

## The constitutional determinants of planetary health



We need to understand the constitutional determinants of planetary health. A constitution denotes one, or in a minority of countries, several, legal documents that contain basic rules and principles about how political power should be exercised and how public goods should be provided.<sup>1</sup> Constitutions clarify the rights and duties of individuals, communities, and public authorities, and allocate power horizontally among the executive, legislative, and judicial organs of the state, and vertically between national and local governments.<sup>2</sup> Different constitutional designs can result in vastly different economic outcomes. Presidential constitutions are consistently associated with greater income inequality than parliamentary constitutions for instance.<sup>3</sup> That constitutional design affects population health is increasingly acknowledged, and for reasons that are not difficult to fathom. Constitutions by definition constitute governments, and governments are typically responsible for providing safe drinking water and infectious-disease control. Proportional representation electoral systems have been found to be positively correlated with higher life expectancy and lower infant mortality.<sup>4</sup> A robust association appears to exist between health and democratic institutions that are accountable to the community at large instead of a small group of autocratic elites who cannot tolerate any dissent, even to policies that are harmful to public, global, or planetary health.<sup>5</sup>

We define the constitutional determinants of planetary health as the constitutional structures within which human impacts on the Earth's natural systems affect human health. Human flourishing has been compromised by drastic environmental changes, organic pollutants, and transborder fire emissions that were by no means inevitable. Global warming is catastrophic not just for global health but also for universally recognised human rights, that are guaranteed either implicitly or expressly by virtually all national constitutions. Climate change and biodiversity loss disproportionately undermine the rights to life and health of vulnerable populations.

In light of these points, we should investigate whether and measure how divergent constitutional structures—presidential or parliamentary, majoritarian or proportional, democratic or autocratic, federal or unitary, judicial independence or the lack thereof—influence and affect planetary health. Preliminary

work has been done by researchers interested in environmental constitutionalism.<sup>6</sup> Constitutionalising atmospheric integrity and decarbonisation would probably result in sustained policy interest in taking relevant action, constrained short-term opportunism among politicians and policy makers, deadlocks in the legislative process being overcome, and an increase in the potential for judicial review and successful lawsuits against defiant governments and powerful corporations, all in furtherance of planetary health.<sup>7</sup> Similarly, the enshrinement of rights to environmental health in constitutions would strengthen the ability of rightsholders to hold violators to account, notwithstanding contrary policy considerations.<sup>8</sup> Indeed, countries with constitutions guaranteeing access to information and the right to participate in environmental governance have been shown to systemically achieve favourable outcomes in environmental justice, relative to countries whose constitutions do not have such features.<sup>9</sup>

The power of constitutions over planetary health must not be exaggerated. In some countries constitutions are more often honoured in the breach than the observance, regardless of their content. But this reality does not excuse us from probing into how constitutions can be drafted or redesigned for the betterment of planetary health at a truly global scale. Empirical constitutional research revealed that constitutional documents are not necessarily unalterable; countries have replaced their national constitutions on average every 19 years during the past two centuries.<sup>10</sup> Supported by more rigorous evidence in relation to the effects of constitutional determinants of planetary health, we might be able to generate concrete advice on how constitutional institutions that are not conducive to planetary health can be suppressed, and how those that are favourable to planetary health can be reinforced. On the basis of this newfound knowledge, courts might consider invoking remedial interpretations of their constitutions to instigate public and corporate actors to act more responsibly and equitably when issues that impinge on the planet arise. We cannot afford to leave untapped the rich potential of constitutions for articulating and upholding a consequential planetary health constitutionalism across nations for this Anthropocene epoch.

We declare no competing interests.

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- 1 Voigt S. Constitutional Economics: A Primer. Cambridge: Cambridge University Press, 2020.
- 2 Bennett B. Legal rights during pandemics: federalism, rights and public health laws—a view from Australia. *Public Health* 2009; **123**: 232–36.
- 3 McManus R, Ozkan FG. Who does better for the economy? Presidents versus parliamentary democracies. *Public Choice* 2018; **176**: 361–87.
- 4 Wigley S, Akkoyunlu-Wigley A. Do electoral institutions have an impact on population health? *Public Choice* 2011; **148**: 595–610.
- 5 Besley T, Kudamatsu M. Health and democracy. *Am Econ Rev* 2006; **96**: 313–18.
- 6 Weis LK. Environmental constitutionalism: aspiration or transformation? *Int J Constit Law* 2018; **16**: 836–87.
- 7 Cepparulo A, Eusepi G, Giuriato L. Can constitutions bring about revolutions? How to enhance decarbonization success. *Environ Sci Pol* 2019; **93**: 200–07.
- 8 Jeffords C, Minkler L. Do constitutions matter? The effects of constitutional environmental rights provisions on environmental outcomes. *Kyklos* 2016; **69**: 294–335.
- 9 Gellers JC, Jeffords C. Toward environmental democracy? Procedural environmental rights and environmental justice. *Glob Environ Polit* 2018; **18**: 99–121.
- 10 Elkins Z, Ginsburg T, Melton J, et al. Constitute: the world's constitutions to read, search, and compare. *J Web Semant* 2014; **27**: 10–18.