

Global Environmental Constitutionalism in the Anthropocene

TSA 463 - 4 ML

Louis J Kotzé

Dipartimento di Scienze Politiche Biblioteca	
Inv.	150-4352
Coll.	AMB 341 B.B. 170



• H A R T •
PUBLISHING

OXFORD AND PORTLAND, OREGON

2016

TABLE OF CONTENTS

<i>Preface</i>	vii
1. Introduction.....	1
I. Human Domination.....	1
II. The Anthropocene's Global Socio-Ecological Crisis.....	4
III. The Anthropocene's Global Socio-Ecological Crisis and the Law.....	6
IV. Constitutionalism and the Anthropocene.....	7
V. Environmental Constitutionalism.....	11
VI. Global Aspects of Environmental Constitutionalism.....	14
VII. Global Environmental Constitutionalism Through the Lens of the Anthropocene.....	16
VIII. About this Book.....	17
IX. Original Contribution.....	20
2. Law and the Anthropocene's Global Socio-Ecological Crisis.....	21
I. Introduction.....	21
II. About this Chapter.....	23
III. The Anthropocene and the History of Earth.....	24
IV. Turning Rock into Air: A Brief History of the Anthropocene.....	26
V. The Anthropocene: What Lies Behind a Word?.....	32
VI. The Anthropocene and Regulatory Institutions.....	38
VII. Conclusion.....	41
3. Constitutionalism.....	43
I. Introduction.....	43
II. About this Chapter.....	44
III. Constitutional Concepts.....	47
A. Constitution.....	48
B. Constitutionalism.....	50
C. Constitutionalisation.....	52
D. The Constitutional State.....	54
IV. The Turn Towards Constitutionalism and Counter-constitutionalism Considerations.....	57

V.	General Elements of the Contemporary	
	Constitutional State	61
	A. A Constitution	62
	B. The Rule of Law	65
	C. Separation of Powers	71
	D. Judicial Independence and Powers of Review	74
	E. Constitutional Supremacy.....	77
	F. Democracy	79
	G. Rights.....	82
VI.	Conclusion	87
4.	Global Aspects of Constitutionalism	89
	I. Introduction	89
	II. About this Chapter.....	90
	III. From the Local to the Global.....	91
	A. The Inappropriateness of Domestic Constitutionalism for the Global Sphere.....	91
	B. The Appropriateness of Domestic Constitutionalism for the Global Sphere.....	93
	IV. Why (Not) Constitutionalise the Global Order?.....	96
	A. Globalisation.....	96
	B. Fragmentation	98
	C. Enhanced Regulation for Global Problems	99
	D. Critiquing Global Constitutionalism.....	100
	V. Approaches to and Meaning of Global Constitutionalism: A Devil with Many Faces	102
	A. The Internationalist Approach.....	103
	B. The Regionalist Approach.....	104
	C. The International Regulatory Regime Approach	106
	D. Global Civil Society Constitutionalism	107
	E. Transnational Comparative Constitutionalism	109
	F. Towards a Singular Vision?.....	110
VI.	In Search of Constitutionalism's Features in the Global Sphere.....	111
	A. A Global Constitution	112
	B. Global Rule of Law	114
	C. Global Separation of Powers	116
	D. The Global Judiciary.....	118
	E. Global Constitutional Supremacy.....	121
	F. Global Democracy	125
	G. Global Rights.....	128
VII.	Conclusion	131

5. The Fundamentals of Environmental Constitutionalism.....	133
I. Introduction	133
II. About this Chapter.....	134
III. A Historical-conceptual Account of the Convergence Between Environmentalism and Constitutionalism	136
A. Should Trees have Standing?	137
B. Jonas and the Imperative of Responsibility.....	138
C. Kloepfer's Environmental State.....	138
D. Bosselmann's Ecological <i>Rechtsstaat</i>	140
E. Verschuuren's Environmental Constitutional Democracy	142
F. Steinberg and the Ecological Constitutional State.....	143
G. Green Constitutionalism	144
H. Boyd's Environmental Rights Revolution.....	145
I. 'Thin' and 'Thick' Environmental Constitutionalism	146
J. Environmental Constitutionalism as a Discursive-contemplative Framework.....	147
K. Global Comparative Environmental Constitutionalism	148
L. Structural and Fundamental Environmental Constitutionalism	150
IV. A Contemporary Description of Environmental Constitutionalism	151
V. Environmental Constitutionalism in Domestic Constitutional Orders.....	153
A. Formal and Substantive Environmental Constitutions.....	154
B. Environmental Rule of Law.....	159
C. Separation of Environmental Governance Powers	162
D. Judicial Independence and Powers of Review	165
E. Constitutional Supremacy.....	168
F. Democracy	169
G. Environmental Rights.....	172
VI. Conclusion.....	175
6. The Prospects of Environmental Constitutionalism in the Anthropocene	176
I. Introduction	176
II. About this Chapter.....	177
III. Revisiting Law in the Anthropocene: The Urgency of Constitutional Transformations	178
A. Law and Order: The Anthropocene's Constitutional Moment.....	178

B.	The 'Global' Regulatory Space of the Anthropocene	184
C.	Ethics, Vulnerability and Responsibility of Care	188
IV.	The Prospects of Environmental Constitutionalism in the Anthropocene	192
A.	Higher-order Juridical Guarantees and Care	192
B.	A Foundational Determinant of Secondary Regimes	193
C.	Benchmarking Environmental Protection Through Transnationalism	194
D.	Regulatory Longevity	195
E.	Environmental Awareness and Societal Involvement	196
F.	Inter-generational Reach	196
G.	Legitimation of Environmental Law and Governance	197
H.	Levelling the Sustainable Development Playing Field	198
V.	Conclusion	199
7.	A Vision of Global Environmental Constitutionalism in the Anthropocene	201
I.	Introduction	201
II.	About this Chapter	202
III.	From Domestic to Global Environmental Constitutionalism	203
IV.	Global Environmental Constitutionalism's Five Approaches	206
A.	The Internationalist Approach	206
B.	The Regionalist Approach	210
C.	The International Environmental Regulatory Regime Approach	214
D.	Global Civil Society Environmental Constitutionalism	217
E.	Transnational Comparative Environmental Constitutionalism	221
V.	The Elements of Global Environmental Constitutionalism	224
A.	A Global Environmental Constitution	224
B.	Global Environmental Rule of Law	227
C.	Separation of Global Environmental Governance Powers	229
D.	The Global Environmental Judiciary	230

Table of Contents

xiii

E. Global Environmental Democracy.....	237
E. Global Environmental Constitutional Supremacy.....	239
G. Global Environmental Rights	242
VI. Conclusion.....	245
8. Conclusion	246
<i>Bibliography</i>	248
<i>Index</i>	271