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Eco-Constitutionalism: A new area of legal research and advocacy



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Key points

1. “Eco-constitutionalism” brings together two subjects of legal research, i.e. (1) **the ‘greening’ of constitutions** since the 1980’ s and (2) growing interest in **‘global constitutionalism’** (seeking to identify constitutionalist principles in international law).
2. The aim is for an overarching constitutional framework that identifies **“living within ecological limits”** as a fundamental concern (and commitment) of all humanity.
3. This fundamental concern has not (yet?) found its expression in (Western-dominated) ethical, political and legal systems.
4. **Taking stock** of what has been achieved since the 1980’ s is a first step; developing a **strategy**, as aptly described by the Earth Charter, is a second step for an agenda of eco-constitutional research.

Content

- What is eco-constitutionalism?
- Origins of eco-constitutionalism
- German eco-constitutionalism
- Greening of constitutions since 1990s
- Global constitutionalism
- Conclusions

What is eco-constitutionalism?

1. “ism”

a school of thought, theory or political movement (like liberalism, Marxism, feminism, pacifism, ecologism etc.)

2. “constitutionalism”

Adherence of any form of government to fundamental (“constitutional”) principles

3. “eco-constitutionalism”

Adherence of any form of government to fundamental ecological principles

Origins of eco-constitutionalism

1. Christopher Stone' s “Trees” (1972)

- triggered jurisprudential debate around anthropocentrism vs ecocentrism

2. German constitutional debate (1985-90)

- Constitutional initiative to overcome anthropocentrism (1985-87)
- Association of Environmental Law (1987)
- Institute for Environmental Law, Bremen (1987)
- “*Robbenklage*”/Seals’ Lawsuit (1988)
- Constitutional revisions in Germany, Switzerland and Austria (during 1990’ s)

3. Worldwide ‘greening’ of constitutions (1990 -)

Robbenklage 1988



Seals (*Pinnipedia*) of the North Sea

vs.



Federal Republic of Germany

Headline DER SPIEGEL 37/1988, p.71: **“*Wie absurd*” / How absurd**

Constitutional Initiative 1985-90:

1. Literature and conferences around new theories with new terms:

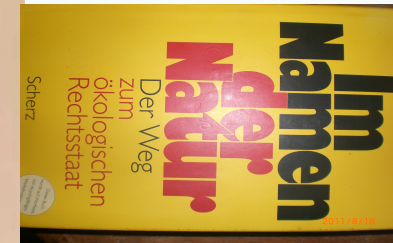
“ökologischer Rechtsstaat”/eco-constitutional state;

“ökologische Grundrechte”/ecological fundamental rights

“Eigenrechte der Natur”/rights of nature

“Ökologische Grundrechtsschranken”

“Ökologisches Recht”



Constitutional Initiative (1985-87)

2. Work with political parties and politicians

3. *Bundesrat*/Upper House Initiative of the State of Bremen

4. *Gemeinsame Verfassungskommission*/
Joint Constitutional Commission (1987-89)

Bundesrat Proposal (1987)

Article 14 (2) :

“Property imposes duties. Its use should also serve the public well-being and the sustainability of natural resources.”

Need to investigate “ecological limitations” to fundamental rights such as individual freedom, freedom of research and right to property.

Social Democratic Party (1987):

“The environment needs constitutional protection for its own sake. The current anthropocentric perspective [of the *Grundgesetz*/constitution] causes massive reductions of environmental protection; day-to-day interests e.g. in the area of economics or transport will inevitably prevail.”

Joint Constitutional Commission Final Report (1989)

“The question of either an anthropocentric or ecocentric approach to the constitution is of such fundamental importance, that the Commission did not see itself as mandated to answer it. Instead the Commission calls for a wide expert and public dialogue before considering such a change.”

BUT then

... following Germany's unification

Joint Constitutional Commission Final Report (1993)

“Environmental protection cannot be subject of protection in its own right, especially cannot claim unilateral priority. Rather it needs to be seen in the context of multifaceted situations of tension, for example, with economic growth, industrial development, creation of jobs, housing, energy supply or transport services.” (...)

“There was no support for the introduction of ecological limitations to individual fundamental rights, for example, property.”

The ‘greening’ of the German constitution

1994 - Art 20a:

“The state, also in its responsibility for future generations, protects the natural foundations of life (...)”

2002 – Art 20a amendment:

“...and the animals...”

Eco-constitutions, containing recognition of intrinsic value of life, ecological limitations to human rights and ecologically defined state obligations, have been drafted in Germany (1991), Switzerland (1992) and Austria (1994).

Greening of constitutions since the 1990s

Samples from around the world



Every individual has the **right to a healthy environment**.

The laws must guarantee the **community's participation** in the decisions that may affect the environment.

It is the duty of the State to protect the **diversity** and **integrity** of the environment, to conserve the **areas of special ecological importance**, and to foster the **education** for the achievement.

The state must also **cooperate with other nations** in the protection of **the ecosystems in border areas**.

República de Colombia

A world map with a light yellow background. France is highlighted in a darker yellow color. The map shows the outlines of continents and countries.

PREAMBLE

The French people solemnly proclaim their attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789, confirmed and complemented by the Preamble to the Constitution of 1946, and to the rights and duties as defined in the **Charter for the Environment** of 2004.

République Française

CHARTER FOR THE ENVIRONMENT

The French People Considering that

Natural resources and equilibriums have **conditioned the emergence of mankind** ;

The **future** and **very existence of mankind are inextricably linked with its natural environment** ;


The environment is the **common heritage of all mankind** ;

Mankind exerts ever-increasing influence over the conditions for life and its own **evolution** ;

Biological diversity, the **fulfillment** of the person and the **progress** of human societies are affected by certain types of **consumption** or production and by **excessive** exploitation of natural resources ;

Care must be taken to safeguard the environment along with the other fundamental interests of the Nation ;

In order to ensure sustainable development, choices designed to meet the needs of the present generation should not jeopardize the ability of **future generations** and other peoples to meet their own needs,



Stemming from the conviction that the state is responsible for the preservation of nature, sound environment, sustainable development, balanced development of all its regions and the establishment of social justice;

The State Article 1

Montenegro is a civil, democratic, **ecological state** with social justice, based on the rule of law.

Република Црна Гора
Republika Crna Gora

Some conclusions

1. 60 national constitutions recognize a human right to a decent environment
2. 60 constitutions recognize individual responsibility to protect the environment
3. 100 constitutions recognize a state obligation to protect the environment

Cultural, political and constitutional traditions are too diverse to detect trend towards eco-constitutionalism

Need for comparative constitutional research

Global constitutionalism

- * A new field of international law research
- * What constitutes a constitution?
 - body of fundamental principles
 - procedural and substantive rules
 - value-laden concept
 - ‘thin’ and ‘thick’ constitutionalism

Is there an ‘international environmental constitution’ ?

- Alexandre Kiss: lack of institutions
- Daniel Bodansky: ‘thin’ / ‘weak’ ;
‘very much state-driven’ ;
‘general principles of international environmental law too vague’

The ‘greening’ of international law

Plethora of documents re. the environment, in particular:

Stockholm, Rio and Johannesburg Declarations; Agenda 21

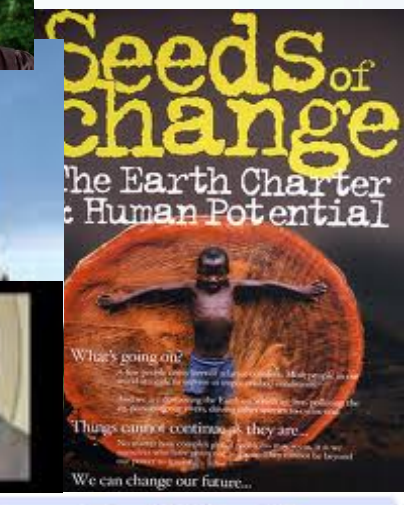
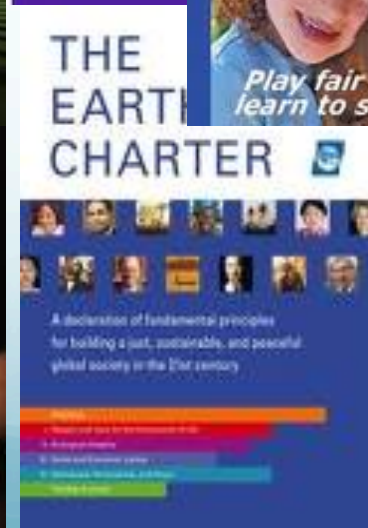
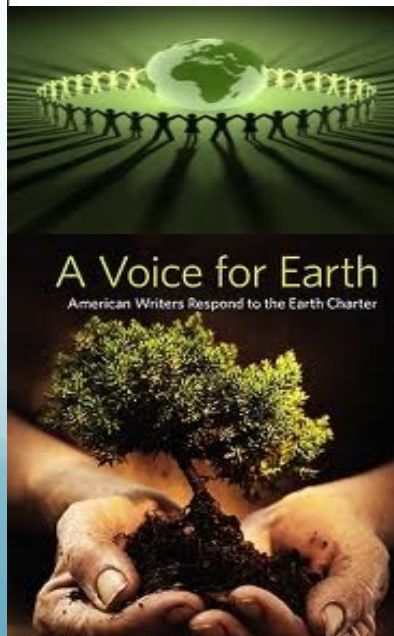
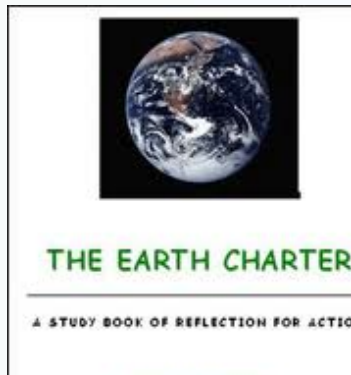
World Conservation Strategy, UN World Charter for Nature, Caring for the Earth, UN Millennium Declaration, Earth Charter, Draft Universal Declaration of the Rights of Mother Earth

Paradigmatic changes through 2000 Earth Charter, 2010 Draft Declaration, Constitutions of Venezuela (1999), Ecuador (2008) and Bolivia (2009).

Legitimacy of a global constitution

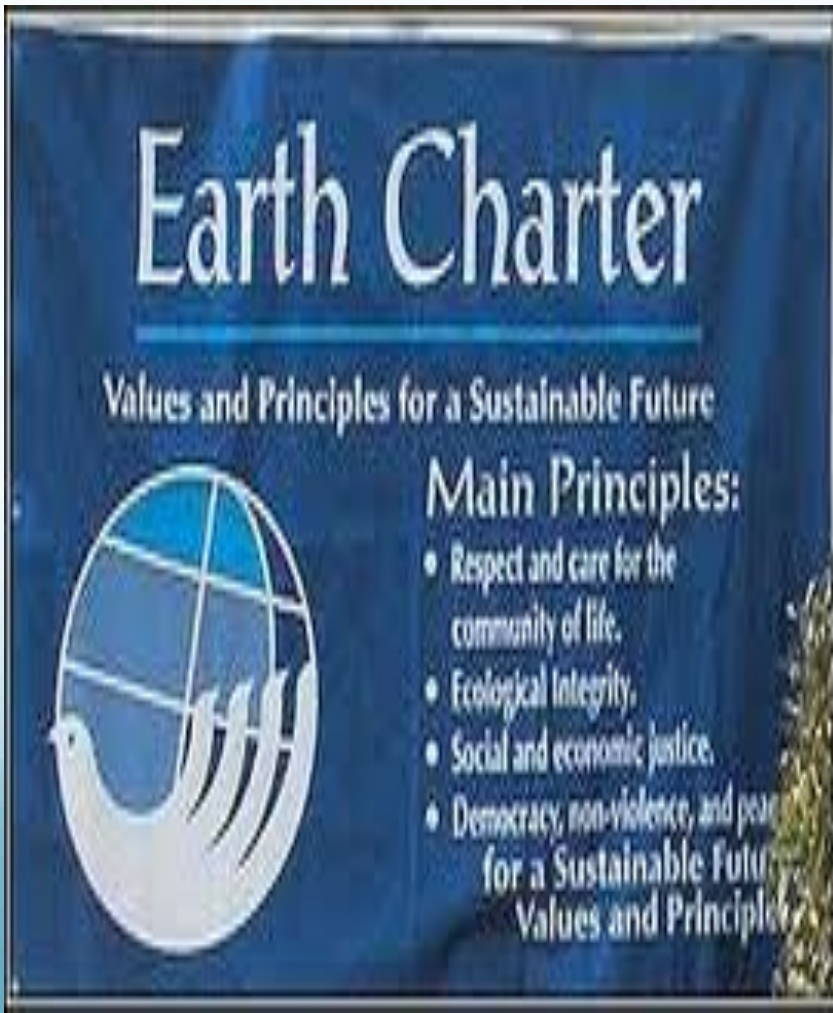
- *ius cogens erga omnes*
- democracy, EU model/multilayered governance, ‘transcivilisational’, common ethical foundations
- 1948 Universal Declaration of Human Rights
- 1948/49 *Draft World (‘Chicago’) Constitution*

Towards a global constitution?



The Earth Charter Initiative

Earth Charter a model?



Endorsed by:

- UNESCO (2003)
- IUCN (2004)
- ca. 5000 organizations
incl. many cities and
several states
- lead document for the
UN Decade for Education
on Sustainable
Development

Earth Charter a model?

- Wide consensus due to transnational, cross-cultural, inter-denominational approach
- Legal recognition (‘soft law’)
- Respect and care for community of life
- Democratic ecological covenant
- Global partnership of states and civil society

Conclusion

1. Eco-constitutionalism (= applied Eco-/Earth Jurisprudence) aims for ecocentrism to guide society (locally, nationally, globally).
2. To-date, only pockets of ecocentric constitutions exist (Ecuador, Bolivia; drafts; environmental rights and obligations; Earth Charter)
3. More research needed on:
 - values underpinning constitutions, human rights & global treaties (incl. growth, property, anthropocentrism, Western-centredness);
 - constitutional responsibilities (individually & collectively, e.g. state as environmental trustee, global commons trusteeship)

Thank you !