

Scott Newton. *The Constitutional Systems of the Independent Central Asian States: A Contextual Analysis*. Hart Publishing, 2017. Pp. 368. £70.00. ISBN: 9781849462501.

Why Central Asia, a reader might ask? Disclosure is in order: my interest in the book under review stems only partly from my ongoing preoccupation with international law and its impact on legal systems and national legal consciousness in the Global South. As a scholar of international law based in the UK but born and raised in Central Asia, I am an “accidental comparativist,” simultaneously an insider and outsider, seeking rational explanations to my own personal encounters with Central Asian legal culture. To some readers, the region is perhaps most notable “for the historical obscurity into which it slipped in the fifteenth century” (at 1). To others, it is the land abundant in natural resources and lucrative market opportunities over which Russia, China, and the West vie for influence. To Scott Newton, it is a unique laboratory of constitutional experimentation and development. As he notes at the outset, the independent Central Asian states sprang into existence at a time when “global constitutionalism had become an authoritative . . . international discourse” (at 2). Yet the constitutional narrative he offers goes well beyond the constitutional texts to the constitutional systems or orders of the Central Asian states, uncovering their otherwise hidden historical and political underpinnings.

Constitutions rarely make an absorbing reading, and the texts of Central Asian constitutions are not an exception. Despite a tremendous transformation that higher education and research in Central Asia have undergone over the last three decades, even the lawyers trained in one of the ‘stans (Uzbekistan, Turkmenistan, Kazakhstan, Tajikistan, and Kyrgyzstan) would find it difficult to disagree with Newton that constitutional commentary and analysis in the region remains doctrinal, inoffensive, and uncritical (at 7). Newton’s book is therefore a welcome and very timely

contribution—the first of its kind—to critically analyze constitutional developments in this hitherto underexplored region. The volume very helpfully begins with a brief constitutional overview of Central Asian states. Chapter 1 offers a constitutional profile for each state, its history, background, and so-called constitutional essentials (formal structure of government and system of rights). This is followed by a meticulously researched and expertly argued Chapter 2 discussing “red origins” of Central Asian constitutional orders, and Chapter 3 on their constituent influences and processes. The following three chapters, respectively, focus on three principal sites of constitutional power—presidents, parliaments, and courts. An uninitiated reader (and perhaps even those with the expert and first-hand knowledge of the region) are likely to appreciate Chapters 7 and 8, which animate the legal exposition of the otherwise dry constitutional particulars with lively, incisive insights into the material underpinnings beneath the evolving rules and institutions of economic governance as well as informal economic practices which the modern constitutions of the Central Asian states have variously preserved, enabled, and reproduced. Chapter 8 rounds out the discussion by offsetting constitutional rules and institutions with insights into the lives affected thereupon: titular and devolved nations, minorities, their language, culture, religion, and local governance traditions.

To this reader, the volume under review stands out for its uniquely rich and dynamic exposition of Central Asian constitutionalism from historical–legal and political science points of view. While Central Asian studies have recently blossomed into a discipline in its own right and generated a rich seam of literature, there is an extremely limited body of knowledge on the region’s legal tradition and its most recent developments.¹ As such, the

¹ Some notable writings shedding light on the law, policy, and legal culture in Central Asia include Akbar Rasulov, *Central Asia and the Globalisation of the Contemporary Legal Consciousness*, 25 LAW & CRIT.163 (2014); EURASIAN ECONOMIC

book is likely to also capture the imagination of legal historians, those with an interest in post-colonial studies and scholars of modern constitutionalism. Without merely summarizing the content of each chapter, the remainder of this review will outline the key lessons Newton's tome offers to different categories of legal scholarship.

While not being a legal historical treatise in the true sense, *The Constitutional Systems of the Independent Central Asian States* offers a compelling case study of legal development set in a unique socio-historical context and in a region known for its rich and complex tapestry of culture and traditions. Yet legal historians and socio-legal scholars may also be puzzled by the absence of any evidence anywhere in the Central Asian legal texts of "patriotism" by which constitutional norms would be "stitched into the fabric of national life and traditions, defining not just reflecting national culture" (at 7). After all, constitutions are "charters for national communities typically held to cast an eye backwards and forwards: retrospectively to reflect . . . national culture and traditions, and prospectively to project a future civic identity" (at 110). Newton explains the lack of pre-constitutional indigenous cultural influence in the Central Asian constitutions by pointing to the latter's red origins. By the time constitutionalism arrived in Central Asia primordial cultural forms had long been reconceptualized in Soviet terms (at 110). Newton does not deplore the Sovietization of Central Asian legal traditions but rather draws the reader's attention to its profound transformative effects on the region and its subsequent patterns of engagement with all things constitutional. "Central Asian states have derived their constitutional traditions not so much from a supremely tyrannical or totalitarian source . . . as from one

of the very few examples of radically novel, comprehensive experimentation in history" (at 56). One of the constitutive Soviet influences on the region is the fact that the USSR was the world's first "comprehensively and formally multinational federation." Once in control over the most extensive overland colonial empire, Bolsheviks devised a hitherto unparalleled constitutional framework for cultural or ethno-linguistic pluralism by juridifying and institutionalizing ethnicity on a scale that "eluded the imagination and the resources of any colonial power" (at 63). It is to this "unlamented monument to the twentieth century constitutional imagination" that Central Asian states owe their very existence, collective identities, mangled cartography, and enduring ethno-nationalism.

Nor do the constitutional texts of the Central Asian states bear any Islamic features—the phenomenon which Newton too ascribes to the Soviet cultural project. Central Asian Islam, along with other primordial traditions and embedded values, could not be repressed without threatening the Soviet cultural project; instead, it was Sovietized through a complex process of regulation, negotiation, and reception. To Newton's discerning eye as a "legal Kremlinologist," all the Central Asian states appear to be by and large loyal to the Soviet-borne Russian legal categories, vocabulary, and logic (at 103). One, however, could disagree as to the extent of the enduring role of Russian legal language and conceptual vocabulary in Central Asian legal culture. Although the pull and prestige of Russian legal language are still palpable, decades of donor-funded legal reforms and scholarship programs for lawyers are likely to have their effect on national legal consciousness. As Newton concedes, Europeanization as a Central Asian institutional project cannot be dismissed. Anecdotal evidence from Kazakhstan, for instance, points to a growing recourse to English law and Western-educated legal professionals as a means of signaling Kazakhstan's commitment to an open and stable economic framework for

INTEGRATION: LAW, POLICY AND POLITICS (RILKA DRAGNEVA & KATARINA WOLCZUK eds., 2013); and MAHABAT SADYRBEK, LEGAL PLURALISM IN CENTRAL ASIA: LOCAL JURISDICTION AND CUSTOMARY PRACTICES (2018).

foreign investors.² As Russia itself continues to be in the throes of the Slavophil–Western dilemma (at 112) it is entirely conceivable that the enduring Russian legal–cultural spell over the region’s constitutional traditions might ultimately wane, giving way to other formidable influences—not only those from the West but also from the rapidly growing neighbors to the east of the border.

In Newton’s view, Central Asian constitutionalist discourse is a story of “the simultaneous push from the repudiation of the Soviet past and pull of the embrace of the globalised present” (at 3). However, contrary to how it might have looked at the time, neither the repudiation nor the embrace was enthusiastic. One shared feature of all Central Asian constitutions—the vestige of their Soviet past—is the notion of a “deep state” typified by the overblown administrative apparatus and preoccupation with control over population, natural resources, and borders. The collapse of the USSR did not entail, as one might have expected, the total repudiation of the Soviet ideal of strong government. Rather, it was adapted in “a more reliable and stable local form”—to guard against disintegration and chaos faced by the newly orphaned republics (at 97). Just as the Soviet constitution was not designed to effectively limit the government (at 86), the Central Asian constitutions are by and large non-justiciable and the procedural mechanisms for the assertion of individual rights are conspicuously lacking.

To Newton, the foremost manifestation of a hyper-centralized political system is Central Asian super-presidentialism—“a kind of informal colonisation by the executive of the powers and prerogatives reserved to other components of the state” (at 127). All five Central Asian constitutions grant parliament limited powers vis-à-vis government in comparison with powers the president enjoys vis-à-vis government (at 132). The Kazakh, Turkmen, and Uzbek constitutions also vest the president with the power to dissolve

parliament (at 136). With the exception of Kyrgyzstan, presidents wield significant powers over the judicial appointments (at 138). To Newton, the centrality of the president as a meta-branch of government is reminiscent of the transcendent status of the Communist Party in the Soviet constitutional order. Yet he cautions against dismissing super-presidentialism as abuse of constitutionalism. Rather, in Central Asian constitutional discourse presidency is construed as a steward for emerging institutions and a guarantor of the constitutional order itself (at 150).

Yet, the USSR was also a “societal state”—combining within itself both a welfare (“maternal”) and a disciplinary (“paternal”) authority. Newton reminds us that Soviet collectivism did not negate individual rights but subordinated them and qualified their existence (at 77). This “social” dimension remains conspicuously underdeveloped in the constitutions of the “stans.” All the Central Asian constitutions guarantee a broad arsenal of fundamental rights but often without adequate remedies and enforcement mechanisms. Another shared omission is the absence of expressly formulated rights of minorities and marginalized and vulnerable populations (at 226). Here, Newton’s book should be instructive both for the advocates of world constitutionalism and for its detractors. Newton deplores “world constitutionalism” for its failure to “appreciate the political economy of tyranny in this strategic frontier of a new world order that is both resource-hungry and terror-obsessed” (at 25). The brief but illuminating overview of the history of Central Asian encounter with global constitutionalism casts an unedifying light on the latter. Drawing as it seems on his first-hand involvement in legal reform projects that engulfed the region from the 1990s onward, Newton exposes an inherent ideological bias underpinning the externally supported constitutional development project. The Western-sponsored democratization agenda favored economic liberalization and civil and political rights over economic redistribution and economic and social rights. Western experts recommended the incorporation of strong constitutional safeguards for

² See MAVLUDA SATTOROVA, *THE IMPACT OF INVESTMENT TREATY LAW ON HOST STATES: ENABLING GOOD GOVERNANCE?* 86, 139 (2018).

the pillars of liberal economic order: private property rights and freedom of contract. Yet no such concern was expressed over the redistribution of such rights in the first place (at 108). Unsurprisingly, the first-generation constitutions remained silent on the subject of the disposition of inherited state assets (at 109). One of the crucial and enduring deficiencies of the Central Asian constitutions is the failure to regulate distribution of wealth. This, Newton rightly stresses, is characteristic not just to the Central Asian states but also to world constitutionalist discourse (at 246).

International advocates of global constitutionalism have also been playing a part in reproducing certain neo-imperial and colonial tropes. Having initially embraced (albeit ostensibly and less than wholeheartedly) Western constitutionalism as a badge of prestige and the admission ticket to “full international citizenship,” the Central Asian states gradually grew weary of inexorable scrutiny by their Western “constitutional elders” (at 120). In the eyes of externally sponsored good governance, rule of law, and democratization experts, Central Asian states were seen to be in need of international wardship—as world constitutionalism’s first graduating class (at 121). Unsurprisingly, the narrative of “immaturity and unreadiness” they have thus perpetuated—remarkably redolent as it is of the historical “civilizing” mission shared by Bolsheviks and the Western colonial order—was readily instrumentalized by the Central Asian leaders and continues to underpin their transition discourse (at 121). Such narratives are still discernible in the tone and content even in the more recent generation of externally sponsored law and development reforms. My own recent empirical research in international investment law reforms reveals how such initiatives contribute to entrenching a (misplaced) belief in superiority of foreign laws and foreign expertise and inferiority of local, home-grown capacity and legal solutions.

Newton’s analysis helpfully transcends the constitutional texts and instead engages with the material, economic foundations of the Central Asian constitutional orders. In all five

’stans, land, subsurface, and other resources remain in state ownership. However, Newton points out, there is also a profound divergence between constitutional norms and actual economic practices (at 234). In each Central Asian state the true economic constitution is the civil code, setting our basic legal rules for the new economic system, inspired by the Russian civilist tradition and drawing on a single template—the Commonwealth of Independent States (CIS) Model Code (at 235). Newton juxtaposes the commonality of legal approaches with the different outcomes characterizing the economic development of the Central Asian states in recent years, thus raising the question of the relevance of legal rules to the economic outcomes (at 236). The new judicial structures—largely modeled on the Soviet-style tripartite court system (and historically tainted by corruption and bribery)—has risen to the challenge of adjudicating a growing number of commercial disputes. They have done so not for “consolidating and legitimizing newly introduced market rules” but because judicial decisions as well as judicial appointments are regulated by commerce (at 240). New rules on the protection of property, contract, and enterprise also enabled “a bewildering interpenetration of public and private interests, with the new economic elites availing themselves of the law both in the process of dividing the Soviet spoils and in creating new wealth” (at 248–249). This view is corroborated with evidence from emerging empirical studies revealing the resourcefulness with which the laws governing economic relations—global norms of good governance—are harnessed to advance somewhat odious aims, such as when local oligarchs disguise themselves as foreign investors to take advantage of special incentives and privileges, to consolidate their wealth, and to escape national law and national judicial oversight.³ Regrettably, the same set of norms failed to transform an “apathetic public into a self-conscious *pouvoir constituant*” (at 101). The reader cannot but agree with Newton that, before all

³ *Id.*

else, constitutional orders serve to “safeguard and immunise the ruling power by forestalling ex ante and eliminating ex post any threat or challenge” (at 29).

Newton should be congratulated for the tone in which most of the book is told. Rather than condemning or disparaging those behind the failed constitutional development project, Newton’s storytelling reveals profound curiosity, deep understanding, a sense of empathy, and, occasionally, a sense of disquiet. His account of Central Asian constitutionalism is not altogether pessimistic. He casts light on the incremental constitutional achievements of the last three decades, such as the professionalization of legislature, a gradual sophistication of legislative review and drafting processes, and growing engagement with constituents (at 160–161), as well as the development and maintenance of centers of judicial expertise. Among other things, Newton is fascinated by what he refers to as “the dynamic constitutionalism of Kyrgyzstan” (at 184) when in the wake of the Tulip Revolution and in a manner unprecedented in other Central Asian or other post-socialist states, multiple alternative drafts of the Kyrgyz Constitution were circulated for general discussion, not merely by the interested stakeholders among the emergent elites but possibly by the general public (at 185). “What if this sort of thing were the norm in world constitutionalism—what if alternative conceptions of the organization of government . . . were a matter of simultaneous choice and comparison?,” ponders Newton. “What if the constituent process itself were fully and openly politicised, if not democratised?” (at 185). The importance of these questions has no regional boundaries. Superbly executed and absorbing, the book compels this reader to agree with the author that the Central Asian experience is emblematic of the tensions and issues contemporary constitutional orders face everywhere.

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The age of comparative constitutional law is upon us. In the last decade, the number of English-language monographs on the study of comparative constitutions has increased five-fold. This “renaissance”¹ of comparative law has also borne witness to the migration of research agendas from the well-traversed terrains of the “usual suspects”² to new frontiers in Asia,³ Eastern Europe,⁴ and Latin America⁵ as scholars venture from the study of established liberal democracies to new⁶ and fragile⁷ ones.

A significant voice in this chorus of new scholarship is Mark Tushnet and Madhav Khosla’s edited collection of essays on South Asia. As the world’s largest democracy, India is regularly featured in the research agendas

¹ RAN HIRSCHL, *COMPARATIVE MATTERS: THE RENAISSANCE OF COMPARATIVE CONSTITUTIONAL LAW* (2014).

² *Id.* at 4, 39, 241. See also RAN HIRSCHL, *TOWARDS JURISTOCRACY: THE ORIGINS AND CONSEQUENCES OF THE NEW CONSTITUTIONALISM* (2007); ROBERT LECKEY, *BILLS OF RIGHTS IN THE COMMON LAW* (2015); ALEC STONE SWEET, *GOVERNING WITH JUDGES: CONSTITUTIONAL POLITICS IN EUROPE* (2000); VICKI JACKSON, *CONSTITUTIONAL ENGAGEMENT IN A TRANSNATIONAL ERA* (2010).

³ PO JEN YAP, *CONSTITUTIONAL DIALOGUE IN COMMON LAW ASIA* (2015); *CONSTITUTIONALISM IN ASIA IN THE EARLY TWENTY-FIRST CENTURY* (Albert H. Y. Chen ed., 2014).

⁴ DAVID KOSAR, *PERILS OF JUDICIAL SELF-GOVERNMENT IN TRANSITIONAL SOCIETIES* (2016).

⁵ JULIO RÍOS-FIGUEROA, *CONSTITUTIONAL COURTS AS MEDIATORS: ARMED CONFLICT, CIVIL–MILITARY RELATIONS, AND THE RULE OF LAW IN LATIN AMERICA* (2016); CÉSAR RODRÍGUEZ-GARAVITO & DIANA RODRÍGUEZ-FRANCO, *RADICAL DEPRIVATION ON TRIAL: THE IMPACT OF JUDICIAL ACTIVISM ON SOCIOECONOMIC RIGHTS IN THE GLOBAL SOUTH* (2015).

⁶ TOM GINSBURG, *JUDICIAL REVIEW IN NEW DEMOCRACIES: CONSTITUTIONAL COURTS IN ASIAN CASES* (2003).

⁷ SAMUEL ISSACHAROFF, *FRAGILE DEMOCRACIES: CONTESTED POWER IN THE ERA OF CONSTITUTIONAL COURTS* (2015).