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Global South

Cases, controversies, legal and political perspectives from the cutting-edge of global law.

A new column edited by **Virgílio Afonso da Silva**

My daughter has a book of folk tales, published in a European country. Translated into English, the title of the book is 'Folk Tales from the Four Corners of the World.' There are tales by the Brothers Grimm, H. C. Andersen, some English, Italian, Slavic, and Middle Eastern tales. And that's it. These are the four corners of the world. Even if it is true that this was the world a European knew many centuries ago, today the world is understood to be a little bit bigger.

The academic and legal worlds, however, sometimes seem to be as small as that of my daughter's book. The strangest thing is that this occurs exactly at a time when technology has increased the flow of information in all directions, when the legal community is constantly speaking of transnational dialogues, migration of ideas, and global constitutionalism. But all this talk of dialogues, migrations and globalisation – one quickly finds out – follow a very well defined hierarchy. What is said in Western Europe and the United States is heard and followed by the rest of the world. Meanwhile, what the rest of the world talks about seems to interest almost no one. Not even international academic journals explicitly dedicated to comparative law seem to completely escape this logic. Statistics show that the overwhelming majority of articles published in these journals are written by authors affiliated with universities and research institutes in Western Europe and the United States.

One quite straightforward reason for this domination could be that those articles written by Western European and US authors are simply better than those written by authors from other corners of the world. But are they?

The national origin of an author may be a relevant variable increasing (or lowering) their chances of an

Girl with swallow by Magdalena Poplawská at the National Library in Prague. Photo: Marina Dafova

article being published. Even in journals more open to international scholarship, editorial boards are composed almost exclusively of academics from the Global North, which can only aggravate this situation. That some journals feel the pressure to explicitly state their selection processes are "unbiased by national prejudices" is only an indication that such a bias exists. Members of editorial boards and ad hoc reviewers are human beings and many of them are prejudiced, if only unconsciously.

Moreover: many journals only publish articles written to "reach a broader readership". Hence, even if they manage to escape individual national prejudice, they may fall into a thematic prejudice trap. The difficulty in breaking down hierarchical barriers moves from the personal level to the level of the object of study, which may gain (or lose) relevance due to geographic reasons. Editorial boards assume (unfortunately, correctly) that an article that presents and analyses a decision of the Supreme Court of the United States will always be read and avidly discussed by a very broad readership, while an article discussing a judicial decision on exactly the same issue taken by, say, the Constitutional Court of South Korea, will barely find any resonance (if get published at all).

In a nutshell: scholars from the Global South who write on issues concerning the Global South will have a doubly hard time in getting their work published. And if it does get published, it will usually be to provide some data and information for and to satisfy the curiosity of a few people interested in regional issues or comparative law, but hardly to add to the global debate of ideas. It is not surprising that many journals demand that in a text about the Brazilian Supreme Court, or the South African Constitutional Court, or Argentinian federal design, it should be clear in the title that it is a local narrative, by means of a subtitle such as "the case of Brazil" or "the Argentinian experience", or, if you are lucky, "lessons from South Africa" (but, in this latter case, usually only when the author is from the North, otherwise it would be too big a pretention).

A similar disclaimer is rarely deemed necessary when it comes to something related to Western Europe, and above all the United States. It is ironic that a court like the US Supreme Court, almost hermetically closed against dialogue with the rest of the world, is considered a court which the whole world can learn something from, while the insightful and innovative jurisprudence of courts that may be much more prone to such a dialogue are frequently, at most, regarded as a curiosity that may add a multicultural touch to a study.

Hence, in times of global constitutionalism, constitutional borrowing and the migration of constitutional ideas, the consequences of the North-South hierarchy are especially burdensome. The world seems to be much smaller than it is. Even smaller than in my daughter's book. As I have written before, "in almost every work that assumes the existence of global constitutionalism, the globe they refer to seems to quite small: take some decisions of some supreme or constitutional courts of a few English-speaking countries like the United Kingdom, United States, Canada, South Africa, throw in decisions of the German Constitutional Court, and it seems you are entitled to speak of the globe."

The constitutional traffic only seems to travel in one direction. It is not surprising that the Weimar Constitution (1919) is considered the foundational moment of social constitutionalism, even though the Mexican Constitution of 1917 had already shown the world that constitutions might move beyond strictly liberal values. And if you think that the Austrian Constitutional Court is the first experience of abstract judicial review of legislation, think again! High courts in Venezuela, Colombia and other Latin American and Caribbean countries performed the task in the Nineteenth or the beginning of the Twentieth centuries. I am not arguing that the Weimar Constitution was influenced by the Mexican experience, or that Hans Kelsen necessarily knew (or was inspired by) the Latin American experience of abstract judicial review of legislation when he designed the Austrian court. I just want to point out that, in the view of almost everyone, inaugural milestones of paramount constitutional and institutional changes can only be located in the Global North, never in the South (certainly, the French Revolution was a global milestone, but so, too, was the Haitian). Of course, many of the reasons for the division between North and South are to be found beyond the academic and scientific world. They are above

all geopolitical and economic. It would be simplistic to think that we in the South are simply victims of an academic conspiracy contrived in the North. Legal scholars of the South also tend to reproduce and reinforce that hierarchy and give precedence to almost everything that comes from the North.

Further, we should not turn a blind eye to what this hierarchy in part faithfully reflects, namely that in the "wholesale", universities and research institutes in Western European and in the United States have better infrastructure, more money and a longer tradition and experience in producing high quality science. Still, we should become more aware that, in "retail", the picture is different: interesting research subjects, excellent researchers and extremely well written works are to be found everywhere (and, very importantly, in every language). But it seems that the academic community has still not been able to identify and recognise this. If I may resort to a metaphor used by Daniel Bonilla, it seems that in the academic community – just as in the world of wines – the generic label *"appellation d'origine contrôlée"* (AOC) is more important than individual qualities and attributes. But just as a Chilean pinot noir may be better than its Burgundian counterpart, much of what has been written (again, in several different languages) by academics from the Global South may be at least just as good as its equivalent from the North.

The aim of this column – which I will have the pleasure to be editor of – is to publish legal scholars from the Global South. In each edition, a guest from a different country will be free to write about cases, controversies, legal and political institutions from their countries and regions. Or to write about global problems that go beyond the division of the world into continents, regions, hemispheres, or corners. The aim, therefore, is not only to remove obstacles, but to break away from the idea that scholars from the Global South may only speak, if at all, of "local" problems, rather than discuss issues of a theoretical nature or that go beyond national or regional borders.

Genuine dialogues are bidirectional. Both sides speak and listen, both teach and learn, the experiences of some help to solve the problems of others, and this goes both ways. In 2009, the late Justice Antonin Scalia of the Supreme Court of the United States went to Brazil for a series of lectures. He gave an interview for an academic law journal. The last question was: "What do you expect to learn on your trip to Brazil?"

"Learn?" he said. "I did not come here to learn, I came here to teach!" It may be argued that Scalia was a controversial figure and his stance (and answer) does not represent the mainstream view within the legal and academic international community. Maybe this is true. But sometimes, I do wonder.

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