Ecocentric Theorem: Environmental Conscious Constitution

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**Abstract**

Despite the fact that many national constitutions include several aspects of environmental constitutionalism, the lack of such provisions in certain countries suggests that broad acceptance is not ensured. The research method used in this article is based on normative juridical method by exploring the determining factors that influence a country's choice to adopt environmental constitutionalism. Through historical studies of countries that have made constitutional changes in this context, this study highlights the contextual background as a key factor in the process of constitutional change. This setting, in consequence, shapes the amendment process, exposing it to a range such influencing factors. The article concludes by highlighting the essential responses crucial for successful amendment processes: linking environmental protection with national values, capitalizing on crises, adequately addressing economic considerations, and having such political will by securing support from public and politicians.
A. Introduction

Over the past 25 years, there has been a remarkable surge in global constitution-making activities, with a majority of nations worldwide revising, amending, or entirely drafting new constitutional texts during this period. This constitutional dynamism has been accompanied by what Boyd aptly characterizes as an 'environmental rights revolution,' where the collective response to ecological degradation has shifted towards framing environmental issues within the discourse of human rights and incorporating them into constitutional frameworks. Originating with Italy's inclusion of provisions for the protection of natural landscapes in its 1947 Constitution, the trajectory of environmental constitutionalism has evolved, initially at a gradual pace but gaining substantial momentum in the past couple of decades. Presently, out of the 193 national constitutions scrutinized, 145 exhibit some level of commitment to environmental constitutionalism, transcending political systems that include democracies, states with absolute monarchy, and those governed by single-party or authoritarian rule. Despite the widespread integration of environmental references into constitutional texts, certain constitutions still lack such provisions. Intriguingly, this absence cannot be solely attributed to states' failure to engage in constitutional amendments. Notably, two states, presented with the opportunity for constitutional reform over the last decade, neglected to incorporate environmental constitutional provisions, suggesting that the process of environmental constitutionalizing is not inevitable but contingent on specific circumstances. Recognizing the importance of comprehending the determinants influencing the successful adoption of environmental constitutionalism, this article delineates four overarching factors that environmental advocates must consider before championing the establishment or reinforcement of environmental constitutionalism in states where it is absent or where existing provisions are weak.

It is imperative to clarify that this research does not assert any claims regarding the substantive impact of environmental constitutional provisions. The study fully acknowledges that the mere presence or absence of environmental constitutionalism does not inherently indicate the extent to which a state effectively safeguards the environment. Moreover, the research does not encompass states lacking specific constitutional provisions but where courts have interpreted and applied other constitutional rights, such as the right to life, bodily integrity, or access to information, for environmental purposes.

B. Discussion

1. Environmental Constitutionalism in a Nutshell

An examination of the constitutions of 193 nations reveals a remarkable diversity in the treatment of environmental issues. Traditionally, scholarly discourse has fixated on the narrow category of ‘environmental rights.’ However, Kotzé broadens this perspective by introducing a...
more comprehensive concept: environmental constitutionalism. According to Kotzé, the expression of environmental 'care' in constitutional language embodies environmental constitutionalism. He defines 'constitutionalism' as the bedrock that legitimizes and directs governance, whether in the private or public sector. Constitutionalism establishes the fundamental universal values cherished by a legal community and safeguarded by the legal order. Furthermore, it establishes checks and balances for the exercise of executive, legislative, and judicial authority in the daily conduct of governance. Kotzé perceives environmental provisions within a constitution not merely as a means to shape the content of laws but also as a mechanism to establish moral and ethical obligations concerning the environment. These provisions serve as a legal foundation and authority, compelling the actual fulfillment of these obligations. This interpretation of environmental constitutionalism transcends a narrow focus on specific rights; instead, it recognizes the value of articulating environmental concerns in a constitutional document, influencing a broader spectrum of public and private interactions. It embraces the expansive definition of environmental constitutionalism based on 'environmental care.' It encompasses any mention of the environment, ecology, natural landscape, or associated rights or duties within a national constitution, bill of rights, or another document of similar legal standing. This section elucidates the multifaceted components of environmental constitutionalism while also delineating certain aspects excluded from consideration.

a. The Environmental Rights

Environmental rights can be defined as a set of responses aimed at addressing issues arising from human interactions with the non-human elements of nature. According to Rodriguez-Rivera, the term 'environmental rights' encompasses three distinct elements, each targeted at different objectives: first environmental procedural rights; second, the right of the environment; and third, the right to the environment.

Environmental procedural rights involve aspects such as participation in decision-making, access to information, and access to justice. In the realm of international law, these rights are arguably the most widely accepted principles of environmental rights, having been formalized by the Aarhus Convention. This convention, known as the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, establishes a framework for these procedural rights. At the national level, rights to environmental information are frequently embedded in constitutions, with numerous references to public participation in environmental decision-making. However, the third component of the Aarhus Convention, access to justice, is not as commonly addressed in constitutional provisions, although the Kenyan Constitution does make a notable reference to it. The most revolutionary among environmental rights is the right of the environment, proposing that the environment should be recognized as having intrinsic value beyond its utility for human purposes. This perspective advocates granting the environment independent rights and protection based on its inherent value.

The argument asserts that it is unjust to confine justice and rights solely to human relationships, thereby depriving interested parties of essential values in the distribution process solely because they are not human. Ecuador took a groundbreaking step by incorporating a chapter on nature (or Pachamama) in its 2008 constitutional revision, making it the first and

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only country to constitutionally protect this right.\textsuperscript{10} The international expression of the right to the environment dates back to Principle 1 of the Stockholm Declaration from the United Nations Conference on the Human Environment. This principle states that every person has the fundamental right to freedom, equality, and adequate conditions of life in an environment of quality that allows for a life of dignity and well-being. It is noteworthy that the right to the environment is conceptualized as an individual right, with the environment valued not solely for its intrinsic worth but in recognition of its significance to human existence.

b. Ecological responsibility

In certain constitutional frameworks, the nexus among citizens, the state, and the environment is delineated in terms of responsibilities rather than rights. The nature and enforceability of these responsibilities exhibit variation across nations. In instances where environmental responsibilities are vested in the state, they often adopt a broad scope. Frequently, these obligations are articulated in fundamental terms, as exemplified in the Constitution of Myanmar, wherein it stipulates that "the Union shall protect and conserve the natural environment."\textsuperscript{11}

Some jurisdictions take environmental duties a step further, encompassing an obligation not only to preserve but also to enhance the current state of the environment. In certain cases, there exists a mandate to raise awareness regarding environmental issues among the populace. The duties assigned to citizens can be characterized as a general mandate for all individuals to uphold environmental integrity. Alternatively, they may be more specific, addressing the conduct of individual actions. In some instances, citizens may be obligated to provide restitution in cases where environmental harm is inflicted. The breadth and depth of these environmental duties thus exhibit considerable diversity across different legal systems.

c. Ecological principles

Ecological principles are delineated separately from the responsibilities imposed on the state. In this context, the constitution explicitly directs those considerations for the environment must find expression in the overarching principles of governance that the state is obligated to uphold. For instance, the Constitution of Slovakia articulates that the economic foundation of the Slovak Republic rests upon the tenets of a market economy that is both socially and ecologically oriented.\textsuperscript{12} Similarly, the Constitution of Bhutan stipulates that the state is tasked with the responsibility of ensuring ecologically balanced sustainable development concurrently with the promotion of equitable economic and social progress.\textsuperscript{13} This underscores a deliberate integration of environmental concerns into the fundamental principles guiding the governance of these nations.

d. Restricting rights in the name of environmental justification

Constitutional rights, though fundamental, are seldom absolute and can be subject to limitations outlined either explicitly or implicitly. Environmental considerations, for instance, may serve as a restricting factor, exemplified by the Constitution of Madagascar. This constitution asserts that the state ensures free enterprise "within the limit of the respect for the


general interest, the public order, morality, and the environment.". A comparable stance is taken by the Macedonian Constitution, which emphasizes that "the freedom of the market and entrepreneurship shall be restricted by law only for reasons of... protection of the natural and living environment." In this context, environmental considerations may be invoked to rationalize constraints, such as imposing bans on commercial advertising, limiting property rights, and restricting freedom of movement.

2. The Dynamics of Constitutional Transformation

The range of individual constitutional modifications leading to the incorporation of environmental provisions spans from the addition of a solitary amendment dedicated to environmental constitutionalism to a comprehensive overhaul involving the repeal and replacement of multiple articles within the constitution. The motivations behind constitutional changes are diverse, and specific circumstances are more prone to instigate the incorporation of environmental constitutional principles. Therefore, it becomes imperative to thoroughly examine and categorize the contexts in which constitutional amendments occur. In the context of this analytical framework, the emphasis is placed on tangible textual alterations within the constitution, distinct from instances of judicial or executive reinterpretation. The 145 constitutions featuring environmental provisions are systematically classified into three overarching categories based on the circumstances under which these provisions were initially introduced: (i) Transformative shifts amid crisis, (ii) Consolidation of regimes, and (iii) Non-crisis evolution.

This categorization is derived from a meticulous historical analysis of the domestic conditions prevailing at the time of the inception of environmental constitutionalism. It is important to note that this classification does not account for any subsequent modifications that each constitution may have undergone, emphasizing a retrospective perspective on the constitutional landscape at the time of the incorporation of environmental provisions.

a. Transformative shift amid crisis

The body of literature addressing constitution-making underscores the pivotal role that moments of crisis play in instigating substantial constitutional changes. One illustrative instance of such transformative episodes is the establishment of a newly independent state, characterized by a legal tumult demanding the meticulous drafting of a new constitution. A comparable scenario unfolds with the withdrawal of an occupying force, where the inherent disparities in values or institutional requisites between the incumbent regime and its successor necessitate a comprehensive overhaul of the existing constitutional framework. Constitutional evolution, however, is not exclusively confined to scenarios culminating in the complete upheaval of the prevailing political and legal order. Internal crises, which fall short of precipitating a total removal of the existing system, can also serve as catalysts for constitutional modifications. Such crises may arise from endeavors to petition the government for constitutional change or mass protests against governmental policies. In these situations, the imperative of constitutional amendment or replacement arises due to the risks associated with a failure to respond effectively. Among the 145 constitutions exhibiting environmental constitutionalism, a substantial 65.5% introduced environmental provisions during crisis-
induced changes. An extensive portion of constitution-making in the post-Second World War era aligns with the crisis change paradigm, unfolding across three pivotal phases: the period following decolonization in the 1950s-1970s, the demise of European military dictatorships in the 1980s, and the dissolution of the Soviet Union and other communist nations in the 1990s. Notably, these latter phases witnessed the inclusion of environmental constitutionalism in the majority of newly democratic or independent states upon achieving autonomy. In instances where the impetus for constitutional change arises internally, environmental provisions may find their way into constitutions despite their peripheral connection to the underlying causes of discontent. A case in point is the 1976 amendments to the Indian Constitution, executed during a highly contentious state of emergency from June 1975 to March 1977. The modifications included the introduction of Article 48A on environmental protection and Article 51A on fundamental duties of citizens, stemming largely from the recommendations of a committee established by Indira Gandhi to review the Constitution. Notably, although the committee's report triggered major changes in the separation of powers and the balance between fundamental rights and directive principles, it did not touch upon environmental protection. Similarly, Kenya witnessed the inception of environmental constitutionalism in 2010 amid a constitutional amendment process aimed at mitigating internal violence.

This transformative constitutional change was part of a broader initiative to consolidate democracy and resolve ethnic tensions that had previously resulted in significant bloodshed between 2007 and 2008, following an earlier unsuccessful constitutional reform attempt. The Indian and Kenyan cases underscore how moments of crisis can be opportunistically leveraged to introduce comprehensive constitutional reforms, showcasing the multifaceted nature of constitutional evolution.

b. Consolidation of regimes

In the aftermath of crises that precipitate processes leading to democratization, certain constitutional frameworks invariably come into existence. Moreover, leaders not aligned with democratic principles may actively initiate modifications to governmental structures, culminating in the articulation of entirely new constitutions. Among the 14 states subjected to scrutiny, a noteworthy 25 (constituting 16.9%) incorporated explicit environmental provisions into their constitutional fabric during a period characterized by the consolidation of constitutional regimes. This discernible trend extends its reach into numerous Gulf states, where nations governed by a semblance of absolute monarchy have undergone the deliberate enactment of constitutions. Such constitutional enactments serve the dual purpose of legitimizing extant legal frameworks while providing a structured basis for governance. A parallel strategy is readily discernible in one-party states, exemplified by China’s embrace of environmental constitutionalism in 1978 and Vietnam's parallel move in 1992.

Beyond their immediate function of solidifying political authority, constitutions may be embraced within the broader context of regime consolidation, strategically wielded with the objective of advancing towards democratic principles, or, at the very least, projecting the appearance of such a transformative journey. A noteworthy illustration of this nuanced interplay is evident in the crafting of the 2008 Constitution of Myanmar. In certain instances, the constitution adopted during this phase of political evolution exhibits a resilience that surpasses the tenure of the regime instrumental in its inception. Such enduring documents persist, often

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in a modified form, well into the post-dictatorial phase, even after the democratization process has ostensibly reached its zenith. A compelling illustration of this phenomenon unfolded in the case of Chile, where the constitution crafted during a pivotal juncture continued to exert its influence in the altered landscape of the democratized nation.\footnote{David Landau, “The Importance of Constitution-Making,” \textit{Denver Law Review} 89, no. 3 (2012): 611–33; Constitute, “Chile 2022 Constitution,” accessed November 30, 2023, https://constituteproject.org/constitution/Chile_2022D.}

c. Non-crisis evolution

In addition to the prevailing inclination towards constitution-making prompted by crisis-induced change, a substantial portion of constitutional adjustments occurs in non-crisis scenarios. Alterations in a nation’s foundational values or perspectives regarding the effectiveness of institutional arrangements can lead to a situation where existing constitutional frameworks fail to meet the expectations of the citizenry.\footnote{Roger D. Congleton and Birgitta Swedenborg, \textit{Democratic Constitutional Design and Public Policy: Analysis and Evidence} (Cambridge, Mass.: MIT Press, 2006).} Among the 145 states under examination, a noteworthy 26 (amounting to 17.6\%) have chosen to integrate principles of environmental constitutionalism into their national charters outside the context of crisis. Even in circumstances that are free from crises, the act of modifying a constitution has the potential to evoke controversy. This controversy, on occasion, serves as a distraction, diverting attention away from the newly introduced provisions concerning environmental constitutionalism. A pertinent illustration can be found in the comprehensive amendment of the Dutch Constitution in 1983. In this instance, Article 21 was introduced, imposing a responsibility on the state to ensure the habitability of the country and to protect and enhance the environment. Significantly, this constitutional amendment coincided with the incorporation of several novel social provisions, encompassing labor rights, welfare rights, and health rights, all of which were anticipated to entail future financial implications for the Dutch state.

It is arguable that the anticipation of these financial ramifications played a role in the minimal attention accorded to Article 21 in the debates about the Constitution in Parliament. Additionally, the perception that Article 21 primarily reiterated the existing legal position on the environment likely contributed to the scant emphasis placed upon it during these deliberations.

3. Ecological Constitutionalism: Influencing Factor

a. Political leadership

Numerous analysts posit that the genesis of a constitution transcends the bounds of ordinary political dialogue, asserting that constitutional politics deviates from conventional political maneuvers. Conversely, some argue that it is subject to the same negotiation dynamics as everyday political processes. Nicol, for example, advances the idea that the realm of constitutional reform is intricately intertwined with the politics of substantive policy and overarching ideology.\footnote{Danny Nicol, “Progressive Eras, Periods of Reaction, and Constitutional Change,” \textit{German Law Journal} 15, no. 3 (May 1, 2014): 437–59, https://doi.org/10.1017/S2071832200018988.} This interconnectedness was palpable during the drafting of the Iraqi Constitution, where occupying powers and international organizations encountered formidable obstacles in surmounting local political resistance, particularly concerning contentious issues such as the designation of Islam as the state religion.\footnote{Noah Feldman, “IMPOSED CONSTITUTIONS AND ESTABLISHED RELIGION,” \textit{The Review of Faith & International Affairs} 4, no. 3 (December 2006): 3–12, https://doi.org/10.1080/15570274.2006.9523256.} This discourse contends that politics and leadership, or the lack thereof, serve as pivotal internal factors shaping the adoption of environmental constitutionalism.

The contentious role of politicians in the Ecuadorian context has been subject to prior scrutiny. Moreover, the incontrovertible fact remains that political leadership in France played
a seminal role in initiating and guiding the process that culminated in the inclusion of the Charter of the Environment in the French Constitution in 2005, along with its acknowledgment in the Constitution’s Preamble. President Jacques Chirac stands recognized as the primary catalyst behind this transformative amendment. In a 2001 speech, he delineated his vision of establishing an environmental charter, said, A fresh and expansive aspiration is placed upon everyone, especially on us, with the aim of transforming France into a new crucible for the emerging ethics and lifestyle of the 21st century. The goal is to establish a humanistic ecology as the focal point of our republican commitment. Environmental concerns assumed a central role in Chirac’s 2002 campaign, and following his re-election, he appointed a government commission that embarked on an extensive public consultation spanning seven months regarding the Charter. The commission presented a draft to Parliament, subsequently affirmed by a constitutional Congress of both houses, thereby circumventing the need for a referendum. It is noteworthy that some Socialist, Communist, and Green deputies abstained from the vote, with speculations citing a combination of reservations about the document’s robustness and a reluctance to grant Chirac a political triumph. Internal resistance to the Charter also manifested within Chirac’s UMP party.

The President intervened on two occasions during the process: initially, to secure the document’s constitutional status, and subsequently, to ensure the elevation of the precautionary principle to the status of a constitutional tenet. The fact that the final text garnered acceptance as a minimum standard by both Socialist and Green deputies, alongside a significant faction of right-wing members, underscores the considerable consensus achieved within the intricate fabric of the French political system on this momentous issue.

b. Coercive diffusion

The phenomenon of coercive diffusion of political ideals intricately unfolds within a framework of power asymmetries, where states wielding greater influence exploit their positions to assert their policy preferences upon nations with comparatively lesser power. This intricate process involves powerful states molding the conduct of their weaker counterparts by magnifying the advantages associated with adopting specific policies while concurrently heightening the costs of non-adoption through a meticulously designed system of material rewards and penalties. The consequential impact of this influential dynamic is often observed in the imposition of specific constitutional arrangements upon less powerful states, with the instrumental roles of foreign aid and foreign assistance becoming evident as coercive tools in this complex interplay of international relations. Goderis and Versteeg’s empirical analysis provides empirical weight to the assertion that nations sharing the same predominant aid donor exhibit a tendency to adopt analogous constitutional provisions. The tentacles of coercion extend further into the realm of international organizations engaged in constitution building, as illustrated by the European Union’s (EU) imposition of specific constitutional amendments to align domestic constitutions with Member State obligations under the EU Treaties. Expanding beyond mere accession requirements, influential entities such as the World Trade Organization (WTO), International Monetary Fund (IMF), and World Bank wield substantial power to shape what they perceive as advantageous constitutional and legal developments on a global scale.

The leverage exerted by these international organizations manifests during constitutional drafting processes, wherein they actively press for adherence to democratic norms or encourage deeply entrenched regimes to embark on processes of constitutional reform. Notably, such coercive strategies have played a crucial role in establishing the tempo for the widespread adoption of environmental laws across the globe. Esteemed scholars like Frank, Hironaka, and Schofer highlight the influential role of organizations like the World Bank in catalyzing the enactment of environmental impact assessment laws on a global scale, occasionally resorting to assertive measures commonly referred to as ‘strong-arm tactics.’ While the World Bank conditions access to its services based on the enactment of new legislation and the domestic implementation of international environmental agreements, it maintains a nuanced recognition of the pivotal role constitutions play in asserting states' sovereignty. Explicitly acknowledging the limitations, the World Bank stipulates that it cannot include conditions that expressly violate domestic constitutional provisions. Consequently, the body of evidence supporting the idea that direct coercion, whether emanating from states or international organizations, has significantly contributed to the widespread adoption of environmental constitutionalism, as opposed to less comprehensive environmental laws, remains notably scarce.

c. Colonialism impact

Law and Versteeg conducted an examination of national constitutions, concentrating on the substantive variations and unique ideological features of each document. They differentiate between constitutions characterized as 'traditional and libertarian,' predominantly present in Anglo-American contexts, and those with a 'contemporary and statist' orientation. Their findings indicate that seven out of the top ten most libertarian constitutions lack any component of environmental constitutionalism. This pattern is consistent across all 48 states without environmental constitutionalism, including 35 associated with the United Kingdom (UK) or its previous territories. This shared characteristic implies a resistance within the common law governance model, particularly linked to the UK, to integrate environmental constitutionalism. Post-independence, former British colonies often emulated the choices of their colonizer, especially in terms of the constitutional rights they safeguard. The frequency of subsequent amendments to these constitutions influences whether they presently incorporate environmental constitutionalism. The link between former British colonies and the absence of environmental constitutionalism is notably observable in Caribbean states. Despite gaining independence and formulating constitutions based on the 'Westminster model,' most of these states lack provisions for environmental constitutionalism. Political stability in the Caribbean has hindered some states from revising their constitutions, limiting opportunities to introduce new provisions. Nevertheless, a few Caribbean nations, including the Bahamas, Barbados, and Trinidad and Tobago, revised their constitutions in the 2000s without including environmental constitutionalism. This hesitancy contrasts with the Jamaican Charter of Fundamental Rights, endorsed in 2011, which introduces the right to a healthy and productive environment. This development is significant given the historical reluctance in the Caribbean to adopt such provisions.

The British colonial legacy also left a notable legal imprint on Africa, with numerous states inheriting a common law legal code and adopting a Westminster model of government with a bill of rights. Currently, only four African states previously under British rule—Botswana, Mauritius, Sierra Leone, and Tanzania—lack elements of environmental constitutionalism.

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This disparity is attributed to political upheavals in many African states post-independence, leading to frequent constitutional amendments and replacements. Former British colonies in Africa tended to incorporate references to the environment during postcolonial constitution rewrites, particularly following crises, thereby severing ties with the liberal Westminster model and embracing influences supporting environmental constitutionalism.

d. National environmental damages

While the nexus between substantial environmental harm within nations and the establishment of environmental protection measures may seem apparent, the degree to which one unequivocally shapes the other remains a subject of ongoing discourse. Sprinz and Vaahhtoranta posit a close correlation, suggesting that in the absence of actual or potential environmental damage, the imperative for environmental protection would lose its relevance. In contrast, Frank, Hironaka, and Schofer adopt a more cautious stance, arguing that throughout history, the predominant human response to widespread environmental degradation has leaned towards migration rather than proactive restoration.

Venturing into the domain of environmental constitutionalism, there are instances where its adoption can be traced, at least in part, to the prevalence of widespread pollution. The 1980s witnessed a surge in awareness concerning substantial environmental degradation in Eastern Europe, capturing public attention. By the time the communist regimes fell, environmental concerns had evolved into a significant focal point for the public. In the specific case of Poland, apprehensions about the environmental consequences of the communist era played a pivotal role in the inclusion of multiple references to environmental protection in its groundbreaking Constitution of 1997.

Environmental non-governmental organizations (NGOs) in Poland actively lobbied during the drafting process, advocating for robust references to environmental protection within the constitutional text. Similarly, during the formulation of the Brazilian Constitution in 1988, domestic NGOs strategically harnessed international concerns surrounding the destruction of the Amazon rainforest. This strategic move significantly contributed to the heightened environmental consciousness on a national scale. Gellers underscores that persistent environmental degradation in Nepal had a comparable effect on public consciousness, ultimately paving the way for the adoption of environmental constitutionalism in its landmark 2007 Interim Constitution. In this nuanced context, the convergence of environmental concerns, public activism, and constitutional development vividly illustrates the intricate interplay between ecological challenges and legal responses, unfolding on a global canvas of evolving environmental consciousness.

4. Pushing Environmental Constitutionalism

The investigation into the dynamics of change in Section C reveals a noteworthy trend, wherein 65.5% of states incorporated provisions related to environmental constitutionalism during periods marked by civil disorder or significant political upheaval. These episodes of transformative change, often stemming from crises, provide fertile ground for constitutional amendments. However, within this context, the process of amending the constitution becomes susceptible to a myriad of influences, particularly the external pressures expounded upon in Section D.2 & D.3. During these tumultuous periods, the primary focus on devising a

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constitutional remedy for the crisis can overshadow the consideration of including environmental constitutionalism within the draft text. The exposure of the constitutional drafting process to influences such as learning, persuasion, acculturation, and emulation, coupled with the diverse potential expressions of environmental constitutionalism, results in individual drafting processes being directed toward a specific trajectory.

Throughout the course of this research, a pivotal determinant in the proliferation of environmental constitutionalism emerges — the frequency of modern constitution-making, predominantly driven by constitutional strife. Despite arguments from Ginsburg, Elkins, and Blount asserting the underestimated prevalence of non-crisis constitution-making, the choice of specific language, whether influenced by persuasive academic advisors, lobbying non-governmental organizations, or perceptions of a regional consensus reflected in treaties or organizational norms, plays a crucial role. The fluidity inherent in the drafting process presents a strategic opportunity for advocates of environmental provisions to secure their incorporation into the final constitutional text. In instances where such a constitution undergoes approval through a referendum or a political assembly, it becomes implausible for arguments specifically against environmental constitutionalism to outweigh the broader set of compromises encapsulated in the constitutional text. Consequently, environmental constitutionalism may be perceived as a relatively inconsequential aspect within the intricate landscape of constitutional negotiation, often deemed unworthy of expending political capital.

The examination of states that have embraced environmental constitutionalism outside of crisis situations or faced rejection of proposed provisions in non-crisis conditions unveils a diverse array of factors at play. The integration of environmental constitutionalism, witnessed in the Netherlands alongside non-controversial amendments, contrasts with the challenges observed in St Vincent and the Grenadines when attempting to introduce it amidst contentious reforms, particularly significant institutional changes. Notably, the absence of the necessity to navigate compromises post-crisis in non-crisis scenarios and the waning of conflict that instigated reform diminishes the prospects of garnering support for a comprehensive constitutional change. Consensus emerges as a pivotal element in ensuring the success of constitutional amendments, as exemplified by Switzerland’s 1999 reform. The depth of agreement achieved through prolonged negotiations among political parties and social interests played a decisive role. The French case underscores the indispensability of consensus for the successful integration of environmental references. Conversely, the absence of consensus in Iceland during its constitutional redrafting following the 2008-9 financial crisis led to substantial opposition, impeding the overall process. Political engagement and public support prove instrumental, as evidenced by Brazil’s social mobilization contributing to the incorporation of an environmental protection chapter in the 1988 Constitution.

In non-crisis situations, the achievement of environmental constitutionalism is most effectively pursued as part of a discrete reform package rather than a comprehensive constitutional overhaul. Unsuccessful attempts often stem from perceived radical changes or a lack of widespread public support. Political champions and influential figures assume a crucial role in advocating for such provisions, whether driven by personal or party legacy-building motives or a commitment to align with international norms. The question of whether environmental concerns warrant constitutional status lacks clear doctrinal foundations, and the diverse expressions of environmental constitutionalism underscore the ambiguity in its

constitutional elevation. The central weakness identified lies in the absence of a clear political or social value anchoring environmental constitutionalism, comparable to traditional fundamental rights. Successful instances, exemplified by France and Ecuador, underscore the significance of aligning environmental provisions with national values. Remarkably, the African Charter on Human and Peoples’ Rights has exerted influence on the adoption of environmental constitutionalism in various states by reflecting specific African values.\(^{33}\) This accentuates the contextualization of environmental rights and their intertwining with national identity, effectively countering claims of imposition by the Western world.

It is arguable that the anticipation of these financial ramifications played a role in the minimal attention accorded to Article 21 in the debates about the Constitution in Parliament. Additionally, the perception that Article 21 primarily reiterated the existing legal position on the environment likely contributed to the scant emphasis placed upon it during these deliberations.

C. Conclusion

The expansion of environmental constitutionalism has followed diverse trajectories. In some states, it has emerged as a result of a comprehensive civil society campaign, capitalizing on public concerns regarding the state of the domestic environment or the assertive leadership of political figures. In other states, its inclusion as a constitutional feature has occurred with minimal public attention. The unsatisfying acceptance of these new provisions does not necessarily denote a positive outcome, prompting questions about whether those involved in the amendment process anticipate their serious implementation. Research is imperative to determine whether the intensity of the debate over granting constitutional status to environmental provisions correlates with subsequent adherence to these articles. It is posited here that an energetic debate on the proposed provisions is essential as it would alleviate confusion regarding their intended meaning and impact. Advocating for a contested amendment process, as opposed to passive acceptance, carries risks, as individuals may be less inclined to embrace environmental references if they comprehend that their constitutionalization may impose restrictive or limiting effects. However, the argument contends that outright rejection is preferable to surreptitious environmental constitutionalism that, in practice, contributes minimally to environmental protection. If the ongoing and substantial proliferation of environmental constitutionalism is deemed a commendable objective, the environmental movement's crucial step is to articulate more effectively the inherent benefits of environmental protection. This, in turn, will bolster the rationale for incorporating and reinforcing these provisions within national constitutions.

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B. Journal


C. Document


