

UDK: 349.6:342

## ENVIRONMENTAL CONSTITUTIONALISM: PROTECTING THE PLANET THROUGH LEGAL FRAMEWORKS

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***Summary:** Environmental constitutionalism is a growing movement that seeks to protect the planet through legal frameworks. This approach recognizes the importance of environmental protection in national constitutions and aims to ensure that the environment is given the same level of legal protection as other fundamental rights. By enshrining environmental rights and responsibilities in national constitutions, countries can create a legal framework that prioritizes the preservation of the natural world. Environmental constitutionalism also allows for the establishment of legal mechanisms to hold governments and corporations accountable for their environmental impact. This can include the right to a healthy environment, the protection of natural resources, and the promotion of sustainable development. By integrating environmental principles into the highest law of the land, countries can ensure that environmental protection is a priority for future generations. In this article, we will explore the concept of environmental constitutionalism and its potential to drive meaningful change in the fight against climate change and environmental degradation. We will also examine some examples of countries that have successfully integrated environmental rights into their constitutions and the impact it has had on environmental protection.*

***Key words:** environmental constitutionalism, environmental rights, constitutional law, sustainable development, global environmental challenges, governance*

### **Introduction:**

Today, we are witnessing unprecedented land degradation and loss of arable land 30 to 35 times faster than in the past. Drought and desertification are increasing annually, resulting in the loss of 12 million hectares of land and affecting poor communities around the world. Of the 8,300 known animal breeds, 8% are extinct and 22% are at risk of extinction.[1, P.89]

Environmental degradation and the urgent need for sustainable development have become pressing concerns worldwide. In response, more and more countries around the globe are amending their constitutions to recognize environmental rights and duties relating to air, water, the use of natural resources, sustainability, climate change, and more, courts are increasingly engaging with these provisions and developing a common constitutional law of environmental rights.[2, P.9] and many countries have recognized the importance of embedding environmental rights within their constitutional frameworks. Environmental constitutionalism offers a valuable approach to analyze and compare the legal mechanisms that countries employ to protect and promote environmental rights. By examining the constitutional provisions and legal frameworks of different nations, this research aims to identify successful strategies and lessons that can be learned from environmental constitutionalism.

At present, the constitutions of about three-quarters of nations worldwide address environmental matters in some fashion. Constitutions from about 76 countries guarantee environmental rights explicitly, with courts in another dozen do so finding that attendant rights to life, dignity or health also embed rights to a quality environment. Constitutions from dozens of other countries impose reciprocal duties toward the environment, commit to environmental stewardship or policies, or guarantee rights to information, participation, and justice in environmental matters. Indeed, most people on earth now live under constitutions that protect environmental rights in some way.

The potential reach of environmental constitutionalism is staggering: it implicates most matters affecting the human condition. These include rights to life, dignity, health, food, housing,

education, work, socio-economic status, culture, nondiscrimination, peace, children's health, and general well-being—as well as the quality of the earth's water, ground, and air [3].

### **Environmental constitutionalism**

Generally speaking, environmental constitutionalism is associated mostly with debates surrounding the protection of environmental rights and the way constitutions the world over employ a rights-based approach to augment environmental care[4]. Yet, environmental constitutionalism is a broader concept that stretches beyond but includes and is often based on the rights-based approach. As a socio-legal and political project that seeks to transform environmental governance to the extent that it provides improved environmental protection, environmental constitutionalism additionally employs a wide range of other constructs and features typical of the broader constitutional paradigm and the environmental governance movement. These include, among others, the rule of law, the separation of powers, the principle of legality, aspirational fundamental values such as human dignity and equality, and various principles derived from soft law such as sustainable development. [5, P. 187]

Douglas Kysar, for example, generally describes environmental constitutionalism as the “constitutionalization of environmental protection,” and elsewhere as “the constitutionaliz[ation] of environmental law,” which, he admits, remains largely a symbolic exercise in the regulatory scheme of things because constitutional provisions are usually weakly enforced and vaguely specified [6, P.231]. While David Boyd similarly seems to view environmental constitutionalism as a transformative process that provides constitutional environmental protection, his empirical-evaluative analysis leads him to conclude more optimistically that: “[w]hile no nation has yet achieved the holy grail of ecological sustainability . constitutional protection of the environment can be a powerful and potentially transformative step toward that elusive goal.”[4]

James May and Erin Daly take a comparative approach and explain that:

Environmental constitutionalism is a relatively recent phenomenon at the confluence of constitutional law, international law, human rights, and environmental law. It embodies the recognition that the environment is a proper subject for protection in constitutional texts and for vindication by constitutional courts worldwide.[ 4]

They admit that while it is difficult to determine exactly the conceptual and theoretical content, as well as the many different forms and components of environmental constitutionalism, “[T]he constant is that environmental constitutionalism exists in just about every nook and cranny on the globe, with growing significance.”[4] Environmental constitutionalism most probably originated from the failures of “ordinary” (mostly pollution and conservation oriented) laws to provide the requisite level of environmental protection that was initially envisaged by the fathers of environmental law. In the same way that a crying child who bumps his toe would instinctively run to his mother, in desperate times, regulators and legislators alike seem to seek refuge in the familiar, the constant, and the trusted. Constitutions and constitutionalism have been around since the 17th Century, [7, P. 416] thus providing a familiar language and the logical “go to” solution for environmental regulators in times of ecological upheaval and regulatory uncertainty.

As the world grapples with the increasing threats of climate change and environmental degradation, there has been a growing recognition of the need for stronger legal protections for the environment. Environmental constitutionalism has emerged as a powerful tool in this fight, providing a framework for governments to enshrine environmental rights and responsibilities in their constitutions.

Environmental constitutionalism is based on the idea that a healthy environment is a fundamental human right, and that it is the responsibility of governments to protect and preserve it for current and future generations. By including provisions for environmental protection in their constitutions, countries can create a legal foundation for environmental policy and regulation, ensuring that the rights of nature are given the same weight as other fundamental human rights.

**Methods:**

This study utilizes a comparative research methodology, analyzing constitutional provisions and legal frameworks related to environmental rights in select countries. The research includes a comprehensive review of relevant constitutional texts, legislative acts, judicial decisions, and scholarly literature. Comparative analysis is conducted to identify commonalities, differences, and emerging trends in environmental constitutionalism.

**Results:**

The analysis reveals that a significant number of countries have recognized environmental rights in their constitutions, although the extent of protection and enforcement varies. Common constitutional provisions include the right to a healthy environment, the duty to protect the environment, and the right to participate in environmental decision-making. Differences exist in the level of specificity, justiciability, and enforceability of these rights.

One of the key principles of environmental constitutionalism is the concept of intergenerational equity, which recognizes the need to consider the long-term impacts of environmental decisions on future generations. By including provisions for environmental protection in their constitutions, countries can create a legal foundation for environmental policy and regulation, ensuring that the rights of nature are given the same weight as other fundamental human rights.

Several countries have already embraced environmental constitutionalism, incorporating provisions for environmental protection into their constitutions. For example, Ecuador's 2008 constitution includes a groundbreaking chapter on Rights for Nature, which recognizes the right of ecosystems to exist and flourish, and imposes a duty on the government to prevent environmental harm. Similarly, Bolivia's constitution recognizes the rights of nature and mandates the government to take measures to prevent environmental destruction.

That countries and their subnational instruments have robust environmental statutory schemes, regulations, and common law traditions, does not mean constitutional entrenchment of environmental values is superfluous[8]. Rather, the international and regional turn toward environmental protection may buttress and help to promote these values at the national level. This may be done, of course, through legislative and regulatory efforts, but for numerous reasons, environmental constitutionalism offers advantages over non-constitutional means of advancing environmental protection. In addition to providing a legal framework for environmental protection, environmental constitutionalism can also serve as a tool for holding governments accountable for their environmental decisions. By enshrining environmental rights in the constitution, citizens and environmental organizations can use the legal system to challenge government actions that threaten the environment, ensuring that environmental considerations are taken into account in all decision-making processes.

However, while environmental constitutionalism holds great promise, its effectiveness ultimately depends on the political will and commitment of governments to uphold and enforce environmental rights. In many cases, the inclusion of environmental provisions in constitutions has not translated into meaningful action on the ground, as governments continue to prioritize economic development over environmental protection.

Nevertheless, environmental constitutionalism represents a significant step forward in the global effort to protect the planet. By recognizing the fundamental rights of nature and establishing a legal framework for environmental protection, countries can take a proactive stance in addressing the urgent environmental challenges facing the world today. As the threats of climate change and environmental degradation continue to escalate, the principles of environmental constitutionalism will play an increasingly important role in shaping the future of environmental governance.

**Discussion:**

The comparative analysis highlights the importance of constitutional recognition of environmental rights in promoting sustainable development and environmental protection. Countries that have strong constitutional provisions for environmental rights tend to have more

effective environmental governance and better environmental outcomes. The existence of justiciable environmental rights provides citizens with legal tools to hold governments accountable and seek remedies for environmental harm. The establishment of specialized environmental courts or tribunals can enhance access to justice and expertise in environmental matters.

The composition and adoption of a constitution can be a singular national achievement. Written constitutions can memorialize society's most ineluctable relationships and rules [9]. As Finer said, "Constitutions are codes of norms which aspire to regulate the allocation of powers, functions, and duties among the various agencies and officers of government, and to define the relationship between these and the public." [10]

For numerous reasons, environmental constitutionalism offers advantages over non-constitutional means of advancing environmental protection.

First, constitutionally embodied environmental provisions are more durable than non-entrenched rights. [11]

Second, environmental constitutionalism provides a normative function that is superior to other domestic legal approaches because "as supreme law of the land, constitutional provisions promote a model character for the citizenry to follow, and they influence and guide public discourse and behavior." [12]

Third, and perhaps because of constitutionalism's normative superiority, the public is more likely to respond to environmental constitutionalism than environmental regulation: "On a practical level, the public tends to be more familiar with constitutional provisions than specific statutory laws. Citizens tend to identify with, and in turn are identified by, the form of their national constitution." [12]

Based on the findings, it is recommended that countries consider incorporating environmental rights into their constitutions, ensuring their justiciability and enforceability. Governments should promote public participation in environmental decision-making processes and establish specialized environmental courts or tribunals to handle environmental disputes effectively. Policymakers and activists should also learn from successful models of environmental constitutionalism in other countries, adapting them to their own legal and institutional frameworks.

### **Conclusion:**

Environmental constitutionalism offers valuable insights into the inclusion and implementation of environmental rights in constitutional law. By examining the experiences of different countries, policymakers, scholars, and activists can identify best practices and lessons that can contribute to more effective environmental governance. Strengthening constitutional provisions for environmental rights, ensuring their justiciability, and establishing specialized environmental courts or tribunals are crucial steps towards achieving sustainable development and protecting the environment.

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