organization resting on several pillars with dispute settlement today being the most prominent one. A long way indeed since John searched the archives of the GATT in the 1960s. He accompanied the evolution of the GATT and the WTO dispute settlement and observed the increasing role of legal analysis and thinking in the process. He realized that in a modern world of globalization, sovereignty needs rethinking without ignoring the traditions and facts of the nation state in conceptualizing *sovereignty-modern*, the term he used.

In all this work, John also took a strong interest in economics in order to fully understand the underpinnings of international trade. During his classes in Ann Arbor, he would regularly invite colleagues from the Department of Economics to introduce students to the economics of international trade. John was interested in empirical research, facts and data; they provided the underpinnings of his legal work in interpreting existing agreements and proposing new ideas next to the political context. He was less interested in modelling and mathematical approaches to trade theory, as this was difficult to interface with legal analysis. His works also would not enter the field of law and economics properly speaking to which others turned in the field of international trade and the analysis of case law. His reasoning was based upon economic facts, the theory and practice of international law now including trade, and US constitutional law. In research, John was not a genuine team worker; he preferred to work on his own, except for preparing teaching materials and edited volumes and in his work as a founder and editor in chief of the *Journal of International Economic Law*. But he was a careful listener. John preferred small discussions groups to large audiences and conferences. He would not actively share and propagate his own ideas until they were carefully tested and elegantly drafted in his work or expressed in well-prepared lectures.

The introduction of legal analysis and legal thinking in international trade in the context of economic data and national and international politics inspired generations of his students who eventually would turn to trade practice, government,

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or academia. In class, he stimulated discussions and was pleased when students took up debating among themselves, often expressing contrary views. John would listen to these debates, perhaps comment, but not seek to impose his own views. In doing so, he was an intellectual mentor of a succeeding generation of international trade lawyers, less by actively supporting them than by way of example and inspiration. He also had the talent to stay in touch, carefully planning his trips and meetings as he travelled with his wife and companion Joan Jackson. It is only now that he has passed away that we realize how much he gave not only to international law, firmly establishing the field in legal theory and practice and its linkages to economics, but to all of us sharing his ideals and aspirations to deploy trade policy and law for cooperation, prosperity, and international peace.

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