

Philanthropic Constitutionalism in the Global South: Reimagining Bandung through Indonesia and South Africa's Constitutional Experiences

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Abstract

The Bandung Principles have long been examined as a milestone in postcolonial diplomacy, yet they remain under-theorized within contemporary constitutional scholarship. Existing literature predominantly situates Bandung within international relations or anti-colonial legal critique, leaving unexplored its potential transformation into an enforceable constitutional paradigm of solidarity in the Global South. This article aims to reconceptualize the Bandung Principles through the framework of philanthropic constitutionalism by comparatively analyzing the constitutional experiences of Indonesia and South Africa. Employing a normative-comparative constitutional methodology grounded in doctrinal analysis and philosophical reconstruction, the study examines constitutional texts, jurisprudence, and foundational values in both jurisdictions. The analysis demonstrates that Indonesia embodies a philosophically rich yet institutionally moderated model of solidarity rooted in Pancasila and social justice, whereas South Africa institutionalizes solidarity through transformative constitutionalism, socio-economic rights enforcement, and the jurisprudential articulation of ubuntu. By synthesizing these trajectories, the article advances philanthropic constitutionalism as a novel Global South paradigm that constitutionalizes solidarity as a binding principle of governance rather than a diplomatic aspiration. This reconstruction reinterprets sovereign equality not as defensive insulation but as the foundation for self-imposed constitutional responsibility, thereby contributing a justice-oriented and postcolonial corrective to dominant global constitutional discourse.

KEYWORDS: *Philanthropic Constitutionalism; Bandung Principles; Global South Constitutionalism.*

Introduction

The contemporary global constitutional order is increasingly characterized by a paradox. On the one hand, constitutional discourse has become globalized: human rights norms travel across jurisdictions, constitutional courts cite each other, and transnational legal dialogue has intensified. On the other hand, solidarity—once heralded as a moral foundation of postcolonial international cooperation—appears to be receding under the pressures of geopolitical rivalry, economic nationalism, and strategic fragmentation.¹ The rise of protectionist policies, selective humanitarianism, and asymmetrical global governance structures reveals a structural imbalance between sovereign equality in formal doctrine and material inequality in practice. Within this tension, the Global South continues to occupy an ambivalent position: formally equal in international law, yet structurally subordinated within global economic and legal hierarchies.

It was precisely this imbalance that animated the 1955 Asian–African Conference in Bandung. The Bandung Principles articulated a vision of sovereign equality, non-intervention, peaceful coexistence, and anti-colonial solidarity. Yet, despite their enduring symbolic power, these principles have largely been treated as diplomatic commitments rather than constitutional propositions.² They remain embedded in the language of inter-state conduct, not in the architecture of domestic constitutional obligations. As a result, solidarity has functioned as a political ethos rather than a juridically enforceable norm. This article contends that the crisis of global solidarity cannot be addressed solely through diplomatic reaffirmation of Bandung’s legacy; it requires a constitutional reimagining.

The Bandung Principles represented a historical rupture with colonial domination and bipolar geopolitical alignment. Their normative ambition lay in constructing an alternative moral community among newly independent states. However, their architecture was predominantly state-centric. Sovereignty, territorial integrity, and non-intervention were foregrounded as safeguards against external domination.³ While this orientation was historically justified, it also produced a structural limitation: solidarity was framed negatively—as resistance to interference—rather than positively—as a constitutional duty toward justice and human dignity. The emphasis on non-intervention, though protective against neocolonial control, constrained the development of a proactive constitutional ethic of responsibility.

¹ Alec Stone Sweet and Clare Ryan, “Kant, Cosmopolitanism and Systems of Constitutional Justice in Europe and Beyond,” *Global Constitutionalism* 9, no. 3 (2020): 562–80, <https://doi.org/10.1017/S2045381720000143>.

² Priyasha Saksena, “Bandung, State-Making, and Citizenship in South Asia,” *AJIL Unbound* 119 (2025): 210–15, <https://doi.org/10.1017/aju.2025.10025>.

³ Bing Bing Jia, “From Asian-African Solidarity to a Community of Common Destiny: An Evolving Chinese Perspective of the International Legal Order,” *AJIL Unbound* 119 (2025): 199–203, <https://doi.org/10.1017/aju.2025.10023>.

Much of the existing scholarship treats Bandung as a milestone in diplomatic history or as a precursor to the Non-Aligned Movement. Even critical traditions such as Third World Approaches to International Law (TWAAIL) engage Bandung primarily as a counter-hegemonic moment in international legal ordering. Yet, what remains undertheorized is the possibility of reading Bandung not merely as an external political doctrine but as an internal constitutional paradigm.⁴ If the Global South seeks to move beyond structural subordination, solidarity must evolve from an inter-state norm into a constitutional principle embedded within domestic legal systems. The transformation of solidarity from rhetorical commitment to enforceable obligation is the missing link in postcolonial constitutional theory.

Global constitutionalism literature has extensively examined judicial review, constitutional courts, separation of powers, and rights adjudication. However, it has paid comparatively less attention to solidarity as a constitutive norm. Human rights discourse, though universalist in aspiration, often prioritizes individual autonomy over collective responsibility. Welfare constitutionalism addresses distributive justice within national borders, but rarely conceptualizes solidarity as a transnational or structural obligation.⁵ In this context, the Bandung Principles offer an ethical foundation that has not yet been fully integrated into constitutional theory. The absence of such integration reflects a deeper conceptual gap: solidarity is acknowledged as morally desirable, but not as constitutionally necessary.

This article introduces the concept of philanthropic constitutionalism as a normative bridge between Bandung's diplomatic solidarity and constitutional enforceability. Philanthropic constitutionalism does not equate philanthropy with private charity. Rather, it reconceptualizes philanthropy as a structural commitment to human dignity, distributive justice,⁶ and shared responsibility embedded within constitutional design. It posits that constitutions in the Global South can internalize solidarity as a binding normative principle—governing both domestic governance and external engagement. In this sense, philanthropic constitutionalism transforms solidarity from a political aspiration into a constitutional obligation.

The comparative experiences of Indonesia and South Africa illuminate distinct pathways toward this transformation. Indonesia's constitutional identity is deeply informed by Pancasila, whose normative core includes social justice and humanitarianism.⁷ The Preamble to the 1945 Constitution articulates a commitment

⁴ Andrew Phillips, "Beyond Bandung: The 1955 Asian-African Conference and Its Legacies for International Order," *Australian Journal of International Affairs* 70, no. 4 (2016): 329–41, <https://doi.org/10.1080/10357718.2016.1153600>.

⁵ Cara Röhner, "Practices of Social Constitutionalism: Poverty, Socio-Economic Status and Social Exclusion in the Jurisprudence of the German Federal Constitutional Court," *German Law Journal* 26, no. 2 (2025): 213–33, <https://doi.org/10.1017/glj.2025.4>.

⁶ Novendri Mohamad Nggilu et al., "Constructing Humanitarian-Based Law: A Philosophical Analysis of the Philanthropic Legal Paradigm," *Yustisia Jurnal Hukum* 14, no. 3 (2025): 283, <https://doi.org/10.20961/yustisia.v14i3.98924>.

⁷ Novendri M. Nggilu et al., "Indonesia's Constitutional Identity: A Comparative Study of Islamic Constitutionalism," *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 2 (2024): 480–500.

to global order based on independence, lasting peace, and social justice.⁸ This language resonates strongly with the Bandung ethos. Yet, solidarity in Indonesia's constitutional framework often remains programmatic rather than fully justiciable. Social justice functions as a guiding principle, but its operationalization depends significantly on legislative and executive discretion. The moral vocabulary of solidarity is robust; its juridical institutionalization, however, is uneven.

South Africa presents a contrasting trajectory. Emerging from apartheid, its 1996 Constitution embeds dignity, equality, and freedom as foundational values. Through the jurisprudence of its Constitutional Court, particularly in cases concerning socio-economic rights, solidarity has acquired justiciable force.⁹ The philosophical concept of ubuntu—emphasizing interconnectedness and shared humanity—has been invoked as a constitutional value shaping rights interpretation. Transformative constitutionalism in South Africa goes beyond formal equality; it seeks structural redress and social reconstruction.¹⁰ Here, solidarity is not merely rhetorical; it informs adjudication, policy, and institutional design.

The juxtaposition of Indonesia and South Africa reveals complementary dimensions of philanthropic constitutionalism. Indonesia offers a normative-philosophical foundation rooted in anti-colonial solidarity and social justice. South Africa demonstrates how solidarity can be judicially operationalized within a transformative constitutional framework. The former provides ethical depth; the latter provides institutional mechanism.¹¹ Together, they suggest that the evolution of Bandung's legacy requires both moral reconstruction and juridical innovation. Solidarity must be constitutionalized not only as a value, but as a standard of review and a guide to state responsibility.

Philanthropic constitutionalism thus emerges as an interpretive and normative project. It challenges the prevailing assumption that sovereignty and solidarity are conceptually opposed.¹² Instead, it argues that true sovereign equality in the Global South depends upon the constitutionalization of shared responsibility. By embedding solidarity within constitutional structures, states can resist external domination while simultaneously committing to internal and transnational justice. This paradigm also

⁸ Novendri Nggilu et al., "Constitutionality Review of Indonesian Constitutional Amendments: History and Future," *Russian Law Journal* 11, no. 2 (2023), <https://doi.org/10.52783/rlj.v11i2.517>.

⁹ Jaco Barnard-Naudé and Julia Chrissyostalis, "Apartheid Remains: Nomos, Law and Spatiality in Post-Apartheid South Africa," in *Spatial Justice After Apartheid*, 1st ed., by Julia Chrissyostalis and Jaco Barnard-Naudé (Routledge, 2022), <https://doi.org/10.4324/9780203712771-1>.

¹⁰ Johannes van der Walt and Izak Oosthuizen, "UBUNTU in South Africa: Hopes and Disappointment – A Pedagogical Perspective," *Perspectives in Education* 39, no. 4 (2021): 156–71, <https://doi.org/10.18820/2519593X/pie.v39.i4.11>.

¹¹ Mashele Rapatsa, "Transformative Constitutionalism in South Africa: 20 Years of Democracy," *Mediterranean Journal of Social Sciences*, ahead of print, December 1, 2014, <https://doi.org/10.5901/mjss.2014.v5n27p887>.

¹² Novendri Nggilu and Chami Yassine, "Constructing Humanitarian-Based Law: A Philosophical Analysis of the Philanthropic Legal Paradigm," *Yustisia Jurnal Hukum* 14, no. 3 (2025): 242–69.

reframes the tension between non-intervention and humanitarian responsibility. Rather than eroding sovereignty, constitutionalized solidarity grounds responsibility in self-imposed constitutional commitments rather than external imposition.

This reconceptualization has implications beyond Indonesia and South Africa. It proposes a Global South constitutional ethic that transcends defensive sovereignty. While Bandung articulated resistance to colonial power, philanthropic constitutionalism aspires to proactive justice. It aligns with TWAIL's critique of structural inequality, yet moves beyond critique toward constructive constitutional design. It resonates with transformative constitutionalism, yet situates transformation within a broader postcolonial solidarity framework. By integrating these strands, philanthropic constitutionalism offers a new theoretical vocabulary for Global South constitutionalism.

Accordingly, this article addresses three interrelated questions. First, how can the Bandung Principles be reconceptualized within contemporary constitutional theory as more than a diplomatic charter? Second, in what ways do Indonesia and South Africa embody distinct yet complementary models of constitutional solidarity? Third, can philanthropic constitutionalism serve as a coherent normative framework for advancing a justice-oriented constitutional paradigm in the Global South? In answering these questions, the article argues that Bandung's spirit must be reconstructed through constitutional internalization. Only by transforming solidarity into an enforceable constitutional principle can the Global South move from symbolic resistance to structural justice.

Through this comparative and normative inquiry, the article contends that philanthropic constitutionalism represents the next evolutionary stage of the Bandung project. It does not abandon sovereign equality, but deepens it. It does not negate non-intervention, but reframes it within self-binding commitments to human dignity and distributive justice. In doing so, it seeks to contribute to global constitutional scholarship by foregrounding solidarity as a foundational norm rather than a peripheral aspiration. If global constitutionalism is to be genuinely global, it must engage the ethical legacies and transformative experiences of the Global South—not merely as case studies, but as sources of theoretical innovation.

Method

This article adopts a normative-comparative constitutional methodology grounded in philosophical inquiry and critical legal analysis.¹³ At its core, the research is doctrinal in nature, examining constitutional texts, foundational principles, and leading judicial decisions in Indonesia and South Africa to identify how solidarity is articulated, interpreted, and institutionalized within their respective constitutional orders. However, the analysis does not remain at the level of positive law. It is

¹³ Dian Ekawaty Ismail et al., *Metode Penelitian Hukum: Teori, Aplikasi, Dan Inovasi Dalam Penelitian Hukum*, ed. Tiara Oktaviana Namira Daud (Ruang Karya, 2025).

complemented by a reconstructive normative approach that interrogates the philosophical foundations of solidarity—drawing upon postcolonial constitutional thought, transformative constitutionalism, and Global South legal theory—to assess whether and how the Bandung Principles may evolve into a constitutional paradigm. In this sense, the method is not merely descriptive but evaluative and constructive: it seeks to identify normative deficits and propose a theoretically coherent framework of philanthropic constitutionalism.

The comparative dimension is functional rather than purely formal.¹⁴ Instead of juxtaposing constitutional provisions in isolation, the study examines how analogous constitutional values—Pancasila in Indonesia and ubuntu in South Africa—operate within broader institutional and jurisprudential contexts. This approach enables the identification of structural patterns, divergences, and complementarities in the constitutionalization of solidarity. By integrating doctrinal interpretation, jurisprudential analysis, and philosophical reconstruction, the methodology aspires to bridge empirical constitutional practice with normative theory. The ultimate aim is to demonstrate that philanthropic constitutionalism is not an abstract moral aspiration, but a concept capable of systematic articulation through comparative constitutional reasoning rooted in the experiences of the Global South.

From Bandung to Philanthropic Constitutionalism: Solidarity, Sovereignty, and Transformative Justice

1. Reconstructing the Normative Core of the Bandung Principles

The Bandung Principles emerged in 1955 as a juridical-political response to a world structured by colonial domination and Cold War polarization. Far from being merely a diplomatic communiqué, Bandung articulated a counter-hegemonic legal imagination grounded in sovereign equality, anti-colonialism, and peaceful coexistence. For newly independent states, sovereignty was not an abstract legal status but a hard-won condition of political survival.¹⁵ The normative architecture of Bandung thus privileged non-intervention and territorial integrity as safeguards against renewed subordination. In this respect, Bandung constituted a postcolonial legal project: it sought to reconfigure international order by asserting the moral and juridical parity of formerly colonized nations within a system historically designed to marginalize them.

Yet the emancipatory force of Bandung was simultaneously constrained by its structural orientation. Its emphasis on sovereignty functioned defensively, constructing solidarity primarily as resistance to external interference rather than as a positive commitment to shared justice. The normative grammar of the Principles

¹⁴ Nurul Qamar Farah Syah Rezah, *Metode Penelitian Hukum Doktrinal Dan Non-Doktrinal* (Social Politik Genius, 2020).

¹⁵ Ahmad Rizky Mardhatillah Umar, “Rethinking the Legacies of Bandung Conference: Global Decolonization and the Making of Modern International Order,” *Asian Politics & Policy* 11, no. 3 (2019): 461–78, <https://doi.org/10.1111/aspp.12473>.

remained state-centric: obligations were framed in terms of inter-state conduct, not in terms of constitutional responsibility toward peoples.¹⁶ While this orientation was historically justified, it limited the capacity of Bandung to evolve into a comprehensive theory of constitutional solidarity. Sovereign equality protected states; it did not necessarily secure material equality or distributive justice within and among them.

The principle of non-intervention, in particular, illustrates this structural limitation. Conceived as a bulwark against neo-imperial intrusion, it reinforced the autonomy of newly independent states. However, when interpreted rigidly, non-intervention can ossify into a doctrine that prioritizes formal autonomy over substantive justice.¹⁷ In contemporary contexts marked by transnational inequality, environmental crisis, and humanitarian emergencies, an absolute reading of non-intervention risks insulating structural injustice from normative scrutiny. The challenge, therefore, is not to abandon sovereignty but to reinterpret it in light of a deeper ethical commitment to solidarity. Sovereignty, if understood relationally rather than atomistically, need not preclude responsibility.

This reinterpretation requires moving from a negative conception of solidarity—defined by what states must refrain from doing—to a positive conception grounded in constitutional obligation. Bandung’s anti-colonial ethos implicitly contained such a possibility: its call for cooperation and mutual respect gestured toward a moral community of nations. Yet this potential remained underdeveloped.¹⁸ The transformation of solidarity from diplomatic rhetoric into constitutional principle demands a shift in normative focus—from protecting state autonomy to institutionalizing responsibility for human dignity and social justice. In this sense, Bandung must be read not as a closed historical episode but as an unfinished normative project.

Reconstructing the normative core of the Bandung Principles thus entails a philosophical reorientation. Rather than treating sovereign equality as an end in itself, it can be reconceived as the precondition for shared constitutional responsibility. The anti-colonial impulse that animated Bandung can be extended beyond resistance toward the construction of justice-oriented constitutional orders.¹⁹ Such a reconstruction does not dilute Bandung’s historical significance; it deepens it. By internalizing solidarity within constitutional frameworks, states of the Global South can transform Bandung from a diplomatic milestone into a living constitutional ethic.

¹⁶ Umar, “Rethinking the Legacies of Bandung Conference.”

¹⁷ Marco Roscini, *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, 1st ed. (Oxford University Press Oxford, 2024), <https://doi.org/10.1093/oso/9780198786894.001.0001>.

¹⁸ Rajan, “Trajectory of Swaraj and the Background Philosophy of Anti-Colonial Solidarity: A Discourse on the Indian Agents of Change,” *Journal of Dharma Studies* 8, no. 3 (2025): 565–88, <https://doi.org/10.1007/s42240-024-00178-9>.

¹⁹ Tadesse Kebebew et al., “Bandung Principles: A Path to Equitable Global Water Governance?,” *International Journal of Water Resources Development* 41, no. 4 (2025): 846–54, <https://doi.org/10.1080/07900627.2024.2448149>.

The normative reconstruction proposed here reframes Bandung as a foundational moment in the genealogy of philanthropic constitutionalism. Its enduring value lies not merely in its defense of autonomy, but in its implicit affirmation of interconnectedness among postcolonial societies. To realize this promise, solidarity must be constitutionalized—embedded within domestic legal systems as a binding principle guiding governance, adjudication, and public policy. Only through such constitutional internalization can the Bandung legacy evolve from a doctrine of sovereign resistance into a paradigm of transformative responsibility.

2. Indonesia: Normative Solidarity without Full Judicial Institutionalization

Indonesia's constitutional architecture is normatively grounded in Pancasila, particularly its commitment to social justice, which situates solidarity at the heart of the state's philosophical identity. Unlike liberal constitutional models that prioritize individual autonomy as the organizing principle of constitutional order, Indonesia's foundational framework integrates communitarian responsibility and collective welfare into its conception of justice. The Preamble to the 1945 Constitution further articulates a commitment to contributing to a world order based on independence, lasting peace, and social justice, thereby embedding international solidarity within the nation's constitutional self-understanding. In this sense, Indonesia's constitutional ethos already reflects a moral horizon compatible with a solidaristic paradigm.

This solidaristic orientation is reinforced by the constitutional balance between rights and duties, indicating a relational conception of constitutional personhood. Rights are not framed as isolated claims but as elements within a broader moral structure that acknowledges obligations to others and to the community. Such a formulation departs from strictly individualist constitutional traditions and aligns more closely with a social constitutional model.²⁰ However, the existence of a strong ethical vocabulary does not automatically entail institutional enforceability. The normative commitment to solidarity remains, in significant respects, programmatic rather than doctrinally entrenched.

A key structural tension in Indonesia's constitutional practice lies in the gap between aspirational commitments and juridical operationalization. Although socio-economic objectives are constitutionally recognized, their implementation largely depends on legislative policy and executive discretion. Judicial

²⁰ Wolfgang Babeck, "Constitutional Duties," in *Writing Constitutions*, ed. Wolfgang Babeck and Albrecht Weber (Springer International Publishing, 2024), https://doi.org/10.1007/978-3-031-39622-9_16.

intervention in matters of distributive justice has been measured and often deferential, reflecting concerns over separation of powers and resource allocation.²¹ Consequently, solidarity operates primarily as a guiding constitutional value rather than as a binding, reviewable standard capable of systematically constraining state action.

The jurisprudence of the Constitutional Court illustrates this ambivalence. While the Court has occasionally invoked principles of social justice and constitutional morality to scrutinize legislation affecting public welfare, it has not consistently developed a structured doctrine that treats solidarity as an enforceable constitutional obligation.²² The absence of a clearly articulated solidarity-based standard of review limits the transformative capacity of Indonesia's constitutional order. Ethical depth is present, but its institutional expression remains moderated and selective.

Nevertheless, this configuration reveals substantial potential for normative development. The philosophical resources embedded in Pancasila and the constitutional text provide a foundation upon which a more explicit doctrine of constitutional solidarity could be constructed. Rather than importing external models, Indonesia's constitutional evolution may proceed through a deeper internalization of its own commitment to social justice. Such a reconstruction would allow solidarity to move beyond rhetorical affirmation toward juridical responsibility, thereby aligning Indonesia's constitutional identity more closely with the aspirations of philanthropic constitutionalism.

3. South Africa: Transformative Constitutionalism and the Judicialization of Solidarity

South Africa's post-apartheid constitutional settlement represents one of the most deliberate attempts in the Global South to reconstruct political community through transformative constitutionalism. Adopted in 1996 after decades of racial oppression, the Constitution was explicitly designed not merely to limit power, but to redress structural injustice and reconstitute society on foundations of dignity, equality, and freedom.²³ Unlike minimalist constitutional frameworks concerned primarily with procedural democracy,

²¹ Tanto Lailam and Putri Anggia, "The Indonesian Constitutional Court Approaches the Proportionality Principle to the Cases Involving Competing Rights," *LAW REFORM* 19, no. 1 (2023): 110–27, <https://doi.org/10.14710/lr.v19i1.54087>.

²² Florent Rivals, "Dental Microwear and Mesowear Raw Data for Equus Ferus and Rangifer Tarandus from Sesselfelsgrötte," Zenodo, May 13, 2021, <https://doi.org/10.5281/ZENODO.4756099>.

²³ Dennis M. Davis and Karl Klare, "Two Cheers for Transformative Constitutionalism," *Law and Critique* 35, no. 3 (2024): 487–533, <https://doi.org/10.1007/s10978-024-09404-6>.

South Africa's constitutional order is substantively transformative. It recognizes that formal equality is insufficient in contexts marked by entrenched socio-economic disparity. This transformative ambition provides fertile ground for the constitutionalization of solidarity as an operational norm rather than a symbolic value.

A distinctive feature of this constitutional culture is the incorporation of ubuntu as an interpretive value within constitutional jurisprudence. Rooted in African communitarian philosophy, ubuntu affirms interconnectedness, mutual recognition, and shared humanity. The Constitutional Court has invoked ubuntu not as cultural ornamentation but as a normative principle shaping the meaning of dignity, proportionality, and justice.²⁴ In landmark decisions, the Court has emphasized reconciliation, restorative justice, and respect for human worth as constitutional imperatives. Through this jurisprudence, solidarity is articulated as relational responsibility embedded within constitutional reasoning, thereby transcending abstract moral aspiration.

The justiciability of socio-economic rights further distinguishes South Africa's model. Constitutional provisions guaranteeing access to housing, health care, food, water, and social security are not merely programmatic directives; they are enforceable commitments subject to judicial scrutiny. The Court's reasonableness review in socio-economic rights cases has required the state to adopt coherent and inclusive policies aimed at progressive realization.²⁵ Although the judiciary has avoided direct managerial control over policy, it has nonetheless affirmed that the Constitution imposes positive obligations to address material deprivation. In this institutional configuration, solidarity acquires juridical force through structured accountability mechanisms.

This judicialization of solidarity, however, is not without tension. Critics argue that reasonableness review may dilute transformative potential by deferring excessively to governmental discretion, thereby limiting structural redistribution. Others question whether courts are institutionally equipped to adjudicate complex socio-economic policy.²⁶ Yet even within these constraints, South Africa's constitutional practice demonstrates that solidarity can be institutionalized without collapsing into either judicial overreach or symbolic

²⁴ Drucilla Cornell and Karin Van Marle, eds., *A Call for a Nuanced Constitutional Jurisprudence: South Africa, Ubuntu, Dignity, and Reconciliation*, 1st ed. (Routledge, 2018), <https://doi.org/10.4324/9781351143363>.

²⁵ Sandra Liebenberg, "The South African Model of Socio-Economic Constitutionalism: Features and Fault Lines," in *YSEC Yearbook of Socio-Economic Constitutions 2024*, vol. 2024, ed. Steffen Hindelang et al., YSEC Yearbook of Socio-Economic Constitutions (Springer Nature Switzerland, 2025), https://doi.org/10.1007/16495_2024_74.

²⁶ Rapatsa, "Transformative Constitutionalism in South Africa."

rhetoric.²⁷ The constitutional framework acknowledges that justice requires material conditions, and it assigns the state an active role in pursuing them under judicial oversight.

South Africa thus offers a model of institutionalized constitutional solidarity grounded in both philosophical depth and procedural articulation. By integrating ubuntu with enforceable socio-economic rights and transformative jurisprudence, its constitutional order moves beyond declaratory commitment toward structured responsibility. Solidarity is not confined to diplomatic posture or ethical proclamation; it is embedded within adjudicative practice and policy evaluation. This configuration illustrates how postcolonial constitutionalism can convert historical struggle into an enduring doctrine of justice-oriented governance, thereby providing a concrete foundation for a broader theory of philanthropic constitutionalism in the Global South.

4. Comparative Analysis: Converging Ethical Foundations, Diverging Institutional Expressions

The constitutional experiences of Indonesia and South Africa reveal a striking philosophical convergence despite their divergent institutional trajectories. Both systems emerge from postcolonial or post-oppressive contexts in which law functions not merely as a mechanism of governance but as a project of moral reconstruction. Indonesia's Pancasila and South Africa's ubuntu articulate communitarian visions of political community grounded in dignity, interdependence, and social justice. Neither tradition conceptualizes the individual as detached from collective responsibility; rather, both embed rights within relational ethical frameworks. This convergence suggests that solidarity is not an imported abstraction in the Global South but an endogenous normative resource deeply rooted in constitutional identity.

Yet this philosophical alignment gives way to structural divergence at the level of institutional design and adjudicative practice. In Indonesia, solidarity operates primarily as a guiding constitutional ethos, shaping political discourse and legislative orientation without consistently crystallizing into enforceable judicial standards.²⁸ By contrast, South Africa has translated its communitarian philosophy into a justiciable constitutional doctrine through socio-economic

²⁷ Emilios Christodoulidis, "Social Rights Constitutionalism: An Antagonistic Endorsement," *Journal of Law and Society* 44, no. 1 (2017): 123–49, <https://doi.org/10.1111/jols.12017>.

²⁸ Tunggul Anshari Setia Negara et al., *The Confrontational Role of the Constitutional Court's Decisions in the Legislative Process*, 2022, <https://doi.org/10.5281/ZENODO.4756099>.

rights enforcement and transformative jurisprudence.²⁹ The divergence is not one of normative commitment but of institutionalization: solidarity in Indonesia tends to be programmatic and politically mediated, whereas in South Africa it is juridically operationalized and subject to structured review.

This divergence reflects broader differences in constitutional strategy. Indonesia's constitutional development has been marked by cautious judicial engagement and deference to democratic processes in distributive matters, emphasizing stability and incremental reform.³⁰ South Africa, by contrast, embraced a more assertive constitutional court model as part of its foundational transition, explicitly empowering the judiciary to supervise transformative change.³¹ The result is not a hierarchy of constitutional maturity but two distinct modalities of embedding solidarity within constitutional order: one privileging moral continuity and political discretion, the other foregrounding judicial articulation and enforceable obligation.

Importantly, these differences should not be framed as mutually exclusive alternatives. Rather, they reveal complementary dimensions of constitutional solidarity. Indonesia's model preserves philosophical depth and socio-political legitimacy rooted in historical consciousness and pluralistic accommodation. South Africa's model demonstrates how such ethical commitments can be institutionalized through doctrinal innovation and adjudicative clarity. The former guards against technocratic reduction of solidarity; the latter guards against rhetorical dilution. Together, they illustrate that solidarity requires both normative grounding and institutional articulation to achieve transformative capacity.

A comparative synthesis of these experiences thus points toward a more comprehensive understanding of philanthropic constitutionalism. Philosophical convergence provides the ethical substrate, while institutional divergence highlights the pathways and challenges of constitutionalization. The task is not to replicate one model within the other, but to integrate ethical depth with juridical enforceability in a manner sensitive to constitutional context. By reading Indonesia and South Africa relationally rather than competitively, solidarity emerges as a dynamic constitutional principle—capable of evolving from moral aspiration into structured responsibility within diverse Global South settings.

²⁹ Fungisai G. A. Gcumeni and C. Rautenbach, "Rethinking Socio-Economic Rights in South Africa: Embracing Ubuntu as a Transformative Legal Framework," *Legal Pluralism and Critical Social Analysis*, July 18, 2025, 1–24, <https://doi.org/10.1080/27706869.2025.2531732>.

³⁰ Bertus De Villiers et al., *Courts and Diversity: Twenty Years of the Constitutional Court of Indonesia* (Brill | Nijhoff, 2024), <https://doi.org/10.1163/9789004691698>.

³¹ Gcumeni and Rautenbach, "Rethinking Socio-Economic Rights in South Africa."

5. Toward a Theory of Philanthropic Constitutionalism

Philanthropic constitutionalism, as advanced in this article, is not a rhetorical embellishment of existing social constitutionalism, nor a rebranding of welfare-state commitments. It is a normative reconstruction that constitutionalizes solidarity as a binding principle of governance. At its core lies the proposition that constitutions in the Global South should not merely protect autonomy and regulate power, but also institutionalize responsibility for human dignity and distributive justice.³² Philanthropy, in this framework, is not understood as voluntary charity or private benevolence; it signifies a structural commitment embedded in constitutional design.³³ By elevating solidarity to constitutional status, philanthropic constitutionalism reorients the function of sovereignty toward justice-oriented responsibility.

Conceptually clarified, philanthropic constitutionalism rests on three interrelated premises. First, dignity is relational rather than atomistic: the worth of the individual is inseparable from social conditions that enable meaningful participation and equality. Second, constitutional rights entail corresponding public obligations that cannot be relegated entirely to political discretion. Third, solidarity must operate both internally—through socio-economic justice and inclusive governance—and externally—through constitutional engagement with global inequality. This dual dimension distinguishes philanthropic constitutionalism from traditional welfare constitutionalism, which often remains confined within national boundaries. Solidarity thus becomes a structuring principle of constitutional order rather than a policy preference.

Normatively, philanthropic constitutionalism requires the articulation of justiciable socio-economic responsibilities without collapsing into judicial overreach. It demands that constitutional courts develop standards capable of reviewing state action in light of distributive commitments while respecting institutional competence. Such standards need not mandate specific policy outcomes; rather, they ensure that governance remains anchored in constitutional responsibility. In this sense, solidarity becomes a lens through which reasonableness, proportionality, and equality are interpreted. The constitutionalization of solidarity transforms social justice from aspirational rhetoric into structured accountability.

Reimagining the Bandung Principles within this framework involves a shift from defensive sovereignty toward constructive responsibility. Bandung's

³² Lu Guangjin and Zhang Wei, eds., “Building a Human Community with a Shared Future by Adopting a Comprehensive Southern Vision on Human Rights,” in *The South-South Dialogue on Human Rights* (Brill | Nijhoff, 2021), https://doi.org/10.1163/9789004377240_018.

³³ Nggilu et al., “Constructing Humanitarian-Based Law.”

emphasis on sovereign equality and non-intervention remains normatively significant, yet it must be complemented by an internal constitutional ethic that addresses structural injustice.³⁴ Philanthropic constitutionalism reframes sovereign equality not as insulation from external scrutiny but as the foundation for self-imposed commitments to justice. States of the Global South, through constitutional internalization, can assert autonomy while simultaneously affirming responsibility toward their populations and, by extension, toward broader global solidarity.

This reconstruction also challenges prevailing liberal constitutional paradigms that prioritize negative liberty over positive obligation. By foregrounding solidarity, philanthropic constitutionalism destabilizes the dichotomy between rights and duties. It posits that constitutional legitimacy in postcolonial contexts depends upon the state's demonstrable commitment to alleviating systemic inequality. In doing so, it aligns with transformative constitutionalism yet extends its reach by situating transformation within a transnational ethical genealogy traceable to Bandung. The project is thus both locally grounded and globally oriented.

Ultimately, philanthropic constitutionalism aspires to convert the moral energy of anti-colonial solidarity into a durable constitutional doctrine. It does not abandon sovereignty; it redefines its purpose. It does not negate non-intervention; it situates it within self-binding commitments to justice. By synthesizing philosophical depth with institutional enforceability, this paradigm offers a coherent theoretical framework through which the Global South can move from symbolic resistance to structured responsibility. In this evolution, the Bandung legacy is not eclipsed but fulfilled—transformed from a diplomatic milestone into a constitutional ethic of shared humanity and distributive justice.

6. Implications for Global Constitutionalism

Philanthropic constitutionalism carries implications that extend beyond the comparative experiences of Indonesia and South Africa, offering a constructive intervention within global constitutional theory. Much of contemporary global constitutionalism remains shaped by Euro-Atlantic intellectual genealogies that privilege judicialization, rights expansion, and procedural accountability as the primary markers of constitutional progress. While these elements are indispensable, they often under-theorize solidarity as a foundational norm. By foregrounding solidarity as a structuring constitutional principle, philanthropic constitutionalism challenges the implicit hierarchy that

³⁴ Saksena, "Bandung, State-Making, and Citizenship in South Asia."

situates individual autonomy above collective responsibility. It repositions Global South constitutional experiences not as peripheral adaptations but as sources of theoretical innovation capable of enriching global constitutional discourse.

This contribution is particularly significant in relation to Third World Approaches to International Law (TWAAIL). TWAAIL has powerfully critiqued the structural biases of international legal order and exposed the continuity of colonial logics in contemporary governance. Yet critique alone cannot generate alternative institutional paradigms.³⁵ Philanthropic constitutionalism complements TWAAIL's deconstructive impulse with a reconstructive constitutional proposal. It shifts the focus from resistance to design, from exposing domination to institutionalizing responsibility. In doing so, it articulates a normative pathway through which postcolonial states may translate anti-hegemonic consciousness into enduring constitutional commitments.

At the same time, this paradigm destabilizes dominant liberal individualism within constitutional theory. By conceptualizing dignity as relational and justice as structurally embedded, philanthropic constitutionalism reframes the relationship between rights and duties. Rights are not diminished; rather, they are situated within a constitutional order that recognizes the interdependence of individuals and communities. This rebalancing does not subordinate liberty to collectivism but insists that meaningful freedom presupposes social conditions secured through solidaristic obligation. Such a move expands the conceptual vocabulary of global constitutionalism by integrating distributive ethics into its foundational architecture.

Moreover, philanthropic constitutionalism offers a justice-oriented constitutional ethic capable of informing transnational engagement. If solidarity is constitutionally internalized, states are encouraged to align domestic governance with broader commitments to global equity. This does not entail external imposition or humanitarian interventionism detached from sovereignty; rather, it emphasizes self-binding constitutional responsibility as the basis for international cooperation. In this way, Bandung's legacy is reframed as an ethical source for renewing multilateralism, grounded not merely in diplomatic alignment but in constitutionally embedded commitments to shared humanity.

Ultimately, the broader implication is that global constitutionalism must be plural in its intellectual foundations if it is to be genuinely global. The experiences of Indonesia and South Africa demonstrate that postcolonial

³⁵ Vincent Chetail, "Third World Approaches to International Law (TWAAIL)," in *Elgar Concise Encyclopedia of Migration and Asylum Law*, ed. Vincent Chetail (Edward Elgar Publishing, 2025), <https://doi.org/10.4337/9781802204155.00105>.

constitutional orders contain normative resources capable of reshaping theoretical debates. By elevating solidarity from peripheral aspiration to constitutional principle, philanthropic constitutionalism contributes a distinctive Global South perspective to the evolving architecture of global constitutional thought. It invites a reimagining of constitutionalism itself—not solely as a mechanism of restraint, but as a framework for transformative responsibility anchored in dignity, justice, and interconnectedness.

Conclusion

This article has argued that the Bandung Principles, long understood as a diplomatic manifesto of sovereign equality and anti-colonial resistance, can and should be reconceptualized within contemporary constitutional theory as the normative foundation of philanthropic constitutionalism. By examining the constitutional experiences of Indonesia and South Africa, the study demonstrates that solidarity in the Global South possesses both philosophical depth and institutional potential. Indonesia embodies a morally rich constitutional ethos grounded in Pancasila and social justice, yet its solidaristic commitments remain only partially juridified. South Africa, conversely, illustrates how communitarian philosophy—expressed through ubuntu—can be operationalized through transformative constitutionalism and the justiciability of socio-economic rights. Together, these models reveal complementary pathways for converting solidaristic aspiration into structured constitutional responsibility.

In answering the research questions, the article concludes that philanthropic constitutionalism provides a coherent normative framework through which the Bandung legacy may evolve from state-centric non-intervention toward justice-oriented constitutional solidarity. It affirms that sovereign equality need not be abandoned, but reinterpreted as the foundation for self-binding commitments to dignity and distributive justice. By constitutionalizing solidarity—internally through enforceable socio-economic obligations and externally through ethically grounded global engagement—the Global South can move beyond symbolic resistance toward transformative responsibility. In this reconstruction, Bandung is neither relegated to historical commemoration nor confined to diplomatic rhetoric; it becomes a living constitutional ethic capable of reshaping both national governance and global constitutional discourse.

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