

Eco-Constitutionalism: A Way Forward

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THE RIGHT TO A HEALTHY ENVIRONMENT

Revitalizing Canada's Constitution



The Environmental Rights Revolution

A Global Study of Constitutions, Human Rights, and the Environment

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FULFILMENT OF SOUTH AFRICA'S CONSTITUTIONAL ENVIRONMENTAL RIGHT IN THE LOCAL GOVERNMENT SPHERE



Anél du Plessis



Luc Lavrysen

The Right to the Protection of a Healthy Environment

International and Comparative Perspective



...the duty of legislatures and
...es, in all future periods of this
EMILY ZACKIN
...wealth, to cherish the interests of
...and the sciences, and all

...series of them... to encourage private
...societies...
Looking for Rights in All the Wrong Places
...and immunities, for the promotion of
...agriculture, arts, sciences, mechanic
...trades, manufactures, and natural history
...of the country; to encourage and
...inculcate...
...general benevolence, public and private
...charity, industry and
...punctuality in their dealings; sincerity, good
...humor, and all social virtues, and
...generous sentiments, among the people.

Five types of rules:

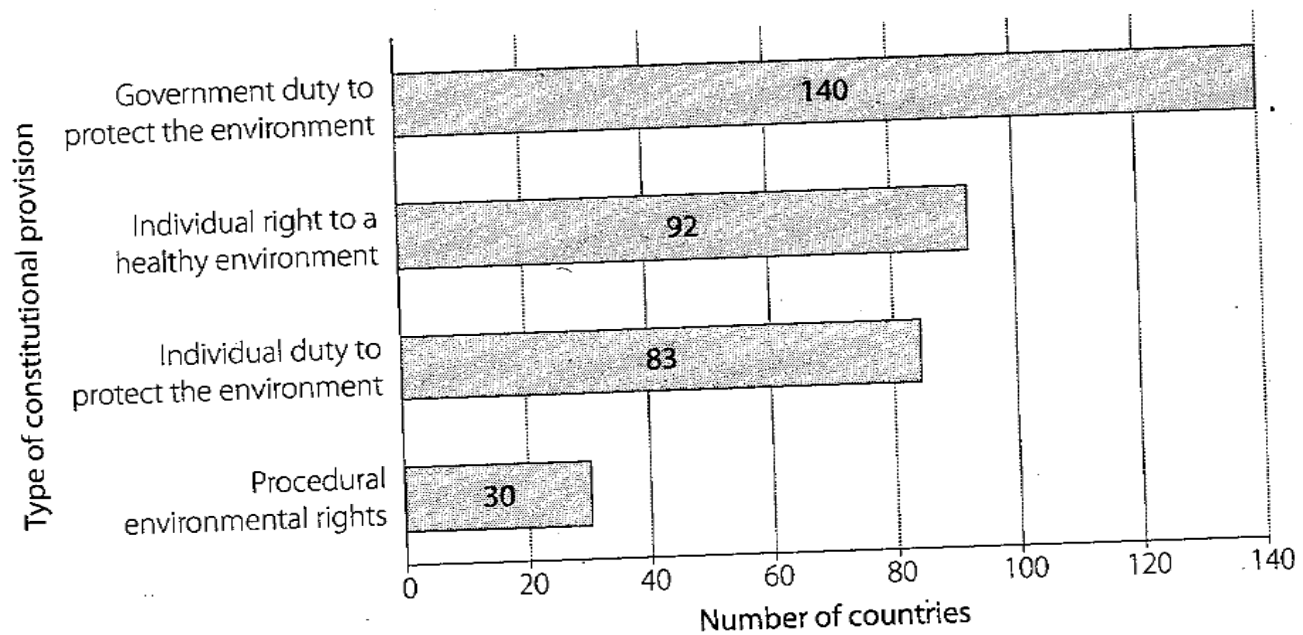
- 1. The rights of humans to a healthy environment – ie , a human right
- 2. The rights of animals and even the environment itself to life and to their own healthy environment
- 3. Duties of states or governments to protect these rights
- 4. Duties of individuals to protect these rights
- 5. Procedural & other supporting rights



- Nations recognizing the right to a healthy environment in constitutions, legislation, or international agreements as of 2012
- Nations not recognizing the right to a healthy environment at the national or international level as of 2012

Figure 3.3

Prevalence of environmental protection provisions in national constitutions



Human Rights to a Healthy Environment

- Stockholm Declaration (1972): Man has the fundamental right to freedom, equality and adequate conditions of life, [and] an environment of a quality that permits a life of dignity and well-being.
- UN Draft Principles (1994): All persons have the right to a secure, healthy and ecologically sound environment.

- Protocol to the American Convention (1988): ‘..the right to live in a healthy environment’.
- Philippines: ‘...the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.’
- Norway (1992): ‘..right to an environment that is conducive to health and to natural surroundings whose productivity and diversity are preserved. Natural resources should be made use of on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations as well.

South Africa - constitution


- “4. Everyone has the right
- a. to an environment that is not harmful to their health or well-being; and
- b. to have the environment protected, for the benefit of present and future generations, through ... measures that
 - i. prevent pollution & ecological degradation;
 - ii. promote conservation; and
 - iii. secure ecologically sustainable development and use of natural resources while
- promoting justifiable economic and social development.

Santa Monica (2013)

(a) All residents of Santa Monica possess fundamental and inalienable rights to: clean water from sustainable sources; marine waters safe for active and passive recreation; clean indoor and outdoor air; a sustainable food system that provides healthy, locally grown food; a sustainable climate that supports thriving human life and a flourishing biodiverse environment; comprehensive waste disposal systems that do not degrade the environment; and a sustainable energy future based on renewable energy sources.

Santa Monica, cont

- (c) All residents of Santa Monica possess the right to self-governance and to a municipal government which recognizes that all power is inherent in the people, that all free governments are founded on the people's authority and consent, and that corporate entities, and their directors and managers, do not enjoy special privileges or powers under the law that subordinate the community's rights to their private interests.

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- Bolivia: “right to life, biodiversity, pure water, clean air, and freedom from genetic modification and contamination”

Rights of Nature:

- Santa Monica:
- (b) Natural communities and ecosystems possess fundamental and inalienable rights to exist and flourish in the City Of Santa Monica. To effectuate those rights on behalf of the environment, residents of the City may bring actions to protect these natural communities and ecosystems, defined as: groundwater aquifers, atmospheric systems, marine waters, and native species within the boundaries of the City.

Ecuador:

Art. 1. Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.

Art. 2. Nature has the right to an integral restoration. This integral restoration is independent of the obligation on natural and juridical persons or the State to indemnify the people and the collectives that depend on the natural systems.

In the cases of severe or permanent environmental impact, including the ones caused by the exploitation on non-renewable natural resources, the State will establish the most efficient mechanisms for the restoration, and will adopt the adequate measures to eliminate or mitigate the harmful environmental consequences

Duties of Governments/States:

- Colombia: 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 education for [this]
- Sweden:...it shall be incumbent upon the public administration to secure the right to work, housing and education, and to promote social care and social security and a good living environment.
- Ontario: While the government has the primary responsibility for achieving this goal, the people should have means to ensure that it is achieved in an effective, timely, open and fair manner.

Duties of Individuals

France (2004):

Art 2 - Everyone is under a duty to participate in preserving and enhancing the environment.

Art 3 - Everyone shall, in the conditions provided for by law, foresee and avoid the occurrence of any damage which he or she may cause to the environment or, failing that, limit the consequences of such damage.

Art 4 - Everyone shall be required, in the conditions provided for by law, to contribute to the making good of any damage he or she may have caused to the environment.

Preambles/General

- France: The French people solemnly proclaim their attachment to the Rights of Man ..., and to the rights and duties as defined in the Charter for the Environment of 2004.
- Montenegro: Article 1:
- Montenegro is a civil, democratic, ecological state with social justice, based on the rule of law.

Procedural and Related Rights

- Participation, right to information: Ontario Environmental Bill of Rights (1994); Bolivia (2009)
- Standing given to individuals to enforce: eg, Philippines
- Enforcement: Eg, 'The City or any City resident may bring an action to enforce any provision of the Santa Monica Municipal Code that advances the goals identified as enforceable in the Sustainable City Plan.'

Put all together: Eg, Spain

- 45(1) Everyone has the right to enjoy an environment suitable for the development of the person as well as the duty to preserve it.
- (2) The public authorities shall concern themselves with the rational use of all natural resources for the purpose of protecting and improving the quality of life and protecting and restoring the environment, supporting themselves on an indispensable collective solidarity.
- (3) For those who violate the provisions of the foregoing paragraph, penal or administrative sanctions, as applicable, shall be established and they shall be obliged to repair the damage caused.

Put all together: Bulgaria

- “Bulgaria shall ensure the protection and conservation of the environment, the sustenance of animals and the maintenance of diversity, and the rational use of natural resources...’
- ‘While citizens have the right to a healthy and favourable environment they [also] have an obligation to protect the environment.’”