

Why do Countries Adopt Constitutional Environmental Rights Provisions and what, if any, Effects do said Provisions have on Environmental Outcomes?

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Abstract: The following is a brief summary of recent quantitative and qualitative research covering the: (1) reasons why countries adopt constitutional environmental rights provisions; and (2) effects of constitutional environmental rights provisions on environmental outcomes in the spirit of Boyd (2012). Section A ("Recent Research") is organized temporally, and Section B ("Summary of Research Findings") is organized logically in the sense of first discussing why countries constitutionalize environmental rights and second their effects on outcomes (broadly speaking).

A. Recent Research

1. Gellers, J. (2012) "Greening Constitutions with Environmental Rights: Testing the Isomorphism Thesis," *Review of Policy Research*, 29(4), 523–543.

Paper Abstract: Why do some countries have constitutional environmental rights while others do not? In this paper, I conduct statistical analyses to respond to this inquiry. Through studying the impact of intraregional constitutional design, I aim to understand why states adopt environmental rights. I argue that regional isomorphism—i.e., the tendency among states within a region to converge on certain policies—may explain the trend toward constitutionalization of environmental rights. In this paper I (1) define and provide historical background on environmental rights, (2) describe theories which support regional isomorphism as a means of explaining the adoption of constitutional environmental rights, and (3) conduct statistical tests to determine the validity of the regional isomorphism thesis. I find that the enactment of constitutional environmental rights within a region does not increase the likelihood that another state within the same region will include environmental rights within its constitution.

Data and Method Summary: Survival analysis of developing countries in Europe and Central Asia, Latin America and the Caribbean, and Sub-Saharan Africa over the period 1974-2010.

Additional Control Variables: Geographic region.

2. Gellers, J. (2015) "Explaining the Emergence of Constitutional Environmental Rights: A Global Quantitative Analysis," *Journal of Human Rights and the Environment*, 6(1), 75-97.

Paper Abstract: While the growing trend toward constitutional enactment of environmental rights has mainly been discussed in normative and descriptive terms, few scholars have endeavored to explain the phenomenon in a systematic fashion and none have approached the subject from the perspective of international relations (IR). In this article, I seek to correct for this theoretical gap and augment the existing understanding of this global development in constitutional design. Using survival analysis, I examine normative, rationalist-materialist, and domestic politics explanations for the phenomenon observed. I find that the adoption of constitutional environmental rights is significantly associated with international civil society influence, human rights legacy, and level of democracy, and best explained by theories of domestic politics and norm socialization. This research suggests that the emergence of constitutional environmental rights signals a major shift in the international normative arena.

Data and Method Summary: Survival analysis of UN recognized states over the period 1983-2010.

Additional Control Variables: GDP, GDP per capita, land area, population, and population density.

3. Gellers, J. and Jeffords, C. (2015) "Procedural Environmental Rights and Environmental Justice: Assessing the Impact of Environmental Constitutionalism," University of Connecticut, Economic Rights Working Paper #25.

Paper Abstract: The global trend toward the adoption of environmental rights within national constitutions has been largely regarded as a positive development for both human rights and the natural environment. The impact of constitutional environmental rights, however, has yet to be systematically assessed using empirical data. In particular, the expansion of procedural environmental rights—legal provisions relating to access to information, participation, and justice in environmental matters—provides fertile ground for analyzing how

environmental rights directly interface with conditions necessary for a functioning democracy. In order to understand the extent to which these provisions deliver on their lofty aspirations, the authors conduct a quantitative analysis designed to evaluate the relationship between procedural environmental rights and environmental justice. The results demonstrate that states with procedural environmental rights are more likely than non-adopting states to facilitate the attainment of environmental justice, especially as it relates to access to information.

Data and Method Summary: Lagged cross-sectional framework for 214 countries as of 2009/2010.

Additional Control Variables: (In unreported results) income per capita, rule of law, population density, forest cover, linguistic diversity, electoral self-determination, provision age, and female percent of the population.

4. Jeffords, C. (2015) "On the Temporal Effects of Static Constitutional Environmental Rights Provisions on Access to Improved Sanitation Facilities and Water Sources," forthcoming in the *Journal of Human Rights and the Environment*.

Paper Abstract: Using novel panel data on constitutional environmental rights (CER) for 190 countries from 1990-2012, this paper questions if the presence/language of CER provisions provides increased access to improved sanitation facilities and drinking water sources. While implementing statutory laws/regulations derived from CER provisions is a dynamic process, the presence/language of CER provisions is temporally fixed. To capture these dynamics, the presence of a CER and a measure of its legal strength are interacted with its age as explanatory variables within a fixed effects framework yielding: (1) no evidence of an association between the CER measures and access to improved sanitation facilities; (2) a positive statistically significant association between ageing CER provisions and access to improved water sources; and (3) a positive but weakly statistically significant association between the legal strength of ageing CER provisions and access to improved water sources, which is improved upon for countries with British as opposed to. French legal origins.

Data and Method Summary: Panel fixed effects framework covering 190 countries from 1990-2012.

Additional Control Variables: Provision age, income per capita, income per capita squared, population density, female percent of the population, government effectiveness, internet users per 100 people, and legal origins (French and British).

5. Jeffords, C. and Minkler, L. (2015) "Do Constitutions Matter? The Effects of Constitutional Environmental Rights Provisions on Environmental Outcomes," University of Connecticut Department of Economics Working Paper #2014-16. Revised and resubmitted.

Paper Abstract: We use a novel data set within an instrumental variables framework to test whether the presence and language of constitutional environmental rights influence environmental outcomes. The outcome variables include Yale's Environmental Performance Index and its components. We employ two stage least squares to account for reverse causality, that is, the possibility that a country which takes steps to protect the environment might also be more likely to constitutionalize environmental rights. Our first stage theory combines constitution norms, opposition costs, and generation effects. Our controls include country income, which means that our study is also related to the Environmental Kuznets Curve literature. We find that constitutions do indeed matter for positive environmental outcomes, which suggests that we should not only pay attention to the incentives confronting polluters and resource users, but also to the incentives and constraints confronting those policymakers who initiate, monitor, and enforce environmental policies.

Data and Method Summary: Lagged and repeated cross-sectional framework for 96 countries as of 2012 and 2014.

Additional Control Variables: Provision age, count of other economic and social rights in country's own constitution, count of environmental rights provisions in constitutions of other countries, income per capita, income per capita squared, state party to the International Covenant on Economic, Social, and Cultural Rights, population density, rule of law, and geography.

6. Gellers, J. (2015) "Environmental Constitutionalism in South Asia: Analyzing the Experiences of Nepal and Sri Lanka," *Transnational Environmental Law*, 4(2), 395-423.

Paper Abstract: Why do some countries adopt constitutional environmental rights while others do not? This article uses qualitative content analysis of interviews conducted in Kathmandu (Nepal) and Colombo (Sri Lanka) to analyze the cases of Nepal, which adopted a constitutional environmental right in the 2007 Interim Constitution, and Sri Lanka, which has not enacted such a right in any of its governing charters. It finds that the presence of a constitutional environmental right in Nepal and the absence of such a right in Sri Lanka can be best explained directly with reference to domestic political conditions and structures, and indirectly in terms of the international normative environment in which the constitution was written. The article outlines a research agenda which focuses on evaluating the impacts of constitutional environmental rights. This research provides important insights into the process of constitutional design in developing states and the translation of international norms in domestic contexts.

Data and Method Summary: Most similar systems research design, qualitative content analysis of 17 interviews, along with evidence drawn from primary and secondary sources.

7. Gellers, J. (2015) "The Great Indoors: Linking Human Rights and the Built Environment," under review at *Journal of Human Rights and the Environment*.

Paper Abstract: It is widely held that environmental rights are designed to protect individuals from environmental harms and improve the quality of the environment. However, thus far the focus of environmental rights has been placed almost exclusively on the natural environment. I break new ground in the literature by arguing that, in conjunction with international human rights regarding housing, health, and water and sanitation, environmental rights should apply to the built environment as well. Through an analysis of international law, case law, and scientific evidence, I demonstrate that protecting indoor environmental quality (IEQ) is necessary to the full realization of health, housing, water and sanitation, and environmental rights. This argument has four important implications. First, it provides victims of indoor environmental harms with a rights-based mechanism for redressing their grievances. Second, it makes a strong case for the inclusion of green building development in efforts to protect environmental rights throughout the world. Third, by directing policymakers to specific, measurable steps that can be taken to protect environmental rights, it eliminates the charge that such rights are too ambiguous to be successfully implemented. Finally, it leads to the establishment of a new legal device—a responsibility to adopt sustainable building practices.

Data and Method Summary: Legal, philosophical, and scientific arguments rooted in international law, case law, national constitutions, and public health scholarship.

B. Summary of Research Findings

B.i Why Include Constitutional Environmental Rights Provisions?

Among developing countries, Gellers (2012) finds that regional influences do not explain the proliferation of constitutional environmental rights. Globally, Gellers (2015) shows that the following factors are associated with increased environmental constitutionalism at the country level: (1) the presence of international civil society organizations; (2) past human rights performance; and (3) the level of democracy. In an instrumental variables framework, Jeffords and Minkler (2015) show that countries are more likely to constitutionalize environmental rights if: (1) they are younger/newer (generational effect); (2) their constitution includes a growing number of other economic and social rights (opposition cost effect); and (3) if there is a growing number of countries with existing constitutional environmental rights provisions prior to a country writing its own (constitutional norm effect). In a comparative study of countries in South Asia, Gellers (2015) observes that the decision to adopt constitutional environmental rights is also related to the historical period in which a constitution is drafted (i.e. the normative environment) and the existing capacity of a state to address environmental problems (i.e. extent to which judiciary is receptive to environmental claims and maturity of environmental law and policy within a country). Anecdotally, this research also suggests that norms related to environmental rights spread through legal education and innovative litigation strategies.

B.ii What Effects do Constitutional Environmental Rights Provisions have on Environmental Outcomes?

After controlling for the reasons why a country might constitutionalize environmental rights, Jeffords and Minkler (2015) show that the presence and legal strength of existing constitutional environmental rights provisions, in particular substantive environmental rights provisions, are positively associated with environmental outcomes as measured by Yale's Environmental Performance Index (Emerson et al., 2012) and one of its components called Ecosystem Vitality. Gellers and Jeffords (2015) show that the combined effect of having both a substantive constitutional environmental right and a constitutional procedural right to information leads to increased access to improved urban and rural water sources and sanitation facilities. Jeffords (2015) demonstrates that ageing constitutional environmental rights provisions are associated with increased access to improved water sources, and that a country's legal origins matter for increasing access to improved water sources. In addition, Gellers (2015) shows that the effectiveness of environmental rights (in terms of both human health and environmental protection) can be enhanced by joining them with other established human rights at the international level including the rights to health, housing, water and sanitation.

B.iii Bullet Point Summary

Based on a reading of the above papers, it appears the following is quantitatively/empirically supported:

1. The heterogeneous characteristics of a country help determine whether or not said country constitutionalizes environmental rights and, furthermore, once it has decided to do so, the use of said provision wholly depends on the particular circumstances of that country at that point in time.
2. Constitutional environmental rights provisions are associated with improved environmental outcomes, human rights outcomes, and environmental justice. In particular, environmental outcomes were captured by Yale's Environmental Performance Index and Ecosystem Vitality component, and human rights outcomes and environmental justice were captured by access to improved water sources and sanitation facilities in urban and rural areas.
3. Future research should consider a meaningful way to control for existing statutory laws and policies associated with environmental outcomes and related human rights outcomes and environmental justice concerns. Failing to control for existing policy likely biases the estimated effect of constitutional

environmental rights provisions on environmental outcomes, human rights outcomes, and environmental justice concerns. It is a serious omitted variables problem.

4. Promotion of environmental rights can be achieved through: (1) further authoritative specification of the relationship between environmental rights and existing human rights in General Comments promulgated by the Committee on Economic, Social, and Cultural Rights; (2) technical assistance in the form of legal training focused on sensitizing actors to the need for and best practices in environmental rights (for law students, advocates, policymakers, and judges); (3) rights consciousness raising campaigns for vulnerable groups (both by establishing baseline levels of rights awareness and launching subsequent efforts to measure the impact of interventions designed to raise awareness levels); (4) national policies (i.e. planning, environmental regulations, etc.) that integrate substantive and procedural environmental rights (i.e. environmental impact assessment laws) where appropriate; and (5) providing financial assistance to national green ombudsmen and public interest law firms that represent clients whose environmental rights may have been infringed upon.

C. Additional References

Boyd, David R., (2012) *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment*, Vancouver: UBC Press.

Emerson, J.W., Hsu, A., Levy, M.A., de Sherbinin, A., Mara, V., Esty, D.C., and Jaiteh, M. (2012) "2012 Environmental Performance Index and Pilot Trend Environmental Performance Index," New Haven: Yale Center for Environmental Law and Policy.

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