Foreword

It was unexpected, but inevitable. It was not easy to suppose that the intellectual discipline of International Law would, at last and so readily, recognise the shameful poverty of its theoretical superstructure. When it happened, it was not surprising, given the spectacular increase in the volume and density and complexity and diversity of substantive International Law since 1945. Large-scale social phenomena – religions, political systems, economic systems – generate the ideas necessary to explain and justify them. And the ideas become part of the life of the phenomena, each energising the other in their further development.

Law, as a large-scale social phenomenon, has been in such a mutually creative relationship with transcendental ideas throughout the whole of recorded human history. Law, evidently a natural and necessary social phenomenon, has needed an exceptional volume of socially effective ideas to explain and justify its highly coercive actual power in given societies. A law governing governments was obviously something less than a natural or necessary social phenomenon. But, intermittently, the prestige of the word law was borrowed tentatively, defensively, paradoxically, metaphorically – natural law, the law of nations, international law. But it was out of the question that a law governing governments might be able simply to appropriate, for its own purposes of explanation and justification, the vast age-old accumulation of transcendental thinking about the universal phenomenon of law.

International Law was obviously an anomaly in relation to that perennial and universal tradition. For some observers, it was too anomalous to be treated seriously as law. For others, the wish had to father the thought that International Law might, at least, be useful, if its vestigial law-like characteristics were emphasised, and if the behaviour of governments were, occasionally and generously, interpreted as manifesting some sort of law-consciousness.

Since 1945 there has been what can only be described as a revolution in the social organisation of the human world. The international dimension of human existence has overwhelmed the national dimension of human existence. Bland, easily-spoken words – interdependence, international community, globalisation – do not do justice to the social reality of a world in which there is now a seamless web of causes and effects stretching from the remotest village to the totality of human social phenomena. Social organisation is now stratified, vertically and horizontally, in social and political and legal forms which are often old in their systematic forms (states, governments, law-making and law-applying institutions, public administrations) but which are new in their fields of action and interaction. There is a new global distribution of social power, a new global constitutional reality.

International Law does not merely reflect these new social phenomena. It embodies and enacts and enforces them. No one can now deny that this new kind of human world demands a new effort to generate the ideas necessary to explain and justify it – not least, to explain and justify the new social role of International Law.
Responding to that urgent and intimidating and exciting summons, this Handbook reflects three kinds of intellectual strategy. One may look again at the inheritance of transcendental thinking about a law governing governments, and treat it now with the intellectual seriousness that it deserves, given that it was the work of thinkers who were deeply immersed in the perennial and universal tradition of transcendental social and legal philosophy. One might even seek to extrapolate a particular tradition within that philosophy to inspire and direct the new revolutionary social challenge.

One might also engage in the kind of intellectual endeavour which has been at the heart of higher-level thinking about social phenomena at the national level – seeking to unravel the conceptual implications of particular aspects of the new international legal reality, with a view to understanding them and evaluating them and influencing the development of public policy.

Finally, one might try to establish a better understanding of how we have come to be where we are. The past is present in the present, and so is the future. We must bring the sophistication of national historiography at its best to our understanding of the strange story of the troubled co-existence of intensely diverse and competitive societies and cultures, of which we are the more or less grateful heirs.

It is a good time in which to be a thinker about the remarkable present and the daunting future of the human world. This Handbook will encourage more thinkers and more thought. It could not be more timely or more necessary.

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