

John H. Jackson, *Sovereignty, the WTO, and Changing Fundamentals of International Law*. Cambridge: Cambridge University Press, 2006. ISBN 0-521-86007-5. GBP 55.

“[O]ur post-war institutions were built for an international world, but now we live in a global world”. This line by UN Secretary General Kofi Annan is quoted twice by John Jackson in his new and timely book on the changing fundamentals of international law. Indeed, the book is about this topic rather than about the WTO. Nevertheless, Jackson used his extensive knowledge of and insight in international economic law to reflect on current developments in the international legal order. Indeed, as he says, international economic law – and the WTO in particular – are perfect illustrations of the changing fundamentals of international law, including the core concept of sovereignty. In that sense the book fits the current trend to call basic assumptions of international law into question, but adds an empirical component in the form of the WTO as a case study. At the same time, the book is triggered by “the forces of globalization and interdependence”, which pose “increasing challenges to traditional concepts of nation-state actors in international affairs” (p. 6). By claiming that the book is “more about queries than theories”, however, the author proves to be too modest. Both the authoritative way in which Jackson surveys the developments and his narrative skills result in a book that is an absolute must for all of us interested in the changing nature of international law. While at first sight the book may seem less relevant for Community lawyers, it adds to the existing body of knowledge on the relationship between international organizations and international law. As in the WTO, international legal notions such as sovereignty and consent continue to play a role in the European Union.

One of the threads running through the book is the development towards more institutionalization, and – inevitably these days – “constitutionalization”. According to Jackson, States will have no choice but to accept a larger role of international institutions as they “are facing greater difficulties than ever in “governing”, in the sense of offering policies which can be adopted at the nation-state level which have a reasonably good chance of “delivering” the benefits sought by constituents.” While one may argue that consenting to a treaty which creates an institution is still in line with traditional notions of sovereignty, it must be accepted that States do also consent to the procedures in that institution which may be used to interpret the relevant treaties and to fill gaps or resolve ambiguities. Both the WTO and the EU are prime examples of international institutions that have developed beyond the imagination of their creators.

These “changing fundamentals of international law” are mapped in Part I of the book, in which the author describes and analyses the impact of globalization on traditional notions of international law. This part formulates the developments as problems: problems related to the way in which States govern both internally and externally, about the relationship between international law and domestic law and about the legitimacy of international legal norms in a world in which these norms become more important, but where the rules on decision-making still show important institutional failures. Also central in this part is the notion of sovereignty, and it is carefully proposed to replace the word “sovereignty” with the phrase “sovereignty-modern”, to indicate a newer approach, which is arguably more pragmatic and more empirically based, embraces a more “balanced and balancing” approach for “core sovereignty” and allows for exceptions. While this Part touches upon some interesting ideas, it refrains from further developing them, thereby somehow leaving the reader with an urge for more.

This seems to be acknowledged by the author in Part II, where – in order to prevent the book from remaining abstract – he aims “to examine empirically what is happening in the real world”. This part (“*The WTO*”) reads like a handbook introduction into the basic features of the WTO, but is certainly more than that. In two chapters the author addresses both the institutional characteristics of the WTO and its famous dispute settlement system. The hidden agenda of this part seems to follow from some frustration on the part of the author that general international law is often ignored or overlooked by those active in international economic law. Again the point seems to be the autonomous position of international institutions:

“Perhaps the most significant lesson is that human institutions inevitably evolve and change, and concepts which ignore that, such as concepts which try to cling to “original intent of the draftpersons”, or some inclination to disparage or deny the validity of some of these evolutions and changes, could be damaging to the broader purpose of the institutions” (p. 82). Indeed, Part II describes and analyses the WTO structure and procedures, but does so with core concepts such as State consent, equality of nations and sovereign immunity in mind. On the basis of WTO practice it calls for a balancing of these traditional goals with other important goals related to the mission of international institutions (which – in the globalizing world – is also in the interest of States).

Part III, then, is used to return to the problems introduced in the first part, by including insight gained on the basis of the WTO analysis. Here, the author is only partly successful. While the possible “solutions” offered are all worthy of further analysis, they do seem to follow from theoretical thinking, rather than from “the real world” of the WTO. In other words: the relation between the different parts of the book and the function of the “case study” to come up with ideas remains underdeveloped. Nevertheless, the ideas are relevant and reflect the struggle apparent in today’s thinking on the international legal order. The major question related to a possible downgrading of the importance of the traditional fundamental propositions of international law is confronted with a “recommendation to disaggregate and to analyse, to break down the complex array of ‘sovereignty’ concepts and examine particular aspects in detail and with precision to understand what is really at play” (p. 265). But what can replace the fundamental propositions of international law? In providing the answers the author is quite ambitious and coins concepts and discussions that are not all new and date back to the legal theory of Kelsen and in particular to the problem of the “sources” of international law. One possibility would be to recognize certain international institutions as the legitimate entities to decide on some of the fundamentals. Juridical institution in particular would seem to help overcome legitimacy problems. Another possibility would be to evolve and redefine the *sovereignty* concepts themselves. Quite a bold solution would be to allow the international community to develop a sort of international *acquis communautaire* which could serve as a source of international law. Related to this is the idea to use the concept of “interdependence” to justify new norms. All solutions, however, downgrade the role of the State, and in particular “consent” as the crucial source of international legal norms. While the present reviewer has a natural tendency to agree on the pragmatic solution to both enhance and acknowledge the role of international institutions, the possible solutions offered here are indeed food for thought more than they offer clear-cut directions of research. Nevertheless, it is beyond any doubt that the WTO has shown that intensive international cooperation in a sensitive area such as international trade is possible by giving heed both to the consent of States and to the mission of superseding absolute sovereignty by handing a “slice” (using Jackson’s terminology) to an international organization.

A final remark seems in place on the structure of the book and – above all – on the way this is presented. We may tell our students to introduce a topic properly and to assist the reader in following your line of arguments by presenting a clear structure, but this book shows that it is also possible to overdo this. Extensive parts are devoted to explaining what will come and what has been done. Not only the different parts, but also the individual chapters start by recalling their purpose and conclude by summarizing what has been said and what is yet to come. It is clear, however, that in no way does this affect my earlier conclusion that the book is an absolute “must have”.

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