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THE HOUSE THAT JACKSON BUILT: RESTRUCTURING THE GATT SYSTEM

*Robert L. Howse**

I. INTRODUCTION

I can claim neither to have been a student nor a colleague of John Jackson, yet as an advocate for a principled jurisprudence of international trade, there is a sense in which, increasingly, I find myself working in his shadow. Long before such a position was fashionable, Jackson argued for a “rules-oriented” approach to the management of international trading relations, opposing the “power-oriented” view that such relations should be conducted through an endless series of diplomatic compromises or adjustments between the sovereignty interests of different states. Jackson’s position had the potential to seem either naive, judged against how the “real world” of global economic power actually functions, or threatening to traditional diplomatic and bureaucratic prerogatives (or both). Yet, as David Kennedy’s seminal article on Jackson’s scholarship suggests,¹ Jackson pursued his vision of trade “legalism” not through articulating the claims of international law in the grand utopian style of some post-war publicists, but in a pragmatic fashion—he evoked the various ways in which legal rules could function as an effective “management tool” for business-people and perhaps also bureaucrats preoccupied with international economic relations, allowing them to more effectively respond to the multiple, daily pressures involved in operating within the post-war global political economy. Jackson suggested that relatively clear and precise rules could win for managers a degree of stability and predictability in an increasingly complex and volatile world. In sum, he made the project of global legal order seem like something friendly and useful, rather than threatening or arcane.

Behind this pragmatic “style” one can nevertheless catch glimpses of a grander vision of liberal internationalism. “To a large degree,” Jackson writes, “the history of civilization may be described as a gradual evolution from a power oriented approach, in the state of nature, towards a rule oriented approach.”² Yet this Whig reading of history is itself immedi-

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1. David Kennedy, *The International Style in Postwar Law and Policy*, 1994 UTAH L. REV. 7 (1994).

2. JOHN H. JACKSON, *RESTRUCTURING THE GATT SYSTEM*, 52 (1990) [hereinafter RESTRUCTURING].

ately followed by a caution: "However, never is the extreme in either case reached."³ Thus, while it is not the full story, Jackson's pragmatism is more than a simple operating strategy for promoting liberal international ideals in the day-to-day world of global managers; it is "hard-wired" into his substantive vision of international (dis)order. This vision is idealistic in its hopes for progressing from the "state of nature," yet it remains within the shadow of "the state of nature."

With the creation of the World Trade Organization ("WTO"), Jackson's pragmatic advocacy for a "rules-oriented," "constitutionalist" approach to international economic relations has received tremendous vindication. Yes, as I shall argue in this appreciation, with the institutions of the WTO, Jackson's argument for legalism in trading relations may have achieved more "success" than the Hobbesian caution in Jackson's vision might want.

In the first years of the Uruguay Round of multilateral trade negotiations, the creation of a new institutional structure for the General Agreement on Tariffs and Trade ("GATT") had been very much a secondary goal with the focus on moving towards the development of rules in "new" areas such as services and intellectual property rights. Then in 1990, John Jackson put forward a proposal for fundamental institutional change: the creation of a World Trade Organization with a "charter" or "constitution" for global trade. Through Jackson's engagement as a consultant to the Canadian Government, a version of this proposal became part of the negotiations of the Uruguay Round. Jackson grounded the proposal in his overall vision of a "rules-oriented" system of international economic relations. Yet his proposal also contained a range of political and diplomatic escape hatches or safety valves against the law being pushed beyond what the underlying reality of international anarchy could apparently bear. Thus, under Jackson's proposal the legal rulings of dispute settlement panels would still require adoption by a representative diplomatic body of the membership (although they would no longer be capable of being vetoed by the parties to the dispute themselves). Jackson proposed an executive body as well, dominated by the major trading powers, which would have a political decision-making role within the World Trade Organization. This would create a force for political or diplomatic decision-making within the World Trade Organization, presumably mediating between rule-creation through a consensus of the membership on the one hand, and judicial or quasi-judicial rule interpretation and application by dispute settlement organs, on the other.

3. *Id.*

The result of the Uruguay Round is, however, an institution without the kinds of protection against “excessive” or non-pragmatic legalism that Jackson was advocating. Instead of these forms of diplomatic/political control over dispute panel decisions—which are now adopted automatically⁴—there is juridical control through the Appellate Body, which may reverse or modify any legal finding of the panel, and the judgements of which are also adopted automatically. Automaticity similarly applies to the right to retaliate against a losing party who has not conformed with a legal ruling, with the level of the retaliation to be ascertained through arbitration—*i.e.*, judicially not politically. While panel and Appellate Body rulings do not constitute definitive or authoritative interpretations of the law in future disputes, there is no practical way of avoiding their precedential value without resorting to a contrary, authoritative interpretation voted either by consensus of the Membership or by three-fourths of the Membership—an almost impossible hurdle in a controversial case.

Yet as we shall see, the seeds of this bolder liberal legal internationalism can be discerned in the manner in which Jackson advocated in 1990 for his more cautious proposal, shifting ground, if even for pragmatic reasons, from the language of “management” towards that of legitimacy and democratic transparency. And as we shall see, as well, Jackson’s recent *ex post* analysis of the “constitutional” result of the Uruguay Round⁵ suggests, in light of the result a somewhat less hesitant embrace of the *telos* of liberal legal internationalism. At the same time, in this most recent work, Jackson hints at where, even within this apparently more purely “legalistic” system, the political can be found.

II. RESTRUCTURING THE GATT SYSTEM: PROPOSAL AND JUSTIFICATIONS

1. The Context of Jackson’s *Restructuring*

Jackson wrote *Restructuring* in the middle of the Uruguay Round of international trade negotiations. While as Jackson notes, at this time the trade negotiators were preoccupied with the drafting of increasingly technical and specialized rules in areas such as trade in services, intel-

4. The actual rule is that of “negative consensus”—unless all Members (including the Member who has won) oppose adoption a panel ruling will be adopted as a binding settlement of a dispute, subject only to appeal to the Appellate Body. *See generally* UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES [hereinafter DSU], Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2.

5. JOHN H. JACKSON, THE WORLD TRADE ORGANIZATION: CONSTITUTION AND JURISPRUDENCE (1998) [hereinafter CONSTITUTION AND JURISPRUDENCE].

lectual property rights and investment⁶, elsewhere sea shifts were occurring in international order, changes of a broader kind. The collapse of communism in Eastern Europe had already begun, and it was imaginable to think of a world no longer divided between East and West—a world where, eventually, international relations would be directed, in large part, by states with liberal democratic constitutional regimes. At the same time, the project of European federation had received new dynamism from the Europe 1992 initiative,⁷ and scholars had begun to write about the “constitutional” character of the European project. Big thinking about these developments and the hopes for supranational organization to which they would give rise was notably absent from the trenches, of the multilateral trade negotiations. At the same time as being arcane and technical, the new issue areas in international trade remained divisive in the world community. There might be global welfare gains from freer trade in services, but such freer trade might depend on countries agreeing to deregulate services industries domestically, which might or might not serve the domestic interests of many countries. With respect to intellectual property rights, greater protection of these could actually reduce domestic welfare in many poorer countries, even if some domestic interests in the United States or Europe would gain from greater rents to innovation. Ambitious investment liberalization proposals raised issues about national security, technology transfer, and distributive justice between rich and poor nations. In all of these areas, unlike with the traditional commitments to reduce tariffs and related border measures which had been the centerpiece of previous rounds, it would be very hard to produce a sense of “win-win”—that all countries would be better off in terms of aggregate domestic welfare if these various negotiations were to succeed. And indeed with respect to services and TRIPS, many developing countries had been dragged into the negotiations by, inter alia, the threat of intensified aggressive unilateralism as an alternative to a deal. Negotiations on subsidies and countervailing duties risked polarizing the United States on the one hand, and most other trading nations on the other. With tariffs on many products already quite low, and with the implications of the new area rules for domestic welfare so complex, the Uruguay Round did not appear to have a “centre” that could hold.

Given this context, Jackson's *Restructuring* can be appreciated for the stroke of brilliance that it is. Its strategy is to seize on the new idealism about the possibilities of liberal internationalism that emerged at the end of the 1980s with the collapse of communism and the building of a united Europe, in order to provide to the Uruguay Round project the

6. See, RESTRUCTURING, *supra* note 2, at 5.

7. See *id.* at 93.

centre that it hitherto had lacked—a “constitutional” status and structure for the entire system, encompassing the new rules as well as the original GATT, holding everything together through the expression of a set of common principles, and a common commitment to the rule of law in international economic affairs. Of course, admittedly, the institutional issues had been put on to the negotiating table already—but in a rather prosaic un-visionary manner, as is reflected in the rubric “Functioning of the GATT System” (“FOGS”) that this negotiating group was given. Admittedly also, Jackson did not achieve the result by any means single-handedly. Yet without his groundwork it is very unlikely that the institutional/“constitutional” project would become central to the Uruguay Round, and without this “centre” it is certainly possible to imagine that the round would have collapsed, at least in its more ambitious form.

2. The Argumentation of the *Restructuring*

In his customary pragmatic and cautious fashion, after a historical overview of the origins of GATT as a “non-institution,” Jackson begins *Restructuring* by listing a variety of institutional shortcomings or defects of the original GATT system, well known to those who follow international economic law closely. The list includes lack of adequate formal amending procedures; the vulnerability of dispute settlement rulings to veto by the losing party; the provisional nature of application of GATT law due to problems at the founding with certain domestic legal systems; the plethora of add-on agreements and understandings, never properly organized or integrated into a common institutional structure; and the practical requirement (rarely possible to meet) of consensus among the membership for most forms of decision-making. The concerns detailed range from ones of a technical efficiency or “housekeeping” nature to more fundamental claims about the lack of appropriate channels for supranational regulatory decision-making. But the list is conventional, reflecting mainstream thinking by academics and policy people about the limitations of GATT.

In Part II of the book, however, Jackson abruptly shifts ground. Chapter 5 is like a second beginning—the issue of the GATT “constitution” is now re-engaged on the basis of competing perspectives on international order, in particular the clash between “rule-oriented” and “power oriented” approaches. Here, Jackson states his case for a “rule-oriented” perspective by arguing that the evolution from raw power to rules is the trajectory of civilization, along which Western countries have advanced quite far, especially the United States; at the same time, he makes the already noted qualification that this evolution from the “state of nature” can never be fully achieved. Jackson is now far removed from

the pragmatic view of “rules orientation,” which addresses managers embattled by diverse pressures and unpredictable changes merely some kind of certainty and predictability. Rather, Jackson is now engaging a much more comprehensive kind of claim for a certain vision of civilization—a claim not unlike that which Francis Fukuyama would make, only a few months before Jackson’s publication of *RESTRUCTURING*, in Fukuyama’s famed article predicting the global triumph of liberalism.⁸

Jackson, once having made this general claim, makes a more particular one, that relates especially to “economic affairs.” Although for international relations generally, a “rule-oriented” approach holds certain advantages—addressing at least at the level of perception power imbalances between big and small countries and providing procedures for the negotiation of compromises—there is an additional set of considerations that apply with great force to economic affairs:

Economic affairs tend (at least in peacetime) to affect more citizens directly than may be the case for political and military affairs. Particularly as the world becomes more economically interdependent, more and more private citizens find their jobs, their businesses, and their quality of life affected if not controlled by forces from outside their countries’ boundaries. Thus they are more affected by the economic policy pursued by their own country on their behalf. In addition, the relationships become increasingly complex—to the point of being incomprehensible to even the brilliant human mind. As a result, citizens assert themselves, at least within a democracy, and require their representatives and government officials to respond to their needs and their perceived complaints. The result of this is increasing citizen participation, and more parliamentary or congressional participation in the processes of international economic policy, thus restricting the degree of power and discretion that the Executive possesses.

This makes international negotiations and bargaining increasingly difficult. However, if citizens are going to make their demands be heard and have their influence, a ‘power-oriented’ negotiating process (often requiring secrecy, and executive discretion so as to be able to formulate and implement the necessary compromises) becomes more difficult if not impossible. Consequently, the only appropriate way to turn seems to be toward a

8. See Francis Fukuyama, *The End of History?*, 16 NAT’L INTEREST 5 (1989); *RESTRUCTURING*, *supra* note 2, at 53–54.

rule-oriented system, whereby the various layers of citizens, parliaments, executives and international organizations will all have their inputs, arriving tortuously to a rule, which however, when established will enable business and other decentralized decision makers to rely upon the stability and predictability of governmental activity in relation to the rule.⁹

There are a number of interesting features of this passage that deserve examination. First of all, while Jackson's other arguments for a "rules-oriented" approach are stated with certain qualifications or even with the rider that there might be significant counter-arguments, this claim about democracy is considerably more categorical—the conclusion is that "the *only* way to turn is a rules-based system" (emphasis added). Secondly, Jackson, true to style, ends with a kind of reassurance to global managers that once the rules are fixed (albeit through a complex and messy democratic process), they will function to insulate at the least private sector managers from uncertainty. Thirdly, and relatedly, Jackson here is silent about the *interpretation* of the rules—it is as if by having a say in the making of rules citizens are thought to have relinquished any participation in the process of their interpretation. Of course, such a say would be unnecessary if citizens could be certain that the interpreter were adequately fulfilling their own understanding of that to which been agreed. Thus, the hidden or unstated premise of Jackson's argument from democracy is the possibility of rules interpretation that is, somehow, faithful to the understandings of many *demoi* about the meaning of their consent to the rules, or at least, *legitimate* in the relevant senses recognized by these *demoi*.

However, instead of exploring this premise explicitly, Jackson ends the chapter by reverting to a model of international bargaining that assumes states as actors who are relatively autonomous from their *demoi*, with stylized interests, even referring to the "prisoner's dilemma." It is in this context that the problem of interpretation emerges, but by analogy to contractual bargaining between individuals—*i.e.*, to *private* law. "Without the judge and the bailiff in the background, contracts do not mean much."¹⁰

As is presaged by this conclusion to Chapter 5, the next chapter will be dedicated to the discussion of "Rule Application and Dispute Settlement." In this chapter, Jackson asked the question as to what extent GATT dispute settlement has been in the past, or should in the future be, "rule-oriented." Since, as he notes, opposition to an increased "rule-

9. RESTRUCTURING, *supra* note 2, at 53–54.

10. *Id.* at 55.

orientation” for dispute settlement is increasingly confined to the European Community, it is understandable that Jackson does not feel the need to restate here the general argument for a “rules-oriented” system. What “rules-orientation” means in dispute settlement must, moreover, be gleaned from the specifics of Jackson’s discussion—it refers to clarity and legal integrity in panel rulings, effective and transparent procedures, the ability to appeal to dispute settlement as of right, and the certainty that the losing party will be bound by the result of the ruling. This last dimension of “rules-orientation” in particular is undermined by the consensus rule for adoption of panel reports as binding, which allows a losing party to veto adoption.

Yet it is equally important to pay attention to what “rules-orientation,” according to Jackson, is *not* (and perhaps should not be) in the GATT context. This emerges in his discussion of “precedent.” Here, in large part, Jackson is restating the general principles of public international law with respect to the status of previous rulings of an international tribunal. Nevertheless, he clearly does *not* advocate a move in the GATT context to an understanding of precedent more consonant with (at least common law) domestic ideas of the rule of law. Unadopted panel reports may have some influence on future decisions, but this only from their intrinsic persuasive power; adopted reports are to have greater precedential weight, but not the status of definitive interpretation of the rules. Such definitive interpretation is, arguably, a prerogative of the membership—*i.e.*, the political or diplomatic representatives of the membership.¹¹

While, as noted, in this discussion Jackson appears to be largely restating the status quo in international law and existing GATT practice, his proposals for *reform* of the GATT dispute settlement system maintain political control over the legal significance of panel rulings.¹² Thus, while the parties to the dispute would no longer be able to veto the adoption of a panel report, it would still need to be adopted by the “highest political body” of the GATT. Now Jackson gives two reasons for maintaining such political control. The first is that of “flexibility” to deal with “special circumstances;” the second, “the recognition for the need for a new rule.” Now the reader who has been following Jackson’s argument throughout *Restructuring* in favour of a “rule-oriented” approach, and especially the democratic argument for a clear separation of rule-creation and rule-application may have several questions in her mind concerning this explanation of the rationale for political control over rule-application or interpretation. This is especially the case, given Jackson’s explicit acknowledgement that in deciding on adoption of a panel report, “policy

11. See *id.* at 67–69.

12. See *id.* at 75.

body considerations go beyond strict rules or the law, invoking for example 'equitable' principles."¹³ First of all, if the issue is special circumstances, would not the interests of transparency dictate addressing these circumstances through the device of an explicit GATT Waiver, where it is made clear that GATT obligations are being modified to deal with a particular situation, so that citizens or at least their representatives can be clear that what is at issue is not a choice about interpretation of an agreed-upon rule, but a choice to modify or suspend its application in a special circumstance? Secondly with respect to recognition of the need for a new rule, would not suspending as it were the application of the old rule through non-adoption of a panel ruling remove the pressure to create a new rule through the democratically legitimate procedure described by Jackson earlier in the book? Finally, and relatedly, would such an approach not undermine the clear distinction between the activity of making new rules and that of applying them, which Jackson would seem to view as a cardinal feature of the "rules-oriented" approach? Of course, it may be that Jackson's proposals represent an estimation of what could realistically be expected to be adopted, not the first best solution implied by the logic of "rule-orientation." It may also be, however, that these proposals reflect Jackson's own caution about the apparent intrinsic limits of "rule-orientation," or even the dangers from taking such an approach to the extreme.

In fact, this possibility is arguably suggested by Jackson's explicit statement that in deciding on adoption of a panel report, "policy body considerations go beyond strict rules or the law, invoking for example 'equitable' principles."¹⁴ Thus, what one is dealing with here may not simply be either an exception from law for "special circumstances" or the need for a "new rule," but a political refinement or adjustment of the rules themselves. Yet the possibility of such adjustment seems to be in tension with the most pervasive argument for "rules orientation" within Jackson's scholarship—namely, the certainty and predictability that come from relatively "precise" rules. Curiously, Jackson is prepared to entertain the rather radical possibility of (albeit at first limited and controlled) access for private parties to GATT dispute settlement. This would seem to make, if anything, more questionable *ex post* political control by governments over application of the rules.

But one must place Jackson's proposals on reform of dispute settlement procedures in the context of his overall blueprint for a World Trade Organization with a "charter" or "constitution," which is developed in the final chapter of *Restructuring*. Here, instead of a plan for clear divi-

13. *Id.* at 76.

14. *Id.*

sion of institutional functions between rule-making and rule-application we have a complex set of checks and balances. The GATT bureaucracy (the Secretariat) is to be given a formal "constitutional" status, with rules for appointment and funding of these offices.¹⁵ Perhaps most notable of all is the proposal to create an executive committee, with the largest representation or voting weight being provided to the major trading powers.¹⁶ Special rights and responsibilities for the "governance" of individual treaties are to be conferred on special bodies seized of those agreements (for instance a possible agreement on services or agriculture), with this power balanced by requirements of transparency and observer status for all the members of the general GATT assembly at meetings of these specialized governance bodies.

Clearly, Jackson attached considerable significance to institutional arrangements of these various kinds. Yet we are inclined to ask: what decisions are the various bodies in question supposed to be making? They will not be creating new "rules"—for that process involves a broader consultation among multiple *demoi*, at least as described earlier in the book. And as for application of the rules, on a legalist approach this would seem to be the province of the dispute settlement organs. Jackson clearly wants to strengthen in some respects the "rules-orientation" of the system, for example preventing a losing party from vetoing adoption of a panel ruling. But, at the same time, he places considerable emphasis on actually creating *more* and *better structured* institutional space for the political/diplomatic adjustment of rules-based outcomes. But, if we recall the distinctive character of Jackson's vision of international legal order there is no contradiction here, only an interesting tension; law provides a life-raft of stability and certainty constructed upon the anarchic seas of international economic relations, but interstate anarchy among nations remains the subsisting reality. Should we build too high on the life raft, the state of nature may engulf it with a vengeance.

III. CONCLUSION: THE BUILDER ASSESSES THE RESULTS

The ultimate result of the appeal for a far-sighted, comprehensive approach to GATT institutional reform is, of course, a very strong move towards "rules-orientation" in the new WTO institutional arrangements, with effective automaticity in adoption of panel rulings, as well as appeals to a standing Appellate Body of expert jurists, whose rulings are

15. See *id.* at 97.

16. See *id.* at 96.

also, effectively, automatic in their legal impact. Even the possibility of suspension of concessions, where a Member has failed to comply with a ruling, is effectively automatic, subject to arbitration concerning the nature and level of concessions that may be suspended. Unlike with Jackson's proposals, there are no explicitly institutionalized political controls over rules-based outcomes; perhaps the one clear exception is that the prerogative of the membership as a whole to make authoritative interpretations of WTO law is entrenched, but subject to a consensus or alternative three-fourths of the membership voting rule. Based on this provision the Appellate Body has, admittedly, stopped short of conferring the status of binding precedent on adopted rulings of the dispute settlement organs.¹⁷ In practice, however, the legal interpretations of those organs would require close to a consensus of the membership to reverse through an authoritative interpretation.

In his 1998 book, *The World Trade Organization: Constitution and Jurisprudence*, Jackson picks up, as it were, where the *Restructuring* left off, and assesses the new WTO system and its prospects.¹⁸ On the one hand, he notes that the decision-making rules for the various political/diplomatic institutions of the WTO seem if anything to be more constraining of collective action by diplomatic representatives of the membership, thus protecting national sovereignty against abuse.¹⁹ Importantly, Jackson links the constraints on such action to the issue of democratic legitimacy of diplomatic decision-making:

A particular government's democratic legislature may have spent decades developing laws and administrative procedures that delicately balanced conflicting governmental goals to achieve, for example, both a large measure of environmental protection and reasonable protection of private property. Or compromises may have been struck to achieve an appropriate relation between economic incentives compared with protection of poor and needy elements in a society. It could often be intolerable for an international body to come along and upset these careful balances and compromises, perhaps motivated by vastly different societal customs and beliefs among more than 130 nations.²⁰

Jackson nevertheless concludes his discussion of the WTO "organization and charter" by posing the question of "whether the WTO as

17. See WTO Appellate Body, *Japan-Taxes on Alcoholic Beverages*, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R (adopted November 1, 1996). On this issue, see D. Palmeter & P.C. Mavroidis, *The WTO Legal System: Sources of Law*, 92 AM. J. INT'L L. 398 (1998).

18. See generally Jackson, *supra* note 5.

19. See *id.*, at 46-47, 57.

20. See *id.* at 57.

an institution has been *too* constrained by the various checks and balances . . . to enable it to respond effectively to the many and rapid changes in economic and market forces that are occurring²¹—he does not go on to answer that question, but does view it as a “key issue” for the future. At the same time, Jackson is clearly sympathetic to calls for greater openness, transparency, and NGO participation in the political/diplomatic institutions of the WTO.²² Perhaps, he sees the possibility of loosening some of the constraints on diplomatic/political decision-making at the WTO as connected to enhancement of the openness and transparency of such decisionmaking, as well as broader participatory opportunities. This would mark a subtle but important evolution in perspective from *Restructuring*, where, it will be recalled, Jackson seemed to understand the issue of democracy as one to be addressed at the stage of rule- or institution-creation.

With respect to the “rules-orientation” of the new WTO dispute settlement system, Jackson merely mentions that some diplomats are scared²³ or unsettled²⁴ by the legalist tendencies of the WTO, such as automaticity in adoption of panel and Appellate Body rulings, which dispenses with political/diplomatic control over whether they become legally binding settlements. While placing some emphasis on techniques of jurisprudence that may lessen the chance that political controls will be necessary to avoid a legal ruling that threatens the stability of the system,²⁵ Jackson nevertheless draws attention to certain tools of diplomatic/political control of dispute settlement that remain, including the power to appoint and decide on the reappointment of the members of the Appellate Body²⁶ and the ultimate power of the diplomatic representatives sitting as the Dispute Settlement Body to determine working procedures for panels and the Appellate Body (implicit in the absence of detailed procedures in the DSU itself on these matters).²⁷ Nevertheless, on the penultimate page of the book he once again raises the issue of whether the constraints on political/diplomatic decisionmaking in the WTO are too strict to allow its adequate evolution in tandem with the needs of the global economy.²⁸

Thus, as much in the assessment of the actual result as in his own original proposals for the WTO institutions, Jackson remains faithful to

21. See *id.* at 58.

22. See *id.*

23. See *id.* at 76.

24. See *id.* at 99.

25. See *id.* at 89–95.

26. See *id.* at 78.

27. See *id.* at 79.

28. See *id.* at 103.

his complex vision of international legal order, a vision that balances legal utopianism with political anxiety. The late French philosopher and political commentator Raymond Aron once referred to himself as a “spectateur engagé”—a committed observer. In many ways, Jackson could be similarly described. While he clearly cares deeply about the direction that events will take, his vision is ultimately shaped and delimited by the felt need to respond reasonably to what he actually sees as the highs and lows of interstate relations in the 20th century. Once this is understood, it is possible to *appreciate* the spirit of Jackson’s work, and the nature of his achievement, even though one’s own angle of vision, and thus one’s legal imagination, have been differently shaped.