Rejoinder

By *Theunis Roux*[*]

A. Introduction

I am grateful for this opportunity to reply to the four reflections on my 'Grand Narratives' piece that appeared in the first issue of World Comparative Law in 2024 and, less fulsomely, to the nine additional comments published here.[1] I have learned a lot from them, and this response is offered in the spirit of scholarly dialogue, not attempted refutation. Rather than replying to each comment individually, I have organised this reply under three headings: B. Key concepts; C. Methodology; and D. Defending constitutionalism. Section E will offer some concluding remarks.

B. Key Concepts

Both Aparna Chandra and Anuj Bhuwania say that key concepts in my article require further elaboration. For Bhuwania, the ideal of Southern Democratic Constitutionalism (SDC) remains 'curiously undertheorized',[2] while Chandra notes that 'Roux does not define what he means by liberal constitutionalism'.[3] The short answer is that a full exposition of these concepts was not necessary given the purposes I was pursuing. My article was thus offering SDC as a common-denominator ideal to which adherents of both the Liberal-Progressivist Narrative (LPN) and the Culturalist Grand Narrative (CGN) could subscribe. The point of that was to support an argument that, despite the seemingly intractable differences between these two narratives, debates over the future of constitutionalism in India and South Africa might fruitfully occur within the parameters of SDC. For those limited purposes, a brief delineation of SDC's essential features sufficed.[4] Likewise, liberal constitutionalism figures

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1 Six of these additional comments were originally published in the IACL-AIDC Blog in a symposium titled "Grand Narratives of Transition and the Quest for Democratic Constitutionalism", either in exactly the form in which they appear here or in a slightly different form. Since I have already responded to earlier versions of these six comments in the IACL-AIDC Blog, I will not respond again here; see IACL-AIDC Blog, Grand Narratives of Transition and the Quest for Democratic Constitutionalism, https://blog-iacl-aidc.org/wmps-grand-narratives (last accessed on 15 September 2025).

2 *Anuj Bhuwania*, Spectres of Decoloniality: Comparing Constitutional Histories of India and South Africa, World Comparative Law 57 (2024), pp. 98-113, p. 99.

3 *Aparna Chandra*, Detangling Knots in the Narratives: A Response to Theunis Roux, World Comparative Law 57 (2024), pp. 114-126, p. 116.

4 For a full discussion, see *Philipp Dann / Michael Riegner / Maxim Bönnemann* (eds.), The Global South and Comparative Constitutional Law, Oxford 2020.

in my article as the tradition of constitutionalism that proponents of the LPN say has been extended in India and South Africa. It is not a tradition whose moral attractiveness I am myself defending in the piece. Nevertheless, I am happy to take up the invitation to explore these two concepts a little more, in the interests of deepening the conversation.

To start with liberal constitutionalism. On page 59 of my article, I say that adherents of the LPN view liberal constitutions as 'revisable conjectures about the institutional preconditions for human flourishing in a defined context'.[5] This statement conveys the two essential features of liberal constitutionalism on the progressivist account.

First, the ideal that this tradition is interested in promoting is human flourishing—an ideal in which individual liberty is highly prized but not absolutized.[6] The significance of this is that it leaves open the question of how much freedom from social control the individual requires in order to flourish. Depending on the context, a liberal constitution—according to the LPN—might strike that balance in a variety of ways, some towards the more libertarian end of the continuum and some towards the more social-democratic.[7] The tradition of liberal constitutionalism, in other words, is capable of accommodating, and historically has accommodated, a range of institutional-design choices along the left-right political spectrum, including institutional-design choices that leave the oscillation between those two poles to the ordinary political process. Thus, for example, the 1949 German Basic Law, for adherents of the LPN, is a social-democratic constitution within the liberal-constitutionalist tradition, whereas the US Constitution is an example of the leave-it-to-the-political-process model.[8]

Second, the ideal of human flourishing, according to the LPN, is pursued in a pragmatic, experimentalist way.[9] Each liberal constitution presents an opportunity for learning about how best to promote this ideal, both in the context of that constitution itself and more generally, in terms of what the evidence emerging from the implementation of that constitution contributes to the storehouse of comparative knowledge. At the level of the individual legal system, liberal constitutions include a number of institutions that provide feedback on progress towards the achievement of value-laden goals. Courts, for example, fulfil this

5 *Theunis Roux*, Grand Narratives of Transition and the Quest for Democratic Constitutionalism in India and South Africa, World Comparative Law 57 (2024), p. 59.

6 On 'human flourishing' as the ideal animating 'progressive capitalism', see *Joseph Stiglitz*, The Road to Freedom: Economics and the Good Society, London 2024, p. 264. As with Stiglitz, my use of this term is intended to signal that in the liberal tradition individual liberty has always been subject to social control in some shape or form.

7 On liberalism's capacity to accommodate a wide range of political philosophies, see *Cass R. Sunstein*, On Liberalism: In Defense of Freedom, Cambridge MA 2025.

8 See *Mark Tushnet*, Editorial: Varieties of Constitutionalism, International Journal of Constitutional Law 14 (2016), pp. 1-2 (agreeing that for some social-democratic constitutionalism is a species of liberal constitutionalism).

9 On the importance of experimentalism to liberalism, see *John Stuart Mill*, On Liberty, London 1859, pp. 101-102; *John Dewey*, Liberalism and Social Action, New York 1935, p. 92.

function as they assess the impact of legislation on individual rights.[10] At the same time, the tradition of liberal constitutionalism as a whole treats each liberal constitution as an opportunity for developing comparative insights about the institutional preconditions for human flourishing.[11] On this understanding, liberal constitutionalism is decidedly not an 'ideology'.[12] Rather, it is a pragmatic, experimentalist *tradition*. As the tradition progresses, it accumulates insights, not just about the institutional preconditions for human flourishing but also about what it means to flourish. Neither the preconditions nor the central ideal is absolutely fixed in that sense.[13]

Presented in that way, liberal constitutionalism resembles the scientific tradition in its commitment to experimental learning. In place of scientific precepts, liberal constitutionalism works with certain well-known principles, such as the rule of law, freedom, equality, and democracy. These principles may be thought of as sub-ideals of the central ideal of human flourishing, which have emerged over time as being relevant to the pursuit of that ideal. Importantly, these principles—like the central ideal—are not absolutely fixed but rather 'essentially contested'.[14] Their moral content and knowledge about how best to pursue them is open to change in light of experience. More controversially, but again resembling the scientific tradition, these principles are also purportedly universal. Adherents of the LPN thus contend that they are relevant to understanding the preconditions for human flourishing in *any* society, once adapted to local conditions, including culturally distinct understandings of those principles. For example, the *Rechtsstaat* is a uniquely German take on the universal rule-of-law principle, while the Indian Constitution's preferencing of 'scheduled castes' is an example of the principle that all groups in society ought to have equal access to public benefits. Viewed thus, there is nothing in liberal constitutionalism's animating principles, for adherents of the LPN, that precludes their application outside the West.

10 On this conception of the role of courts in liberal constitutionalism, see *Michael C. Dorf / Charles F. Sabel*, A Constitution of Democratic Experimentalism, Columbia Law Review 98 (1998), pp. 267-473.

11 As an aside, it is this feature that makes liberal constitutionalism peculiarly apt, according to adherents of the LPN, for acting as the normative lodestar for the field of comparative constitutional studies.

12 See *Martin Loughlin*, Against Constitutionalism, Cambridge MA 2022 (depicting written constitutionalism as an ideology). Loughlin does not offer a definition of 'ideology', but typically this word is taken to mean a purportedly coherent set of propositions about the fundamental nature of human society and how it ought to be organised. Liberal constitutionalism is not an ideology in that sense because its propositions are not offered as eternal truths but as revisable conjectures.

13 On the experimentalist pursuit of ideals in ways that allow for adjustment of an ideal as it is pursued, see *Martin Krygier*, Philip Selznick: Ideals in the World, Stanford 2012.

14 See *WB Gallie*, Essentially contested concepts, Proceedings of the Aristotelian Society. New Series 56 (1955-1956), pp. 167–198.

This understanding of liberal constitutionalism is very different from Giovanni Sartori's conception, to which Bhuwania refers.[15] For Sartori, the essence of constitutionalism is its concern for the *limitation* of political power. For adherents of the LPN, by contrast, that is just one understanding of liberal constitutionalism that held sway for a time but has since given way to superior insights. What we now understand better, they say, is that human flourishing requires a capable state and thus the tradition needs to be concerned, not just with the limitation of political power, but also with how best to direct political power towards the end of human flourishing.[16] This would be the case, for example, where past injustices cannot be left to the market to remedy, or where protection of the negative liberties associated with classical liberalism requires the state actively to promote the fulfilment of social and economic rights.

Because the institutional preconditions for human flourishing are not absolutely fixed, this shift towards embracing the need for positive state action does not entail any departure from liberal constitutionalism for adherents of the LPN. It simply marks a stage in that tradition's evolution towards enhanced understanding of those preconditions. There is accordingly no reason to accord the label 'post-liberal' to constitutions that are more statist than the American. Indeed, to do that is to fundamentally misconceive what liberal constitutionalism is about. On that approach, the first constitution to give women the vote or to recognise a fourth branch of government would also need to be classified as post-liberal. The silliness of that idea reveals the wrong-headedness of any attempt to place fixed parameters around a tradition that is constantly adjusting its understanding of how its core principles might best be institutionalised.[17]

For adherents of the LPN, it follows that the question whether the German and the Indian Constitutions of the mid-twentieth century and the South African Constitution of the mid-1990s are part of the liberal-constitutionalist tradition must be settled by asking whether it is reasonable to see them as extending that tradition to new circumstances. When the question is posed in that way—in contrast to asking whether they depart from some preconceived notion of what the fixed parameters of liberal constitutionalism are—the answer is obvious. All three constitutions were more statist in orientation than the classical model exemplified by the US Constitution, but none of them for that reason alone falls outside the tradition. At least for adherents of the LPN, it makes sense to say that the statism in these constitutions was a considered response to the question of how human flourishing ought to be pursued in the circumstances of these constitutions' drafting:

15 *Bhuwania* note 2, p. 100 referring to *Giovanni Sartori*, Constitutionalism: A Preliminary Discussion, The American Political Science Review 56 (1962), pp. 853-864.

16 On 'positive constitutionalism', see *Stephen Holmes*, Passions and Constraint: On the Theory of Liberal Democracy, Chicago 1995; *N. W. Barber*, The Principles of Constitutionalism, Oxford 2018.

17 See *Theunis Roux*, Transformative Constitutionalism and the Best Interpretation of the South African Constitution: Distinction Without a Difference? Stellenbosch Law Review 20 (2009), pp. 258-285.

post-war Germany, post-imperialist India, and post-apartheid South Africa (the 'posts' are all in the context, not the tradition).

This exposition of liberal constitutionalism explains how adherents of the LPN come to classify the Indian and South African Constitutions as liberal constitutions. It is not an argument, however, about the merits of the particular institutional-design choices that were made or the strategic wisdom of classifying them in that way when it comes to defending them against the culturalist critique. Those are separate questions, which I will partly address here and partly in section D.[18]

First, in response to Bhuwania's point that the statism in the Indian Constitution was a departure from liberal constitutionalism that helped facilitate the rise of the Bharatiya Janata Party (BJP),[19] adherents of the LPN would say, first, that there was no such departure (for the reasons just given) and, second, that the tendency of the institutional features in question to promote human flourishing should be assessed in light of experience. They would thus welcome Bhuwania's invitation to consider whether the Indian Constitution, in overly qualifying individual rights in deference to the public interest (say), made the BJP's style of ethno-nationalist populism easier to implement without any large-scale amendment of the Constitution.[20] But for adherents of the LPN the purpose of this discussion would not be to decide whether the Sartorian understanding of constitutionalism would have been preferable, but to understand better how the tradition of liberal constitutionalism should be pursued in the Indian setting. Perhaps it is now possible to see that the Indian Constitution, either in its original design or as amended after 1950, did lean too far in favour of statism, and that this facilitated the rise of the BJP. If so, however, that would not on its own be a reason to say that it departed from liberal constitutionalism. It is simply an insight that could be used to amend the Constitution to provide better protection against ethno-nationalist populism when political conditions are again propitious for that.[21]

Second, and likewise, explaining why it is that the LPN classifies the Indian Constitution as a liberal constitution is not a direct response to Chandra's argument that this framing is a strategically ineffective way of engaging the culturalist critique.[22] But it does help to clarify the terms on which adherents of the LPN would enter this debate. For them, any

18 Here, I address the questions from the perspective of the LPN. In section D, I address them from the perspective of someone committed to Indian and South African constitutionalism.

19 *Bhuwania*, note 2, p. 100,

20 See *Tarunabh Khaitan*, Killing a Constitution with a Thousand Cuts: Executive Aggrandizement and Party-State Fusion in India, Law & Ethics of Human Rights 14 (2020), pp. 49-95.

21 To my mind, the problem with the Indian experiment is not statism per se but its abandonment of core aspects of the separation of powers. I thus agree with Bhuwania that the Indian Supreme Court took a wrong turning in its Public Interest Litigation jurisprudence because it took over governmental functions instead of shoring them up. The South African Constitutional Court fared much better in that respect. See *Theunis Roux*, A Tale of Two Citadels: Constitutional Court Resilience Against Creeping Autocratisation in India and South Africa, Global Jurist 25 (2025) (forthcoming).

22 See section D below.

question of strategy must be approached consistently with their conception of the essential features of liberal constitutionalism. Since that conception leads them to treat the Indian Constitution as extending that tradition, any concession to the view that it is post-liberal would involve a trade-off between their conceptually coherent views and the strategic benefits of adopting a position inconsistent with those views. While there is such a thing in liberal political philosophy as 'non-ideal theory', i.e., notions that, in the real world, the ideal society might need to be pursued in incremental steps that could require short-term compromises on principle,[23] this is not an occasion on which compromising would make any sense for adherents of the LPN.[24] The reason for that is that the claim to the universality of its principles is a key, non-negotiable aspect of liberal constitutionalism on their account. If the strategic purpose of describing Indian constitutionalism as 'post-liberal' is to deflect the critique of its Western-ness, doing that would amount to abandoning an essential feature of liberal constitutionalism in order to win a side argument. Much better to double down on the claim to universality and confront the culturalist critique head on.

Of course, Chandra is not writing as an adherent of the LPN, and thus the strategic considerations for her are different. For Chandra, the question is whether conceiving of Indian constitutionalism as post-liberal provides a better normative vantage point from which to engage the culturalist critique, which she sees as crucially different from the decolonial critique.[25] Since that is not a definitional issue, I deal with it in a separate section—section D—below.

The remaining definitional issue concerns Bhuwania's claim that my conception of SDC is undertheorized. My concededly brief exposition of this concept is contained on page 51 of my article.[26] I say there that SDC conceives of constitutions as more than mere 'procedural frameworks for managing competition between groups with different conceptions of the common good'.[27] Rather, constitutions are conceived as 'instruments for transforming society in line with a clearly articulated vision of post-colonial justice'.[28] I then add that SDC recognizes that both the state and the citizenry must be empowered to play their respective roles in this constitutional transformation process, through measures designed at supporting democratic institutions to perform their constitutional functions and to provide citizens with the material and non-material means to participate in the democratic process.

23 See *Ronald Dworkin*, Law's Empire, Cambridge MA 1986, pp. 380-381. The distinction between ideal and non-ideal theory originates in *John Rawls*, The Law of Peoples, Cambridge MA 1999, p. 89 ("[n]onideal theory asks how this long-term goal [of achieving a just society] might be achieved, or worked toward, usually in gradual steps. It looks for courses of action that are morally permissible, and politically possible as well as likely to be effective").

24 This is raised in the dialogue. See *Roux*, note 5, p. 46.

25 *Chandra*, note 3, pp. 120-126.

26 *Roux*, note 5, p. 51.

27 Ibid.

28 Ibid.

The purpose of this brief exposition, as noted already, was not to offer a full theorization of SDC but to articulate a common-denominator ideal that could serve as the framework within which adherents of the LPN and CGN could advocate for constitutional reform in India and South Africa. It was deliberately articulated in very general terms so that neither side would feel alienated by it, unless of course they were not committed to fundamental social and economic transformation or to capacitating the state and the citizenry to play their respective roles in that process. The point, in other words, was to sketch the parameters of an ideal that would keep the adherents of the two narratives within conversational range of each other while excluding anyone who was not prepared to subscribe to even so broadly-sketched an ideal.[29]

The other reason that I did not attempt a full theorization of SDC was the sheer complexity of addressing that question in an article whose length, I thought, might already be trying my readers' patience. The 'Global South' on its own is an amorphous and contentious term, without bringing constitutionalism into the mix. Whatever SDC or 'constitutionalism from the Global South' means, it undoubtedly sucks into its semantic orbit a vast array of different constitutional experiences, cultures and institutional-design options. Philipp Dann has done magisterial work in attempting to draw out the common themes underlying this perspective,[30] and there will, I hope, be another occasion on which I can enter the conversation he has started. But, in this piece, I had not laid any kind of conceptual or empirical basis for doing that, and thus I restricted myself to stating some essential features that Indian and South African constitutionalism, as prominent examples of attempts to pursue SDC, share. Given some of the other contributions to this symposium, it appears that this was a wise choice. Anna Dziedzic, Abrak Saati and Heinz Klug, for example, all raise questions about how representative my depiction of SDC would be if offered as a full theorization of constitutionalism from the Global South. Dziedzic, for her part, argues that, if the heart of SDC is something like 'transformative constitutionalism', it does not 'resonate' in the constitutional imaginaries of the Pacific-island states she is studying.[31] Saati and Klug likewise point to a great deal of variety within the Southern perspective that makes offering an overarching theorization difficult.[32] It is just as well, then, that I was not doing that.

29 Kate O'Regan, in her comment (*Catherine O'Regan*, Some Reflections on Theunis Roux's Grand Narratives of Transition and the Quest for Democratic Constitutionalism in India and South Africa, World Comparative Law 57 (2024), pp. 72-81) questions the logic of that choice, which is a methodological point to which I return in section C below.

30 See *Philipp Dann et al*. note 4; see also *Philipp Dann*, Southern Turn, Northern Implications: Rethinking the Meaning of Colonial Legacies for Comparative Constitutional Studies, Comparative Constitutional Studies 1 (2023), pp. 174–196.

31 *Anna Dziedziec*, Grand Narratives Interwoven: Pacific Constitutions and Constitutionalism of the Global South, World Comparative Law 58 (2025).

32 *Abrak Saati*, Public Participation and Grand Narratives of Constitutional Transitions: The Case of Fiji, World Comparative Law 58 (2025); *Heinz Klug*, Beyond a Bimodal Southern Democratic Constitutionalism, World Comparative Law 58 (2025).

When the time for offering a fuller theorization comes, the purpose in any case would not be to present SDC as a species of constitutionalism with fixed parameters, but rather as a perspective on constitutionalism from the Global South. This is the approach that Dann advocates,[33] and I think it is the right one, albeit for different reasons. For a liberal-constitutionalist like me, SDC is a particularisation of that tradition to the circumstances of the Global South. As such, it possesses all the characteristics of that tradition, including its willingness to reinterpret core principles and rethink institutional-design options in light of experience. There would thus be no uniform, one-size-fits-all SDC on this account, just as there is a great deal of conceptual and institutional variation within liberal constitutionalism more generally. Rather, the point of identifying SDC as a separate species of liberal constitutionalism would be, first, to delineate a perspective on that tradition based on a shared set of experiences, and, second, to assess what can be learned from SDC, both with a view to improving the institutional-design options associated with that perspective and also with a view to contributing to comparative understanding of the possibilities of liberal constitutionalism more generally.

C. Methodology

I turn now to questions of methodology and, in particular, to comments that took issue with the device I adopted in the piece of putting the LPN and CGN into conversation with each other. The most forceful objection here came from Joel Modiri who argued that this device was just a 'ruse' to (a) obscure the ideological precommitments that I bring to this discussion; and (b) mask the privileged position from which I assume the right to be charitable.[34] Catherine O'Regan in her comment, is also very critical of this device, albeit for different reasons. In her view, the problem is that I hold back from challenging decolonial critics like Modiri to be more specific about what it is about the 1996 South African Constitution that they would change.[35] O'Regan further feels that my decision to exclude the exclusionary, nativist side of the CGN from the shared ideal of SDC biases my conclusion.

The easiest way to respond to these two comments would be to pit them against each other and say, 'I told you so'. Modiri, in his response, thus doubles down on his critical-theory approach that is epistemologically averse to saying anything empirically contradictable.[36] If you accept his critical perspective that the 1996 South African Constitution was the morally illegitimate product of the unjust balance of political power that

33 See *Dann*, note 30

34 *Joel Modiri*, Narrating Constitutional Dis/order in Post-Apartheid South Africa: A Critical Response to Theunis Roux, World Comparative Law 57 (2024), pp. 82-97.

35 *O'Regan*, note 29.

36 For a good example of this style of scholarship, see *John L. Comaroff / Jean Comaroff*, Law and Disorder in the Postcolony: An Introduction, in: Jean Comaroff / John L. Comaroff (eds), Law and Disorder in the Postcolony, Chicago 2006, pp. 1-56.

prevailed at the time it was drafted, everything follows. But if you do not, there is no real conversation to be had. At the same time, O'Regan in her piece, argues from her situated perspective as a former Constitutional Court justice who took an oath of affirmation to uphold the 1996 Constitution. She would not have taken that oath, she says, had she thought that the Constitution was 'deeply illegitimate'.[37] That is a perfectly reasonable position for her to adopt. But it does mean that she and Modiri enter the debate over South Africa's constitutional future from irreconcilable positions: the one implacably opposed to the 1996 Constitution's moral legitimacy and the other profoundly committed to it.

Given that, one possible response for me would be to say that this is precisely why I adopted the device of putting the LPN and CGN into dialogue with each other. The point of that device, it will be recalled, was to shift the debate away from the moral legitimacy of the Indian and South African Constitutions to practical suggestions for constitutional change. If the dialogue revealed that adherents of the LPN and CGN shared at least some normative commitments, those could be used to ground a discussion about constitutional change with due regard to the political context in which such change would take place. Modiri's and O'Regan's diametrically opposed responses to my piece tend to confirm the need for such a device, and thus I might leave it there. That would be a little too neat, however. Modiri and O'Regan both argue their case very forcefully, and so it behoves me to deal with each argument separately.

Starting with O'Regan's comment: The nub of her complaint is that my methodology amounts to a disinclination to engage 'with the substantive aspects of colleagues' work in the field of comparative constitutional scholarship because those colleagues are understood to be so committed to their scholarly paradigm that they will dismiss any critiques of their work'.[38] With respect, I think that this misstates my position. Anyone who reads my piece, and Modiri's impassioned response to it, cannot but be left with the impression that I was engaging with the substance of it. The difference between O'Regan's position and mine concerns how best to do that.

In pointing out that scholarship in this area is beset by the problem of competing grand narratives, I was referring to something akin to John Rawls's idea of 'reasonable comprehensive doctrines', i.e., a view formed through an exercise of both 'theoretical and practical reason [that] covers the major religious, philosophical, and moral aspects of human life in a more or less consistent and coherent manner [and] belongs to, or draws upon, a tradition of thought and doctrine'.[39] In my conception, the LPN and CGN are something like that. This does not mean that they cannot be engaged. It simply means they need to be engaged in a particular way. In *Political Liberalism*, Rawls thus uses the idea of an 'overlapping consensus' to suggest how citizens with competing reasonable comprehensive doctrines may nevertheless agree on a 'political conception of justice' (such

37 *O'Regan*, note 29, p. 78.

38 Ibid.

39 *John Rawls*, Political Liberalism, expanded edition, New York 1993, p. 59.

as 'justice as fairness') as a basis for political decision-making.[40] In my article, SDC was performing that function—a common-denominator ideal around which adherents of the LPN and CGN could debate South Africa's constitutional future without agreeing on the moral legitimacy of the current constitutional framework. Within the parameters of that shared ideal, it is perfectly possible to engage opposing arguments. Thus, I do call out both Modiri's and Tshepo Madlingozi's scholarship in my piece for their failure to provide concrete examples of what their alternative constitution would look like.[41] But I do that only after I have accepted the reasonableness of their premises.

O'Regan's second point is that the way I pursue the 'grand narratives' methodology prejudges the issues in contention. By excluding the morally offensive, nativist side of the CGN from the SDC ideal, she contends, I artificially tilt the argument in favour of my conclusion that there likely would be much for adherents of the LPN and CGN to agree on.[42] Again, I think this mischaracterises my argument.

What I say in my article is that, in bringing the LPN and CGN into dialogue with each other, we need to ascribe the most charitable interpretation to both of them. In the philosophical literature, 'interpretive charity' is perfectly compatible with fierce disagreement.[43] Indeed, the whole point of adopting this approach is to ensure that when one finally engages one's opponent's argument, one is engaging the best version of it. This is what I was attempting to do in my piece. The exclusionary version of the CGN is easy enough for adherents of the LPN to dismiss,[44] and thus the latter narrative needs to be put in contention with the best version of the former. Of course, exclusionary arguments will still be deployed in the real world. But the purpose of my piece was not to rehearse a real-world debate, but a scholarly debate between the adherents of two narratives who are currently talking past each other. I disagree that this approach tilts the argument in favour of my conclusion. Rather, I think it (a) helpfully conditions entry into the scholarly debate on the renunciation of exclusionary views and (b) moves the debate onto a terrain where the scholars concerned can discuss practical questions without endlessly disputing premises that no one is inclined to give up.

In response to Modiri's point that the 'grand narratives' device is just a 'ruse' for disguising my own situated perspective and arrogating to myself the privilege of being charitable,[45] my view is that there was nothing underhand about what I was doing. As Modiri himself notes,[46] my liberal commitments are well known, and thus there would

40 Ibid., p. 482.

41 *Roux*, note 5, pp. 67-68.

42 *O'Regan*, note 29, p. 81.

43 See *Donald Davidson*, Inquiries into Truth and Interpretation, Oxford 1984.

44 See *Meera Nanda*, Postcolonial Theory and the Making of Hindu Nationalism: The Wages of Unreason, London 2025.

45 *Modiri*, note 34, p. 84.

46 Ibid., p. 83.

have been no point in hiding them. Rather, what I was attempting was a sincere exercise in distancing myself from my own subject position—in putting views with which I am not naturally inclined to agree in their best light so as to genuinely listen to them. I know that the process of writing the piece did that for me. It forced me to take seriously arguments that provoke in me, as a white South African, profound feelings of anxiety and unbelonging. I worked hard to overcome that visceral reaction to give the CGN its due. So much so that, if I am allowed to share an anecdote, there were occasions when liberal constitutionalists reading the dialogue section of my article complained to me that I had given 'all the best lines to the CGN'. They would not have responded that way had they thought that the exercise was entirely contrived. To O'Regan, who objects to my not engaging decolonial critics more forcefully, I would say that there are occasions to be forceful, and there are occasions to try to listen, and I was engaging the latter mode in this piece.

D. Defending Constitutionalism

I return now to Chandra's argument that, when it comes to defending Indian constitutionalism from the culturalist critique, it would be better to conceive of it as post-liberal in character.[47] That is primarily a strategic argument, but it is also based on certain underlying conceptual considerations. In this section, I deal first with these considerations, both to clear away some underbrush and also to clarify where I think Chandra misconstrues my argument. I then proceed to the strategic issue, this time addressed not from the perspective of the LPN,[48] but from the perspective of a friend of Indian and South African constitutionalism, whether conceived as liberal or post-liberal.

As a conceptual matter for Chandra, Indian constitutionalism is best conceived as post-liberal because it transcended what she regards to be liberal constitutionalism's preoccupation with the limitation of political power.[49] This becomes clear in the passage to which I have already referred in section B, in which she queries my understanding of liberal constitutionalism. Having noted that I do not offer a definition of this concept, Chandra proceeds to assume, based on a decontextualised quotation from my article,[50] that my conception is something akin to the classical conception of constitutions as limits on power. Having in this way determined both my alleged conception and her own understanding of liberal constitutionalism, Chandra proceeds to describe a range of respects in which Indian constitutionalism departs from the classical conception and therefore warrants being classified as post-liberal.

47 *Chandra*, note 3, pp. 120-26.

48 See section B above.

49 *Chandra*, note 3, p. 116.

50 *Chandra*, note 3, p. 116 referring to *Roux*, note 5, p. 51. The quote in question occurs in a section in which I am setting out the parameters of SDC and explaining how it defines itself in contradistinction to the classic liberal idea. There is no reason for thinking that this conception amounts to my own personal conception.

This argument is perfectly logical if you accept Chandra's definition of liberal constitutionalism. But as a comment on my piece, it is both question-begging and misdirected. It is question-begging because the plausibility of the label 'post-liberal' depends on one's answer to the prior question as to whether liberal constitutionalism is best seen as an ideology with fixed parameters or a pragmatic, experimentalist tradition. As Chandra has helpfully pressed me to explain, adherents of the LPN adopt the latter view, and thus for them there is nothing 'post' about Indian constitutionalism. Chandra's response to my piece is in addition misdirected in so far as she attributes to me a conception of liberal constitutionalism as an ideology with fixed parameters. That is not my conception, and thus for the most part, she and I are arguing at cross-purposes.

So much for the conceptual underbrush. Despite these differences, I think that it is still possible to make some progress with the strategic question that Chandra raises, of how best to defend Indian—and by extension, South African—constitutionalism from the culturalist critique. Whether you view those two constitutionalisms as liberal or post-liberal, if you are well disposed towards their ideals, you would want to engage in this defence.[51]

For Chandra, as noted, the post-liberal conception of Indian constitutionalism holds distinct advantages when it comes to defending it against the culturalist critique.[52] That is primarily because it allows defenders of Indian constitutionalism to avoid all of the historical, conceptual and cultural baggage that comes with the label 'liberal' while still defending a morally attractive, and indeed, in Chandra's view, superior variety of constitutionalism. The 'post' in 'post-liberal' for Chandra, in other words, signals not just a break with liberal constitutionalism but also with the Western values that are said to be ineluctably bound up with that variety of constitutionalism. To the culturalist critics of the Indian Constitution, then, Chandra is able to say: your critique is misdirected. There is nothing culturally alien here. The Indian Constitution already embodies an authentically Indian understanding of constitutionalism.

This is an attractive argument. Indeed, in my original piece, in the dialogue, I have the LPN character conceding as much.[53] It is certainly easier to defend Indian and South African constitutionalism in that way. Nevertheless, there are reasons to think that it might not be as strategically advantageous as first appears.

To start with, it is not obvious that classifying Indian or South African constitutionalism as post-liberal allows one to sidestep the nub of the culturalist critique, which has to do with the degree of influence exerted by European Enlightenment ideas on the constitution-making process and ultimately the question of democratic political agency. One of the central claims made by proponents of the culturalist critique is thus that Indian and

51 I have already explained in section B above how I think adherents of the LPN would enter this debate. Here the purpose is to consider the strategic question from the perspective of defending Indian and South African constitutionalism.

52 *Chandra*, note 3, pp. 120-126.

53 *Roux*, note 5, p. 46.

South African constitution-makers were 'mentally colonized'.[54] While they might in their own minds have seen themselves as democratically elected representatives of the relevant formerly-colonized people, they were, as a matter of their own psychological make-up, members of a privileged sub-section of that people who had won the right to govern the postcolony on the basis that they had assimilated the coloniser's values. Whatever mandate they might have had, they were thus not really exercising any democratic political agency. Rather, for culturalist critics, it is as though the constituent assembles in India and South Africa were suffering from some kind of collective Stockholm syndrome, with the constitution just a long love letter to their former colonial masters. From this perspective, whether Indian and South African constitutionalism is classified as liberal or post-liberal does not matter all that much.

Not so, proponents of the post-liberal conception might respond. The distinct advantage of our approach is that it allows us to build a conceptual wall between the variety of constitutionalism that constitution-makers in India and South Africa drew on and the variety they adopted. This is why, they would say, it is so crucial to treat liberal constitutionalism as an ideology with fixed parameters. Doing that allows friends of Indian and South African constitutionalism to depict post-colonial constitution-makers as making a clean break with European Enlightenment thinking. Yes, the argument goes, they treated liberal constitutionalism as a resource of sorts, but in the end, they found it wanting. Emerging as it did from the very different context of Euro-America in the late eighteenth century, liberal constitutionalism was focused on different problems and founded on different, quintessentially Western values. It was therefore necessary to go *beyond* that tradition. In doing so, post-colonial constitution-makers broke decisively with Western values, and the charge of mental colonization accordingly fails.

This seems at first blush like a good defence. The problem with it, however, is that culturalist critics have been able to mount quite a powerful riposte, and one that interestingly draws on the LPN's conception of liberal constitutionalism as an evolving tradition.[55] Modiri, for example, argues that the post-liberal conception, and particularly that version of it that celebrates 'transformative constitutionalism' as a distinctive mode of constitutionalism from the Global South, is just liberal constitutionalism on acid.[56] It is the most evolved, most 'woke', if you like, version of liberal constitutionalism—all the more insulting because it was designed by people who would not have been able to adopt such a radically progressive constitution had they attempted to do so in Canada, say.[57] And yet here they are ramming all this Western liberal progressivism down the throats of

54 Ibid., p. 56.

55 As I noted in my original piece (*Roux*, note 5, pp. 46-47), there is thus an interesting point of agreement between culturalist critics and adherents of the LPN in this respect.

56 *Joel M. Modiri*, Conquest and Constitutionalism: First Thoughts on an Alternative Jurisprudence, South African Journal on Human Rights 34 (2018), p. 300.

57 Socio-economic rights, for example, were included in the 1996 South African Constitution but not the Canadian Charter of Rights and Freedoms.

Indians and South Africans, who may from their own cultural perspective support such things as gender equality and same-sex marriage, but don't need the Western version of those progressive positions imposed on them.

Does that not then mean, though, that those who would classify the Indian and South African Constitutions as falling in the liberal-constitutionalist tradition are even less able to deal with the mental colonization point? Not necessarily. For adherents of the LPN, as we have seen, democratic political agency consists in the degree of creativity shown in the adaptation of liberal constitutionalism to local circumstances. Constitution-makers in India and South Africa, on this view, stood in exactly the same relationship to liberal constitutionalism as constitution-makers elsewhere in the world who have drawn on that tradition. Because it is a universal tradition, no one is a cultural insider to liberal constitutionalism. Everyone is in a sense at one stage removed from it, having to engage in the work of cultural adaptation and specification. Not just that but, because it not an ideology with fixed parameters, liberal constitutionalism is not capable of mentally colonizing anyone and never has. As a pragmatic, experimentalist tradition, it is inherently committed to both the re-interpretation of its ideals and to innovative institutional-design features. In this way, adherents of the LPN are able to own the progressivism of the Indian and South African Constitutions, not as external impositions, but as authentic local adaptations of liberal constitutionalism of which their citizens can be justifiably proud.

It should be clear by now that I am myself drawn to this second view. I think it is both aligned with the best understanding of liberal constitutionalism and more strategically advantageous. Not only that. It is also aligned in unexpected ways with the work of a scholar who does not self-identify as a liberal-constitutionalist, Philipp Dann.

Dann, as readers of this journal would know, has been at the forefront of the 'constitutionalism from the Global South' movement in comparative constitutional studies. One of the central concepts he has suggested in the course of this intervention is the idea of the 'double turn'—the notion that adopting a Southern perspective on constitutionalism involves a certain amount of 'epistemic reflexivity'.[58] As part of that, Dann and his co-authors argue, Northern scholars need to be open 'to effectively learn from and import Southern institutions, concepts, and theoretical approaches, and transform their own'.[59] Dann did not mean it in this way, but that approach is completely compatible with the liberal-progressivist understanding of constitutionalism from the Global South as an opportunity for comparative learning. The great advantage of seeing Indian and South African constitutionalism as a development of the liberal-constitutionalist tradition is that their moral insights and institutional innovations are not seen to be cordoned off to something called 'the Southern experience', as though developments like the justiciability of socio-economic rights and the identification of a fourth branch of government had no implications for constitutionalism in Europe and North America. Rather, that experience is taken to

58 *Dann et al.*, note 4, p. 31.

59 Ibid., p. 32.

be part of the universal struggle against the abuse of private and public power, which, suitably adjusted, might contribute to the revival of liberal constitutionalism in the countries in which it originated. On the liberal-progressivist view, as I have been stressing, every attempt to deploy liberal constitutionalism in service of the ideal of human flourishing is worthy of comparative learning.

E. Conclusion

There are many more arguments in the various comments to which I might have responded had space allowed. The fact that I have not, does not mean that I do not take them seriously or have not found them helpful. I thank all the commentators for pushing me to clarify my views. I hope that they are left with the feeling that this symposium has been worthwhile.