

ABHANDLUNGEN / ARTICLES

Comparative Constitutional Law from and within the Global South: challenges, prospects and hopes

By *Dinesha Samararatne**

*This is an adapted version of the Krüger Academic Keynote delivered at the annual conference of the World Comparative Law, 5 July 2024, at the Faculty of Law of the Humboldt University Berlin.*¹

A. Introduction

For my remarks today I have opted to engage with the edited volume *Comparative Constitutional Law and the Global South* co-edited by Philipp Dann, Michael Riegner, and Max-

* Professor at the Department of Public & International Law, Faculty of Law, University of Colombo, Sri Lanka, Email: dinesha@law.cmb.ac.lk.

1 This keynote speech is based on the following scholarly contributions: *Dinesha Samararatne*, Dimensions and Dilemmas: Public Participation in Constitution-Making in Post-War Settings, *Indian Law Review* 7 (2023), pp. 218-243; *Anna Dziejic / Dinesha Samararatne*, Asking the Woman Question of Constitutions: Insights from Sri Lanka', *World Comparative Law* 56 (2023), pp. 127-152; *Dinesha Samararatne*, Resilience through Synergy? The Legal Complex in Sri Lanka's Constitutional Crisis, *Asian Journal of Law and Society* 9 (2022), pp. 1-25; *Dinesha Samararatne*, Gendering 'The Legal Complex': Women in Sri Lanka's Legal Profession, *Journal of Law and Society* 47 (2020), pp. 666-693; *Dinesha Samararatne*, From South Africa to Sri Lanka: Prospects of Travel for Transformative Constitutionalism, *Asian Journal of Comparative Law* 15 (2020), pp. 45-68; *Philipp Dann / Michael Riegner / Maxim Bönnemann*, *The Global South and Comparative Constitutional Law*, Oxford 2020; *Tom Daly / Dinesha Samararatne*, Democratic Consolidation & Constitutional Endurance Comparing Uneven Pathways of Constitutional Development in Asia and Africa, Oxford 2024; *Swati Jhaveri / Tarunabh Khaitan / Dinesha Samararatne*, Constitutional Resilience Beyond Courts: Views from South Asia, Oxford 2023; *Dilini Pathirana / Dinesha Samararatne*, The Colombo Port City Project: How Chinese Investment Interacts with Local Public Law, in: Matthew S. Erie (ed.), *A Casebook on Chinese Outbound Investment*, Cambridge 2025, pp. 133-155; *Dinesha Samararatne*, An Umbrella Body for Guarantor Institutions: A Necessary Condition or a Strange-Creature?, *Journal of Comparative Constitutional Studies Comparative Constitutional Studies* 2 (2024), pp. 292-314; *William Partlett / Dinesha Samararatne*, Redeeming the National in Constitutional Argument, *World Comparative Law* 54 (2021), pp. 461-484; *Tarunabh Khaitan*, On scholactivism in constitutional studies: Skeptical thoughts, *International Journal of Constitutional Law* 20 (2022), p. 547; *Adrienne Stone*, A Defence of Scholarly Activism' *Constitutional Court Review* 13 (2023), p. 1

im Bönnemann.² Through their intervention, the editors and chapter contributors to that volume have been effective in placing the Global South on the agenda for consideration by all of us with an involvement in the field of comparative constitutional law. In this lecture, I intend to respond to their invitation or call to undertake Comparative Constitutional Law from the Global South and hence the title of my talk – *Comparative Constitutional Law from and within the Global South: Prospects, challenges and hopes*. To develop and illustrate the points that I make today, I will draw on my published and ongoing academic work in addition to my own experiences as a person who lives and works in Sri Lanka. I ask you to bear with me because I intend to move across several domains, the intellectual, professional, political, and the personal, but I hope that you will eventually understand why I do so. I organise my remarks under five questions that emerge from the topic I have chosen for today. Through my answers to these questions, I aim to leave with you, some ideas for you to consider if we are to take the Global South on its own terms in our field.

I must begin by acknowledging the irony and poignancy of speaking about the Global South here in the city of Berlin in Germany. As with identity, the category of the Global South seems to attract study and debate outside of it rather than within. I remember sharing similar remarks with the students of an intensive class that I taught at the Melbourne Law School in Australia last year. Although I was living and working in the Global South, I left it behind physically, in order to teach about it. Germany as a geographical location for this discussion raises several questions, especially in this particular political moment. However, I will not go into those questions today. I will nevertheless, comment briefly on the *World Comparative Law Journal (WCL)*, the reason for our gathering and this conference. The World Comparative Law Journal is most likely the only journal that is explicitly committed to providing an academic platform for scholarship about the Global South in our field. This institutional commitment has provided me and many colleagues in different parts of the geographical Global South like me, a forum to publish their work and communicate their ideas to the rest of the world. To my mind, the WCL is a living example of the way in which the injustices of the unidirectional flow of intellectual and financial resources from the Global South to the Global North, is being reversed. It is a worthwhile example to emulate when considering the ways in which we may respond to the epistemic injustices and inequalities that concern us.

I turn now to my questions. None of them are new but I hope that in answering them in a sequential manner today that I can provoke your thinking in a useful way. The questions are:

- (a) What is the Global South?
- (b) From the perspectives of the Global South what is Comparative Constitutional Law?

2 Philipp Dann / Michael Riegner / Maxim Bönnemann, *The Global South and Comparative Constitutional Law*, Oxford 2020.

- (c) In terms of doing Comparative Constitutional Law from the Global South – what are our challenges?
- (d) What are our prospects? and
- (e) What are our hopes?

I would like to venture further and share, in conclusion, some further but provisional thoughts, which I hope might be useful overall, as we continue to reflect on these questions in our work.

B. What is the Global South?

Thanks to the work done by so many others, today we have some compelling answers to the question: what is the Global South? When I co-taught a course titled ‘Constitutionalism and the Global South’ at the Melbourne Law School with Prof Cheryl Saunders, the familiar fault lines became clear very quickly. The case for identifying the Global South as a lens or category is familiar to this audience. This audience is further familiar with the limits to that lens or category. During the intensive course, we worked with different case studies each day, learning in that process, that the Global South is a general but useful term that can be used to point beyond the usual jurisdictions that are studied in our field to the understudied, ignored, or invisible jurisdictions.

It is a useful term that helps us to focus on research agendas that are identified based on ground-up theory for comparative constitutional law. It is a reminder that constitutionalism remains a heavily contested concept throughout much of the world and that unless we examine the life of diverse constitutions from a broader perspective, we will be limited in our truth-seeking exercise. The Global South may not be a discreet place or concept, nevertheless, it can be a *distinct* category. Factors that result in this distinctness include colonisation, lower levels of economic development, persistent challenges to constitutional governance, and being under-represented and under-studied as sites for theory building in comparative constitutional law. It is also a category which is temporary and shifting in nature. We now recognise it as a place for agenda setting for our field, but most importantly, it is a mode of thinking and orientation, one which constantly takes us back to fundamental questions about methods and methodologies in comparative constitutional law.

C. What is Comparative Constitutional Law, from the perspective of the Global South?

I intend, today, to take on some aspects of the intellectual challenge presented to us by the Global South critique in comparative constitutional law. But before I get to that, let me turn to my second question: what exactly is comparative constitutional law, from the perspective of the Global South? I would like to mention five points very briefly and then explain them

further in answering the questions about prospects and challenges for doing this type of work.

When doing comparative constitutional law from and within the Global South in the contemporary context, often, our first and primary task is that of description. The knowledge gap in the description of the Global South is so vast that nuanced description itself might be what we do for a long time – of single jurisdictions or of comparable ones.

Second is the daunting task of interpretation of similarity and difference. Histories, different types of humans, ecological diversity, and armed conflict are three domains which reminds us of how complex this task of interpretation can be. Located in and focussing on South Asia, I am humbled and often overwhelmed by this task of the interpretation of similarities and differences.

The foregoing challenges are intimately connected with the third and fourth challenges that I identify here. The different constitutional systems are part of an ecosystem, connected in different ways to each other and influencing each other across time and space. This is obvious in the case of some jurisdictions, like within South Asia, but perhaps less so when looking at jurisdictions like Sri Lanka and Burma. But the connectivity is there when one begins to look and is not limited to regional connections. Accurate description and interpretation will draw out those connections in the ecosystem of comparative constitutional law.

The fourth challenge is that in stepping out to study complex similarities and differences in the Global South demand we have to overcome or deal with some of the inherent limits to our discipline, the law. We experience, learn, and use the law within political boundaries of the state, which until quite recently were also referred to commonly as the nation-state. This nationalist methodology has a way of framing and limiting our approach, our imaginations, our expectations, and our methods in multiple ways. Recognising and being self-aware of such limitations can be difficult.

The related fifth and final challenge is that as constitutional comparativists, we are, almost inevitably drawn into constitutional politics, reform, and advocacy. This push and pull, too, has a direct and indirect impact on us. This push and pull have re-emerged today as a debate around what we describe as ‘scholasticism.’

D. What are the challenges of doing Comparative Constitutional Law from and within the Global South?

Having considered the meaning we attach to the Global South and having considered what we do when we do comparative constitutional law from and within the Global South, let me now turn to the third question - what are the challenges of doing comparative constitutional law from and within the Global South?

Description itself is a daunting challenge. Because so little is known about jurisdictions that are typically identified as belonging to the Global South, those of us with interest in such jurisdictions carry the intellectual burden of description. Much of our scholarly labour is taken up by this task. Unless and until there is sufficient familiarity with our histories

and contexts, the Global South will remain unknown, invisible, even exotic, and often - a place of lack. In discharging this burden, most of us carry the responsibility of presenting our jurisdiction to the 'rest of the world' – mediated and limited by the international language in which we communicate. It is an exercise of intellectual agency and is shaped significantly by our positionality and identity and therefore our politics – which might be hidden from our audience.

Because the state of knowledge in international languages on the Global South is poor, description remains a primary task, leaving less room, energy, time, opportunities or other resources for theory building in the Global South. Multilingualism within domestic legal systems adds another layer of complexity here. Consequently, we are at a nascent stage in responding to the call to take the Global South on its own terms and to engage in comparative constitutional law *from* the Global South.

Description of a single understudied jurisdiction can be difficult enough if your interest is in moving on to the analytical and theory building. However, when engaging in comparative constitutional law from and within the Global South, you may end up having to offer detailed description of most of the jurisdictions that you consider. Much more collective effort is needed, perhaps across generations, to reach the necessary levels of description, which will allow for other types of comparative work, for broadening comparison, and for contributing to theory building from and within the Global South.

If description is challenging in our context, what do we make of interpretation of difference or similarity of the understudied jurisdictions that we work with? Let me take two recent examples from my work. Thanks to the invitation and encouragement first by Dr. Asanga Welikala around 2015 and by Prof. Tarunabh Khaitan from 2018, I have been studying the emergence of guarantor institutions in Sri Lanka. What began as descriptive work evolved into critical scholarship on the prospects for a fourth or guarantor branch and on the corresponding evolution of the doctrine of separation of powers. For a while, I desired to reflect on some of these questions comparatively, particularly comparing Sri Lanka's experience with that of Nepal. The establishment of the Constitutional Council of Sri Lanka after the Nepali model in 2001 is an example of what we may call South-to-South borrowing.³ In trying my hand at comparing these little-known developments in Nepal and Sri Lanka, in work in progress titled 'An Umbrella Body for Guarantor Institutions: A Necessary Condition or Strange-Creature?', I experienced the several prospects and challenges for doing comparative constitutional law from and within the Global South.⁴ My efforts at attempting to learn about the developments related to the Constitutional Council of Nepal have had limited success. I have had no access to any original material that captures the

3 Coincidentally, another example of South-South borrowing is the statement of Directive Principles of State Policy, originally borrowed from Ireland and replicated across the Global South.

4 Since then, published as *Dinesha Samararatne, An Umbrella Body for Guarantor Institutions: A Necessary Condition or a Strange-Creature?*, *Comparative Constitutional Studies* 2 (2024), pp. 292-314

debates or discussions on how or why Nepal designed and adopted an institution such as a Constitutional Council. My access to Nepali history has been limited to material published in English, and I have no access to voices on the periphery of Nepali constitutional politics. Ideally, I would spend some time in Nepal on a research grant to find answers to these questions. But I now work in a context where even basic resources for academic work are scarce, and access to an international travel grant seems unlikely, to say the least.

Another example is my effort at advancing the research agenda for comparative constitutional law within South Asia. The practical challenges of comparison within and from the Global South, abound. The challenge of accessibility arises at several levels. Challenges related to accessibility of material, accessibility of the critical accounts of history, and the accessibility of different perspectives or voices (due to language, power, identity politics, etc.) are only some examples.

Due to these limitations and due to limitations of our own training, the questions, issues, and answers that lie beyond law and legal institutions and more in history, politics, culture, etc., can remain inaccessible to those of us engaging in comparison in general. This limitation is even more significant when studying societies that have long histories and have experienced colonial disruption. At this stage of my career, it seems to me that in such societies, two aspects of the law are inescapable. One, the law is very much a result of the complex interactions of history, economics, culture, etc., and second, the law is entangled with these domains of history, economics, culture, etc. This was clear to me in exploring the significance of public participation in constitution making in post war societies such as Nepal, Myanmar and Sri Lanka. This realisation led me to conclude, in my article ‘Dimensions and Dilemmas: Public Participation in Constitution-Making in Post-War Settings’, that in postwar societies where a political resolution to armed conflict is absent, public participation in constitution-making will reflect social divisions and even exacerbate them and therefore is an exercise that involves significant risks.⁵ Even if one acknowledges that these deep challenges and questions about the role of law are prominent in the Global South, we nevertheless have to confront and respond to the expectations placed on the law to offer solutions, design relevant institutions, regulate human behaviour, etc. In comparative constitutional law, these expectations include the containment of the exercise of public power, state reform to meet expectations of service delivery including social welfare, and the regulation of foreign direct investment.

Another example comes to mind here. Direct foreign investment through China’s Belt and Road Initiative is a recent development in the South Asian region. In Sri Lanka, one of the initiatives in this project is the creation of the Port City – built on reclaimed land as an area purpose-built for attracting foreign investment to Sri Lanka. Together with my colleague Dr Dilini Pathirana, an expert in the law of foreign direct investment, we examined the Port City as it relates to the law of investment and public law. This work

5 *Dinesha Samararatne*, Dimensions and dilemmas: public participation in constitution-making in post-war settings, *Indian Law Review* 7 (2023), pp. 218-243.

is due to be published as a case study chapter titled ‘The Colombo Port City Project’.⁶ Two insights from that work are relevant here. One is the way in which political goals of states result in path dependencies for foreign direct investment for the investor state and home state. These path dependencies determine the extent to which the law, including constitutional law, guides or is *guided* by political goals. Second is the role the law is required to play within a context deeply entangled with economics, regional politics, and culture of political parties, among other factors. The application of constitutional norms and remedies for judicial review of state and non-state action related to such projects at the local level becomes a challenging and complex exercise in that context. Anecdotally I know that this is a concern in many parts of the Global South.

These complexities give rise to a further challenge - that of searching for concepts and frames that we can use to interpret developments on the ground. Allow me to take another example. In April 2022, Sri Lanka defaulted from its sovereign debt repayment. The crisis in Sri Lanka at this time was not only severe but undeniable. Fuel and cooking gas were scarce, and life had ground to a halt for most. The economic solution to this crisis was assumed to lie in another agreement with the International Monetary Fund (IMF). When this agreement was finally reached, it was the 17th time Sri Lanka had resorted to borrowing from the IMF to deal with a balance of payment crisis. In a chapter titled ‘Economic Governance and Rule of Law Discourses: the Port City and the Economic Crisis’ I have reflected on these developments from a constitutional law perspective.⁷ The practice of entering into agreements with the IMF is not unusual for Sri Lanka or in the region. Based on such agreements, governments undertake law reform across several domains, including taxation, public service, and institutional reform of the Central Bank. Interestingly, the Constitution is silent about the way in which IMF conditionalities can be met, should be subject to judicial review, etc. This leaves me looking for concepts and frames that I could use to interpret constitutional developments that have taken place in relation to Sri Lanka’s latest (and 17th) agreement with the IMF and I know that similar developments are taking place in jurisdictions across the region. In this chapter, I attempt to trace the rule of law discourses that are invoked in such contexts by domestic and international actors. This work has further led me to the idea of state capture and its relevance for constitutional law. Here too, I am struggling to identify appropriate concepts and frames that I can use to interpret this phenomenon in relation to constitutional law.

I hope these examples illustrate to you that conditions for doing comparative constitutional law that are more common in the Global South leaves us with the triple challenge of description, conceptualisation, and theory building. Almost always, this triple challenge in the task of comparison is compounded by a thread of urgency and a general environment

6 Since then, published as, *Dilini Pathirana / Dinesha Samararatne*, The Colombo Port City Project: How Chinese Investment Interacts with Local Public Law, in: Matthew S. Erie (ed.), *A Casebook on Chinese Outbound Investment*, Cambridge 2025, pp. 133-155.

7 *Dinesha Samararatne*, *Economic Governance and Rule of Law Discourses* (2023).

of weak value commitments to advancing constitutionalism by many constitutional actors. In some cases, research on some of these topics can be inhibited by threats to academic freedom and personal liberty.

Dealing with this triple challenge has become harder due to reasons related to legal education. What I am about to say is a generalisation. Legal education at the undergraduate level may equip us to study law as standalone doctrine but does not equip us well to study law in society. Many of the best law graduates of the Global South then obtain their postgraduate training overseas in some of the leading law schools of the world. At undergraduate and graduate level, material on constitutional law is dominated by scholarship from the Global North, and the discourse too is dominated in the same way. As noted by my colleague Tarunabh Khaitan, the dominance of the US-centric and long-standing debate on the legitimacy of judicial review is one such example. This dominance limits legal education and training in such a way that in order to deal with the triple challenges in comparative constitutional law from and within the Global South, much of the learning has to be unlearned. Individuals and institutions doing comparative constitutional law from and within the Global South have to discharge this intellectual burden.

In writing about these issues and in my efforts to undertake comparison from and within the Global South, I am confronted with another question. Who will listen, read, and engage with this type of work? My own experience is that much of the interest and engagement comes from my fellow colleagues who are almost always located in places of privilege in the Global North. They not only have the genuine interest and commitment to engage with this type of work but importantly also have the privilege of listening because they have the relative luxury of structuring their time. My wider readership too is often located in places of privilege in the Global North. When I write primarily in English and publish in journals and with publishing houses like Oxford University Press and Cambridge University Press, which publish behind paywalls, this realisation should not surprise me. I have had the honour and pleasure of being a co-editor with Tom Daly of an edited volume titled *Democratic Consolidation and Constitutional Endurance: Comparing Uneven Pathways in Constitutional Development in Asia and Africa*⁸ and with Tarunabh Khaitan and Swati Jhaveri in publishing *Constitutional Resilience Beyond Courts: Views from South Asia*⁹. These edited volumes cover understudied jurisdictions and significant constitutional developments in the Global South. I know they make an important contribution to the field. However, this work is not accessible on multiple levels to those in the Global South, including in terms of language.

I have therefore been reflecting on this following question – how should I speak about my work in a way that makes sense to what I write about, where I work, and who I am?

8 Tom Daly / Dinesha Samararatne, *Democratic Consolidation & Constitutional Endurance Comparing Uneven Pathways of Constitutional Development in Asia and Africa*, Oxford 2024.

9 Swati Jhaveri / Tarunabh Khaitan / Dinesha Samararatne, *Constitutional Resilience Beyond Courts: Views from South Asia*, Oxford 2023.

Three different experiences have given me some sense for what matters and what ought to be done, but whether I in fact have the capacity or energy to follow through is a separate question.

The first experience is that of speaking with different communities of women and men who have been impacted by systemic violations of their human rights in Sri Lanka. Since I began my career in academia, I have had the opportunity to engage in fact-finding and report writing on several such issues. Learning about these experiences through firsthand accounts, articulated in our local languages by people from different walks of life, has been confronting, humbling, and traumatic too. But these experiences have made me realise that constitutional values and remedies matter deeply on a day-to-day level to so many.

The second experience I have in mind is the engagement with the broader public during moments of constitutional crisis which involves public protests, etc. Being able to do this with different ethnic communities from different regions has given me firsthand insight into the way in which identity can influence how we approach public issues. During the Constitutional Crisis of 2018 and during the people's mass protests of 2022 in Sri Lanka, civic engagement opened up space for discussions on constitutional law – a topic not often discussed in that way. The interest, the questions and push back I experienced on those occasions have given me insights as to the type of contestations that play out between the elite and non-elite in places like the Global South.

These experiences have made me realise that constitutional issues and ideas can and ought to be the subject of debate in the public square. As a scholar, I should ideally train myself more to be able to communicate and participate in such debates in the local languages, and most importantly, listen and learn.

The third experience, which is where I have the least experience, comes from my observations and study of how social movements lead to political action and public interest litigation. Through this experience, I have observed the way in which new or pressing questions are translated to constitutional questions and how people considered to be in the peripheries of constitutional politics invoke, defend, and seek remedies for the violation of constitutional values that have been criticised by others as being euro-centric in nature. It has also helped me to develop my understanding of the role that litigators, media, academia, etc., can play as enablers. My work on the legal complex in Sri Lanka in two different articles, 'Resilience through Synergy? The Legal Complex in Sri Lanka's Constitutional Crisis'¹⁰ published in the *Asian Journal of Law and Society* and the article 'Gendering 'The Legal Complex': Women in Sri Lanka's Legal Profession'¹¹ published in the *Journal of Law and Society*, tries to explore some of these themes.

10 *Dinesha Samararatne*, Resilience through Synergy? The Legal Complex in Sri Lanka's Constitutional Crisis, *Asian Journal of Law and Society* 9 (2022), pp. 1-25.

11 *Dinesha Samararatne*, Gendering 'The Legal Complex': Women in Sri Lanka's Legal Profession, *Journal of Law and Society* 47 (2020), pp. 666-693.

Allow me to pause here to add a fourth reflection that relates not just to experience but to our existence too, which is about death. How do we live and do comparative constitutional law, from wherever we do it, in light of the certainty of death? I was first alerted to this question by Tarun, while on a walk late evening across the leafy parts of Parkville, Melbourne. The inescapability of this question confronted me, my co-editor Tom Daly, and many other colleagues when Julius Yam, who authored the chapter ‘Constitutional Courts and the Exceptionality of Regime Change’ for the volume on Democratic Consolidation and Constitutional Endurance, passed away earlier this year at a young age.¹²

I think about this question often and have much to say but will only say the following for now. First, the reality and unpredictability of our death should help us to be extremely selective about what we write and teach. It could very well be the last thing we do. Have we worked on what matters most to us? Second, it should free us from our intellectual, social, and financial shackles - to take risks and be bold. I say this as someone who is weak and often anxious about the consequences of my actions and my scholarship. Julius Yam’s scholarship has outlived his beautiful life and the same will be true of us. His death has challenged me to strive to be more kind in my work and his work illustrates for me the power of the written word; it defies not only power but even time and to some extent, individual death.

So, I guess what I am trying to say here is that, even if my traditional academic work is conceived and published in a limited setting and reaches a limited audience, if I am doing comparative constitutional law from and within the Global South, I need to see this traditional academic work as one aspect of a more complex and dynamic process. For the avoidance of any doubt, I must note here that whatever a scholar does, research, teaching, and publication is foundational. Everything else that we do, must flow from that.

Before moving to my fourth question, I want to briefly acknowledge that this type of deeply contextual comparison has the effect of shifting our attention away from usual suspects, such as the United States, and in the case of the Global South, India and South Africa. This shift helps us to avoid pitfalls such as the narrow conceptualisation of liberal constitutionalism. However, it could have its own risks. It may lead to fragmentation, regionalisation, and a sharpened focus on contingencies. I often wonder whether this may lead us to a place where we no longer agree on universal general truths. The prospects of such a scenario unsettles and troubles me, but I will not explore that question today.

E. What are the prospects for comparison from and within the Global South?

Amidst all these challenges, what are the prospects for comparison from and within the Global South? This is the fourth question that I would like to pose today, and it has already been answered to some extent in discussing the challenges of doing comparative constitu-

12 *Julius Yam*, *Constitutional Courts and the Exceptionality of Regime Change*, in: Tom Daly / Dinesha Samararatne (eds.), *Democratic Consolidation & Constitutional Endurance Comparing Uneven Pathways of Constitutional Development in Asia and Africa*, Oxford 2024, pp. 99–116.

tional law from and within the Global South. I am increasingly noticing that challenges and prospects are co-constitutive. It is these very challenges that create new prospects. But let me list them out briefly for the purpose of clarity:

- (a) Comparison from and within the Global South allows for the framing of new questions on their own terms.
- (b) Consequently, it allows us to move away from a narrative of lack or transgression in the Global South.
- (c) We can use new material (case law, constitutional text, scholarly writing, etc.) untouched or underexplored in the Global South, thus far, in answering new but also old questions.
- (d) We have the opportunity to listen to voices that have previously been ignored or silenced and learn from them
- (e) When we approach comparison in this way, we are able to highlight continuities, discontinuities, diffusions, adaptations, and identify constitutional developments that are distinct to the Global South. Philipp Dann and others have shown us that this allows us to do the double turn, first to the Global North, and then to the field as a whole.
- (f) In this way, we could have a second chance at seeking to interpret our problems and hope to deal with them more effectively.

Let me offer another example for you to consider. When I was working at Melbourne Law School, regular conversation with my colleague William Partlett led us both to see similarities and resonance across two jurisdictions that were unlikely comparators – Russia and Sri Lanka. Further exploration led us to write a paper titled ‘Redeeming the National in Constitutional Argument’ where we argued that the experiences in constitutional litigation in these jurisdictions reveal the ways in which political reasoning trumps constitutional text, values, and logic.¹³ We argued that there are prospects for redeeming ‘the national’ in advancing constitutionalism by exposing this type of political reasoning and in insisting on taking the text and constitutional values seriously. Beyond the writing of this article, working on this piece collaboratively with William Partlett, a trained historian and lawyer, helped me to be more mindful of historiography and its contested place in comparative constitutional law. It also helped me to better understand the limits to the category of the Global South when placed alongside jurisdictions like Russia and regions like Central Asia.

13 *William Partlett / Dinesha Samararatne, Redeeming the National in Constitutional Argument, World Comparative Law 54 (2021), pp. 461-484.*

F. What are our hopes?

I would like to end by offering some reflections on the point about hope in relation to doing comparative constitutional law from the Global South, my fifth point for this evening.

When we approach comparison in the ways that I have described so far, we can hope for less incompleteness in our pursuit of truth in the procedural, substantive sense as well as in relation to actors and institutions. This approach makes comparative constitutional law as a discipline more familiar, relevant, and inviting to more academic communities and institutions. In effect, as Tom Daly and I argued in our introduction to the edited volume *Democratic Consolidation and Constitutional Endurance*, it creates more space at the table.¹⁴

Importantly, we can hope for minimising the harm caused by the insights, theory, and prescriptions offered by the discipline. For instance, in ‘Asking the Woman Question of Constitutions: Insights from Sri Lanka’, Anna Dziejic and I argued that focusing on constitutional text or constitutional reform is an inadequate approach to the problem of discrimination against women.¹⁵ We argued that in addressing women’s substantive equality, constitutional actors should look beyond constitutional text and practice to proximate institutions, both state and non-state, such as religious institutions and the military. Similarly, in ‘From South Africa to Sri Lanka: Prospects of Travel for Transformative Constitutionalism’, I argued that invoking transformative constitutionalism across jurisdictions must be undertaken cautiously and cannot be limited to a call for the dynamic interpretation of the constitution by the judiciary.¹⁶ The idea has a much broader implication not just for constitutional institutions but also for legal culture.

Doing comparative constitutional law from and within the Global South can hopefully reduce the prospects for harm through our work. We can have hope that prescriptions that arise out of our intellectual labour could provide more meaningful solutions and that our discursive accountability will be greater. However, this is possible only if we continue to maintain intellectual rigour, honesty, and humility in our work. There is much to be said about how that can or cannot be done in the Global South, but we will have to leave that discussion for another day. As a member of the editorial board of the *Indian Law Review* and the editor of the *University of Colombo Review*, a multidisciplinary journal, I am acutely aware of the challenges involved and do not want to err by romanticising academic publication in the Global South.

14 Tom Daly / Dinesha Samararatne, Decolonising Comparative Constitutional Law (and Democratisation Studies)?, in: Tom Daly / Dinesha Samararatne (eds.), *Democratic Consolidation & Constitutional Endurance Comparing Uneven Pathways of Constitutional Development in Asia and Africa*, Oxford 2024, pp. 1-36.

15 Anna Dziejic / Dinesha Samararatne, Asking the Woman Question of Constitutions: Insights from Sri Lanka’, *World Comparative Law* 56 (2023), pp. 127-152.

16 Dinesha Samararatne, From South Africa to Sri Lanka: Prospects of Travel for Transformative Constitutionalism, *Asian Journal of Comparative Law* 15 (2020), pp. 45-68.

I also think that this approach to comparative constitutional law helps us to reverse the flow of intellectual and other resources, to some extent. There are obvious reasons as to why academic hubs for robust comparative constitutional law are located in the physical Global North. I am acutely aware of the insurmountable challenges of doing scholarly research in my own context and the irresistible temptation to escape, relocate, and re-imagine your life elsewhere. This is more acute for me now, given the challenges of the constitutional office I hold. If we agree on the need to undertake comparative constitutional law from and within the Global South, I know that more scholars will seek to relocate to the Global South or find ways of being a part of the Global South in a sustained way. More funding will reach institutions of the Global South. Academics and institutions alike will seek to get their hands dirty with the hard work of institution and capacity building. Last year, I was invited by the wonderful Prof. Marie Gren from University of Paris 1, Pantheon-Sorbonne for a project she had developed along such lines. The semi-presidential system in Sri Lanka was inspired by the French system. Marie and her colleagues were interested to learn about Sri Lanka's experience with the semi-presidential system, in order to interpret their own experience. This 'reverse' comparison epitomises much of what I have been trying to articulate today. Not only was that exchange intellectually generative but it has led to us, along with Eleonora Bottini and Olatunde Jhonson, to be successful in obtaining a grant to engage in a similar exercise, this time including the United States – not as a model exporting jurisdiction, but as one that will try to learn from the Global South.

This approach to comparison, I think, also helps in developing meaningful professional relationships, connectedness, and solidarity. My second academic home, the Melbourne Law School, and my colleagues there have exemplified this for me along with several other colleagues who abide by me and other colleagues like me. I stand here today because of similar efforts by Philipp Dann and Theunis Roux, who took the initiative to support my travel in ways similar to those of Rosalind Dixon, who sought to support me last year to participate in ICON-S in New Zealand. However, last year, even though I had the funding for travel, I could not participate in the conference as my visa to New Zealand arrived far too late. This experience illustrates another serious inequality that we face in relation to the Global South. For academics like myself, the issue is about the administrative, financial, and personal burden of applying for a visa and experiencing the indignities that accompany that process. But I do think that is entirely negligible in comparison to the countless who desperately seek to cross political borders because their bare existence is at risk.

Through missed deadlines, sometimes sharing incomplete work and through times of deep anxiety, I have had colleagues and institutions offer me support. But the picture I paint here will be an incomplete one, if I do not share with you the difficult compulsion I feel to remain in Sri Lanka, engage, try even when I fail and the deep satisfaction I feel when I am able to present in writing the intellectual insights I gather because of my positionality in Sri Lanka. My classroom may have minimum physical resources, but as we know, that does not limit the prospects for intellectual exchange and transformation within that space. Throughout my work, having the opportunity to witness the intellectual and professional

development of some of the students who take on the challenge of higher education has been one of my deepest joys.

I mentioned that a constant line of reflection in my head is about how I should speak about my work in a way that makes sense to what I write about, where I work, and who I am. It is not considered appropriate or proper to unduly personalise academic work, but again, when you speak from the Global South, because it is often understood as a place of lack, we are given the intellectual permission to do so. This is an indulgence that I gladly embrace because I think this a suppressed theme in our work that requires more frank intellectual probing.

To be honest, I do not know what it means to be *from* the Global South. It seems silly for me to say I am from the Global South when I have read for a postgraduate degree at the Harvard Law School and worked for two years at the Melbourne Law School. I have received numerous scholarships and travel grants from the Global North. In Sri Lanka, I live in Colombo, the most populous region, producing the most GDP. It is a place asymmetrical in access to political, economic, cultural, and intellectual resources. Because of my education and professional experience, even if I am not traditionally from an elite family background, I am less in the margins and more in the centre. I say less because there are times when I am unceremoniously placed in the margins. In any event, this reality illustrates for me the relative nature of the Global South and the limits to the Global South as a category.

In January 2023, I was appointed as an independent member of Sri Lanka's Constitutional Council. In doing this work, I am learning and experiencing what it means to have a seat at a constitutional table – literally and metaphorically. I am learning about the demands and burdens of exercising constitutional discretion and, I have observed, with a front row seat, the nature of political contestations. I have been challenged in articulating values and ideas that I have been working on – to a political audience. I am also learning about the challenges of facing litigation as a respondent when decisions of the Council are reviewed in courts. In that process, I am also learning about access to justice. Overall, I feel the burden of knowing the constitutionally valid decision to make in the constitutionally accepted way even when challenged in several other ways - and that burden feels heavy.

Since January 2023, within a typical day and week, I move from my reading and writing, to teaching, to my work on the Council, to sitting with my children to help with their school work, to housework, to rest, to deal with the financial struggles of living in a bankrupt country to travelling overseas to attend conferences. A wide range of emotions and intellectual tasks are covered in the process. The sense of conviction and purpose, laughter, and surprise coexists with fatigue, despair, anger, fear, and anxiety. Soon, I realised that there was no script or prescription for this position that I occupy. I also know that there are others like me and many others like us who have gone before us.

How should one work with individuals holding the highest constitutional office in the country, feed and provide for the man who turns up at your doorstep because he is in generational poverty and answer your student who questions the deeply problematic

governance in your land? How do you maintain an attitude of purpose and hope through it all? How do you bring those emotions, questions, and aspirations to your intellectual work? How do you reconcile the spaces of intellectual and physical wealth with the daily places of abject intellectual and physical poverty that you inhabit? When I drive to Parliament, where the Constitutional Council meets, often from my university to attend meetings of the Council, I pass places where people have been murdered or disappeared. I pass a war memorial, beggars at traffic lights, mansions, slums, heavy traffic. If there has been a protest on that day, I also pass water cannons, heavy police guards, luxury cars carrying one person, motorbikes carrying two adults and three children, I pass children getting back from school laughing and joking...

I ask myself – what does all of this mean to me, for who I am, for who I will be, for the children I raise, for the deep connection that I feel to my land and the people I see around me? But not just that, I also ask myself what all this can and should mean for doing comparative constitutionalism from and within the Global South? What I have tried to do today is to share some of those thoughts, and I hope that it carries some provocation as you reflect on your own journeys.



© Dinesha Samararatne