

Relatedly, while the book does a very good job of living up to the self-stated expectation of providing a rich explanation of the larger sociopolitical context and the activists' subjective evaluation of the corresponding political opportunities and limitations, more could have been done to explain the nature and effect of the emerging Christian conservative countermovement that began to challenge gay activists in the 2000s. The introduction of a substantial countermovement changes the environment within which the gay movement acts and adds a new entity beyond the state that they must interact with and take into account. This significant change in the sociopolitical context raises various questions. Is the movement freed from the constraints that produce pragmatic resistance when facing a nonstate adversary? If so, will it still devotedly adhere to pragmatic resistance as its only form of activism? If they stick with pragmatic resistance does its basic form change in any way? While some of these issues are introduced they are not significantly explored in the text.

These criticisms, however, are overshadowed by the book's overall contributions. The in-depth exploration of a contemporary gay movement in an authoritarian state is a unique contribution to the study of social movements generally and gay rights specifically. The concept and examples of pragmatic resistance also provide a very compelling contrast to how much of the literature discusses political opportunity, resource mobilization, the means of activism, and the place of law and rights in social movements. On this last note, Professor Chua's concluding discussion of the nature of law and the politics of rights in Singapore is terrifically compelling and invites pairing with many of the major Americanist texts on law and social movements. Taken collectively, *Mobilizing Gay Singapore* is an engaging read and a very welcome addition to the literature.

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Comparative Matters: The Renaissance of Comparative Constitutional Law. By Ran Hirschl. Oxford: Oxford University Press, 2014. 320 pp. \$45.00 cloth.

Reviewed by Benjamin L. Berger, Osgoode Hall Law School, York University

As the epigraph to one chapter in his impressive volume, *Comparative Matters: The Renaissance of Comparative Constitutional Law*, Ran

Hirschl offers the following exchange between the archaeologist Howard Carter and his patron, Lord Carnarvon, on Carter's entry into Tutankhamun's tomb: "Can you see anything?" "Yes, wonderful things!" The epigraph might aptly frame the volume as a whole. Hirschl's ambition is to seize a pivotal moment in the development of comparative constitutional scholarship and to help those engaged in the field to see more and better. There is a tone of excitement and affection in the pages, born of the recent and rapid global spread of constitutionalism and judicial review, which has been accompanied by a marked growth in scholarly—and juridical—interest in comparative constitutional study. Hirschl sees the scholarly possibilities attendant on such a moment and regards the comparative constitutional enterprise as poised to enrich our understanding of modern constitutional life.

And yet this enthusiastic tone is accompanied by one of concern because, as Hirschl sees it, the field of comparative constitutional study is currently afflicted by "a fuzzy and rather incoherent epistemological and methodological matrix" (5), a shortfall in self-understanding that prevents the scholarly enterprise from realizing its potential. In particular, the range and variety of approaches that are collected under the mantle of comparative constitutional study has deprived us of a clear view of what the character of the "comparative" project is and ought to be, and of a refined sense of what methods are well calibrated to its ends. In this volume, Hirschl seeks to address this weakness by drawing the reader through the intellectual history and contemporary quandaries of comparative constitutional inquiry and by charting out a kind of methodological *desiderata* for the field.

Indeed, the heart of *Comparative Matters* is a plea for comparative constitutional study to be more energetically and resolutely interdisciplinary, engaging, in particular, with the social sciences and empirical methods. The latter half of Hirschl's book is dedicated to this methodological call, with Chapter 4 urging a shift from comparative constitutional "law" to comparative constitutional "studies," signalling an enterprise more closely tied to the contextual focus of the social sciences and less anchored to conventional forms of legal analysis. One need not wholly concur with Hirschl that the style of constitutional reflection in the legal academy is quite so thin on such social and political framing to nevertheless profit from his account of why deeper engagement with the social sciences and its methods would enrich the field of comparative constitutional study. In Chapters 5 and 6, Hirschl examines key methodological tensions that must be reckoned with for the field to continue to develop (the universal versus the particular and critiques from the "global south") and offers a set of principles and methodological rules. In these latter pages, Hirschl sets out

principles of case selection in small-N comparative studies and advocates for the greater use of large-N empirical studies. Hirschl is not overly sanguine about such studies, carefully noting the limits and risks involved. But he is insistent that research method must be calibrated to research aim and that *if* one aspires to meaningful causal claims or explanatory theories, such well-crafted studies are important arrows in the comparative constitutionalist's quiver.

The force of these methodological arguments rests, however, on the work that Hirschl does in the first half of the book. The first three chapters, each fascinating and erudite, appear vastly different in their focus and character. Chapter 1 addresses the currently salient issue of top courts citing the constitutional jurisprudence of foreign countries. Hirschl offers a helpful and extensive review of the practice, complete with an illuminating case study of Israel. Chapter 2 turns to "pre-modern religion law" and explores the ways in which religious communities managed engagement with the constitutive laws of societies in which they lived or came into contact, presenting these examples as early instances of comparative constitutional engagement. In Chapter 3, the reader is given an intellectual history of comparative constitutional inquiry, reaching back to the mid-sixteenth century and Jean Bodin, and galloping forward through thinkers like Selden, Montesquieu, Bolívar, arriving at a comparison between contemporary Canadian and U.S. juridical practices.

What unites these apparently divergent chapters is their common insistence that a court's, community's, scholar's, or polity's practices of comparative constitutional inquiry are motivated and shaped by forces that lie outside of the purely legal. Patterns in the judicial citation of foreign law, Hirschl argues, are more about the politics of identity construction than divergences on legal principle. The deep history of comparative constitutional law revealed in the lives of religious communities shows that feelings of vulnerability or security, social and economic needs, political economy, and practical exigency are the chief determinants of adaptation to and borrowing from the constitutive law of others. And, in Hirschl's hands, the intellectual history yields the lesson that comparative constitutional reflection is driven by a trio of motivations: necessity, inquisitiveness, and politics. Although not cast in this manner, I read these chapters as jointly exposing and disrupting the pathologies of formalism, presentism, and parochialism that afflict too much comparative constitutional work. As he insistently pushes us into the theological, the social, the historical, and the political to understand the nature of constitutional comparison, Hirschl establishes his case that a genuinely interdisciplinary approach is not just appealing but imperative. Having been so pushed, where can we turn for richer understanding but to

the social sciences (and, I would add, humanities)? Recall Hirschl's complaint about the current epistemological and methodological foundations for the field. By enriching the epistemological terrain for understanding comparative constitutional practices in the first part of the book, Hirschl establishes the case for his methodological ambitions.

Comparative Matters leaves us at the threshold of certain important issues of (appropriately) both an epistemological and methodological nature. In his desire to shine a light on the social, economic, and political factors that influence practices of comparative constitutionalism, Hirschl narrows and ossifies certain concepts that those working in sociolegal studies might prefer to expand and destabilize. For example, having explained the various political factors that influence judicial choices to cite foreign constitutional law, Hirschl concludes that "[t]hese choices are sociopolitical, not juridical" (43). Similarly, his intellectual journey through comparative law arrives at the statement that "ultimately attitudes toward the 'laws of others' reflect social processes, political ideologies, and national meta-narratives that are broader than the constitutional sphere itself" (13). Seeing the persistent influence of social, political, and identity-based factors on comparative constitutional practice, perhaps the more constructive move would be to expand our sense of the juridical task (as one always involving decisions about community identity) and of what is encompassed by the "constitutional sphere." Methodologically, as *Comparative Matters* moves into its final chapters, the range of the imagined interdisciplinarity seems to narrow, focussing on empirical social sciences and leaving aside Hirschl's own illuminating engagement with theology, philosophy, and literature, so fruitful in the early chapters of this book. The choice is understandable, given the less mature state of scholarship that takes seriously case selection and large-N research design principles; and yet one can hope that Hirschl's book will inspire a similarly careful consideration of the methodological rules and approaches appropriate to the humanistic engagement with comparative constitutionalism.

Comparative Matters is an ambitious, learned, and provocative book that succeeds in contributing to a more sound and productive foundation for the field of comparative constitutional studies. With this volume, Hirschl (2004, 2010) again marshals his impressive range and vision as a scholar to advance our understanding of constitutionalism and, this time, to help us to think more deeply about the character of the comparative constitutional enterprise. Otherwise put, as a comparative constitutionalist, this book will help you to see "wonderful things."

References

- Hirschl, Ran (2004) *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism*. Cambridge, MA: Harvard Univ. Press.
- (2010) *Constitutional Theocracy*. Cambridge, MA: Harvard Univ. Press.

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Exploited, Undervalued – and Essential: Domestic Workers and the Realisation of their Rights. Edited by Darcy du Toit. Pretoria: Pretoria University Law Press, 2013. 380 pp. ZAR225.00, \$22 paperback, available online.

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Starting points matter. The University of Western Cape’s Social Law Project’s recent, insightful volume could easily be missed by those concerned about the future of labor law as a general field. After all, the book focuses on one of the most marginalized groups of workers, resolutely situated in labor law’s peripheries: domestic workers performing historical “care” work. And, the book emerges out of a historically “marginalized” continent, albeit in the African member of the BRICS, South Africa. Yet Emeritus Professor Darcy du Toit’s edited volume centers and contributes meaningfully to core debates on the direction of labor law, nationally and internationally because, I would argue, it takes peripheries as starting points.

The volume considers the potential of the International Labor Organization (ILO)’s alternative vision to the Washington consensus: that is, decent work as a manifestation of social justice in the global economy. It does so within a state constitutional framework that is “historically self-conscious” (p. 45) and that has social transformation from an *apartheid*-based to a democratic society as its fundamental purpose. For Du Toit, the adoption by the ILO in 2011 of the Decent Work for Domestic Workers Convention, 2011 (No. 189) and Recommendation, 2011 (No. 201) is “a milestone in that it settled the long-standing debate as to whether domestic work should be considered as ‘work’ for purposes of labor legislation” (p. 2). For South Africa, which has a staggering 8.7 percent of its population working in this sector (p. 1), rethinking the regulation of domestic work through principles like equality, freedom and development is hardly peripheral. It is intimately wedded to contemporary labor law’s renewal.