


Grand Narratives of Constitutional Journeys and the Crisis of Democracy: Introduction to the Blog Symposium

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In his thought-provoking piece of contemporary global relevance, Theunis Roux makes an important intervention in the debates around the design, character, and effects of the Indian and South African constitutions, with the primary aim of nudging our politics towards securing, albeit incrementally, an inclusive and democratic vision of constitutionalism. In this exercise, Roux attempts to manage a herculean task within the confines of an academic article, which has its shortcomings and omissions. Yet, he achieves something remarkable and thus, acts as the locus of this symposium.



Anmol Jain
Jindal Global Law School

Titled '*Grand Narratives of Transition and the Quest for Democratic Constitutionalism in India and South Africa*,' Roux's article argues that one could broadly trace two discursive narratives about the Indian and South African constitutional journeys in scholarship and politics. The first narrative holds that while the two constitutions may seem to have borrowed their structure and institutional design choices from the Western liberal constitutionalism model, the framers consciously made a few notable and defining changes to suit the local needs and demands of the two nations. The constitutions, therefore, cannot be called a replica of the Western ideas. Roux terms this the liberal progressive narrative ("LPN"). The LPN does not deny that the two constitutions have been successful in their purposes. While acknowledging the shortfalls in the desired performance, the LPN disagrees that such shortfalls are on account of designing the state by taking inspiration from the liberal constitutionalism model. Several extra-constitutional factors and governance decisions could be the reasons, something that Roux acknowledges requires further work to ascertain.

Contradicting this narrative and challenging the extent, if not existence, of such local adjustments, the adherents to the culturalist grand narrative ("CGN") argue that the two constitutions are symbols of colonial hangover. They perpetuate the colonial matrix of

power in the economic, social, and political domains, largely on account of the framers' rejection of designing the constitutions with indigenous inspirations. In developing this account, Roux limits the boundaries of CGN to only those critiques of LPN that still believe in the inclusionary and democratic vision of constitutionalism. Those interests that use the language of culture, indigeneity, and the decolonization movement to establish an exclusionary ethno-nationalist state are termed the 'dark side of CGN.'

Having outlined these two broad narratives, Roux presents an imaginary dialogue between the two camps to highlight that they have much in common. Both intend to establish a constitutional system that not merely establishes state institutions and distributes power among them but empowers such institutions in ways that enable them to bring about ground-level socio-economic and political transformations. In other terms, the idea of transformational constitutionalism binds the politics of LPN and CGN, though Roux labels this as 'southern democratic constitutionalism.' In his words,

"... it is fair to say that the LPN and the CGN, despite their many differences, are animated by the same ideal – call it *southern democratic constitutionalism*. According to this shared ideal, the role of constitutions in the Global South is different from the classic liberal idea of constitutions as limits on government. Rather, constitutions in the Global South should be designed to empower a democratic state to undo the colonial legacy of social, economic, and cultural inequality. Constitutions, in this view, are not purely procedural frameworks for managing competition between groups with different conceptions of the common good. They are instruments for transforming society in line with a clearly articulated vision of post-colonial justice." (p. 51)

At this point, Roux pivots to the current political realities of India and South Africa and argues that as anti-democratic populist forces are on the rise, it is urgent for the LPN and CGN camps to come together in their fight for the shared ideal. Now is not the time to champion the differences; the exigencies of current politics and the dangers they pose to the survival of democracy call for a strategic coalition between the proponents of LPN and CGN. They must synergize their energies and fight together for a future where they may find adequate political opportunities to bring about suitable changes to the Constitution. Any call for revisions or overhaul at this stage would be dangerous and could give way for the dark side to seize the moment.

There are many entry points for engaging in a conversation with Roux and his ideas. The [four responses](#) to Roux already published in the special issue of *World Comparative Law* in which Roux's article was published make tremendous efforts in this regard, but much scope for engagement remains. Given the limited space available here, I will restrict my arguments to four aspects drawn mainly from my understanding of the Indian constitution, as that is the country I know the best.

First, the [Indian Constitution](#) is much more complex in its framing and institutional suggestions than is portrayed by Roux and conveyed by the two narratives. LPN does not fully capture the identity of the Indian constitution, and its specific sections portray how indigenous ideas were given due space by the framers. For instance, consider Part

X of the Constitution, which provides for specialized governance regimes for the scheduled and tribal areas and allows for the creation of autonomous councils. This idea was carried further in the post-independence period by constitutionally supporting similar exceptional institutional structures in select states (See Part XXI of the Constitution). Calling the Constitution inspired by Western ideas, though with local adjustments, overlooks such examples of indigenous inspiration and papers over their significance while presenting the constitution-making process in an oversimplified manner and discounting the agency of the framers.

Second, pairing the decolonial critique with the CGN essentializes the former. Particularly from the Indian experience, the aspect of the absence of culture and Hindu religious values from the Indian constitutional thinking is only one strand of the decolonial critique. There are so many other ways of thinking, which Roux himself acknowledges, that critique the Indian constitution without adopting the vocabulary of indigeneity (or the absence of it). In fact, works such as Mathew John's *India's Communal Constitution* could be read as arguing for the wider adoption of liberal thought to decolonize the design and practice of the Indian Constitution. John notes that one of the reasons for the communal nature of Indian society could be the continuation of the colonial practice of communally defining the Indian people. Roux's choice to club all such critiques within the camp of CGN could perhaps be on account of studying India along with South Africa, where, in my understanding, the aspect of religion is absent in the language of cultural critique. In such a scenario, a forceful marriage of such diverse critiques within a single camp may not be appropriate.

Third, it is wrong to presume that the alternative institutional design ideas from the CGN camp would be democratic in their outlook. I agree with Roux that the present times call for coalition building between the believers of LPN and CGN; however, it cannot be denied that the coalition must be based on the shared ideal of Southern *democratic* constitutionalism. There is a possibility that institutional alternatives based on indigenous thinking further an anti-democratic outlook, which may not resemble what Roux calls the 'dark side of CGN' but which nonetheless remain miles away from the understanding and depth of democracy as believed by the LPN. Indigenous suggestions bring with them the possibility of supporting a different set of hierarchies, which we can term a pre-colonial matrix of power. Therefore, the strength of the coalition would hinge on the normative assessment of the reform proposals by the CGN camp. We are yet to see any elaborate exposition of that, as Arghya also notes in his contribution to this symposium (to come).

Fourth, the approach to reforms must not only be inward-looking. Adherents to the LPN, as well as the CGN, must make active efforts to expand their vision beyond the West and their respective cultures and study other similarly situated societies and systems. The borrowing of ideas is a historical truth, and no modern society has remained uninfluenced in the design of its constitutional system. The dangers of the present and the failure of the 1950 Indian Constitution and 1996 South African Constitution in materializing their transformational potential must not only make us conscious of the

need to brainstorm reform but also nudge us toward the possibility of south-south borrowing. In developing such reform proposals, I agree with Roux that the aspect of Southern democratic constitutionalism must remain the focal point, with the ideas of substantive democracy (in its thick understanding) and transformation at its core.

There is so much more that could be said about this wonderful contribution by Roux. It is a genuine effort to inform our politics and is written in service of democracy. Given the contemporary and global relevance of the arguments Roux develops, this blog symposium attempts to take the conversation further and beyond. Over the next few weeks, several scholars deeply engaged with Indian and South African constitutionalism, along with scholars from other jurisdictions facing similar narrative battles like Mexico, Kenya, and Ethiopia, and those invested in the survival of democracy, will share their opinions and engage with Roux. I sincerely hope this symposium will make positive contributions and further the cause of Southern democratic constitutionalism.

Anmol Jain is a lecturer at Jindal Global Law School

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