
Max Huber: A Portrait in Outline

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The introductory chapter should be written last – that was what Richard Baxter taught us, his students. It is the best way to provide a general overview and to highlight the main points of the other chapters. Dietrich Schindler, Jost Delbrück, Oliver Diggelmann, Daniel Khan, Ole Spiermann and Yves Sandoz have each shed light on Max Huber as a person and on his work. This introduction seeks to fill in certain traits in the portrait of Max Huber that could not be included in the individual studies. I also discuss what Max Huber’s work means to us in today’s world.

1 An Outstanding Person

During his lifetime Max Huber was considered a prominent figure in international circles. By ‘prominent’ we generally mean someone who is a large cut above the average, someone who makes a mark on society, shaping the way in which contemporaries or later generations feel, think, organize and act.¹ On Huber’s death in 1960, the President of the International Court of Justice wrote:

As a member of the Permanent Court of International Justice from 1922 to 1930, as the President of this Court from 1925 to 1927, the deceased played a primary role in the organization of international justice. Through his academic studies and his decisions as a judge, he also made such an eminent contribution to the development of international law that his name will live on for everyone who works in that field. As someone who had gained the ear and the respect of the entire world, he was one of those people who are an honour to their country and to the human race.²

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¹ Max Huber himself had already addressed the question of what makes a great human being, statesman, Swiss citizen, etc., and had come to the conclusion that greatness is rare, not only because it needs to be far above the average but also because first-class intellectual performance must be coupled with ethical conduct, and a marked impact must be evident—albeit only posthumously or exemplary: see Huber, ‘Foreword’, in H. Schulthess (ed.), *Schweizer Juristen der letzten hundert Jahre* (1945), p. VII ff.

² Speech by Max Petitpierre, President of the Swiss Confederation, at Max Huber’s funeral.

The President of the Swiss Confederation, Max Petitpierre, described Max Huber at his funeral as ‘an eminent lawyer for whom law can only be the instrument of justice’. Huber, who as President of the International Committee of the Red Cross (ICRC) accepted the Nobel Peace Prize awarded to the organization in 1944, was greatly esteemed. In his home country he was celebrated as a great Swiss citizen.³ It is astonishing and something of a mystery that since then his name has largely been forgotten in professional circles and has faded into obscurity in the broader public consciousness. Why is that? It might be that Huber – his writing and his work – was too wide-ranging and changed too greatly in the course of his lifetime to be encapsulated in a simple formula, whereas people who much remain in the collective memory are those who can be readily identified with a specific subject or event. Huber had gained a reputation as the author of a number of academic works, but these have been very selectively stored in the memory of the professional world. He had made a name for himself as a legal counsellor and diplomatic representative of his government and as an international judge and arbitrator but, despite their high quality, only a few extracts from his articles on the practice of international law are still cited today; Huber’s wide-ranging impact on politics, society and culture is mostly unknown.

We are very grateful to the Editors of the *European Journal of International Law* for encouraging us to present a tribute to Max Huber in this series of symposia on the European tradition in international law. Only by bringing together various individual aspects can an all-round portrait of Huber be painted that will aptly reflect his importance. Will this contribute to a rediscovery of Huber by academics and the broader public? Will Martti Koskenniemi include a detailed portrait of him in a future edition of *The Gentle Civilizer of Nations*,⁴ in which Huber at present makes no more than a marginal appearance? At all events, the following pages are an attempt to focus on the inner coherence of this complex figure and they are an invitation to readers to take a (new) look at Max Huber. It is not our intention to write history for history’s sake – from an ‘antiquarian’ or ‘archaeological’ perspective. Our intention is to show that Max Huber as a phenomenon is of considerable contemporary significance and that we can learn much from his writings and achievements.

2 Academic Legacy: Sociological and Ethical Bases of International Law

As a young man, Max Huber embarked on an academic career, as is recounted several times in these symposium articles. The most important treatise that he wrote as Professor of International, Constitutional and Ecclesiastical Law at the University of Zurich was ‘*Die soziologischen Grundlagen des Völkerrechts*’ (*The sociological*

³ For further information on his great esteem in Switzerland see, in particular, the biographies by P. Vogelsanger, *Max Huber—Recht, Politik, Humanität aus Glauben* (1967), and F. Wartenweiler, *Max Huber—Spannungen und Wandlungen im Werden und Wirken* (1953). From an encounter in his youth, the author himself remembers the name and figure of Max Huber as those of a ‘great Swiss citizen’.

⁴ M. Koskenniemi, *The Gentle Civilizer of Nations—The Rise and Fall of International Law* (2001).

foundations of international law').⁵ The author considered attempts by earlier generations to derive international law from natural law to be too broad and too vague and the prevailing positivist take on international law to be too formalistic. Huber was concerned with the common interests of the community of states and was trying to find their political substratum. His efforts to understand international law in terms of its factual premises was more realistic and bore practical fruit. Although his approach is now self-evident in many respects for modern international lawyers, he was then an innovator in academic thought. Huber represented a way of perceiving and thinking about international law that was new in Europe.^{6/7} Because his subsequent career took him to high offices in legal practice, he was denied the chance of founding a 'school' within its own 'four doctrinal walls', although that would probably have been in contradiction with his liberal, non-authoritative understanding of scholarship.

In keeping with his times and his doctoral studies in Wilhelminian Berlin, Huber still based this doctrine on the sociological foundations of international law firmly on the sovereign power of *states*. He began his study by stating that the state is 'the most powerful factor of all social life' and that the whole of history is state history, by which he did not only mean political history.⁸ From today's perspective, this side of Huber's sociological conception of international law seems somewhat outdated. It is important to note, however, that Huber repeatedly tried to fathom processes 'behind' the law as it was actually practised, 'over' and 'under' the law and 'between' the legal systems. His assessment of the plans of the Hague Peace Conference in 1907 (which were only modestly realized) to create mechanisms for international arbitration seems really modern; he believed that the significance of all these new international legal institutions lay 'less in what they are, as seen from a formally legal perspective, . . . than in the moral weight that they lend to the ideas and aspirations which led to their creation and which they embody at least in part'. Huber's view was that although most people knew nothing about these institutions, in some circles they

⁵ Reprinted in M. Huber, *Gesellschaft und Humanität—Gesammelte Aufsätze* (1948), at 49–162. The article was first published under the title 'Beiträge zur Kenntnis der soziologischen Grundlagen des Völkerrechts und der Staatengesellschaft' in the *Jahrbuch des öffentlichen Rechts* (1910), vol. iv. An unchanged reprint appeared in 1928 in the Verlag Dr. Walther Rothschild, Berlin Cirunewald, entitled 'Die soziologischen Grundlagen des Völkerrechts' ('The Sociological Foundations of International Law').

⁶ The writings of Johann Caspar Bluntschli (1808–1881) were, however, also based on similar methodological principles. See, in particular, J.C. Bluntschli, *Das moderne Völkerrecht der civilisierten Staaten also Rechtsbuch dargestellt* (1872); on the work of this leading lawyer and statesman and his environment, see, for example, Huber, *supra* note 1, p. VII ff.; D. Schindler, *Die Staatslehre in der Schweiz*, in: *Jahrbuch des öffentlichen Rechts der Gegenwart* (1976), at 255 ff. and J.C. Bluntschli's *Contribution to the Law of War*, in M.G. Kohen (ed.), *Promoting Justice, Human Rights and Conflict Resolution through International Law—Liber Amicorum Lucius Caflisch* (2007), at 437 ff; B.R. Baker, *J.C. Bluntschli, Francis Lieber und das moderne Völkerrecht 1861–1881* (2003), at 2 ff.

⁷ The strongly politologically-oriented methodological approach to international law was subsequently taken up particularly forcefully in the US by the 'New Haven School': see McDougal, Reisman, and Wilard, 'The World Process of Effective Power—The Global System', in *Power and Policy in Quest of Law—Essays in Honor of Eugene Victor Rostow* (1985), at 353–414; S. Voos, *Die Schule von New Haven: Darstellung Kritik einer amerikanischen Völkerrechtslehre* (2000).

⁸ *Supra* note 5, at 49.

were nonetheless ‘a symbol of an international legal system’, a ‘fixed point’ around which public opinion could crystallize.⁹ Today we think immediately of, for example, the International Criminal Court or the UN Human Rights Council, institutions whose practical impact has so far lagged behind the expectations originally invested in them, but which have mobilized the general public in the not insignificant conceptions of a worldwide ‘rule of law’.

In addition to his methodological innovations in the field of the sociology of international law, what is impressive about Huber’s work is his broad view of the history of international law and his almost prophetic prediction of its further development, which was quite out of keeping with the spirit of the times. Is it not striking to discover that in 1910 when this work was first published or in 1928 when it was reprinted that Huber took it almost for granted that in Europe centuries of terrible wars would be followed by a new order of free movement and political cooperation and that the economy and its enterprises would come also to influence the shape of international law? Thanks to his sensitivity to the facts and the history of law, Huber was able to perceive tendencies which would have remained concealed if the situation were viewed from a purely positivist perspective.

Given the broad elementary methodological approach in Huber’s thought, it is not surprising that a significant shift of emphasis took place during the course of his life. It may have come about as a result of the change in the general political situation, his appointment as the President of the ICRC and new academic insights. At all events, it was a paradigm shift from the 1930s on towards *ethical principles* as a foundation of international law, a shift that commentators fixated on his early writings have paid little heed to. The needs which, as Huber was later to write, became evident to all during the two world wars, awakened in him a concern for what lay behind the law and for the spiritual powers which breathed life into the institutions.¹⁰ It was in keeping with Huber’s creativity and inner dynamism that he now turned to thoughts of ethics, legitimacy and justice in his quest for new ways of explaining, criticizing and further developing international law. Huber’s ability to reach beyond the technicalities of legal provisions and to seek the fundamental principles, the essence of the law, indeed the underlying metalegal principles, was also evident in relation to these moral questions.

Huber’s long, impressive career in legal practice kept him from writing a self-contained, systematic academic work, which would have doubtless earned a permanent place in the literature on international law. Even if it is not always easy to reconstruct Huber’s thought patterns from his many writings, it seems to me that his *ability to see the whole picture* as well as *the change and inner growth* of the law would have marked such a work. The attempt in his treatises, essays and lectures to achieve a synthesis of international law as it is incorporated in reality and is oriented to the higher values of ethics and justice, could then have been given an accessible, doctrinally comprehensible, logically coherent and graspable form.

⁹ *Ibid.*, at 147.

¹⁰ In: ‘Wesen und Würde der Jurisprudenz’ (1945), reprinted in Huber, *supra* note 5, at 47.

3 Legal Practice: Justice as a Basis

Huber regretted that his busy life never allowed him the time to write such a fundamental work on international law. It might have been entitled, by analogy with Rudolf von Jhering,¹¹ 'On the Spirit of International Law'. However, Huber did succeed in applying his sense of the fundamental in his practical work in and on the law. His efforts as a member of the Swiss delegation to the Second Hague Peace Conference in 1907 to establish an international judicial (or arbitration) system, his learned draft of a message from the Swiss Federal Council to the Swiss people regarding Swiss accession to the League of Nations¹² and his work as a judge all testify to Huber's quest for the elementary and simple in practical matters too.

Huber repeatedly stressed that the marked international nature of life was in keeping with the ideal of a heightened interstate solidarity. This, he said, had two roots. First, it lay in the gradual development of structures based on the rule of law inside the states, in accordance with which their decision-making bodies would not be above the law but within it and tendencies to subject the state to the concept of the law also in its relations with other states would be favoured. This double sense of the 'rule of law' was said to be furthest developed in the United States – such was the situation in the interwar period. Second, Huber referred to the 'idea of morality', which was about to extend to the whole of human relations. Since positivism had triumphed over natural law, however, questions of the moral bases had been almost completely neglected in the study of international law. Nonetheless, in Huber's view any real progress in international law was ultimately dependent on those moral bases and they would give rise to an environment of international law in which conflicts between states would not escalate beyond that required by the interests at stake.¹³ However, Huber pointed out that 'the ethical, as material justice, is only taken into account by the judge as a critical principle of legal interpretation and, in the framework of the law, as a guideline for the just application of the norm to the individual case. The judge therefore has to obey the dictates of formal justice, and undertake entirely objective scrutiny and appraisal – free from any personal considerations – of norms and facts. This justice on the part of the judge,' Huber argued, 'is the essence of the judicial system, an ethos related to the way justice is handled, but even, in this restricted definition utterly radical.'¹⁴

The concrete contributions made by Max Huber to the practice of international law are examined in detail in the articles of this symposium. I can merely indicate here the extent to which Huber, even when he was involved in practical work in institutions or with texts, always took care to give an account of his ideas on the development of justice. He wrote:

I have long realized that, to be complete, the concept of law must not be left at the stage of a historical or sociological experiment or in the form of a pure science based on abstract

¹¹ R. von Jhering, *Der Geist des Römischen Rechts auf den verschiedenen Stufen seiner Entwicklung* (1852–1865).

¹² [1919] IV Federal Gazette (*Bundesblatt*) 541 (4 Aug. 1919).

¹³ Huber, 'Soziologische Grundlagen', *supra* note 5, at 156 ff.

¹⁴ Huber, *supra* note 10, at 37.

reasoning. Of necessity, reason must always question its conclusions; as far as empirical positivism is concerned, it risks ending up as a pitiful capitulation to the law of the strongest. If pushed to their limits, both systems lead to a sort of nihilism. It is in the light of the very notion which inspires justice that the true nature of the problem of the law appears.¹⁵

It is interesting to note that Huber saw the importance of international jurisprudence as lying primarily in its independent moral character, free from the interplay of political and economic interests. The judge was not to be swayed by sympathies, prejudices and ideologies and not even by his doctrines, his past or his culture.¹⁶ 'In fact,' Huber wrote, 'the international judge always takes a personal decision which involves his moral responsibility, as legal reasoning never has the restrictive and impersonal logic of a mathematical demonstration.'¹⁷

Huber's view was therefore that international jurisprudence derived its importance primarily from its power of persuasion. He accordingly gave preference to methods of conciliation over pronouncements of justice. He gained greater satisfaction from presenting the parties, in the framework of a commission, with suggestions on how to achieve a mutual settlement of a conflict than from most of his decisions as a judge on the basis of the law in force at the time.¹⁸

4 ICRC Presidency: Person and Institution

If, by analogy with Max Weber,¹⁹ three possible grounds for the legitimacy of public action are assumed – 'rule based on tradition' (authority of 'die-hard reactionaries'), charisma as a feature of leadership, and legality (practical competence by virtue of rationally created rules of modern 'public servants' and rulers) – the legitimacy of the Red Cross, understood in the broad sense, belongs to the third category. The humanitarian work of the Red Cross could even be described as the prototype of an international movement emerging by virtue of its practicality. That is certainly true of the period in which Max Huber was the President of the ICRC (1928–1945). At the time Huber took up office, Henry Dunant's intuitive, big and ingenious idea was still very much alive; the League of Red Cross Societies was set up on the basis of an American initiative and that was also the year in which the Red Cross Movement was also given its Statutes.²⁰ The ICRC was then far less independent as an organization than it is today²¹ – a fact that strikes the reader of Huber's writings. It was also still strongly bound up in the network of Red Cross Societies and was still strongly dependent on Swiss policy,

¹⁵ Huber, 'Souvenirs', in M. Huber, *La pensée et l'action de la Croix-Rouge* (1954), at 14.

¹⁶ *Ibid.*, at 12.

¹⁷ *Ibid.*

¹⁸ *Ibid.*, at 12–13.

¹⁹ M. Weber, *Politik als Beruf* (1919, reprinted 1992), at 160.

²⁰ For further details about the special features and the history of the Red Cross and especially of the ICRC see F. Bugnion, *The International Committee of the Red Cross and the Protection of War Victims* (2003).

²¹ Dominicé, 'La personnalité juridique internationale du CICR', in: C. Swinarski (ed.), *Etudes et essais sur le droit international humanitaire et sur les principes de la Croix-Rouge en l'honneur de Jean Pictet* (1984), at 663 ff.

neither of which is currently the case. As Huber put it, the ICRC saw itself and its task as a ‘social service’²² in the context of a universal work which focused on war victims, natural disasters or epidemics. He considered ‘securing world peace by the rule of justice’ as the supreme political objective, although the tendency for people to take up arms was also one of the realities of history. The objective of the Red Cross was therefore to protect and support the victims of violence and those in need and, most of all, to contribute to the ‘humanization of war’, should peacemaking fail. Huber wrote on the contemporary organizational structure of the Red Cross Movement:

But if its national and international groups are wholly contained in the Red Cross, the Red Cross is not wholly contained in them. It must be viewed in its totality as the sum of all its parts and aspects, an idea made concrete in committees and societies, but existing by itself, apart from these. It must be seen as upholding, in the midst of the nations, a set of living principles which, though the practical forms it assumes are chiefly national, yet in its utter simplicity is comprehensible and acceptable to all peoples; as a bridge of understanding from one people to another, which they will allow to stand and consent to use when, in the recurring tragic crises between nations, almost every other bridge of human intercourse has broken down.²³

In his day, Max Huber appeared in the context of the still more or less loosely united Red Cross as the ‘head’ of the ICRC, seeing it as his task to firmly establish the objectives and operating principles (neutrality, impartiality and universality) of the Movement, to defend them and, despite institutional deficiencies, to secure the unity of the Red Cross (symbolized by its emblem) and a common ‘spiritual orientation’. To a certain extent, Huber appeared as a ‘*maitre penseur*’²⁴ who gave the Movement inner strength, life and aura, as the spiritual leader of the institution or – as Max Weber would have probably put it – as the ‘servant’ of the multifaceted work of the Red Cross.

We should not forget that the Red Cross – even if it is subject to instructions from its managing bodies – draws its life from the unceasing sacrifices of its delegates and from many different kinds of ‘silent heroism’, as Max Huber put it, in the everyday work of its staff. The way in which the Movement works is illustrated by a story of reported by Marcel Junods, who was an ICRC delegate in Abyssinia, in Spain during the civil war, and in Germany and Japan during the Second World War. Dr Junod, who had left his work as a doctor in Alsace to take up an appointment as an ICRC delegate, was busy studying the Geneva Conventions in the ICRC library. A delegate named Sidney Brown, who was to accompany him to Abyssinia, approached him and informed him: ‘Books are all very well, but when you are alone in the field, thousands of kilometres from Geneva, you have to rely on your imagination. There are plenty of Red Cross texts, but there is most importantly . . . one spirit.’ He went on, ‘Remember

²² Huber, ‘Extension and Limitations of Red Cross Activities’, in M. Huber, *The Red Cross Principles and Problems* (1950), at 43.

²³ Huber, ‘The Red Cross Idea at the Present Time’, in *ibid.*, at 53.

²⁴ See M. Huber, *The Good Samaritan—Reflections on the Gospel and Work in the Red Cross* (Foreword by W. Temple and Introduction by A. Keller, 1945). On the Red Cross principles see, for example, Thüner, ‘Dunants Pyramide—Gedanken zu einem “humanitären Raum”’, in S. Breitenmoser, B. Ehrenzeller, M. Sassöli, W. Stoffel, and B. Wagner Pfeifer (eds), *Menschenrechte, Demokratie und Rechtsstaat—Liber Amicorum für Luzius Wildhaber* (2007), at 819 ff. with further references.

that you are neither an investigator or a judge and that your line of conduct must be dictated first and foremost by the principle of providing relief for war victims.’ And he concluded, ‘You will see what I mean when you are there. Be careful and remain objective at all times.’²⁵

With the Red Cross – and with Max Huber as its leading representative – the history of international law was infused a new spirit and took a new turn, in that (suffering) human beings were now deliberately placed at the centre of an international set of rules. The Geneva Convention of 1864 was the first international convention with the objective of limiting warfare. The Red Cross Movement, which produced and developed international humanitarian law, is – as an expression of the conscience of civil society – the most powerful forerunner of the NGO movement, which would subsequently grow so forcefully.

5 Tests of Time?

Is Max Huber’s work still relevant for international lawyers in the early 21st century? The world in which we live today is completely changed.²⁶ In 1946, when Max Huber retired as President of the ICRC and thus from the practice of international law, a revolution in international law had already taken place under the aegis of the United States and the United Kingdom: the United Nations Organization had been established as a potentially global political organization with a general prohibition of force in international relations enshrined in its Charter and with a universal programme of human rights. Yet today we seem to be witnessing dangerous developments in which the foundation of an international order of peace and law set up by Roosevelt und Churchill is being questioned by, among others, their political successors. I am thinking, for example, of phenomena such as the ‘war on terrorism’ declared by President George W. Bush, Guantánamo, Abu Ghraib and the illegal war against Iraq, but also of general threats to civilization and to human survival such as the spread of weapons of mass destruction, climate change and world poverty. One may well ask whether, in this new world of international law, there is any point in taking a closer look at Huber’s writings. If the aim is to make the world ‘a better place’, are they still relevant? What can we learn today from Huber as we have tried to portray him here? There are perhaps three things that, although they are generally not immediately associated with the name of Max Huber, are intrinsically bound up with his person and his work; they might serve as criteria to test the quality and durability of Huber’s thought.

²⁵ M. Junod, *Le troisième combattant—De l’Yperite en Abessinie à la bombe atomique d’Hiroshima* (1989), at 12 f. Jakob Kellenberger, President of the ICRC, described this book as ‘compulsory reading’ for every delegate even today, in E. Deuber Ziegler (ed.), *Soixante ans après: Le Désastre de Hiroshima de Marcel Junod* (2005), at 11.

²⁶ See P. Sands, *Lawless World—America and the Making and Breaking of Global Rules* (2005).

- Powers of globalization.* There has been a massive increase in the material of international law since Huber's time. An immeasurable collection of often very detailed agreements, conventions, protocols, resolutions, decrees, judicial opinions, and other documents of international law has taken shape. Globalization has led to the formation of specialized, worldwide cooperative networks in sectors as diverse as trade, environment, communication, energy production or human rights. Owing to their generally very differentiated, highly complex and rapidly changing nature, these networks tend to become independent and to assume a life of their own. Systems of international law in the form of multilateral agreements and of documents from practice, have therefore arisen that are specifically tailored to the needs and interests of these cooperative networks, and a world that was divided up among sovereign entities is mutating into a world divided by special regimes.²⁷ The International Law Commission has made the fragmentation of international law one of its fields of work. In its opinion, this development does not require a fundamental transformation of international law. It considers it sufficient to make innovative use of the traditional techniques of rules of precedence such as '*lex specialis*', '*lex posterior*' and hierarchically superior legal standards in line with the concepts of '*jus cogens*' or '*erga omnes*'.²⁸ With regard to Max Huber's way of seeing things, I wonder, however, if such general, flexible tools for settling conflicts really are sufficient to respond to decentralized, spontaneous and virtually anarchic developments in international norm-making. In any case, against the background of concurrent specialized legal orders with no clear legal interconnections, I am impressed by Huber's efforts not to lose sight of the common features and fundamental issues behind the individual phenomena. His thoughts appear fresh and new today in that respect too. If we think them through and apply them to our modern thought and concept of law, they tend, in contrast to the unambitious approach of the International Law Commission, towards a (overarching) 'constitutionalization of international law', as proposed primarily by international law experts in the West, or – more modestly and more realistically – towards a reevaluation of 'general principles of law' as a source of international law.²⁹ Of course, such patterns of thought could be attached to the legal concepts of the '*jus cogens*' or '*erga omnes*' nature of fundamental principles of international law referred to by the International Law Commission, but that is a step that the Commission has specifically not taken. In any case, the current trend to ever

²⁷ See A.M. Slaughter, *A New World Order* (2004).

²⁸ Report of the Study Group of the ILC, 'Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law', 13 Apr. 2006, UN Doc. A/CN.4/L.682. See also Abi-Saab, 'Fragmentation or Unification: Some Concluding Remarks', 31 *NYU J Int'l L and Politics* (1999) 919; Buergenthal, 'Proliferation of International Courts and Tribunals: Is it Good or Bad?', 14 *Leiden J Int'l L* (2001) 267; Alford, 'Federal Courts, International Tribunals, and the Continuum of Deference', 43 *Virginia J Int'l L* (2003) 675; Oellers-Frahm, 'Multiplication of International Courts', 8 *UN Yearbook* (2001) 67.

²⁹ See Thürer, 'Modernes Völkerrecht: Ein System im Wandel und Wachstum—Gerechtigkeitsgedanken als Kraft der Veränderung?', 60 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (2000) 557.

greater ‘specialization’, which is also referred to as ‘professionalization’, does not necessarily seem to be a path with a promising future. Indeed, it seems to me that Max Huber’s holistic approach has become attractive again at the higher level of the complexity of global governance.

- *Ethical bases.* As indicated, Huber placed ethical issues at the centre of his legal philosophy. He thus continued a tradition which – from Jean Jacques Rousseau through Heinrich Pestalozzi, Henri Dunant to Jean Piaget and Hans Küng – has repeatedly marked the thinking of Swiss citizens or people closely involved in Swiss political culture. The development of morality in people and in society has gone through various stages: from individuals’ fear of punishment through the recognition of reciprocal claims of others to the creation of systems of objective standards.³⁰ In ‘moral principles’, however, Max Huber saw an important approach to the understanding and further development of international law that had been neglected by academics. Huber pointed emphatically to the ethical foundation in the individual’s conscience and generalization and codification processes, and he repeatedly highlighted the historical breakthrough of the concept of human rights in the first Geneva Convention of 1864. He also importantly reflected on the emerging position of human beings in international law. This contribution by Huber to international ethics and, in particular, to the ethical dimensions of international law is still too little known. Thought through to their conclusion, the lines of thinking drawn by Huber also lead to the underlying concept of the ‘international community’ and to modern doctrines of the constitutionalism of international law.³¹ However, what Huber still understood as metalegal standards have now largely become part of the currently applicable order of international law, especially in the form of various human rights instruments. Huber was in that respect a pioneer of later legal developments. Nonetheless, it should be said that Huber’s ethical observations, as we perceive them today, remained abstract and somewhat aloof. An accusatory activism as expressed, for example, in November 2003 by the British Law Lord Steyn in his courageous public attack on the United States’ illegal practices in Guantánamo,³² and the ‘advocacy’ work of modern NGOs were unknown to him. In 1942 the ICRC had omitted to criticize,

³⁰ See the multi-stage model of moral development as elaborated by Lawrence Kohlberg and presented by A. Becker, *Gandhi—Zur Einführung* (1999), at 146 ff.

³¹ See Simma and Paulus, ‘The “International Community”—Facing the Challenge of Globalisation’, 9 *EJIL* (1998) 266; Frowein, ‘Konstitutionalisierung des Völkerrechts’, 39 *Berichte der Deutschen Gesellschaft für Völkerrecht* (1999) 427; de Wet, ‘The International Constitutional Order’, 55 *ICLQ* (2006) 51; Peters, ‘Compensatory Constitutionalism: The Function and Potential of Fundamental International Norms and Structures’, 19 *Leiden J Int’l L* (2006) 579; Thürer, ‘Bundesverfassung und Völkerrecht’, in J.F. Aubert, K. Eichenberger, J.P. Müller, R. Rhinow, and D. Schindler (eds), *Kommentar zur Bundesverfassung der Schweizerischen Eidgenossenschaft vom 29. Mai 1874* (1996), Einleitung zum Kommentar, at 1; Thürer, ‘Internationales “Rule of Law”—innerstaatliche Demokratie’, 4 *Schweizerische Zeitschrift für internationales und europäisches Recht* (1995) 455; Thürer, ‘Recht der internationalen Gemeinschaft und Wandel der Staatlichkeit’, in J.F. Aubert, J.P. Müller, and D. Thürer (eds), *Verfassungsrecht der Schweiz* (2001), at 37, 49 f.

³² In a public speech, the British Lord Steyn described to the tribunals set up to monitor Guantánamo as kangaroo courts: see Sands, *supra* note 26, at 156.

in an international appeal, the Holocaust of the Third Reich of which it was aware; it admitted later to having possibly committed moral errors at the time.³³ The dynamic developments, as they have since been experienced in the legal consciousness of the states and in the inter-national community, are reflected in the ICRC's efforts to account for its conduct in the Second World War.

- *Democratic deficits.* Particularly in the framework of the European Union, criticism is rightly voiced that its legal process suffers from a democratic deficit. This deficit is, however, also inherent in international law more generally. It has become apparent in recent years, especially in demonstrations against the WTO, which unlike the World Bank, for example, still lacks structures for democratic participation.³⁴ In his report 'In Larger Freedom',³⁵ the United Nations Secretary-General Kofi Annan recalled principles of democratic rights as they were proclaimed in the Universal Declaration of Human Rights, and the High Commissioner for Human Rights Louise Arbour listed democracy as one of the six major challenges in her 'Plan of Action'.³⁶ Huber, however, had repeatedly indicated the necessity for international law to be rooted in civic, democratic soil.³⁷ He saw, so it seems to me, the foundations of democratic processes at the international level as lying in the responsibility of the citizen and in the participation in one's own national law. A glance at his biography is instructive: Max Huber came from an old, respected Zurich family and was deeply integrated in the social life of his city, his canton and his country.³⁸ He took on a range of public responsibilities. In his younger years he was a member of the Cantonal Parliament and Church Synod of Zurich and spent several years in the service of the Federal Administration. The currently widespread 'cult of experts' or the belief in a (democratic but weakly legitimized) 'oligarchy of experts', which has been criticized by Edward W. Said as a 'discourse in which the lowliest intellectual seems accustomed to thinking that he or she needs to keep watch on the entire world' would have been alien to his *Weltanschauung*.³⁹ As a citizen who was also committed to acting within and on behalf of small circles, Huber was convinced that worldwide democratic processes must primarily emerge from the bottom upwards, i.e. grow out of the participation

³³ J.C. Favez, *The Red Cross and the Holocaust* (trans. J. and B. Fletcher, 1999), at 83–91; Bugnion, *supra* note 20, at 167 ff.

³⁴ See S. Marks, *The Riddle of All Constitutions: International Law, Democracy, and the Critique of Ideology* (2003); P.J. Schraeder (ed.), *Exporting Democracy: Rhetoric vs. Reality* (2002); G.H. Fox and B.R. Roth (eds.), *Democratic Governance and International Law* (2000); B. Bauer, *Der völkerrechtliche Anspruch auf Demokratie: zur Rolle internationaler Organisationen im weltweiten Demokratisierungsprozess* (1998); Franck, 'The Emerging Right to Democratic Governance', 86 *AJIL* (1992) 46; Thürer and MacLaren, 'In and Around the Ballot Box: Recent Developments in Democratic Governance and International Law put into Context', in Kohen (ed.), *supra* note 6, at 549 ff.; Thürer, 'Herkules und die Herausforderungen des modernen Menschenrechtsschutzes', in R. Grote, I. Härtel, K.E. Hain, T.I. Schmidt, T. Schmitz, G. Folke Schuppert, and C. Winterhoff (eds.), *Die Ordnung der Freiheit* (2007), at 1037 ff.

³⁵ UN Doc. A/59/2005.

³⁶ UN Doc. A/59/2005/Add.3.

³⁷ M. Huber, *Gesammelte Aufsätze* (1957), iv, at 187.

³⁸ See M. Huber, *Denkwürdigkeiten 1907–1924* (1974), at 57 ff.

³⁹ E.W. Said, *Humanisme et démocratie* (2005), at 216.

and the accountability of public authorities and out of a ‘democratic spirit’ in society.

A close study of Max Huber first shows how fruitful a broad perspective on problems and processes is for science and practice. Huber was an extraordinarily multifaceted, changing, creative person, who worked in many academic and practical fields, and the portrait of him is distorted if later generations only recall a random selection of individual aspects and, losing sight of the overall image, isolate or overemphasize these. Reflection on Huber’s works, as presented by distinguished scholars in this issue, also shows how productive and indispensable full pictures of a life’s work are for a comprehensive academic understanding. The total product of a life is more than the sum of its parts, and much can be lost in the course of simple dissection. Nowadays, as questions of international law feature on the agenda of national governments, parliaments and courts to a far greater extent than even in the recent past, there seems to be a need in the area of international law, for professionals and non-professionals alike, to find figures from whom direction may be taken. In times in which torture worldwide is referred to as a ‘shock to the human conscience’ and even local newspapers voice criticism on breaches of international humanitarian law in Iraq or Afghanistan, public opinion is looking to measure questions relating to international life by standards of international law. Fundamental perspectives and personalities that provide this kind of orientation have become important for an ever broader public. Far beyond his times, Max Huber remains a role model, and a study of his life and work can be enriching for both lawyers and non-lawyers.