

and highlights crucial areas of the judicial system as a whole that still need improvement. It represents the latest important work alongside the seminal contributions of Daniel S. Lev, Sebastian Pompe, Tim Lindsay, Mark Chammack, Adrean Badner, Melissa Crouch, Stijn Cornelis van Huis, and Dian Rositawati, among others, on modern Indonesia's judiciary.

Professor Simon Butt raises significant concerns that demand serious attention from all stakeholders: Parliament, the government, the Supreme Court, academia, and Non-Governmental Organisations. . Amid the decline of democracy and some indicators of political interference over the judiciary, the coming years will be more challenging for the Indonesian judiciary. The decline of public trust due to deficient integrity will become a ticking bomb for our national commitment to the rule of law if not addressed.

*Abdul Halim*

Judge at the Islamic Court of Bekasi, Indonesia; PhD student at the School of Law and Justice, University of New South Wales, Australia, Email: abdul.halim@unsw.edu.au

*Tom Daly and Dinesha Samaratne (eds.), Democratic Consolidation and Constitutional Endurance in Asia and Africa: Comparing Uneven Pathways, Oxford University Press, Oxford 2024, 400 pages, \$117.99, ISBN 978-0-1928-9934-7*

## **Making Room for Difference\***

### **A. Introduction**

In 2024, the New York Times published a list of hundred books which it considered the 'best' books of the twenty-first century.<sup>1</sup> The list sparked criticism, predictably, as the assumption of the 'best' centred primarily American stories told in English by mostly English speaking authors to the exclusion of all other vast human stories, cultures, and emotions.<sup>2</sup> The exercise, however, tells us two things: first, that the world is full of stories. And second, that, unfortunately, only certain kinds of stories often occupy our hearts and minds. Many stories remain untold because we simply do not bother about them. We see that the one living or telling the story is too *far* from us, is too *different* from us and we close our eyes and ears. But what would happen if we moved the centre and changed the

\* I am thankful to Prof. Rosalind Dixon and Douglas McDonald-Norman for their comments. Mistakes are all mine.

1 New York Times, The 100 Best Books of the 21<sup>st</sup> Century, <https://www.nytimes.com/interactive/2024/books/best-books-21st-century.html> (last accessed on 5 September 2025).

2 The Bookshop Inc, Not the NYT List: 100 Fine Books from Around the World (and Not Just the USA) of the 21<sup>st</sup> Century, <https://scroll.in/article/1070853/not-the-nyt-list-100-fine-books-from-around-the-world-and-not-just-the-usa-of-the-21st-century> (last accessed on 5 September 2025).

map of the world a little bit to tell a different story? What if we shifted what we consider the mainstream a little bit?

That is the impulse that inspires the edited volume by Tom Daly and Dinesha Samaratne on democratic consolidation and constitutional endurance. It relies on the modified Mercator-Miller projection map of the world which places Africa and Asia at the centre of the map to 'radically reorient' the conversation of the comparative constitutional field (p. 3). It decenters the usual suspects and places the experiences of African and Asian democracies and their endurance at the heart of questions of democracy and its institutional-non-institutional challenges. In doing so, it builds on and revives earlier but somewhat sidestepped tradition of comparison between the two biggest and deeply diverse continents of the world.<sup>3</sup>

The edited volume includes case studies of Malaysia, Thailand, Myanmar, Sri Lanka, Maldives, Ethiopia, and Gambia - seven countries covering a vast region of East Asia, South Asia, and Africa. The comparative choices of the book are welcomed as most of these countries have remained understudied in the conversation on democracy, constitutions, and their endurance. The comparative choices, however, also pose a challenge. Any discussion of understudied jurisdictions first requires a detailed case study style account of the country before comparative conclusions can be drawn. The authors and editors respond to this challenge by dividing the volume in two parts: part one is thematic, and part two provides single country case studies. The two parts correspond to the two aims of the volume: first, to contribute to the growing scholarship on backsliding, constitutional endurance, and resilience through case studies, and second to provide bottom-up, contextualized chapters on understudied jurisdictions (p. 4). Although appearing as two separate parts, the two form a seamless intertwined web. Part two applies the themes to the case studies and, in turn, part one distils the overarching themes from the case studies. The volume thus engages in a constant and deeply self-reflective style of doing comparison.

## B. The Wedding Party

In the introductory chapter, Daly and Samaratne imagine the global conversation on democracy and constitutions as a wedding party with hierarchical and regimented seating arrangement. The usual suspects occupy the tier one table or the high table. They are the referential framework through which all other constitutional contexts must be filtered. Their language is the language in which varied constitutional experiences have to be articulated. As the editors point out, the occupants of the high table decide, 'what constitutional democracy 'is', what is valuable about it, how it should function, and who counts as a

3 In 1987, leading scholars like Neelan Tiruchelvam, Radhika Coomaraswamy undertook comparative research on adjudication in divided societies through case study of three Asian (India, Sri Lanka, and the Philippines) and two African countries (Tanzania and Mozambique). See *Neelan Tiruchelvam / Radhika Coomaraswamy* (eds.), *The Role of the Judiciary in Plural Societies*, London 1987.

democracy.' (p. 2) The experiences that do not fit in the framework of usual suspects or dwell too far away from it have to be adjusted, assimilated, or even worse discarded altogether. Overall, the editors point out that the relevance, and the value of a comparative work gets determined by its '*proximity to the central guests*' (p. 1). Some jurisdictions are considered naturally belonging in the wedding party; some have to justify why they are there; and then there are whole bunch that are not even invited. Through the wedding party analogy, the editors sharply bring out the limits of global north framing of experiences of backsliding and resilience.

A good example of the normative dominance of usual suspects is the over-occupation of the field with courts. Courts are the lead occupants of comparative constitutional scholar's mind.<sup>4</sup> This, in part, is a result of the influence of the US constitutional system in the scholarship where rights have been constitutionally entrenched, and the federal and state courts have been provided vast powers to declare any law unconstitutional and invalid. Other institutions like political parties,<sup>5</sup> military,<sup>6</sup> and fourth-branch institutions,<sup>7</sup> have only recently become part of the conversation. The edited volume joins these efforts and moves the conversation on democracy and resilience beyond courts. The thematic chapters of the book include an analysis of executive-legislative relationship (i.e. the impact of presidential, parliamentary, semi-presidential, republic-monarchy in constitutional endurance),<sup>8</sup> military institution and its impact on democracy,<sup>9</sup> political parties and democratization,<sup>10</sup> and even the role of non-institutional factors like constitutional cultures<sup>11</sup>. This makes the volume multi-institutional and multi-factorial.

The tier two table in the wedding party is occupied by what I term the '*new usual suspects*'. The dominant nations in the global south tend to repeat the patterns of the global north: seeking standardization, overshadowing varied experiences of other polities in a

4 Ginsburg terms it as 'core of comparative field'. See *Tom Ginsburg*, The State of the Field, in: David S. Law (ed), *Constitutionalism in Context*, Cambridge 2022, p. 11.

5 *Tom Ginsburg / Aziz Z. Hug / Tarun Khaitan* (eds.), *The Entrenchment of Democracy: The Comparative Constitutional Design of Elections, Parties and Voting*, Cambridge 2024.

6 *Melissa Crouch*, The Military Turn in Comparative Constitutional Law: Constitutions and the Military in Authoritarian Regimes, *Annual Review of Law and Social Science* 20 (2024), p. 53.

7 *Tarunabh Khaitan*, Guarantor Institutions, *Asian Journal of Comparative Law* 16 (2021), p. 40.

8 *Kimana Zulueta-Fülscher*, The Role of Governing Institutions in Attempted Reform Process, in: Tom Daly / Dinesha Samaratne (eds.), *Democratic Consolidation and Constitutional Endurance in Asia and Africa*, Oxford 2024.

9 *Shanil Wijesinha / Daniel Alphonsus*, Civil-Military Relations, in: Tom Daly / Dinesha Samaratne (eds.), *Democratic Consolidation and Constitutional Endurance in Asia and Africa*, Oxford 2024.

10 *Mouli Banerjee*, Here, there, Everywhere: Locating the Political Party in Democratic Transitions and Backsliding, in: Tom Daly / Dinesha Samaratne (eds.), *Democratic Consolidation and Constitutional Endurance in Asia and Africa*, Oxford 2024.

11 *Cheryl Saunders*, Constitutional Cultures, in: Tom Daly / Dinesha Samaratne (eds.), *Democratic Consolidation and Constitutional Endurance in Asia and Africa*, Oxford 2024.

region, and acting as normative framework on the basis of which all experiences have to be discussed. Countries like India or South Africa are often used as a rushed representative for the whole of South Asian and African continent. The dominance of India and South Africa in the comparative world shows that even the 'global south' is not a monolithic whole. Who gets a seat on the 'global south' table at the wedding party also gets determined by the history of colonization, and geopolitical and economic factors. Asia and Africa are geographically, socio-economically and culturally diverse continents. They do not and cannot tell a single story of democracy and resilience. As Samararatne's own previous work with Tarun Khaitan and Swati Jhaveri, shows that the experiences of resilience and democratic decay in South Asia both disturb and affirm the global patterns, making it hard to rely on any easy narratives.<sup>12</sup>

The book challenges the thematic dominance in the field. From the South Asian region, India is not included in the volume. It is Sri Lanka, Maldives, and Myanmar. In her another work Samararatne describes these jurisdictions as 'south of south' i.e. countries which even within the global south, remain understudied.<sup>13</sup> The edited volume thus undertakes 'double decentering', both inside and outside the global south. It disrupts what the editors' term as 'top-table epistemic centrality' (p. 5) not only in global north but also in global south. The double decentering asks us to imagine and articulate different stories and, in the process, learn more about the existing stories. The 'southern turn' of the comparative field will surely benefit from these new styles of comparisons.<sup>14</sup>

### C. Immersive Comparison

The edited volume engages in an immersive comparative exercise through in-depth single-country case studies. As I and others have argued, the southern turn in the comparative field requires making more room for differences and, therefore, more in-depth, contextual case studies.<sup>15</sup> Contextual single-country case studies can unburden the case study from comparative frameworks, settled boundaries, and terms and allow us to study the case on its own terms. It can allow us the lens of 'difference' rather than being forced into finding sameness. For instance, the edited volume includes a chapter on Maldives and the role of political parties, coalitions, and personalized leadership in the Presidential system since the

12 *Surbhi Karwa*, Towards Grounding Differences: Review Essay on South Asian Comparative Constitutional Studies, *Comparative Constitutional Studies* 2 (2024), p. 370.

13 *Dinesha Samararatne*, Book Review: Philipp Dann, et al., *The Global South and Comparative Constitutional Law* (OUP 2020), *International Journal of Constitutional Law* 20 (2022), p. 536.

14 *Philipp Dann / Michael Rieger / Maxim Bönnemann*, The Southern Turn in Comparative Constitutional Law: An Introduction, in: *Philipp Dann / Michael Rieger / Maxim Bönnemann* (eds.), *The Global South and Comparative Constitutional Law*, Oxford 2020, p. 1.

15 *Surbhi Karwa*, Towards Grounding Differences: Review Essay on South Asian Comparative Constitutional Studies, *Comparative Constitutional Studies* 2 (2024), p. 370. See also *Arun Thiruvengadam*, Foreword, in: *Swati Jhaveri et al.* (eds.), *Constitutional Resilience in South Asia*, Oxford 2023, pp. viii-ix.

promulgation of the 2008 constitution in the country. Since 2008 no party has received the threshold of 50+1 votes, creating a unique situation of coalitions in a Presidential system. Maldives is seeing a small but determinative rise of comparative scholarship, and this chapter contributes towards better understanding of constitutional system in the country and also raises important questions about designing presidential systems, tackling corruption, and their impact on the process of strengthening democracy.<sup>16</sup> In the chapter, India does not appear as prime comparator and norm setter. Instead, Maldives is described in its own terms creating a database for further comparative exercises involving Maldives.

Notably, the volume and seven case studies are not disjointed, a challenge that edited volumes often face. For instance, the broader theme of legislative-executive relationship emerging out of the experience of Maldives and its impact on democracy and resilience, in turn, is discussed in thematic chapter by Kimana Zulueta-Fülscher. Each of the countries in the volume has gone through democratising in the past and is at various stages of democracy, backsliding, and their reverse, and back forth. They all have been impacted by colonial rule, directly or indirectly. They push us to think more deeply about what is in crisis in the current crisis of democracy, and how do we prevent or salvage it. These case studies warn us against exceptionalizing experiences of the global north. Instead, as the editors point out, it takes us towards recognition of 'cyclic' and 'recurrent' nature of democratization, consolidation, and decay and backsliding (p. 8). They point us towards a concerning reality where instead of operating as polar opposites of 'normal period' and 'exceptional period', the threat to democracies is perhaps more systemic and more entrenched.

#### D. Conclusion

The field of 'world literature' often follows a pattern. Literary theorists explain that there are 'well-known strategies' and 'formulae' for writing 'world literature': 'Keep the prose plain and readable, the imagery simply and translatable, the setting metropolitan and identifiable.'<sup>17</sup> We may run similar risks in comparative constitutional field. The edited volumes, like the current one, demonstrate that we require a more sincere acknowledgement what we choose to compare and how we compare is not entirely a neutral exercise. They are deeply intertwined with our own nationalistic locations and geo-political power structures.

Perhaps the analogy of wedding is troubled not only because of the underlying gendered and blood-based connotations of the idea but also because at the weddings only two people can be centre of attention, and only invited guests can join. We can aspire, instead, to be a university society or club which, in principle, is open to all irrespective

16 See, for instance, Ahmed Nazeer, The Maldives: A Parable of Judicial Crisis, Institutional Corruption and Democratic Demise, in: Swati Jhaveri et al. (eds.), *Constitutional Resilience in South Asia*, Oxford 2023, p. 211. Shamsul Falaah, Towards a Maldivian Nation State: The Constitutions of 1932 and 1968, in: Kevin YL Tan / Ridwanul Hoque (eds.), *Constitutional Foundings in South Asia*, London 2021.

17 *Vineet Gill, Here and Hereafter: Nirmal Verma's Life in Literature*, Gurgaon 2022, p. xvi.

of any ties; and where no one is centre of attention by design. The world of democracy, constitutionalism, and law is kaleidoscopic. It requires multiple reflections from multiple standpoints. Light needs to be allowed from various angles, and various centres for more patterns and, consequently, more vibrant imagery. Else, the conversation, as Daly and Samaratne put it, will be 'distorted'.

*Surbhi Karwa*

Ph.D. Candidate, UNSW Sydney