Pierre-Marie Dupuy is an inspired and inspiring mind. He invites young students and academics like myself to open their minds to new and different ways of thinking, to overcome strict formalism, while remaining lawyers and academics. His enlightened positivism underscores the necessity of situating law in its sociological and political context: law is a tool for regulating social relations, not a set of rules without consequences in real life:

Les normes juridiques ne sont pas des expressions de la seule logique formelle. Ce sont aussi des instruments empiriques destinés à la régulation sociale. Elles ont elles-mêmes une histoire; elles sont l’expression de choix politiques et idéologiques qui ont des implications sur leur dynamique propre.1

Professor Dupuy constantly reminds us that our theories should be mainly descriptive, and only marginally prescriptive, if we want to remain in the spheres of science. However, he also recognizes that academic discourse could and in fact should, at times, be prospective and attempt to devise new schemes more in line with present day sociological conditions.2

Among all of the issues Professor Dupuy addresses with his concern for opening minds and highlighting new perspectives, he gives particular attention to the

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2 Dupuy, Cours général, 211: “Descriptive, non prescriptive, l’analyse juridique du droit international ne doit pas forcément s’effrayer d’être à l’occasion prospective, dans la mesure où elle est contrainte par l’accélération de l’histoire comme par l’affirmation ostensible d’une volonté collective de ‘moralisation du droit’ à intégrer la composante idéologique et la variable temporelle dans l’analyse de la dynamique inhérente à la norme qu’elle a pour objet d’examiner”.

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concept of an international constitution. This concept generally generates a lot of scepticism among international lawyers, especially French international lawyers. Pierre-Marie Dupuy has examined this concept very closely, and in particular the argument according to which the Charter of the United Nations (UN) is seen as the “Constitution of the International Community”. While acknowledging the constitutional dimensions or the constitutional flavour of the UN Charter, Pierre-Marie Dupuy also develops a critical perspective based on the difficulties in terms of interpretation raised by this position. Difficulties arise, in particular, from the vagueness of the concept of a constitution. A constitution means different things in different legal traditions with the result that applying an indeterminate concept of a constitution to the UN Charter may not help in clarifying its content and its meaning. Professor Dupuy recognizes that viewing the UN Charter as a constitution may have an impact on providing a substantial unity to the international legal order. At the same time, he remains sceptical about what fundamentally appears to be an analogy with a concept generally used in relation to a state. Thus his cautiousness in handling the concept: at a certain level, it is quite certain that the UN Charter gives organic unity to the international community, as well as substantial common principles, but that does not clearly mean that it is appropriate to call it a “constitution”.

I fully agree with this critical view on what has also been called the doctrine of the “constitutionalization” of international law. What is disturbing here is the failure to come to an agreement on the concept of a constitution. The movement described as constitutionalization is not premised on a clear understanding of what its result is supposed to be.

Another question is whether we need the concept of a constitution in the first place to describe international law? I tend to think that under certain conditions such a concept would be very useful in understanding contemporary international law. International law is not what it used to be anymore, as Pierre-Marie Dupuy has taught us. The concepts which were forged by Vattel and his successors—sovereignty, consent, non-interference—clearly fall short of what we need to describe the changing structure of international law. We need new types of concepts—which does not mean that we need to reinvent law altogether. This essay is based on the idea that legal theory offers a limited range of concepts to describe a limited phenomenon. Law is not everything and it is not an indeterminate phenomenon. It is a phenomenon which is immanent in any society.

4 Dupuy, Cours général, 227.
5 Dupuy, Cours général, 229.