The Role of Transnational Judicial Dialogue in Shaping Transnational Speech: International Jurisdictional Conflicts in Hate Speech and Defamation Law

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A. Introduction

Reading Harvard Professor Manley O. Hudson’s lectures at the University of Idaho from nearly a century ago, one is struck by the profound sense of optimism with which international lawyers of his era greeted the launch of the great liberal internationalist experiment. Hudson spoke for a generation of scholars and policymakers in stating his firm belief that institution building was the key to the lasting worldwide peace that had eluded previous generations. Institutions were, in his words, “the great simplifiers of human problems.”¹ To Hudson, the founding of the League of Nations and the concomitant growth of a complex web of international institutions marked “the beginning of a new era in organized international life.”² And his generation would be remembered, Hudson was convinced, “for the progress which we have made in organizing the world for co-operation and peace.”³

To the, perhaps, too-jaundiced eye of the 21st century scholar, Hudson’s uncomplicated faith in the emerging international legal system of his day seems somewhat naïve. In the United States, at least, liberal internationalism – the dominant paradigm for international cooperation and governance for the latter half of the 20th century – is increasingly under attack from all sides.⁴ As the complex web of

¹ Manley O. Hudson, Progress in International Organization 121 (1932).
² Id. at 23.
³ Id. at 5.
⁴ I use the term “liberal internationalism” to describe a system for international cooperation and governance based on multilateral negotiation of treaties, and the creation of a variety of international institutions to oversee implementation of those treaties. Other scholars have adopted similar, though not identical, definitions of liberal internationalism. See, e.g., Kal Raustiala, The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law, 43 Va. J. Int’l L. 1, 17–19 (2002) (liberal internationalism is a paradigm for international cooperation...
international institutions expands its reach into fields that were previously the exclusive province of domestic authorities, U.S. policymakers increasingly question the wisdom of participating in such institutions.\(^5\) International law and international relations theorists alike argue that liberal internationalist theory no longer captures the reality of international lawmaking; moreover, they question whether international institution building has reached the limits of its potential.\(^6\)

Scholars posit a range of alternatives to Hudson’s liberal internationalist faith in treaty-making and institution building. The emphasis for many modern scholars is on “trans-” rather than “inter-” national lawmaking.\(^7\) Moreover, no longer is international

consisting of “an ever-increasing number of international institutions, constituted by a legally binding treaty, with expanding powers of governance”); David P. Fidler, Caught Between Traditions: The Security Council in Philosophical Conundrum, 17 Mich. J. Int’l L. 411, 430 (1996) (“liberal internationalism” is “the tradition of liberal thought that views international organization as vital to the maintenance of international peace and security”); Anne-Marie Slaughter (formerly Anne-Marie Burley), Toward an Age of Liberal Nations, 33 Harv. Int’l L.J. 393, 394 (1992) (liberal internationalism is the “belief in the necessity of leadership by liberal democracies in the construction of a peaceful world order through multilateral cooperation and effective international organizations.”) (quoting Richard N. Gardner, The Comeback of Liberal Internationalism, Wash. U. Q., Summer 1990, at 23)).


\(^6\) See, e.g., Anne-Marie Slaughter, A New World Order 8 (2004) (acknowledging that “the international institutions created in the late 1940s … are outdated and inadequate to meet contemporary challenges,” but arguing that “world government is both infeasible and undesirable” because it presents “an unavoidable and dangerous threat to individual liberty”).

\(^7\) Scholars from the transgovernmentalism school, for example, argue that the real action in international lawmaking is in the worldwide growth of transgovernmental networks among regulatory agencies. See Kal Raustiala, The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law, 43 Va. J. Int’l L. 1 (2002); Anne-Marie Slaughter,