

Between Normative Universality and Constitutional Sovereignty: A Comparative Examination of National and International Legal Frameworks for Fundamental Rights Protection

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ABSTRACT

The relationship between national constitutional orders and the international human rights regime has become increasingly complex, moving beyond the traditional dualist/monist dichotomy to a condition of normative interpenetration and structural tension. While both national and international legal frameworks now enshrine fundamental rights protections, they do so through fundamentally different architectures, sources of legitimacy, interpretive methodologies, and enforcement mechanisms. Existing scholarship has examined either domestic constitutionalism or international human rights law as distinct fields, but comparatively systematic analyses of the structural divergences and evolving convergences between the two levels remain underdeveloped. This study addresses that gap through a qualitative comparative legal methodology, employing a functional institutional comparison of three illustrative national constitutional systems—Germany, South Africa, and India—with the core international human rights framework under the International Covenant on Civil and Political Rights and regional equivalents. The analysis reveals four axes of structural divergence: foundations of authority (constituent power versus treaty consent), institutional architecture (centralized constitutional adjudication versus dispersed treaty body and court systems), interpretive approaches (proportionality and structured doctrines versus evolutive and consensus-based interpretation), and modes of enforcement (direct constitutional supremacy versus layered international compliance). Simultaneously, the study identifies convergent dynamics through judicial cross-referencing, the emergence of jus cogens norms, and the incorporation of international standards into domestic constitutional interpretation. The article contributes a novel typology of national-international legal interactions—resistance, accommodation, hybridisation, and convergence—and argues that the contemporary human rights landscape is best understood as a pluralist legal order characterised by heterarchy rather than hierarchy. Practical implications for judicial dialogue, treaty design, and rights advocacy are drawn.

Keywords: Comparative Constitutional Law; Constitutional Pluralism; Fundamental Rights; International Human Rights Law; Judicial Dialogue; Legal Convergence; Monism And Dualism; Treaty Interpretation

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1. INTRODUCTION

The protection of fundamental rights is no longer the exclusive province of national constitutions. Since the mid-twentieth century, a dense international and regional architecture of human rights treaties, monitoring bodies, and adjudicatory mechanisms has developed alongside, and increasingly intersects with, domestic constitutional orders (Steiner, Alston, & Goodman, 2008; Shelton, 2014). The Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), and regional instruments such as the European Convention on Human Rights (1950) and the American Convention on Human Rights (1969) have generated a body of supranational norms that parallel, and occasionally conflict with, the fundamental rights enshrined in national constitutions. This dual-level architecture raises foundational questions about the sources of legal authority, the legitimacy of adjudicative institutions, the methodologies of rights interpretation, and the mechanisms of enforcement—questions that comparative legal scholarship is uniquely positioned to address.

The traditional conceptual apparatus of international law—the doctrines of monism and dualism—provided a relatively clear framework for understanding the relationship between national and international legal orders (Triepel, 1923; Kelsen, 1967). Monism posited a unitary legal system in which international law held primacy, while dualism maintained the separateness of the two spheres, requiring domestic incorporation for international norms to have internal effect. In practice, however, the contemporary interaction between national constitutional frameworks and international human rights law has far exceeded these doctrinal categories. National constitutional courts routinely engage with international human rights jurisprudence—sometimes embracing it as persuasive authority, sometimes rejecting it as incompatible with domestic constitutional identity (Benvenisti, 2008; Slaughter, 2004). International human rights bodies, in turn, draw upon comparative constitutional practice to elaborate the content of treaty norms, engaging in a form of transnational judicial dialogue that blurs the boundaries between the national and the international (McCrudden, 2000; de Wet, 2006). The result is a legal landscape characterised by interpenetration, mutual influence, and persistent structural tension.

Despite the burgeoning literature on comparative constitutional law (Hirschl, 2014; Tushnet, 1999) and the extensive scholarship on international human rights law, comparatively systematic analyses that place national and international frameworks side by side to examine their structural differences and evolving interactions remain surprisingly scarce. Much of the extant work adopts either a domestic constitutional perspective, analysing how international law is received within a particular legal order, or an international institutional perspective, assessing state compliance with treaty obligations. What is missing is a functionally oriented comparative study that treats national constitutional frameworks and the international human rights regime as alternative—and increasingly intertwined—architectures for the protection of fundamental rights, analysing their distinct logics, institutional designs, and normative outputs.

This article undertakes precisely such a study. It pursues three interconnected objectives. First, it identifies and systematically compares the foundational structural differences between national constitutional frameworks and the international human rights regime across four dimensions: sources of authority and legitimacy, institutional architecture, interpretive methodology, and enforcement mechanisms. Second, it analyses the dynamics of convergence and divergence, asking under what conditions national and international frameworks influence one another and where points of irreducible tension persist. Third, it develops a typology of national-international legal interactions—resistance, accommodation, hybridisation, and convergence—that captures the spectrum of relationships observable in contemporary practice. The study’s novelty lies in its integration of comparative constitutional and international legal perspectives into a unified analytical framework, and in its articulation of the typology as a tool for understanding and navigating the pluralist legal order.

The significance of the study is both theoretical and practical. Theoretically, it contributes to the literature on global legal pluralism and constitutional pluralism (Krisch, 2010; Walker, 2002; Maduro, 2012), offering an empirically grounded account of how distinct legal orders interact in the field of fundamental rights. Practically, it offers guidance for constitutional and international court judges, policymakers engaged in treaty design and constitutional reform, and human rights advocates navigating multi-level litigation strategies. The article proceeds by reviewing the relevant comparative law and international law scholarship, setting out the methodology, presenting and discussing the findings across the four comparative axes and the typology, and concluding with implications.

2. LITERATURE REVIEW

2.1 Comparative Constitutional Law and the International Turn

Comparative constitutional law has undergone a renaissance since the late twentieth century, driven by the global spread of constitutional democracy, the proliferation of rights-based judicial review, and the intensification of transnational judicial communication (Hirschl, 2014; Tushnet, 1999). Classical comparative law, rooted in private law taxonomies of legal families (Zweigert & Kötz, 1998), has been supplemented by functionalist approaches that compare how different legal systems address similar social problems, and by contextual approaches that emphasise the embeddedness of constitutional norms in political and cultural contexts (Hirschl, 2014; Jackson, 2010). A significant strand of this literature has focused on the migration of constitutional ideas, documenting how constitutional courts borrow doctrines—proportionality, dignity, the margin of appreciation—from one another and from international human rights bodies (Choudhry, 2006; Perju, 2012).

The “international turn” in comparative constitutional law has directed attention to the ways in which domestic constitutional orders interact with international law. Anne-Marie Slaughter’s (2004) vision of a disaggregated world order, in which national judges, regulators, and legislators form transnational networks that generate a new kind of global governance, captured a central dynamic. Eyal Benvenisti (2008) examined the

strategic uses of foreign and international law by national courts, arguing that engagement with international norms can empower domestic judiciaries vis-à-vis the executive and legislature. Karen Knop (2000) explored the role of domestic courts in interpreting and applying international law, highlighting the transformative potential of domestic judicial engagement. Yet, this literature tends to treat international law as a resource for domestic constitutional interpretation, rather than as an alternative normative framework with its own distinct structural features. The comparison between the two systems as systems remains underdeveloped.

2.2 International Human Rights Law: Institutional Architecture and Challenges

The international human rights regime has been analysed extensively in terms of its institutional architecture, normative development, and enforcement deficits. The United Nations treaty body system, with its reporting procedures, individual communications mechanisms, and general comments, represents a distinctive form of supervisory jurisdiction that differs markedly from domestic constitutional adjudication (Alston & Crawford, 2000; Steiner et al., 2008). Regional human rights courts, particularly the European Court of Human Rights, have developed more robust adjudicative capacities, issuing binding judgments and elaborating an extensive jurisprudence on rights (Helfer & Slaughter, 1997; Stone Sweet & Keller, 2008). The Inter-American and African human rights systems have followed distinct trajectories, with the former developing innovative doctrines on amnesties and forced disappearances, and the latter pioneering collective rights (Binder, 2011; Murray, 2004).

The effectiveness of international human rights law has been the subject of sustained debate. Realist scholars have questioned its independent causal effect on state behaviour (Posner, 2014), while constructivist and liberal-institutionalist scholars have marshalled evidence of norm internalisation, socialisation, and the gradual improvement of human rights practices in states that engage with international mechanisms (Simmons, 2009; Risse, Ropp, & Sikkink, 2013). The compliance gap—the disparity between formal commitment to human rights treaties and actual domestic implementation—remains a central preoccupation, generating a large literature on the conditions under which international norms translate into domestic change (Hafner-Burton, 2013; Koh, 1997). This literature, while rich, primarily addresses the vertical relationship between international norms and state behaviour; it does not systematically compare the structural features of international and national rights-protection systems.

2.3 The Intersection: Pluralism, Dialogue, and Constitutional Identity

A growing body of interdisciplinary scholarship has addressed the intersection of national and international legal orders through the lens of legal pluralism and constitutional theory. Neil Walker's (2002) concept of constitutional pluralism beyond the state challenged the traditional Westphalian model of a single, hierarchically ordered constitutional authority, positing instead a heterarchical arrangement in which multiple constitutional orders—national, supranational, international—coexist and interact without a single ultimate rule of recognition. Nico Krisch (2010) developed this

framework empirically, analysing the pluralist structure of postnational law and arguing that the absence of a clear hierarchy between legal orders can be a source of flexibility and adaptability rather than merely a problem to be solved. Miguel Poiates Maduro (2012) theorised the role of “contrapuntual law” and judicial dialogue in managing the tensions between overlapping constitutional claims, particularly in the European context, where the relationship between national constitutional courts and the Court of Justice of the European Union has generated landmark jurisprudence (the Solange saga, the Lisbon judgment, the Melloni doctrine).

The European experience has produced the most developed literature on the national-international constitutional interface, but its insights are not fully generalizable to other regional and domestic contexts. The South African Constitution’s explicit mandate to consider international law in interpreting the Bill of Rights (Section 39) has generated a distinctive practice of constitutional-international engagement (Liebenberg, 2010; Klug, 2010). The Indian Supreme Court’s expansive interpretation of Article 21 of the Constitution, incorporating international environmental and human rights norms, exemplifies another model of judicial incorporation (Khosla, 2012; Baxi, 2006). Comparative constitutional scholarship has documented these practices but has not systematically compared the structural logics of the national and international systems that they bring into dialogue.

The concept of “constitutional identity” has emerged as a key site of tension, with several national constitutional courts—most prominently the German Federal Constitutional Court and the Polish Constitutional Tribunal—asserting ultimate authority over core constitutional commitments, even in the face of conflicting international or supranational obligations (Sadurski, 2019; von Bogdandy & Schill, 2011). These identity-based resistance claims underscore the enduring structural differences between national and international frameworks, particularly around the foundational question of the demos—the national political community that constitutes the ultimate source of constitutional authority in the domestic sphere, but which has no direct equivalent in the international legal order.

2.4 The Research Gap and the Present Study

The literature thus reveals a landscape of rich but fragmented scholarship. Comparative constitutional law examines national systems and their borrowing from international norms. International human rights law analyses treaty regimes and state compliance. Pluralist theory theorises the coexistence of multiple legal orders but often at a high level of abstraction. What is lacking is a systematic, side-by-side comparative analysis of the structural features of national constitutional frameworks and the international human rights regime as alternative architectures for fundamental rights protection. This study fills that gap by undertaking a functional comparison across four dimensions—authority, institutions, interpretation, and enforcement—and by developing a typology of national-international interactions grounded in comparative institutional analysis.

3. METHODOLOGY

This study adopts a qualitative comparative legal methodology, combining functional comparison with institutional analysis. The approach is designed to illuminate the structural logics of national and international rights-protection frameworks through systematic, side-by-side examination, rather than through a causal analysis of specific outcomes (Zweigert & Kötz, 1998; Hirschl, 2014). The research design comprises three components: case selection, comparative dimensions, and analytical framework.

The national constitutional systems selected for comparative analysis are Germany, South Africa, and India. These jurisdictions were chosen on the basis of a “most different systems” logic that maximises variation on relevant institutional and contextual dimensions while permitting meaningful comparison. Germany represents a mature, post-authoritarian constitutional democracy with a powerful, specialised constitutional court and a strong commitment to international law (Article 25 of the Basic Law). Its legal culture includes the landmark *Solange* jurisprudence that has shaped the terms of the national-international interface globally. South Africa exemplifies a transformative constitutional order, explicitly designed in the aftermath of apartheid to incorporate international human rights norms into domestic rights adjudication through Section 39 of the 1996 Constitution. The South African Constitutional Court has developed an extensive practice of engaging with international and foreign law. India, as the world’s largest constitutional democracy with a common law tradition, provides a contrasting model: its Supreme Court has creatively interpreted fundamental rights, incorporating international norms without an explicit constitutional mandate to do so, and has developed the basic structure doctrine as a shield against both domestic legislative encroachments and, potentially, international impositions. Together, these three jurisdictions span civil law and common law traditions, different colonial and postcolonial legacies, parliamentary and semi-presidential systems, and varied relationships with international law.

The international legal framework selected for comparison is the core international human rights regime centred on the International Covenant on Civil and Political Rights (ICCPR) and its monitoring body, the Human Rights Committee, supplemented by reference to regional systems—the European Convention on Human Rights and the European Court of Human Rights, the American Convention on Human Rights, and the African Charter on Human and Peoples’ Rights—where these illuminate distinctive structural features. While regional systems differ in their institutional design and jurisprudential output, they share with the ICCPR regime a common architecture: state consent as the foundation of obligation, a separation between monitoring and adjudicative functions, an absence of direct enforcement powers, and a reliance on state reporting, individual communications, and inter-state complaints as primary mechanisms.

The comparative analysis is organised around four functional dimensions, derived from the institutional and normative features of legal systems that most directly affect rights protection:

1. Foundations of authority and legitimacy: the source of the system's binding force (constituent power and constitutional supremacy versus state consent and treaty obligation) and the nature of the political community that underpins it.
2. Institutional architecture: the design of the adjudicative and supervisory bodies, including their composition, jurisdiction, access rules, and relationship to other branches of government.
3. Interpretive methodology: the dominant approaches to interpreting rights provisions, including the use of proportionality, margin of appreciation doctrines, evolutive interpretation, and the role of foreign and comparative law.
4. Enforcement and compliance mechanisms: the means by which decisions are given effect, including direct effect, declaratory judgments, monitoring procedures, and the role of political and diplomatic follow-up.

Data sources comprise primary legal materials—constitutional texts, international treaties, and the decisions of domestic constitutional courts, international courts, and treaty bodies—together with secondary scholarly literature in comparative constitutional law, international human rights law, and legal theory. The analysis proceeds through systematic comparison along each dimension, identifying structural differences, patterns of convergence, and points of tension. The findings are then synthesised into a typology of national-international legal interactions.

The study's validity rests on the coherence of the comparative framework, the appropriateness of the case selection for illuminating structural variation, and the grounding of interpretive claims in specific legal sources. As a qualitative, theory-building exercise, the study does not claim statistical generalisability; its aim is conceptual clarification and the generation of a typology that can inform further empirical research.

4. RESULTS AND DISCUSSION

The comparative analysis reveals systematic structural divergences between national constitutional frameworks and the international human rights regime, alongside significant dynamics of convergence and mutual influence. This section presents the findings across the four comparative dimensions and articulates the resulting typology of national-international interactions.

4.1 Foundations of Authority: Constituent Power Versus Treaty Consent

The most fundamental difference between national and international legal frameworks for rights protection lies in their sources of binding authority. National constitutions derive their ultimate validity from the exercise of constituent power—the foundational political act of a people constituting itself as a political community and establishing the fundamental terms of its collective existence (Colón-Ríos, 2012; Loughlin, 2010). This act generates a legal order that is, in its own self-understanding, supreme within its territory; the constitution is the highest law, and all other legal

norms, including those derived from international sources, are valid only to the extent that the constitution permits. The German Basic Law's Article 79(3) eternity clause, the Indian Supreme Court's basic structure doctrine, and the South African Constitution's transformative commitments all exemplify this foundational premise.

International human rights law, by contrast, derives its authority from state consent expressed through treaty ratification. The ICCPR binds states because they have voluntarily acceded to it, and the obligations it imposes are, in principle, revocable through withdrawal (albeit subject to procedural constraints and the possible operation of customary international law). The Human Rights Committee and regional human rights courts exercise jurisdiction only with respect to states that have accepted their competence, and the normative force of their decisions rests ultimately on the continued willingness of states to comply.

This difference has profound consequences. National constitutional courts can claim a direct democratic pedigree—however mediated—that international bodies cannot. The counter-majoritarian difficulty in domestic constitutional law (Bickel, 1962) is mitigated by the fact that the constitution itself is the product of a sovereign people's foundational choice. International human rights bodies, by contrast, face a double democratic deficit: they are neither directly elected by a global demos nor anchored in a single foundational act of a global constituent power. This structural difference explains the recurring assertion by national courts of ultimate constitutional authority, even while they engage with international norms. The German Federal Constitutional Court's *Solange* jurisprudence, which reserves the right to review European Union and international human rights measures for compatibility with the Basic Law's inviolable core, is the paradigmatic expression of this structural stance, grounded precisely in the conviction that the democratic legitimation of the Basic Law cannot be displaced by treaty-based obligations (German Federal Constitutional Court, *Solange II*, BVerfGE 73, 339, 1986; Lisbon, BVerfGE 123, 267, 2009). The Indian Supreme Court's basic structure doctrine, while not directly applied to international law, similarly posits an unamendable constitutional core that no external obligation could override.

Yet, this structural divergence is being partially bridged by the emergence of *jus cogens* norms and customary international law obligations that bind states irrespective of consent, and by the increasing acceptance in domestic constitutional doctrine that certain fundamental rights possess a supranational validity that transcends state sovereignty. The South African Constitutional Court's approach in *S v Makwanyane* (1995), which declared the death penalty unconstitutional in part by drawing on international and foreign human rights norms, reflects a conception of fundamental rights as participating in a global normative order rather than being exclusively the product of domestic constituent power (*S v Makwanyane*, 1995 (3) SA 391 (CC)). The Court's Section 39 jurisprudence does not treat international law as an external imposition but as a co-constituent of the meaning of the Bill of Rights. This represents a shift from a purely consensual to a more communitarian conception of rights authority, one in which the national and international are mutually reinforcing rather than hierarchically ordered.

4.2 Institutional Architecture: Centralised Adjudication Versus Dispersed Supervision

The institutional architecture of rights protection differs markedly between the national and international spheres. National constitutional systems concentrate rights adjudication in a single, apex court—the constitutional court or supreme court—that possesses the authority to issue binding, final interpretations of constitutional provisions. The German Federal Constitutional Court, the South African Constitutional Court, and the Indian Supreme Court each sit at the apex of their respective judicial hierarchies, with the power to strike down legislation, develop constitutional doctrine, and bind all other state organs. Access to these courts is typically broad; individuals can bring constitutional complaints when their fundamental rights are violated by state action, and the courts’ remedial powers are extensive.

The international human rights regime, by contrast, is institutionally fragmented and multi-layered. At the global level, the ICCPR’s Human Rights Committee is not a court but a treaty body that issues non-binding “views” on individual communications, concluding observations on state reports, and general comments that elaborate the meaning of treaty provisions (McGoldrick, 1994; Joseph & Castan, 2013). Its membership is composed of independent experts elected by states parties, not career judges. The Committee lacks the power to issue binding judgments, order specific remedies, or compel state compliance. The regional systems have developed more court-like features: the European Court of Human Rights issues binding judgments and can award just satisfaction, while the Inter-American Court of Human Rights has pioneered structural remedies and supervisory compliance mechanisms. Yet even these regional courts operate within a dispersed supervisory framework that includes political organs—the Committee of Ministers in the Council of Europe, the OAS General Assembly—responsible for overseeing the execution of judgments.

This institutional architecture carries significant implications. The centralised, apex-court model enables doctrinal coherence and the development of a unified national rights jurisprudence, whereas the international model produces multiple, potentially divergent interpretive authorities even within a single treaty system—the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, and the various specialised treaty bodies each generate their own interpretive outputs, with no formal hierarchy or mechanism for resolving conflicts. Furthermore, the absence of a central enforcement authority means that international human rights bodies rely heavily on the persuasiveness of their reasoning and on naming-and-shaming dynamics to induce compliance, whereas national constitutional courts can marshal the full coercive apparatus of the state.

The comparative cases illustrate different modalities of institutional interaction. The German Constitutional Court has consistently maintained the priority of its own jurisdiction, as evidenced in the *Görgülü* case (BVerfGE 111, 307, 2004), where it asserted that the Basic Law’s commitment to international law does not require unconditional deference to European Court of Human Rights judgments but only their consideration within the framework of the domestic legal order. The South African Constitutional Court, by contrast, has treated international human rights bodies as co-

interpreters whose views carry substantial persuasive weight, reflecting Section 39's mandate. In *Government of the Republic of South Africa v Grootboom* (2001 (1) SA 46 (CC)), the Court drew on the Committee on Economic, Social and Cultural Rights' general comments to interpret the right to housing. India's Supreme Court, particularly in *Vishaka v State of Rajasthan* (1997 (6) SCC 241), incorporated the provisions of the CEDAW Convention directly into domestic law in the absence of implementing legislation, effectively collapsing the dualist distinction and deploying international standards to fill gaps in domestic legal protection.

4.3 Interpretive Methodology: Proportionality, Consensus, and the Margin of Appreciation

The methodologies employed to interpret fundamental rights provisions reveal both striking convergences and persistent divergences. National constitutional courts have increasingly adopted structured proportionality analysis—a multi-stage test assessing the legitimacy, suitability, necessity, and proportionality *stricto sensu* of rights-limiting measures—as the dominant framework for rights adjudication (Barak, 2012; Stone Sweet & Mathews, 2008). Originating in German constitutional law and disseminated globally through comparative judicial dialogue, proportionality analysis now characterises the rights jurisprudence of South Africa, India, and a majority of constitutional democracies worldwide. It provides a transparent, structured method for balancing competing rights and interests, and it facilitates judicial review of legislative and executive action without requiring the court to substitute its own policy judgment for that of the political branches.

International human rights bodies have adopted related but distinct interpretive methodologies. The European Court of Human Rights employs proportionality as part of its analysis of qualified rights but embeds it within a broader framework that includes the margin of appreciation—a doctrine that grants states a zone of discretionary judgment in implementing Convention rights, based on the premise that national authorities are better placed than an international court to assess local conditions and the requirements of public morality (Arai-Takahashi, 2002; Letsas, 2007). The Human Rights Committee, in its general comments and views, uses a form of proportionality analysis but generally does not employ a margin of appreciation doctrine as such; instead, it applies a standard of reasonableness that sometimes exhibits deference to state determinations on matters of national security and public order (Joseph & Castan, 2013). The Inter-American Court has developed a particularly robust proportionality framework that tends to afford less deference to states than the European system (Contesse, 2016).

The principle of evolutive interpretation—that human rights treaties should be interpreted in light of present-day conditions rather than the original intentions of their drafters—is a distinctive feature of international human rights methodology, enabling the European Court to find that practices once tolerated (such as corporal punishment in schools or the criminalisation of homosexuality) now violate Convention rights (Mowbray, 2005). National constitutional courts also engage in living constitutionalism, but they do so within the context of a single constitutional tradition and a defined

political community, whereas international bodies must construct evolutive interpretations that claim validity across diverse legal and cultural systems. The European Court's reliance on "European consensus" as a trigger for evolutive interpretation—if a clear majority of member states have adopted a particular position, the margin narrows—is a mechanism for reconciling transnational norm development with state sovereignty that has no direct domestic equivalent.

The interplay between national and international interpretive methodologies generates a dynamic process of mutual learning and occasional friction. The German Constitutional Court's highly structured proportionality doctrine has influenced the European Court's jurisprudence, while the margin of appreciation concept has influenced domestic doctrines of judicial deference in the United Kingdom under the Human Rights Act 1998, though not in Germany or South Africa. The Indian Supreme Court's expansive, justice-oriented interpretation of Article 21—reading in rights to privacy, livelihood, education, and a healthy environment—bears structural similarities to the evolutive interpretation of international human rights bodies, even if the Court grounds its approach in the specific constitutional commitment to "the dignity of the individual."

4.4 Enforcement and Compliance: Direct Effect Versus Layered Monitoring

The enforcement dimension reveals the most salient structural divergence between national and international frameworks. National constitutional systems possess what international law lacks: the direct coercive authority of the state. A declaration of unconstitutionality by the German Federal Constitutional Court, the South African Constitutional Court, or the Indian Supreme Court has immediate legal effect within the domestic legal order. Legislation is struck down, executive action is quashed, and lower courts and administrative bodies are bound to comply. While compliance is never automatic and judgments may be evaded or resisted, the constitutional court operates within an institutional environment in which its authority is backed by the state's enforcement apparatus.

International human rights bodies possess no comparable coercive machinery. The Human Rights Committee's views on individual communications are formally non-binding, and while states are obligated under the ICCPR to provide an effective remedy, the Committee has no power to enforce its recommendations. The European Court of Human Rights' judgments are binding under Article 46 of the Convention, and states do comply in the large majority of cases, but the Court relies on the Committee of Ministers and ultimately on the political will of member states for execution, a process that can be protracted and incomplete (Hillebrecht, 2014; von Staden, 2018). Systemic or politically sensitive judgments—concerning prison overcrowding, voting rights for prisoners, or the treatment of asylum seekers—have met with significant resistance, even from established democracies (Donald, Gordon, & Leach, 2018).

The comparative cases illustrate different compliance dynamics. Germany's record of compliance with European Court of Human Rights judgments is generally strong, but the *Görgülü* case and the subsequent preventive detention saga (M v

Germany, 2009) demonstrate that compliance is contingent on the alignment between the international judgment and domestic constitutional principles. When the European Court found Germany's system of preventive detention violated the Convention, the German Constitutional Court engaged in a complex dialogue, ultimately holding that the Basic Law permitted the continued detention of certain dangerous offenders, albeit under revised conditions (Merkel, 2011). The South African Constitutional Court's compliance with its own socioeconomic rights judgments has been variable, but the framework of structural interdicts and supervisory jurisdiction has generated ongoing implementation processes that are more robust than international monitoring. India's Supreme Court has used the continuing mandamus device to supervise the enforcement of its own rights-protective orders in areas such as environmental protection and prison reform, creating a mechanism of judicial oversight that is more intensive than anything available in the international system.

The enforcement gap in international human rights law has prompted a turn toward domestic incorporation as a strategy for strengthening compliance. The United Kingdom's Human Rights Act 1998, New Zealand's Bill of Rights Act 1990, and similar mechanisms in other jurisdictions represent efforts to bridge the enforcement divide by making international human rights norms directly justiciable in domestic courts, thereby harnessing the enforcement capacity of the national legal system. The converse phenomenon—the strategic use of international bodies by domestic litigants to challenge national laws and practices—illustrates the complementarity of the two enforcement frameworks. The Vishaka case in India exemplifies this dynamic: the Supreme Court used the international CEDAW Convention to fashion a domestic remedy for sexual harassment in the workplace, effectively creating an enforcement pathway that bypassed the gap between India's ratification of the treaty and the absence of implementing legislation.

4.5 A Typology of National-International Legal Interactions

Synthesising the findings across the four dimensions, the study develops a typology of national-international legal interactions. The typology identifies four ideal-typical modes of relationship:

Resistance occurs when a national constitutional order asserts the primacy of its own fundamental rights framework and explicitly limits or rejects the authority of international human rights norms. The German Constitutional Court's Solange and Lisbon jurisprudence, and the Polish Constitutional Tribunal's challenges to the primacy of EU law and the European Convention, exemplify this mode. Resistance is typically grounded in assertions of constitutional identity, democratic sovereignty, or the structural limits of treaty-based authority. It does not necessarily imply non-compliance with specific international obligations but establishes a hierarchical framework in which international norms are valid only to the extent that they are compatible with core domestic constitutional commitments.

Accommodation describes a relationship in which the national legal system formally recognises international human rights law as part of domestic law, but subjects

it to constitutional review and retains the ultimate authority to determine its domestic effect. The United Kingdom's Human Rights Act, which requires courts to interpret legislation compatibly with Convention rights but does not permit them to strike down incompatible primary legislation, represents an accommodationist model. The Act maintains formal parliamentary sovereignty while creating a strong interpretive obligation and a declaration of incompatibility mechanism that places political pressure on the legislature to amend non-compliant laws.

Hybridisation refers to the process by which national constitutional courts incorporate international human rights norms into domestic constitutional interpretation, blending the two frameworks into a syncretic body of rights doctrine. The South African Constitutional Court's Section 39 practice, which treats international law as an interpretive resource that co-determines the meaning of the Bill of Rights, and the Indian Supreme Court's use of international treaties to fill gaps in domestic rights protection, are paradigmatic examples. In hybridisation, the boundary between national and international law becomes porous; constitutional rights are interpreted in light of international standards, and international norms acquire domestic enforceability through constitutional channels.

Convergence represents the limiting case in which national and international frameworks come to so closely align in their normative content and interpretive approaches that the structural differences between them become operationally insignificant. Full convergence is rare, but partial convergence occurs when a regional human rights system, such as the European one, develops a jurisprudence that is consistently followed by national courts without significant reservation, and when national courts actively shape that jurisprudence through preliminary references and judicial dialogue. The relationship between the European Court of Human Rights and many Nordic and Western European national courts approximates convergence, at least in domains where consensus exists, though resistance points persist.

The typology is not intended as a rigid classification but as an analytical tool that captures the spectrum of observed interactions and the dynamics of movement along that spectrum. States may shift between modes over time, as Hungary and Poland have shifted from accommodation toward resistance in the context of democratic backsliding. The typology contributes to the theorisation of global legal pluralism by specifying the forms that inter-order relationships can take, moving beyond the abstract assertion of pluralism to a more granular account of how pluralism operates in the field of fundamental rights.

5. CONCLUSION

This article set out to systematically compare national constitutional frameworks and the international human rights regime as alternative architectures for the protection of fundamental rights. The analysis has demonstrated that the two levels operate according to distinct structural logics. National frameworks derive their authority from constituent power and operate through centralised, apex-court adjudication with direct enforcement capacity. International frameworks derive their

authority from state consent and operate through dispersed, supervisory bodies with layered compliance mechanisms. Their interpretive methodologies, while increasingly convergent around proportionality, diverge in their use of doctrines such as the margin of appreciation and evolutive interpretation that reflect the different institutional contexts and democratic legitimisation challenges of international adjudication.

Yet, the comparison also reveals that these structural differences coexist with significant dynamics of interpenetration and mutual influence. National courts routinely draw on international norms to enrich domestic rights interpretation; international bodies draw on comparative constitutional practice to elaborate treaty standards; and litigants strategically navigate both levels to maximise rights protection. The resulting legal landscape is not one of simple hierarchy—neither international primacy nor constitutional sovereignty fully describes the reality—but one of heterarchical interaction, captured by the typology of resistance, accommodation, hybridisation, and convergence.

The theoretical contribution of the study lies in its articulation of an integrated comparative framework and a typology that specify the modes of interaction between national and international legal orders in the rights domain. This framework advances the literature on constitutional pluralism by operationalising the abstract concept of heterarchy and demonstrating its varied empirical manifestations. It also bridges the gap between comparative constitutional law and international human rights law, treating the two not as separate fields but as interacting components of a single global rights-protective ecology.

The practical implications are significant. For constitutional and international judges, the analysis highlights the value of judicial dialogue and the importance of understanding the institutional limitations and democratic credentials of counterpart jurisdictions when engaging in cross-referencing. For treaty designers and constitutional reformers, the findings underscore the need to design incorporation mechanisms that are sensitive to the structural differences between the two levels, recognising that direct effect, interpretive obligation, and hybridisation represent different strategies with distinct implications for the balance between international normativity and democratic self-government. For human rights advocates, the typology offers a diagnostic tool for assessing the relationship between domestic and international frameworks in a given context and for developing multi-level litigation strategies that leverage the strengths of each level.

The study has limitations that invite further research. The case selection, while illustrative, is limited to three national jurisdictions and the core UN treaty regime; extension to other regions (Latin America, Southeast Asia, the Middle East) and to specialised regimes (international criminal law, international economic law) would test the generalisability of the typology. The analysis has been qualitative and structural; future quantitative research could develop indicators of the four interactional modes and test hypotheses about the conditions under which states shift from one mode to another. The normative question of how conflicts between national and international frameworks should be resolved—the question of constitutional identity versus

cosmopolitan justice—remains a site of ongoing philosophical and legal debate, to which this study's structural analysis contributes a descriptive foundation but not a prescriptive resolution.

In an era of resurgent nationalism, democratic backsliding, and contestation over the legitimacy of international institutions, understanding the structural dynamics of national-international legal interaction is of urgent practical importance. The protection of fundamental rights depends on the continued vitality of both constitutional democracy at the national level and the international human rights regime; their relationship, as this study has sought to show, is one of productive tension and necessary complementarity rather than zero-sum competition.

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