already be surmised, contains a substantial measure of this idea, reflecting principally the instrumental facets of independence and control. And like the associated concepts of "self-determination" and "self-governance", self-sufficiency posits therefore a "self", the kernel of which is the polity, which is supreme (and unique) in its settling of values.

What is crucial, of course, for all these related ideas is determining just what is the make-up of the so-called "self", who the constituents are of the polity.[16] For the most part, we are accustomed to demarcating, at least implicitly and initially, the bounds of a particular social and political group by the formal means of a constitution. A constitution has several components, the most obvious being the institutional and structural, which set out the organs of government and their interrelations. But it also defines the polity underlying that more formalised expression of social order. A constitution demarcates a particular constituency as the organised source of power and law. In this way we return to the notion of constitutional identity.

By dint of history, the conceptual foundation for this rests upon territoriality, and further, the institutions and powers which hold sway within that territory. Because we are dealing with associations characterised by regular and recurring interactions among people, and because people occupy space on the ground, our mindset necessarily implicates a territorially bounded framework. Our historical inheritance of political and constitutional-legal thought makes it difficult—if not impossible—here to detach people from place and time, to dislocate them. It was the simple, and self-evident, realisation that we see the world alike only because we have lived next to one another which produced out of the Romantic movement the persisting ideas of culture and nation. Our understanding of what is and what ought to be comes from a shared history grounded in a particular place. By this shared understanding and shared place, a more formal social order coalesces. Hence, the structures of social groupings can operate only insofar as the members remain in contact with one another and can exercise influence over one another. (Modern forms of communication may extend the range of our contacts the world over, but we are still tied to our own neighbourhoods for the bulk of our daily, usual interactions.) The practicable and effective range of those contacts and influence have always delimited a polity in territorial terms, directing thus the further debates on whether uniformity and intensity of contacts (as in "culture" or "nation") or administrative efficiency serve as determinative measures.

The institutional form to the territorial conception of a political and social constituency has been the primary focus of this study, as seen through the optic of the separation of powers. Every political and social group possesses in virtue of its being an organisation, an association, particular official bodies and institutions

[16] This is not to say that the polity itself stands as a conscious or self-conscious entity. Nor even that some sort of "group awareness" comes into play. True, it is the collection of individuals coalescing into that political and social association who each become aware of their ordering (in some way) into a community. But I am not convinced of taking that further step to posit some collective, actively shared group consciousness in which different individuals nonetheless participate in some central, coherent fund of group identity and selfhood.

charged with managing society. This power of control and management is experienced through the imposition of rules and regulations over conduct and their relatively uniform enforcement over the inhabitants of the territory. The limits of official (and thus the officials') power runs to the extent of the effective and potential enforcement range of those laws. That range is based on resources, measured in quantities of blood and treasure needed to assert a constant, efficacious state presence. It is quintessentially a territorial measure.

The power vector is primarily top–down rather than bottom–up, in contrast with the rawer form of association outlined above. The institutions for managing the polity, the organs of state, pronounce those rules and regulations as an aspect of their public leadership stature. The judicial, executive and legislative departments of state exercise an actual and apparent authority in deciding the rules by which we live, by which we identify ourselves as members of a particular community. Admittedly, the organs of state also function as a sounding board and as a mechanism to collect and synthesise the range of varied private opinions into a single, public, statement of governing values, rules and so on. Indeed, the symbiosis between top–down compulsion and bottom–up pressures regarding rule creation covers the course of constitutional history as the struggle to achieve a working equilibrium between the two forces. But this long and complex story to the imposition of laws in function of office and control of power and its isolation from public representation, and the generation of laws arising out of the community itself and its tendencies to fragmentation and gridlock are topics for another day and another place. Suffice it for present purposes to say that the development of the doctrine of the separation of powers has offered one means for reconciling the two forces. The allocation of particular species of authority to separate organs of state gives rise to a dynamic process for settling and checking the determinative values and laws for a polity. It subdivides the overall constitutional association into particular, intersecting constituencies arranged under three main objectives: law-making, law-interpreting and law-enforcing. The subdivision allows for variegated opportunity and influence in norm generation between institution and public, and among citizens and officials themselves. Yet, the geographic underpinning continues to demarcate these various sub-groupings because they are drawn from and limited to the primary constitutional association, the polity itself. The norms, values, laws and such like, remain those of the polity itself.

All this adds texture and further detail to the concept of dualism. It reveals the two components to the traditional conception of "dualism", which are also carried over into the positions of polycentrism/pluralism. In the first place, on the surface, dualism exhibits the institutional characteristics arising from constitutional identity. The positivism of a constitution creates an institutional arrangement of state power, and an exclusive hierarchy of sources. A polity formally articulates its normative self-sufficiency by way of a constitution. A constitution sets up (and authenticates) a specific series of institutions to manage society and defines the necessary sources of law for that society peculiar to, unique to it. The institutions created thereby owe their allegiance to the device and body which created them, namely the constitution and the polity. They serve both, and take instructions from

both. The second facet, and what underlies this structural identity, is the territorial community. It serves as the self-sufficient and self-sustaining seedbed for norms. It generates its own institutional framework for processing and administering those norms. The geographic metric to "normative community" sits at the foundation of a constitutional identity, necessarily dividing up the "internal" and national from the "external" and alien. It is bred in the bone of modern constitutionalism.

One last observation is apt. Despite all these points, it may well be legitimate to question whether or not the actual problem here is overstated. It is reasonable to question whether customary international law has any substantive, continuing relevance to domestic law issues. Apart from the simple and easy observations that customary international law represents obligations binding among governments, and not as against or for private parties who have no direct interest in these obligations, much of the province of customary international law, such as prize law and piracy, have fallen into desuetude or have been surpassed by some form of legislation. Even the area of sovereign immunity has been drawn into legislative frameworks. Attempts to revive customary international law as a fallback position for treaty provisions not adopted nationally, or through the doctrines of *ius cogens* and obligations *erga omnes*, remain burdened by all the problems above, as well as those internal to customary international law.

5.3 Separating Powers and Legal Orders

Acknowledging this dual aspect to dualism can provide new insight into efforts to integrate international law into national law. It reveals that dualism comprises two dimensions, one pertaining to the institutional structures of political society (and thus its legal system) and the other, to the geographic, cultural motor driving the coalescence of political society in the first place. In particular, these reflections would suggest that any approach aiming for theoretical and practical success must account for both dimensions to some degree. That is, any vertical integration recommended in the institutional dimension cannot entirely ignore some co-ordinate horizontal integration of territorial communities. Indeed, something more than a perfunctory reference to "global humanity" or such like is required.

5.3.1 A Transnational Separation of Powers?

Up to this point, however, emphasis has predominantly fallen upon vertical integration to overcome or transcend dualism. This flows from a concentration by the international constitution movement upon the institutional facets of constitutionalism.[17]

[17] Kennedy 1987.

These are of course modelled upon the three pillars of national public power: the legislative, the executive and the judicial. Admittedly, the movement is of recent vintage relative to its municipal cousin, and this concentration upon structural certainties reflects its first steps. Much effort is still needed in working out its overall dimensions before addressing more detailed issues.[18] Nonetheless, its primary track is extrapolating from national constitutional structures some generalised, international *trias politica* applicable to the international political and legal sphere. Once posited, the superimposition of "international" state organs upon national ones follows, with their arrangement into some sort of coherent hierarchy having the international at the top. Also added into this emulsion of institutions is the separation of powers. The doctrine's necessary association with the three pillars of deconstructed state power makes its addition inevitable. A comment of Nick Barber in the context of outlining a general model of the separation of powers illustrates the point:

> Abandoning the tripartite vision of the state strengthens the doctrine of the separation of powers. The doctrine is as concerned with the proper allocation of competence between competing legislatures as it is with the balance between a legislature and a court. It need not be confined to states at all; supra-national courts and legislatures are also within its scope.[19]

And Barber does continue with a description of the general characteristics of the courts and the legislature, setting out what functions are most efficiently satisfied by them. Basing the separation of powers on effectiveness allows Barber to adopt a functional understanding of the doctrine. This seems to suggest the possibility of a transnational separation of powers approached from a taxonomy of functions and powers attributed to the basic agencies of any and all forms of government.[20]

Admittedly, this particular point is merely a tangential observation in Barber's overall assessment of the separation of powers. Barber is in fact arguing that the separation of powers is an (inevitable) instrumentality of some underlying political theory, such that the former's practical form will vary according to the political underlay particular to it. He dismisses an argument that the fundamental point to the separation of powers is the protection of citizens against an excess of power.[21] Instead he ties the doctrine to an efficiency rationale in the broader context of political theory: the structuring of government agencies and the allocation of such power to them as best enables them to achieve their assigned objectives. The separation of powers is, for Barber, an instrumental concept whose ultimate, practical representation depends upon the particular political intentions of the constitutional order to which it applied. The doctrine, in its barest of forms, requires only that the correct function be assigned to the correct institution, as a matter of efficiency. Constitutional theory provides for the creation and design of

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[18] See, e.g., Walter 2001; Peeters 2005, 2006; de Wet 2006, and Giegerich 2009.

[19] Barber 2001, p. 71.

[20] His concentration upon the legislative and the judicial clearly reflecting the UK state of affairs. We can set aside the further issue of whether or not these three agencies are what the doctrine did or does require: see, e.g., Ackerman 2000, and Carolan 2007.

[21] Specifically, that argued for by Barendt 1995: Barber 2001, p. 61ff.

the institutions. But political theory, on the other hand, has the role of specifying what the institutions should accomplish, especially in the broader context of the political society they emanate from and serve. Because the nature and range of such objectives differ from one society to another, the political branch of the separation of powers makes it difficult, if not impossible, to prescribe one single, paradigmatic model for the distribution of governmental powers. Hence to argue that the separation of powers stands for, say, a specifically liberal constitutional arrangement conferring on the courts a robust constitutional review jurisdiction to preserve individual liberty from unreasonable state intervention, confuses the political underlay with the much thinner theoretical mandate of the doctrine. There is simply no inherently "right" way of distributing government power. And once begun on the path of instrumentality and function, he can easily dismantle a state-centred version of the doctrine because the state-centred view of government institutions has apparently dissolved as well. This opens the way to reconstructing the organisation of a state which seemingly affords a place and role for international organs.

Barber's institutional approach seems to offer a reasonable model for vertical integration which also accounts for some national political underlay to governance. We can begin to speculate how we might assign certain erstwhile national matters, powers and functions—but with international content or ramifications—to the international *trias* for the sake of efficient management. Under the aegis of "globalisation", whether financial, commercial, or even fiscal, we could begin to reconstruct the national state on a transnational, or even internationally federal, institutional platform which could address cross-border problems and deliver solutions and services more effectively.[22] Efficiency concerns bear not only upon the type of institution, but also upon its ability to accommodate the transnational in its operation. Dividing the powers of governance across a range of national and supra-national bodies requires a functional taxonomy that is sensitive to what voice international elements have, and its carrying-power. But simply dividing government powers and services in this way so as to ensure their most efficient delivery, and in turn therefore the most efficient management of society, does not really get us very far. It would tend to confuse a means for an end. True, the institutional extensions of any association, political or otherwise, ought not to hinder but rather enhance that association's enduring existence. And the respective powers and functions of those institutions are therefore best tuned by efficiency concerns. Yet, unless we are seeking efficiency for the sake of efficiency itself—efficient in being efficient so to speak—what we are in fact aiming for is the quicker and clearer identification and realisation of the common goals, desires, interests, and so on of the polity, of society.

Efficiency is the means by which we can better attain our ends, and its suggested path will depend on just what those ends are in the first place. It is precisely the

[22] See the efforts of, e.g., Paulus 2009, and Dunoff 2006 (though less a structural approach, focussing instead on the functional).

creation of those ends and goals and the ways in which we evaluate them which represent the vital and defining questions for any society. What type of political institutions exist and what form they have in any society depend in the first place upon publicly identifying and expressing those defining characteristics (even if only in some "incompletely theorised"[23], temporary and variable way). The net result of Barber's efforts is simply to entrench the principle of a tripartite division of state power in constitutional (institutional) theory, and detach it from the (logically prior) more substantive and contested issue of settling the precise dividing lines among the branches of government to political theory. But the latter question is in fact the determinative issue, apart from which we cannot begin to consider the separation of powers. The particular instantiation of the doctrine of the separation of powers does indeed reflect choices made by the polity, simply because every political society has its own goals and values as part of its constitutional identity, the structures through and by which it seeks to realise upon them. The institutional expression of a polity can be represented in one, two, three, four or any other number of pillars. There is no magic in numbers. The critical question is the identity of the polity, and how its component voices might be tuned into harmony.

Moreover, the doctrine of the separation of powers also teaches that political institutions (among others) are co-ordinate components in the complex process of generating and articulating social values, in the forms of customs, morals, laws and so on. Those values reflect and further social cohesion and political coalescence. Constitutional identity is the current equilibrium to and synthesis of the institutions, social projects and values emanating from a constant tension among individual, social and institutional interests. Because state institutions draw their constituents from the same national pool of individuals, and because they represent different forms of organising and amplifying voices and interests from the polity, the institutional articulation of a society must work in symbiosis with the less formalised social components to a society, whether individual interests, civil society groups or such like associations and interest groups. Indeed, this simply reflects the history of political organisation. It tracks a constantly recalibrating equilibrium between two poles: a top–down imposition of values and rules from institution and official to citizen, and their bottom–up generation from private interest and civil society to public values and laws.[24] Moving from monarchy and the *ancièn regime* to representative and responsible government has accorded in constitutionalism greater weight to the latter, just as more recent developments in social management and the regulatory state have tended to shift the balance towards the former.

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[23] Borrowing from C. Sunstein.

[24] The question of balance operates not simply between the conventional "private and public" or "individual and society", but more so between the forces of political or social (value) generation and those of political and social management. The former relies on dynamism and fluidity, whereas the latter needs stability and reification. This reflects the "paradox of constitutionalism" appearing between constituent power and constitutional structure, long and much considered in political and constitutional thinking. For recent contributions to this question beyond a framework of "Schmitt–Kelsen", see e.g., Bellamy 2007 and Loughlin and Walker 2007.

The corresponding emphasis on rights and liberties signals the counter-balancing efforts of the other pole, to moderate bureaucratic governance. In every instance, however, the geographic metric has bound the discussion or struggle to achieve some sort of practicable equilibrium to a particular, territorially defined polity. Institutions cannot be divorced from the (political) society out which they spring. The values and ends around which a polity coalesces inhere in the constitutional articulation of a polity, and in this Barber is correct. But yet it also means that the political institutions of a state cannot be separated from that underlying political community. The geographic metric inheres in the institutional construction of a society. The separation of powers prescinds from a particular territorial community that has defined the nature and scope of those powers. Hence, more widely drawn political institutions cannot be superimposed or integrated with extant local ones without first redefining that community on a similarly wide basis. It is not merely a question of the efficient distribution of administrative capacities. It is a definition of those capacities in the first place. And this redefinition of community, of the polity, must obviously and logically precede its institutional articulation.[25] The creation of a political community does not occur in a top–down fashion. Horizontal integration must accompany or precede vertical integration.

Thus, when we try to integrate international law into a domestic legal system armed only with an institutional perspective of constitutional provisions and structures, the doctrine of the separation of powers drives us (true to form) to address the fundamental and logically prior question of identifying the actual political community underlying and empowering those institutional structures. And the doctrine curbs our tinkering with the institutions of political and legal power before first amending or adjusting the political and social underlay. So the separation of powers frames for us the two principal horizons for the possible integration of international law and national law. On the one side, we have to tinker with concepts of constitutional law and constitutionalism if we wish to pursue the integration of the two systems. On the other side and wishing to avoid this, we may have to recalculate what international law should or can do within a municipal legal system.

5.3.2 Redefining Constitutionalism?

As sketched above, three important elements factor into the traditional concept of constitutionalism. First, there is the constantly recalibrating equilibrium between a top–down imposition of rules from official to citizen and their bottom–up

[25] Or perhaps, at the very least, occur at the same time. This recalls the idea of the "constitutional paradox". A good example of the pitfalls to pursuing institutional coalescence before social coalescence is the EU and the continuing and expansive discussion on developing European integration, where the superimposition of transnational institutions has neither generated nor reflected an amalgamation of the underlying political communities making up the member states of the EU.

generation from private interest to public values. This resounds of course in the ideas of the rule of law and *the Rechsstaat*. Those who author and administer the laws are also those equally subject to them without extra preference or prejudice. The route by which to achieve the balance is the separation of powers, the second element. The doctrine divides the power of social organisation and control in order to account for and amplify the different voices and separate tones within the polity. Each of the three departments of state power gives preference to a particular range or type of voice and interest and allows them to resonate with varying intensities which allows a society to identify and convert private interest into public rule. And that society is conceived of as a politically significant community defined by territory and common custom. This is the geographic metric, the third element. In order then to ensure a seamless integration of international law with domestic law, we must account for all three elements.

Starting from the usual institutional approach, any integration of international law with domestic law will naturally alter the separation of powers. If we choose the narrow route of simply expanding the powers of the executive or judicial branches to implement international legal rules as domestic law, we are nonetheless bypassing the significant role of Parliament as law-maker. This path also leads to the possibility of the courts finding new jurisdiction to review the decisions of domestic and foreign public authorities and hold them liable therefor, where no jurisdiction had been recognised hitherto. Likewise, if we choose a broader route, of redistributing jurisdiction vertically between international and national organs, we are clearly readjusting the current roles and functions of the traditional, national *trias*. We impose new restrictions and limits on, or redefine the function of, domestic organs of government within the framework of national and international interests and both levels of legislative, executive and judicial bodies. Common to both options however, a shift in the separation of powers reflects a recalibration of the equilibrium between the top–down and bottom–up declaration of rules.

Integrating international law with domestic law will necessarily alter the balance of rule-making power between public officials and citizens. This follows from the simple fact that local customs and practices are no longer the primary and self-sufficient sources of domestic law. The voices of governments and international interest groups and organisations predominate on the international level. A distillation or synthesis of any public rules at that that level necessarily involves interests and values not immediately connected to any or all polities. Inasmuch as treaty-based law and customary international law are directly and immediately applicable, these rules naturally originate out of the interplay of more than just local interests and values. Foreign ideas and customs will generate law directly, even to the extent of being inconsistent with those local practices and interests. Because of their apparent direct applicability, they obviate any precondition or prerequisite of first being internalised as domestically grounded values through legislative or civil society mechanisms. In other words, directly enforceable treaty-based law and customary international law introduce norms and values which may be alien or detached from those already present in the national polity. The polity is not the final collective voice for its own self-government. That domestically

created rules and values may become diluted, if at all tangible, in the final legal product raises a host of issues on the importance of home grown values. Most of these are beyond the scope of this work. But one certainly is. The inclusion of politically and legally significant voices from outside the constitutional community, the geographically defined polity, entails a redefinition of what counts as constitutionally (legally, politically, socially) self-sufficient. The geographic metric appears no longer to represent the defining point for constitutional identity.

Adjusting the separation of powers to allow for international voices to define or participate in generating legal rules implies a recalculation of the community serving as the seedbed for values and norms. A different concept, one other than a territorially defined idea, must underpin a legal and political system which integrates local and more widely dispersed interest and voices. Territory obviously does not meet the task. On the one hand, we might try for a seamless integration of international and national voices by replacing the geographic metric to constitutional identity with some other basic measure. Consistent with the suggestions of globalism, we might substitute neighbourhoods of interests for the current neighbourhoods of place. That is, we could replace our concept of the community significant for politics and law from one of place to one of interest. Neighbourhoods of ideas, obviously not bound to any one location, would ground the new concept of political society. Connections among people deriving from their proximity, or cultural resemblances, would represent but types of possible linkages.

A constitutionalism derived from neighbourhoods of interest rather than place, rather than "culture" or "nation", would seemingly offer the solution to bypass the limitations of national and natural boundaries. In constituting communities of interest, we discount the territorial qualification on interest and value. Our interests, desires and values may parallel those of other people the world over, while at the same time diverge substantially from those of our closest neighbours. Instead, as suggested by global commercial interests and international humanitarian and human rights interest, we rely on a single metric of universalised human will and desire. Hence, a constitutionalism based thereon would not arrange constitutional identity in terms of the dualism of national and international. Constitutional identity would arise in function of particular interests, like the law merchant, international trade or finance, information exchange and protection, human rights and so on. From a certain viewpoint, this may understood as constitutionalising civil society organisations, but on a global scale. Associations thus based on interest would necessarily have to accommodate in their eventual constitutional articulation the diversity and cross-cutting nature of individuals' interests. There is nothing which in principle or by definition mandates that all these associations could be arranged into a consistent and coherent constellation without conflict or inconsistency among them. So the question of integrating these separate strands into whole cloth addresses the substance of the values and interests. Instead of the arguable artificiality of state borders and the presumption of national differences, it is the actual coherence of values predicated upon common goals and interests that drives the debate.

But such this approach of redefining constitutionalism does not escape significant problems. In the first place, the advantage to a widely distributed community of interest must reckon with the potential dilution of the ties that bind. Associative interests, those which generate socialisation, need to have real and actual purpose and presence in daily life. That realisation grounded the premise of the Romantic movement to constitutionalism relying on cultural and the territorial metric. This historically set advantage to social administration and management is not easily relinquished. Narrowing or making more specific the defining interests constituting the community risks losing the expansiveness of the membership, and thus returning to the classic form of territorial constitutionalism. In the second place, while neighbourhoods of ideas may allow us to construct "transnational" constitutional identities, we really have not overcome the structural or systemic problem of constitutional boundaries themselves. If we take religion as an easy to hand example of such a "transnational" constitutional identity, we cannot escape the unpleasant realisation that communities of interest are equally bloodthirsty and intractable. In truth, we may have simply exchanged a dualism arising out of territorial connection for one emanating out of seemingly irreconcilable values, interests, and ideologies. The traditional sense of international law as modulating the interactions among entities (whether territorial or other) remains. So we have likely made no advance on the main problem of dualism, the internal and external position for law.

Perhaps the paradigm shift required for constitutionalism is one which removes any need or basis for "integration" at the outset. This takes theoretical speculation uncomfortably far, for the moment. We would need to redefine constitutionalism without reference to or underpinning of community. In other words, we might take our cue from Barber's attempt to divide the separation of powers as a question of institutional efficiency, from the polity as a question of social organisation. Constitutionalism and constitutional identity would have to be detached from the ideas of community and polity. Constitutionalism and constitutional identity would no longer be derived from, a reflection of, a social grouping. Constitutionalism would be instead simply a politically and socially autonomous mechanism for the efficient management of all people. It is autonomous because it is conceptually and practically detached from any specific notion of identity and from any particular social foundation. Under this hypothesis, no problem of dualism seems to arise. There are no constitutionally relevant or material communities from which to erect boundaries. All interests and values must subordinate themselves to efficient management, whatever that may be. The idea of a constitution therefore becomes less a statement of any one polity's identity and engagement, and more a technique or instrumentality of comprehensive social management. And constitutionalism itself, as the study of social power and governance, reifies itself into calculating management outputs.[26] It loses thereby

[26] The term "reification" derives from the works of Lukács, Marx, and Weber, and represents a complex set of philosophical assumptions and ideas. Studies good for background and explanation within a legal context, but with differing points of emphasis and approach, include Gabel 1994; Fejfar 1996, and Litowitz 2000.

the human element to the relationship between value, power, office and law. It treats a constitution as an end in itself, rather than as a means to an end.

5.3.3 Redefining International Law?

To the extent we wish to avoid any such comprehensive undertaking in the field of constitutional law and constitutionalism, our other option for addressing the integration of international law and national law is to reconsider the purpose and role of international law. Specifically, the reorientation to an internal perspective for international law ought to spark the question why we understand international law to be, and why it is needed in and as part of domestic law. Of course, it represents no less a comprehensive undertaking in the field of international law. My objective in this section, far from the temerity of suggesting a new direction or conception of international law, attempts merely to sketch out very briefly one analytic approach.

Re-evaluating international law implies reconsidering why we need international law integrated into domestic law at all. Specifically, we need to identify what international law is and ought to do within a national legal system, and that preferably with sufficient transparency to declare any underlying philosophical, ideological or political attachments. There would likely be two poles. If we accept a Koskenniemi type hypothesis that international law acts a sort of conscience for state authorities, then we are using international law as a sounding board for domestic policy and law. We rely then on international law not as law *per se* but as a moment of sober second thought instead. International law would not strictly require the character of law to accomplish this. And it could still offer courts additional reasons why a given case ought to be decided one way or another. On the other hand, we might prefer a Kant inspired view which accords international law legal compulsion and moral conscience.

Let us put to one side the important question why such a further legal or policy check is in fact desirable or necessary. Whichever side we choose, we must press yet further and ask whose conscience international law represents, and who is charged with determining or identifying its central elements. Drawing upon our constitutional inheritance, we have every right to be deeply sceptical, if not suspicious, of any proposals which deprive us or dilute our voice in forming the rules governing us. Likewise, we should be suspicious of any attempt to undo constitutional history by returning greater law-making powers to executive bodies, or special interest groups, under the guise of administration or social management. This assumes that any law ought to reflect our conscience, or interests and values, at the very least. But the "we" and "us" at issue here cannot be defined by region or (political) nation if international law is to transcend the bounds of dualism. Yet once we venture into more widely sourced pools of value and interest, we compound the central problem of identifying any one particular value, sense of good or right, in sufficiently practicable detail beyond idle ruminations sauced with