Verfassungsblog
ON MATTERS CONSTITUTIONAL

Confluence Constitutionalism

Between the Authentic and the "Chutney" Mode of Thinking and Being

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30.10.2026 doi: 10.59704/10747842e62283cc

In 2012, filmmaker Anurag Kashyap released "Gangs of Wasseypur", a two-part Hindi film that depicts the trials, tribulations, and testaments of gang members from what is now the state of Jharkhand in eastern India. Based as it was on the real-life experiences of those involved with the coal mafia over seventy years spanning the colonial and post-colonial periods, the film endeavoured to authentically represent the socio-political landscape of Wasseypur and its neighbouring districts. In this spirit of authenticity, responsibility for the film's music – which played a significant role in bringing it critical acclaim – was given to Sneha Khanwalkar, a young composer known for her distinctive blend of electronic and folk music. For "Wasseypur", Khanwalkar, in her characteristic mode, left the confines of the "Bombay studio" and entered the "field" to learn, record, and represent the music of Bihar, the state from which Jharkhand was carved out in 2000.[1] Through extensive travel, she constructed an "auditory archive" of Bihar,[2]which she then used to compose tracks that critics have described as "strikingly flavourful and headily authentic."[3]

Interestingly, Khanwalkar's travels for "Wasseypur" were not limited to the state of Bihar or the broader region of which it is a part. To trace back the sounds of the region from the colonial era, she travelled to the Caribbean, where many Biharis had been forcibly shipped to serve as indentured labour following the official ban on slavery in the British Empire. From the Caribbean, Khanwalkar brought to Indian audiences "Chutney music," a Caribbean blend of Bihari music, which, as its name suggests, was born out of a fusion of Indian and Caribbean sounds and rhythms. Redolent of Salman Rushdie's term "Chutnification," Chutney music reminds us that "authentic" sounds – or, more broadly, authenticity – do not exist out there and beyond time. Instead, much like a chutney (a mix of herbs and spices), it is a blend of the old and the new, the colonial and the pre-colonial, the oriental and the occidental, and the global and the local.

Constitutional History and Theory as Already Chutnified

What does all of this have to do with constitutional law and the idea of reflexive globalisation? Recent decades have seen the rise of right-wing populists who have collectively ushered in a crisis of constitutionalism by disregarding the rule of law and championing a form of strongman politics. In this context, many in the Global North, being disgruntled with liberal legalism, have argued for a form of decolonising constitutionalism, at the core of which is the "imperative to go South and learn from the South."[4] In parallel, in the Global South, many, in support of their populist leaders, have advocated for a revivalist form of decolonial constitutionalism which seeks to rediscover an authentic, indigenous, and non-Western self.[5] Despite their differences in terms of their political orientation and relations with state power, these approaches share two key presuppositions: firstly, they assume that constitutionalism, at its core, is of Northern/Western authorship; and secondly, they contend that the non-West

[1] Shikha Jhingan, *Backpacking Sounds: Sneha Khanwalkar and the "New" Soundtrack of Bombay Cinema*, Feminist Media Histories, 1 (2015), DOI: 10.1525/fmh.2015.1.4.71, p. 71.
[2] Ibid., p. 85.
[3] Raja Sen, *Review: Gangs of Wasseypur Is a Brilliant Soundtrack*, Rediff, 01.06.2012, https://www.rediff.com/movies/review/music-review-gangs-of-wasseypur-is-a-brilliant-soundtrack/20120601.htm, last accessed 04.09.2026.
[4] Boaventura de Sousa Santos, *Epistemologies of the South: Justice against Epistemicide* (Routledge, 2016), DOI: 10.4324/9781315634876, p. 42.

exists in a museumised form, outside of time and space, thereby making a return to it possible.

Relying on the idea behind the Chutney, I challenge these two presuppositions and, in their place, advance a theory of decolonising constitutionalism that centres on the idea of "confluence constitutionalism." The choice of the term *confluence* here is largely motivated by scholarship on confluence philosophy, championed by Arindam Chakrabarti and Ralph Weber, among others.[6] As a method, confluence, unlike comparison, allows for dialogue across national and other imaginary boundaries and highlights the entangled nature of our present, in which ideas from all parts of the world have flowed into one another, often despite best efforts to keep them apart.

Using the lens of confluence, I question the standard genealogy of constitutionalism to open the possibility for the South to claim constitutionalism as part of its own legacy, while simultaneously proffering a mode of thinking about the future of constitutionalism that is neither indigenist nor parochial. Scholars of constitutional law and politics – acting either out of a sense of academic modesty prompted by a lack of knowledge of the non-West or following the received wisdom of colonial historiographers who were invested in describing Europe's past and non-Europe's present as dark and irredeemable – typically narrativise constitutionalism's origin story by referring exclusively to what are considered Western sources.[7] They either locate the emergence of contemporary constitutionalism exclusively in the modern revolutions in France and the United States,[8] or draw a direct line from modern Euro-America to ancient Greece and Rome, which are together regarded as the birthplaces of constitutional thought.[9]

Drawing on scholarship on connected histories and Eurocentrism,[10] both of which emphasise the Chutnified nature of our past and present, I critique this narrative and, in so doing, redeem the place of the non-West/South in the history of constitutionalism. Relying on Aditya Nigam's metaphor of modernity as a "constellation" composed of pre-existing elements,[11] I contend that while the constitutive elements of modern constitutionalism were present both outside of the West and in the West, the crucial task of assembling them and giving them a bourgeois orientation took place in the West during the turn to modernity. In making this claim, I acknowledge modern Europe's contributions to constitutionalism, while nonetheless recognising that modernity did not construct an entirely new politico-legal order but instead ushered in a new orientation towards existing political concepts.

In parallel, drawing on Samir Amin's critique of Eurocentrism,[12] I contend that Europe was never sequestered from the rest of the world in a way that would allow for an undisturbed pathway to be created between it and ancient Greece and Rome. Instead, being enmeshed in a broader landscape, European modernity was informed by a whole host of ideas, many of which flowed in from the East and got radicalised in the West. This entanglement only increased with colonialism, when those in the colonies mobilised, critiqued, and, in the process, transformed the received wisdom of modernity and modern constitutionalism.[13] Acknowledging this movement of ideas helps recognise the syncretic nature of modern constitutionalism, while opening the door for its critique on universal rather than parochial grounds.

Decolonising Constitutionalism as Confluence Constitutionalism

Moving from the past to the future, I contend that once it is accepted that the history of contemporary constitutionalism is a product of a confluence of Western and non-Western thought(s), experiences, and institutions, a critique of it along lines of inauthenticity or lack of indigeneity becomes indefensible. In other words, if it is accepted that "no type of thinking [here, constitutionalism] can be considered purely

[5] See for instance J. Sai Deepak, *India, That Is Bharat: Coloniality, Civilisation, Constitution* (Bloomsbury Publishing, 2021); for an analysis of the different modes of decolonisation see Theunis Roux, *Grand Narratives of Transition and the Quest for Democratic Constitutionalism in India and South Africa*, Verfassung und Recht in Übersee / World Comparative Law, 57 (2024), DOI: 10.5771/0506-7286-2024-1-5; For the politics of authenticity and purity in India see Anuj Bhuwania, *Spectres of Decoloniality: Comparing Constitutional Histories of India and South Africa*, Verfassung und Recht in Übersee / World Comparative Law, 57 (2024), DOI: 10.5771/0506-7286-2024-1-98.

'Western' or purely 'Indigenous' without further scrutiny,"[14] the road to an alternative constitutionalism – or even an anti-constitutionalism – from the South cannot take the form of performing an exorcism to rid the rest of the world of the West. Rather, alternative imaginings, be they presented from the West/North or the South, must proceed from a critique of constitutionalism that is itself universal in nature. Decolonising constitutionalism in this key cannot be a return to a pure past, for no such past exists. Rather, as Frantz Fanon put it in "The Wretched of the Earth", it must be an attempt to "work out new concepts, and try to set afoot a new man."[15]

For the emergent task of re-imagining constitutionalism, the Global South has a historical advantage. In the South, where constitutionalism was not assembled and where its violence and limits are for all to see, alternative imaginings other than modern constitutionalism have always been afoot. These alternatives, examples of which include M.K. Gandhi's 1939 constitution for the princely state of Aundh,[16] exist as an archive of possibilities and as a source of inspiration for thinking otherwise. They remind us that modern constitutionalism is neither natural nor inevitable and that other futures can emerge "for Europe, for ourselves and for humanity."[17] Using the language of the Chutney, they suggest that the present mix that we refer to as constitutionalism is not the only recipe in town. Other ingredients can be added, and some can be taken out. In so doing, new mixes can be created, and through this, something altogether different can emerge.

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SUGGESTED CITATION

Sarma, Rohit: Confluence Constitutionalism: Between the Authentic and the "Chutney" Mode of Thinking and Being, Verfassungsblog, 30.10.2026, doi: 10.59704/10747842e62283cc.

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Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20261030-133710-0.

[6] Arindam Chakrabarti and Ralph Weber (eds.), *Comparative Philosophy without Borders* (Bloomsbury Publishing, 2015); Nevad Kahteran and Ralph Weber, *Towards Post-Comparative Philosophy: Interview with Ralph Weber*, Asian Studies, 9 (2021), DOI: 10.4312/as.2021.9.2.211-221; Lerato Posholi, *On the Idea of Post-Comparative Philosophy*, Philosophy East and West, 75 (2025), DOI: 10.1353/pew.2025.a949584; Mark Siderits, *Comparison or Confluence in Philosophy?*, in: Jonardon Ganeri (ed.), *The Oxford Handbook of Indian Philosophy* (Oxford University Press, 2017), DOI: 10.1093/oxfordhb/9780199314621.013.5.

[7] Graham Maddox, *Constitution*, in: Terence Ball, James Farr and Russell L. Hanson (eds.), *Political Innovation and Conceptual Change* (Cambridge University Press, 1989); see also Karl Loewenstein, *Political Power and the Governmental Process* (University of Chicago Press, 1957), as cited in Sandipto Dasgupta, *Legalizing the Revolution: India and the Constitution of the Postcolony*(Cambridge University Press, 2024), DOI: 10.1017/9781108781039, p. 9.

[8] See for instance Giovanni Sartori, *Constitutionalism: A Preliminary Discussion*, American Political Science Review, 56 (1962), DOI: 10.2307/1952788.

[9] See for instance C. Perry Patterson, *The Evolution of Constitutionalism*, Minnesota Law Review, 32 (1948), DOI: 10.24926/265535.1834.

[10] Sanjay Subrahmanyam, *Connected History: Essays and Arguments* (Verso, 2022).

[11] Aditya Nigam, *Decolonizing Theory: Thinking across Traditions* (Bloomsbury Publishing India, 2020), DOI: 10.5040/9789389812350, p. 54.

[12] Samir Amin, *Eurocentrism* (Aakar Books, 2nd ed., 2011).

[13] Partha Chatterjee, *Empire and Nation: Selected Essays* (Columbia University Press, 2010), DOI: 10.7312/chat15220, p. 136–152.

[14] Ingrid Harvold Kvangraven, *Inverted Eurocentrism: The Consumption of Decolonization in the Global North and a Radical Decolonization Agenda*, Development and Change, Early View (2026), DOI: 10.1111/dech.70084, p. 11.

[15] Frantz Fanon, *The Wretched of the Earth*, trans. Constance Farrington (Penguin Books, 2001), p. 255.

[16] *Aundh State Constitution Act 1939*, Historical Constitutions, ConstitutionofIndia.net, https://www.constitutionofindia.net/historical-constitution/aundh-state-constitution-act-1939/, last accessed 31.08.2025; for an analysis of Gandhi's constitution and other radical imaginations born out of the anti-colonial experience, see Tejas Parasher, *Radical Democracy in Modern Indian Political Thought*(Cambridge University Press, 2023), DOI: 10.1017/9781009305563, p. 93-120.

[17] Frantz Fanon, n. 15, p. 255.