Progress in International Organization: A Constitutionalist Reading

By Christian Walter

A. Introduction

Harvard Professor Manley O. Hudson’s book Progress in International Organization was, in many ways, an audacious and visionary. His idea of an “international government”1 comes pretty close to the concept of “international governance” popular in today’s scholarly discourse.2 The book’s overall structure – on the one hand a strong argument in favour of international co-operation,3 and on the other hand a critical assessment of the position of the United States in the international arena4 - operates as an excellent mirror for reflection on the current hopes and concerns of many international lawyers. Hudson’s analysis of the impact of accelerated communication on the political organization of the world also bears striking similarities to current developments in the so-called “digital age.” Writing in 1932, Hudson was referring to the changes provoked by postal and telegraphic communication as well as steamship transportation in the 19th century.5 But the current transformations are working along similar lines, when the increased speed with which information may be distributed is qualified as an important contribution to societal change.6

1 Manley O. Hudson, Progress in International Organization 6 (1932).
2 See Karl-Heinz Ladeur, Public Governance in the Age of Globalization (2004); see also Governance-Forschung: Vergewisserung über Stand und Entwicklungslinien (Gunnar Folke Schuppert ed., 2005).
3 Hudson, supra note 1, at chs. IV–VIII.
4 Id. at ch. IX.
5 Id. at 7.
History has proven other aspects of Hudson’s vision to be too optimistic, or to have fallen short of our debates, which have gone beyond that which he could have predicted and analyzed in 1932. Nevertheless, the general ideas in his book provides useful guidance in looking at the current state of international affairs from a constitutionalist perspective. The following chapter takes up some of the ideas that may be found in Hudson’s book and relates them to the current debates on the constitutionalization of international law on the one hand (Parts B. and C.), and hegemony and unilateralism on the other hand (Part D.).

B. Is There An “International Constitution”?

Without expressly comparing the organization of the international order to national constitutional structures, Hudson refers to several aspects of international relations in his era that bear similarities to our own era. I want to discuss two important constitutional characteristics that are mentioned in Hudson’s book (the idea of a “constitutional moment” and the requirement of democratic legitimacy) in order to highlight important differences between the concept of a constitution in national law and the constitutionalization of international law.

I. “Constitutional Moment”

It is often said in constitutional theory that the adoption of constitutions requires a so-called “constitutional moment.” Constitutional moments are specific historical situations in which conditions are favourable for fundamental changes in the organizational structures of a given society. Such conditions often exist after a successful revolution (a situation for which the United States or France in the late 18th century may be taken as examples) or in situations of complete defeat and devastation (exemplified by post-World War II Germany, when the Basic Law was created). It is, however, unclear whether a “constitutional moment” really is a necessary condition for the creation of new constitutional structures.

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7 This relates notably to the Chapter on “World Peace.” Hudson, supra note 1, at 89.
8 One may mention in that context the parts devoted to “international legislation” that basically refer to either customary law or treaty law (including the idea of codification) without focusing on law-making by international organizations such as the EU. Hudson, supra note 1, at 76.
9 See Bruce Ackerman, Revolution on a Human Scale, 108 Yale L.J. 2279, 2298 (1999); Bruce Ackerman, Constitutional Politics/Constitutional Law, 99 Yale L.J. 453, 489 (1989).