Essays on the Nature of International Trade Law, Robert E. Hudee

Cameron R. Krieger
Well-known international trade law scholar Robert E. Hudec has recently compiled several of his essays from the last thirty years. The resulting book, *Essays on the Nature of International Trade Law*, provides not only a synthesis of the developments in Hudec’s thought but also a contrast to international law scholarship over that period.

Hudec’s scholarship, which focuses on the GATT, diverges from that of other academics in the depth of his analysis. For instance, many commentators content themselves with noting violations by the U.S. of international law and shaking their collective finger at U.S. decision-makers. Hudec, however, ignores the dead end of disapprobation. Instead he takes the more interesting path of examining why the United States has chosen such a route; whether U.S. actions can be justified; and why these actions may benefit international trade law in the end.

Consider, for example, how Hudec approaches Super 301, a statute that allows the United States to unilaterally impose trade sanctions on nations which the U.S. feels has violated trade law. Nearly all critics agree that Super 301 violated GATT, and now violates the WTO, in various ways. In “Thinking About the New Section 301: Beyond Good and Evil,” Hudec takes this locus of rather unsubtle bashing of the United States and turns it into a revealing look at why disobedience of international rule-making bodies like the GATT and WTO may be justified and, indeed, valuable. His somewhat controversial thesis is that one can view Super 301 as “justified disobedience.” By unilaterally imposing trade sanctions, the United States highlights problem areas and often forces international organizations to make necessary reforms to their own rule-making and adjudicatory bodies. Hudec argues that it is possible, and even likely, that needed reforms would not be made without the forcing function of justified disobedience.

Hudec recognizes the dangerous implications of his argument. Presumably it could be used to justify any individual governmental action which violates an international agreement. To counter this criticism, Hudec proposes both structural and substantive guidelines for the use of justified disobedience, but these suggestions are only reassuring to the extent one accepts his initial proposition and believes that a government, already acting outside the bounds of law, will hew to his guidelines.

The approach in the essay “Beyond Good and Evil” informs all of Hudec’s articles, because his criticism remains consistently pragmatic. Vilification of the United States and a claim that “international law has been broken” is too simple. Critics should seek to understand how particular parties interact, why they took particular positions, and what benefits might have resulted from these positions.
Hudec explores these questions by engaging in minute dissection of individual "case studies" and extraction of general principles from discrete events.

While Hudec's approach is pragmatic, the essays also reveal how his thinking has evolved over the years. For example, Hudec begins to employ the language of economic analysis in later essays such as "Tiger, Tiger, in the House" and "Requiem for an 'Aim and Effects' Test." Hudec gradually integrates other strands of legal theory as well. This integration, however, tends to detract from the essays, in large part because the essays' strengths lie in Hudec's own compelling functionalist interpretations.

Like many collections of essays, the book lacks some coherence in its presentation. Although Hudec organized the essays under three broad subjects—"The Nature of International Trade Law," "Concepts of Fairness in International Trade Law," and "Concepts of Discrimination in International Trade Law"—it is unclear why some essays belong under one of these headings and not another. In the end, however, each essay stands alone with ease.

Hudec's compilation is refreshing. Today, mainstream international trade scholarship employs a combination of economic analysis, game theory models, and "embedded liberalism." In contrast, Hudec focuses on the actual functioning of governments on the world stage. Rather than theoretical models and abstractions, Hudec uses case analysis based on concrete events.

Reviewed by
Cameron R. Krieger
University of Chicago
Class of 2001