Democratic Constitutionalism and the Blandishments of Grand Narratives

By *Mathew John**

A. Introduction

This timely and engaging essay by Theunis Roux sweeps across the democratic constitutionalist project as it is under threat of running aground in India and South Africa with echoes for other countries across the world.[1] His axis of analysis is held together two grand narratives articulating national constitutional self-identity in these countries—the liberal progressivist narrative (LPN), and the cultural grand narrative (CGN). Consequently, these grand narratives define the poles along which Roux contours the challenge of forging the political and institutional conditions for democratic constitutionalism in India and South Africa respectively.

Framed in this manner, the essay suggests that the institutional success of the hitherto dominant liberal constitutional project (broadly the LPN) hinges on its ability to draw on and bring itself into dialogue with its principal antagonists—cultural nationalists (CGN), in Roux's telling. Accordingly, the essay details both the LPN and CGN narratives, brings them into an imagined dialogue, and pulls them together to further a democratic vision for constitutionalism in the global South. As these two narratives are brought into conversation, a key challenge that is evaluated in some depth is the colonially inflected political imagination inherited in India and South Africa and its suitability for forging constitutionalism in the global South. As the essay is organised, CGN prosecutes the charge of colonially inflected (and unsuitable) choices in the making of these Constitutions; and LPN, which was broadly adopted as part of the dominant institutional firmament, finds itself fending off the charge of being complicit in carrying on colonial government in a new garb through the independence constitutions of India and South Africa.

Negotiating what Roux presents as GGN's demand for de-colonising constitutional imagination and practice is therefore a key concern of my response, especially his presumption that CGN embodies the best case for de-colonisation. To outline the contours of my response, the ideological and institutional reality of colonialism, as well appreciated by the essay, was a framing condition for law and politics for all parties across India and South Africa. Therefore, all political and constitutional positions that took shape in opposition to colonialism were perforce shaped by the institutional and intellectual currents of colonial

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

society. If that be the case, I would like to show it is no easy task to attribute and argue, as Roux seems to do, that the sets of political actors associated with the CGN position could be taken to best embody the case for decolonisation.

On the contrary, I argue that both LPN and CGN are responses to the same challenge that colonisation posed—that is, how is it possible to forge modern political solidarities in societies that emerge from the throes of colonial domination. Problems associated with the afterlives of a "colonised" imagination and its impact on modern political and constitutional institutions are a problem that India and possibly South Africa also confront. However, this is not the central burden that either CGN or LPN seek to resolve in forging political solidarity and working towards state formation. Thus, even as CGN and LPN are political antagonists, it is not their stance on decolonisation that sets them apart but their different accounts of who must count as the people who constitute democratic constitutionalism. This has implications for Roux's considerations for democratic constitutionalism as it dissolves the problem, he generates from the aspiration to decolonise that is rife in different ways in most post-colonial societies. This way of recharacterizing Roux's essay takes me to a more full-throated engagement with decolonisation than he has explored in his essay, the prospects of which I explore with reflections on Gandhi as a thinker of decolonisation. Finally, I suggest what my response might mean for democratic constitutionalism in societies like India and South Africa, the heart of Roux's essay.

B. Characterising the Colonial Problem

Cutting through the nuances of Roux's account of constitutionalism in India and South Africa, I argue that he misidentifies, at least in the case of India, the problem posed by colonialism. That is, he accepts all too easily the assertions advanced by the advocates of Hindutva[2] (the Indian votaries of CGN) that they embody the case for decolonising modern Indian constitutionalism. But why must one look beyond and second guess the arguments advanced by a set of political actors who explicitly come down on the colonial character of Indian constitutional imagination and argue for fashioning constitutional identity that draws on native India political idioms? The answer I offer lies in the history of colonial government in India within whose folds Hindutva began to be asserted as rightfully representing Indian identity.

To historically locate Hindutva, it is important and perhaps even inescapable to begin our enquiry in the debates on nationalism and national self-identity in colonial India. Drawing on Partha Chatterjee's definitive work, it is possible to take nationalism to be a form of political consciousness that rent the political experience of pre-colonial South Asia.[3] Roux presents CGN as the claimants of this pre-colonial world and as those trying to

2 I use the term Hindutva loosely to encompass all shades of political opinion in India that argue for a nationalism rooted in Hindu identity

3 See *Partha Chatterjee*, The Nation and Its Fragments, Oxford 1995, esp. chapters 4 and 5.

align contemporary India to the largely "Hindu" values that made up this world. It therefore is useful to touch on the contours of this pre-colonial world and the forms in which it has been drawn on as a resource for modern India which I will try to address a little more systematically at the end of the essay through a discussion on Gandhi.

Chatterjee makes the historical imagination of pre-colonial India salient through the voice of Mrityunjay Vidyalankar, a Brahmin scholar in the employment of the British East India Company at Fort William in Calcutta. In his 19th century text *Rajabali,* Vidyalankar, pulled together the world of political power that he inhabited in which time, geography, and political lineage were all seamlessly woven with a mythic or *puranic* understanding of the Indian sub-continent.[4]

In this *puranic* world where mythic time could co-exist with liner time, and where mythic heroes could be viewed as predecessors of historically recorded figures, the motor force animating the past/history and time were providence and the divinely ordained authority of kings. Ordinary human agency as a presence in history and as an aspect of sovereign power, Chatterjee argues, did not make its presence felt for another half century. That is, Indians who largely did not engage the problem of the authorship of a political order felt the compulsion, through interactions and provocations arising from colonial state, to identify themselves as political and historical agents.[5] Consequently, and very significantly for my response, it was by breaking some of their *puranic* commitments and by attempting to cast themselves as sovereign political agents that Indians began to identify themselves as a nation or a *people*.

Drawing on the contours of this nationalist history through Chatterjee as also other historians, it is possible to draw out some salient features that defined the efforts of early Indian nationalists to demarcate their identity as sovereign agents of their own history. These include a recognition that national identity was by and large absent as Indians found themselves in the middle of 19th century, that Indians had to accept and learn from the superiority of European forms of knowledge and self-fashioning in this regard, that this learning from Europe entailed a thorough going reform of Indian society, and as Chatterjee points out, this transformation of India was to be carried in a manner that did not wholly concede the question of national identity to their European mentors.[6]

Drawing on this reconstruction of Chatterjee, my response makes the, arguably uncontroversial, assertion that decolonisation must be understood as an offshoot of the process through which Indians devised and debated, across the 19th and 20th centuries, responses to questions regarding the appropriate reform and remaking of their national and sovereign self-identity. However, even as British government framed the conditions and the challenge

4 Ibid., pp. 77–87.

5 Ibid.

6 For a flavour of this debate see Ibid; see also *Dipesh Chakrabarty*, Provincializing Europe: Postcolonial Thought and Historical Difference, Princeton 2000; *Sudipta Kaviraj,* Imaginary Institution Of India, New York 2010; *Tanika Sarkar*, Hindu Wife, Hindu Nation: Community, Religion and Cultural Nationalism, Bloomington 2001.

of decolonisation, it soon became clear to Indians that the realisation of national identity required national self-government, a demand that British would not concede until they were forced to leave by a movement for political independence.

National self-determination was indeed realised after Indians were able to forge a national solidarity that bridged differences across caste tribe region language and so on which the colonial state had supercilious declared would never allow Indian national unity. [7] It was the ferment and debate across these differences that positions recognisable from a contemporary vantage point about national unity began to take shape. Thus, LPN could be said to be the constellation of actors and positions that defended the that defended and viewed the Indian people to be a collection of individual citizens. Similarly, CGN could be said to the perspective that viewed the people in terms of exclusionary national identity, a perspective that played a big role in the creation of Pakistan but had limited success in independent India. Similarly, another important perspective foregrounded the federal character of the Indian people, and yet others like Gandhi argued that the project of national unity would have first have to reinvigorate the plurality of everyday practices that gave the Indian subcontinent its civilisational strength and cohesion.

Against this backdrop it is important to note that all these positions and perspectives are responses to the appropriate form in which national identity must be articulated and, that almost all these positions save that of the Gandhian strands are also straight-forward responses to the colonial/European problem—who must be the bearer of sovereign power? To narrow onto just LPN and CGN for our present discussion, it is true that they offer very different answers to the challenge of organising sovereign power which is a point that Roux makes more than apparent in detailing of their very different perspectives on how sovereign power is or must be organised for modern India. However, to what extent could it be said that these positions embody a decolonising sentiment that significantly and materially goes beyond the transfer of political power to a sovereign government that represents the Indian people?

Roux casts decolonisation as a process that goes beyond the merely acquisition and wielding of sovereign power but emphasises instead the argument that decolonisation must be the process of fashioning a constitutionalism that is culturally appropriate for India. Further he also identifies CGN as an embodiment of decolonisation in this latter sense. However, in the light of the discussion up to this point I would argue neither LPN or CGN are substantially invested in decolonisation understood as a project that seeks to fundamentally shed the Anglo-European character of constitutional and governmental organisation for an independent India. Of course, both these perspectives on national unity have been invested in mobilising symbols and resources from India's past to shape what they believe to be a uniquely Indian foray towards sovereign nation building. Thus, symbols like that

7 The British consistently claimed that the social divisions of India did not permit the possibility of national unity and justified their rule—Pax Britanica—as upholders of the peace in India See for example *Reginald Coupland*, Report on the Constitutional Problem in India: The Indian Problem, 1833-1935, Oxford 1943.

of "mother India", the Indic iconography of the India Constitution, the unique place given to the cow via provisions in of the directive principles in the Constitution and so on could be deployed by either LPN or CGN in their respective visions of national identity and by extension of constitutional government. That is, both LPN and CGN are principally efforts to build sovereign nation states as inspired by the brush with the Anglo-European forms of political imagination that colonialism brought to India.

Thus, against the backdrop of my re-characterisation of the terrain that Roux maps, at least in the case of India I would hesitate to label either LPN or CGN as perspectives as elaborating a decolonisation committed to undoing the cultural impacts of colonial rule. On the contrary they are merely different hues that constitutional democracy has assumed in India over the last 70 odd years coming out from the struggle for independence and self-determination.

Entering the debate on decolonisation and Indian self-identity, Gandhi was an exceptional political and intellectual figure who made a serious attempt to think with Indian ideas. Gandhi of course also drew intellectual inspiration from romantics and the traditions of dissent from across the world that he wove into the Indian intellectual traditions in pitching for a vision of "Hind Swaraj" or a free India. As a subject of the British empire Gandhi could not but be influenced by ideas that came to him from every part of the world.[8] However, unlike many of his fellow countrymen who drew on the Anglo-European political traditions to fashion their distinct conceptions of Indian national identity, Gandhi charted a path that was more deeply committed to the decolonisation or rejection of Anglo-European ideas than any of his contemporaries. Consequently, I suggest that it is intellectual imprint of figures like Gandhi and not the cultural nationalists associated with CGN who brings to view a much better case for decolonisation as it goes beyond self-determination, transfer of power, and the establishment of representative government. However, before we assess what this claim means for the manner in which Roux ties his essay to decolonisation it is useful to outline Gandhi as a decolonial thinker.

C. The Ghandhian Challenge

Gandhi refused to participate in the debate on national identity as it was framed by the colonial state. Going back to our discussion on the emergence of the history of modern India, I had pointed out via Chatterjee that sovereign national identity as a people, a historical account of that nation, and a thorough going reform of Indian society were viewed by both Indians as well as their colonial government as the conditions precedent for Indians to take their place in the world that colonialism had wrought. However, Gandhi turned his back on much of these ways of thinking about and fostering national identity by refuting the colonial assertion that Indians lacked identity as a nation or a people and by refusing the demand that Indians develop a sense of political unity understood through

8 *MK Gandhi*, Hind Swaraj and Other Writings, Cambridge 1997, pp. xiii–lxii.

frames such as liberal individualism, cultural nationalism, federalism and so on. He was committed to the reform of Indian society like for instance his opposition to the practice of untouchability. However, in his exhortation to India, the inhabitants of the subcontinent only needed to double down, rediscover, and refine their everyday and plural (perhaps even *puranic)* practices that had defined them over millennia.[9]

Gandhi was unimpressed by the developmental of the political, legal, and eventually the constitutional imagination that colonialism introduced to India. Responding to the political and constitutional change that the colonial state unfolded in India over the 19th and 20th century as the leader of the struggle for Indian independence, he spurred the most thoroughgoing attempt to revitalise Indian traditions that emphasised individual self-making, sustainable forms of engagement with the natural world, as also forms of engaging with each other as individuals and plural communities. Pulled together in his manifesto the *Hind Swaraj*, these ideas elaborate individual and moral self-making he envisioned at the heart of the project of *swaraj (*literally translated as self-rule). This approach to freedom was tied to the idea that mere transfer of power from the British to Indians would be insufficient to secure true swaraj. Thus, swaraj would only arrive "when we learn to rule ourselves".[10] The problem, however, were the structures of colonial rule that interrupted and came in the way of the freedom and self-making that he envisaged.

Roux makes many references to Gandhi in his essay and for the most part he does not take any position on Gandhi one way or the other. However, most of the interlocutors Roux draws upon, portray Gandhi as a woolly-headed romantic who did not have an eye on practical realities. In turn this impractical Gandhi is cast as having turned his back on modernity and on securing political power for the people who were understood to be the agents of modernity. However, far from being a form of naiveté, Gandhi's dismissal of railways, doctors, lawyers, as also the conflicts between Hindus and Muslims could be alternatively viewed as part of an attempt to foreground these typical forms modern life as they thwarted the ability of Indians to think with their intellectual traditions.

To take one of these emblems of modern life—the need for a sovereign people and its allegedly absence of in India owing conflict between Hindus and Muslims as principal elements of the body politic—it is useful to highlight Gandhi's deep suspicion of identities as the exclusionary axis of national solidarity. Thus, Gandhi objected to the colonial belief that unified political agency in South Asia was not possible because Hindus and Muslims were condemned to irreconcilable conflict.[11] On the contrary, unlike the colonial state which cast them as monolithic and exclusionary identities of potential national solidarity, he viewed these groups as civilisational spaces for experimenting with truth seeking. To the extent that they could be basis for solidarity, it was the through the diversity and the

9 This the core of his message in *Gandhi*, note 8.

10 Ibid., p. 73.

11 Ibid., pp. 51–57.

pluralism of experimentation that these traditions fostered. Consequently, founding politics and nations through exclusionary identities was to him sheer foolishness.

Hence, he was not merely unimpressed with colonial forms of pushing the subcontinent towards claiming political agency through exclusionary political identities but was one of its fiercest critics. For him, sovereign political agency was displaced by the urgency he placed on strengthening everyday forms of plural social practice held together under the umbrella of different traditions of truth seeking that were termed Hindu, Muslim, Christian and so on.

For the present purpose I will winding down this indicative account of Gandhi that is understandably short on detail and nuance but is hopefully sufficient to point to an approach to decolonisation that is not founded in acquiring and wielding sovereign power but in revitalising the ability to think with the social and intellectual traditions of the Indian sub-continent. In turn this could be characterised as the form of decolonisation that Roux was foregrounding all through his essay but was in my opinion unable to find across the spectrum of mainstream of Indian politics that he chose to examine.

Thus, if Roux was to examine a full-throated effort at decolonising Indian political and constitutional imagination, I would imagine that he could not evade engagement with the legacy of the likes of Gandhi in contemporary India. Consequently, it is on this note that I would like to draw this response to a conclusion with some cursory reflections on the absence of decolonisation in Roux's essay in the sense that I have outlined in my response.

D. Conclusion

To conclude, my response was framed as a search for decolonisation in Roux's essay. As I have presented it, the problem that Roux terms the colonial power matrix and a broad commitment to decolonisation is recognised by all parties across the Indian political spectrum. However, I have tried to argue that the deeper call for decolonisation that is associated with the CGN is a red herring in Roux's presentation and that CGN is as much part of the political mainstream of Indian constitutional imagination as is LPN. I have not been able to elaborate at great depth on the contours of a decolonial constitutional imagination, but through my cursory account of the Gandhian political thought I have suggested a more appropriate location to search for such for a decolonial imagination. Thus, in my understanding this leaves Roux where he signs off in this essay—elaborating the important avatars of democratic constitutionalism in both India and South Africa who are both committed to the same ideal even as they debate key constitutional concerns such as the scope of judicial review, secularism, federalism and so on. In my understanding these are problems best considered outside the purview of decolonisation, but I hope to hear

from Roux on how best to carry forward our common concerns, how best to confront the uncertainties facing constitutional democracy in almost all parts of the contemporary world.