The Constitutional Construction and Refinement Pathways of Environmental Rights in China's Legal Development: A Comparative Study Based on Chinese and French Models of Environmental Rights Protection

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Abstract: This paper examines the constitutionalization of environmental rights in China in the context of their growing recognition as human rights and the advancement of ecological civilization. It analyzes the nature and theoretical challenges of environmental rights, as well as the practical need for their legalization. Through a comparative study of the French model, the paper highlights key institutional experiences. It argues that China should adopt a gradual approach by transforming existing constitutional provisions into rights-based norms, establishing a framework combining substantive and procedural rights, and strengthening judicial protection. By adapting foreign experiences to domestic conditions, environmental rights can evolve into enforceable fundamental rights.

Keywords: Environmental Rights; Constitutionalization; Comparative Law

1. Introduction

Against the backdrop of the escalating global ecological crisis and the continuous development of human rights discourse, environmental rights have gradually evolved from moral advocacy into a legally binding institutional framework. On July 28, 2022, the United Nations General Assembly adopted Resolution 76/300, formally recognizing "a clean, healthy, and sustainable environment" as a fundamental human right, marking a broad international consensus on environmental rights.

Meanwhile, China is at a critical stage characterized by the deep integration of ecological civilization construction and the development of the rule of law. Environmental protection and human rights protection have been elevated to unprecedented levels of importance. In this context, how to clarify the constitutional status of environmental rights and establish a systematic protection mechanism has become a pressing issue for both theory and practice.

From a global perspective, countries such as France, Brazil, South Korea, and South Africa have established environmental rights as fundamental rights through constitutional or quasi-constitutional instruments, complemented by procedural safeguards and judicial remedies. This has enabled coordinated development between environmental protection and the protection of citizens' rights. In contrast, although China's current Constitution establishes fundamental principles of environmental protection through Articles 9 and 26, it does not explicitly recognize environmental rights as independent fundamental rights. Relevant provisions are primarily framed in terms of state obligations and public interests, resulting in fragmented and weakly justiciable individual rights.

Although the development of environmental public interest litigation and representative cases such as air pollution disputes have, to some extent, promoted the judicial recognition of environmental rights, the overall institutional framework remains insufficient to meet practical needs.

From a practical perspective, under international cooperation frameworks such as the Belt and Road Initiative, environmental protection standards are becoming increasingly internationalized. While soft law norms have begun to take shape, their binding force and enforceability still require strengthening through domestic legislation. This not only necessitates elevating the normative status of environmental rights within China's legal system but also calls for effective alignment with international rules.

Therefore, drawing on mature foreign experiences while taking into account China's national conditions, and promoting the constitutional expression and institutionalization of environmental rights, carries significant practical and theoretical value.

Based on this, this paper focuses on the constitutionalization of environmental rights. Through a comparative analysis of Chinese and foreign systems, it systematically examines the current status and deficiencies of environmental rights protection in China, explores their appropriate positioning and realization pathways within the constitutional framework, and aims to provide feasible theoretical support and institutional proposals for improving environmental rights protection and advancing the rule of law in ecological civilization.

2. The Nature of Environmental Rights

From the perspective of rights classification, environmental rights are generally regarded as social rights, the core characteristic of which lies in their reliance on the implementation of state social policies and the level of socio-economic development for their realization. It is widely acknowledged in academic discourse that social rights are closely connected to constitutional policy provisions. Articles 9 and 26 of the Constitution explicitly establish environmental protection as a fundamental state policy, reflecting the state's basic stance on environmental governance.

In a similar vein, the United States had already begun exploring, as early as the 1940s, the possibility and feasibility of transforming public policy into legally enforceable individual rights. Drawing on this experience, environmental rights in China, supported by clear policy foundations, may also be indirectly justified as constitutionally protected rights.

The primary objective of environmental rights is to ensure the sustainable existence of natural resources, safeguard a suitable living environment for humanity, and prevent resource depletion, which poses a fundamental and potentially existential threat to human survival and development. The underlying rationale of environmental rights emphasizes the overall interests and security of society, with a clear focus on collective welfare. Accordingly, the substantive content of environmental rights should not only encompass the right to enjoy a healthy environment but also include the reasonable utilization of environmental resources in the course of development.

Unlike classical liberty rights, which emphasize individual choice and freedom of action, environmental rights are, to a certain extent, neither waivable nor subject to individual discretion. Their realization depends far more heavily on state action than traditional liberty rights, and even more so than hybrid rights such as the right to education, which combine elements of both social and liberty rights but are fundamentally social in nature.

Under the pressures and incentives of economic development, states may lack sufficient initiative in fulfilling their obligations to protect environmental rights. Therefore, the claim-right function of environmental rights-namely, the ability of individuals to demand positive action from the state-becomes particularly important.

Nevertheless, the specific content of environmental rights remains highly contested in academic discourse. Some scholars define environmental rights in civil law terms as encompassing environmental personality rights, environmental public servitudes, and environmental benefit rights. However, such classifications tend to result in conceptual overlap.

Even setting aside the preliminary question of whether the environment can possess personality attributes, the notion of "environmental personality rights" remains ambiguous in nature: it is unclear whether it should be categorized under environmental rights or personality rights. Similarly, concepts such as "environmental public servitudes" and "environmental benefit rights" face comparable difficulties in classification, as it is not evident whether they belong to the domain of environmental rights or property rights.

From the general principles of rights theory, an independent right must possess a relatively clear and non-overlapping scope of protection. Where its content substantially overlaps with existing rights, it is more appropriately understood as a specific manifestation or extension of those rights rather than a wholly new and independent right. Therefore, in defining environmental rights and related concepts, it is necessary to further clarify their boundaries and proper positioning.

3. The Practical Necessity and Dilemmas of the Legalization of Environmental Rights in

China

3.1 Practical Necessity

The most direct rationale for advocating the constitutionalization of environmental rights lies in the hierarchical superiority of fundamental rights enshrined in the Constitution. As the supreme law, the Constitution provides guidance for the creation and amendment of all other laws. Once a right is incorporated into the Constitution, it not only establishes the fundamental status of that right but also offers a normative basis for its specification in subordinate legislation, as well as for the review, invalidation, or correction of policies and legal norms that conflict with it. Granting environmental rights to citizens at the constitutional level thus constitutes a high-level constraint on public power.

Environmental protection is a product of particular stages of socio-economic development. In the early stages of China's development, environmental protection was not prioritized; compared with economic growth as a measure of political performance, environmental protection was often treated as secondary or merely aspirational. In practice, local governments have, at times, relaxed environmental regulation as an incentive to attract investment and promote economic development. Such policy choices and governmental practices have undermined environmental rule of law. The root causes of this phenomenon lie not only in the deeply entrenched priority given to economic development but, more importantly, in the excessive expansion of governmental power and the lack of effective constraints.

Since the promulgation of the Environmental Protection Law in 1979, China's environmental legal system has gradually become more comprehensive. However, constraints on governmental power remain insufficient, and the aforementioned problems continue to arise. The reasons are twofold: first, the lack of adequate norms restricting public power within the environmental legal framework; and second, the inherent tension between environmental protection and economic development. Relying solely on sector-specific environmental legislation is insufficient to fundamentally constrain public power. In other words, it is necessary to impose checks on governmental authority at a higher legal level and through broader legal mechanisms.

In this regard, incorporating environmental rights as fundamental constitutional rights would provide a higher-level normative basis for addressing one of the most challenging issues in environmental governance-namely, the restriction of public power. This approach has also been adopted by many countries as an effective means of ensuring environmental rule of law.

3.2 Dilemmas

(1) Instability in Theoretical Foundations

First, there is no settled consensus in academic discourse. In China, no unified theory of environmental rights has yet been established. Significant divergences exist among scholars regarding the concept, subject, and specific content of environmental rights. For example, theories recognizing environmental rights can be categorized into broad, moderate, and narrow approaches, depending on differing understandings of their scope and subjects, and these approaches vary considerably.

Second, there is a lack of clear standards for determining the realization of environmental rights. The realization of environmental rights is often described in general terms as the enjoyment of a "good environment" or the satisfaction of individuals' needs for survival and development. However, such descriptions give rise to interpretative difficulties: how should a "good environment" be defined, and what standards should be applied? Significant challenges remain in terms of concretization and quantification. Without clear and measurable standards, the practical application of environmental rights becomes problematic.

(2) Difficulties in the Selection and Localization of Foreign Experiences

Environmental rights have been explicitly recognized in the constitutions of many countries, providing valuable references for China's research and legalization efforts. However, it is equally important to note that constitutional recognition does not always produce the expected environmental protection outcomes. In some cases, constitutional provisions on environmental rights have been criticized as largely symbolic declarations. This may be due to the limited practical effectiveness of constitutions in certain countries, for example, where democratic institutions are weak or where detailed implementing legislation is lacking, resulting in the hollowing out of constitutional provisions.

Therefore, identifying the problems encountered in the constitutionalization of environmental rights in these countries, analyzing their underlying causes, and developing targeted solutions are crucial steps prior to constitutionalizing environmental rights in China.

At present, more than one hundred countries have explicitly recognized environmental rights as constitutionally protected rights. This not only provides comparative models for China but also demonstrates the feasibility of constitutionalizing environmental rights. However, another key issue lies in how to effectively integrate foreign experiences with China's domestic realities. The success of borrowing foreign models depends on their compatibility with local conditions.

China's unique natural environment and legal system require that any constitutional arrangement for environmental rights take into account its specific ecological conditions and institutional framework. Natural environments vary significantly across countries and regions, in terms of both the types and quantities of environmental elements. Since environmental law fundamentally regulates the relationship between humans and nature, its structure and content necessarily differ according to environmental conditions.

At the same time, given China's distinctive legal foundations, institutional structure, and political context, designing a feasible and effective pathway for the constitutionalization of environmental rights remains a significant challenge.

4. Comparative Experience of Environmental Rights: The Case of France

4.1 The Process of Constitutionalizing Environmental Rights in France

With regard to the incorporation of environmental rights into law and the Constitution, France represents one of the most classical examples worldwide. Environmental rights in France underwent a two-stage development process: first being recognized in statutory law, and subsequently elevated to constitutional status. Before examining the constitutionalization of environmental rights, it is necessary to analyze their prior legalization.

In 1995, the so-called "Barnier Law" first incorporated environmental rights into the Rural Code. Later, environmental rights were codified in the Environmental Code in 2000 and became part of its general provisions. The incorporation of environmental rights into French law occurred within a specific international legal context and reflects the interaction between domestic and international law.

(1) The 1995 Barnier Law and the Establishment of Environmental Rights

Modern French environmental law, which emerged in the 1970s, initially consisted mainly of fragmented statutes and regulations lacking unified principles and guiding values. To address this issue, under the leadership of then Minister of the Environment Michel Barnier, France enacted Law No. 95-101 of February 2, 1995 on strengthening environmental protection.

This law supplemented and reinforced existing environmental protection mechanisms, and for the first time explicitly articulated general principles of environmental law, including the recognition of substantive environmental rights as part of these principles. Article 5 of the law introduced Article L200-2 into the Rural Code, which consists of three paragraphs addressing environmental rights, environmental obligations, and environmental responsibilities. The first paragraph establishes the right of everyone to a healthy environment and promotes balanced development between urban and rural areas; the second paragraph imposes a duty on all persons to protect and contribute to environmental preservation; and the third paragraph imposes obligations on both public and private entities to protect the environment in their activities.

The provisions of the Rural Code exhibit three notable characteristics. First, the formulation of environmental rights is relatively concise, with the "right to a healthy environment" serving as a typical expression of substantive environmental rights (see Wu Weixing, New Developments in Environmental Rights Theory, Peking University Press, 2018, pp. 243-292). Second, the provisions emphasize the role of laws and regulations in safeguarding environmental rights, thereby establishing an objective legal order for their protection. Third, the provisions do not overly isolate or emphasize environmental rights, but instead integrate them into a broader normative framework.

(2) The Incorporation of Environmental Rights into the 2000 Environmental Code

As a representative of the civil law tradition, France has long regarded codification as a sign

of the maturity of a legal field, and environmental law is no exception. As early as October 1990, the French Ministry of the Environment announced plans for codifying environmental law, and this process was gradually implemented thereafter.

Following substantial efforts, in September 2000, the French government, under parliamentary authorization, promulgated the legislative part of the Environmental Code. The completion of this codification marked the maturation of the French environmental legal system.

It is noteworthy that debates among political and academic circles in France regarding environmental rights had persisted for over thirty years prior to their formal constitutionalization. During the drafting of the Environmental Charter, environmental rights provisions consistently occupied Article 1 in successive drafts, reflecting a broad social consensus.

4.2 The Normative Expression of Environmental Rights in the Environmental Charter

First, at the normative level, the Charter reflects a structured system of interconnected rights. The Environmental Charter, consisting of ten articles, contains several provisions directly addressing environmental rights and obligations. Article 1 provides that "everyone has the right to live in a balanced environment which shows due respect for health." This establishes the fundamental right to a healthy environment and implies that the state must take necessary measures to ensure its realization.

While Article 1 constitutes the core provision, a systematic understanding of environmental rights requires interpreting it in conjunction with Article 2 (the duty to participate in the protection and improvement of the environment) and Article 7 (the right to participate in public decision-making affecting the environment), as well as through constitutional review practices.

The Charter also enshrines key principles such as the precautionary principle (Article 5), the right to access environmental information, and public participation (Article 7). For example, the precautionary principle requires public authorities to take preventive measures even where scientific certainty is lacking, if there is a risk of serious or irreversible environmental harm. Article 6 further requires that public authorities integrate environmental protection into public decision-making, particularly in areas such as urban planning, natural resource management, and industrial development.

Second, the concrete forms of environmental rights impose multiple obligations on governmental and public authorities. These include: safeguarding public health by addressing pollution and environmental risks; promoting sustainable development by balancing economic growth with environmental protection; ensuring public participation in environmental decision-making through mechanisms such as consultations and hearings; and facilitating the interaction between environmental rights and legislative and judicial processes. Courts and administrative bodies must balance environmental protection against competing social and economic interests.

At the legislative level, in addition to the Environmental Charter, France has enacted numerous laws to operationalize environmental rights. For instance, the Environmental Code consolidates legal provisions on environmental management, risk prevention, and natural conservation. The Law on Energy Transition for Green Growth (Loi n 2015-992 du 17 août 2015) sets targets for reducing greenhouse gas emissions and promoting renewable energy. Similarly, the Biodiversity Law (Loi n 2016-1087 du 8 août 2016) strengthens the protection of ecosystems and endangered species.

4.3 Characteristics of Environmental Rights in France

(1) The Integration of Domestic and International Law

In the field of environmental protection, France has consistently followed international norms and has sought to play a leading role globally. Therefore, the incorporation of environmental rights into French law cannot be understood without reference to international law.

Since the 1970s, environmental rights have increasingly been recognized in national constitutions, domestic legislation, and international legal instruments. For example, United Nations General Assembly Resolution 45/94 (1990) reaffirmed the environmental rights articulated in the Stockholm Declaration, stating that "all individuals are entitled to live in an environment adequate for their health and well-being." Such international norms provided the foundation for incorporating environmental rights into French law.

From an international law perspective, the legal force of environmental rights has progressively strengthened. France ratified the Aarhus Convention in 2002, which explicitly recognizes the right of present and future generations to live in an environment adequate to their health and well-being. Following ratification, this provision acquired a supra-legislative status within the French legal system.

Although international treaties do not require constitutional recognition of environmental rights, the increasing importance of environmental rights has driven the need for higher-level legal protection. Consequently, constitutional recognition became a natural development under the interaction of domestic and international law.

(2) Environmental Rights as a Basis for Constitutional Review

Following the adoption of the Environmental Charter, President Jacques Chirac declared that the Charter established "a new individual right-the right to live in a balanced environment conducive to health." In theory, Article 1 serves as the core provision and foundational value of the Charter.

From a normative perspective, the Charter forms part of the French constitutional bloc, alongside the 1789 Declaration of the Rights of Man and of the Citizen and the 1946 Constitution's Preamble, and thus serves as a basis for constitutional review.

First, the 2005 constitutional amendment strengthened the role of the legislature in environmental matters. The legislature is responsible for specifying the application of key Charter principles, including those in Articles 3, 4, and 7. It also bears responsibility for defining fundamental principles of environmental protection. The amendment to Article 34 of the Constitution reinforced this legislative role.

The Constitutional Council has ruled that only the legislature may determine the conditions and limitations of environmental information access. In one case concerning genetically modified organisms, it declared certain provisions unconstitutional on the grounds of legislative inaction, as they improperly delegated authority to administrative bodies.

Second, the Charter has stimulated legislative reform. Although its provisions may be directly invoked in court, many require further specification through legislation and regulation. Thus, the Charter not only provides a constitutional foundation but also generates continuous momentum for legislative development.

5. Feasible Constitutionalization Pathways for Environmental Rights in China's Rule of Law Development

Admittedly, the constitutionalization of environmental rights can enhance the intensity of rights protection and further constrain legislative and judicial authorities, thereby facilitating legislative concretization and the establishment of judicial remedies. However, constitutionalization is only the first step in affirming the normative value of environmental rights; their specific normative implications must be further developed through the accumulation of constitutional and judicial case law. Meanwhile, environmental issues are highly technical in nature and often intersect with socio-economic development as well as fundamental rights such as personality rights and property rights. These conflicts must be balanced through detailed legislative provisions and judicial adjudication. Accordingly, the pathway for environmental rights within China's rule-of-law framework must also take into account the country's specific national conditions.

First, at the level of normative expression, a "gradual constitutionalization" approach should be adopted. At the current stage, priority may be given to transforming the environmental protection provisions in Articles 9 and 26 of the Constitution into rights-oriented norms through constitutional interpretation or constitutional amendment. That is, while maintaining their nature as state obligations, their corresponding implications as citizens' fundamental rights should be explicitly clarified. This approach not only avoids drastic disruption to the existing constitutional structure but also enables a smooth transition from "objective state policy clauses" to "subjective rights norms."

Second, in terms of rights structure, a composite system of environmental rights should be established. Drawing on comparative experiences-particularly those reflected in instruments such as the Environmental Charter-environmental rights should not remain at the abstract level of "the right to a good environment." Instead, they should be further specified into concrete forms, including substantive rights (such as the right to a healthy

environment) and procedural rights (such as the right to access environmental information, the right to public participation, and the right to judicial remedies). This structured design can, to a certain extent, overcome the inherent abstraction and operational difficulties of environmental rights.

At the level of institutional operation, the justiciability and judicial protection of environmental rights should be strengthened. On the one hand, this can be achieved by improving environmental public interest litigation and administrative litigation mechanisms, thereby broadening avenues for relief. On the other hand, environmental rights should be incorporated into constitutional review as a relevant consideration, enabling them to exert real normative force in cases of normative conflict and preventing them from degenerating into merely symbolic provisions. Furthermore, in terms of legislative coordination, it is necessary to promote systematic linkage between constitutional norms and the body of statutory law. Following constitutionalization, revisions to the Environmental Protection Law and related special legislation should translate constitutional principles into concrete institutional arrangements, including environmental standards-setting, accountability mechanisms, and constraints on governmental power, thus achieving vertical coherence among "Constitution-law-policy."

From the perspective of localization, the principle of "parallel emphasis on borrowing and adaptation" should be upheld. While comparative experiences provide valuable references for the constitutionalization of environmental rights, China's unique stage of development, governance structure, and ecological conditions must be fully considered. Therefore, institutional design should be guided by the concept of ecological civilization, integrating environmental rights with national development strategies. This approach ensures that, while safeguarding citizens' fundamental rights, due consideration is also given to economic development and social stability, thereby promoting the coordinated advancement of environmental protection and the modernization of the national governance system.

Through the above pathways, it is possible to progressively transform environmental rights from policy-oriented principles into enforceable fundamental rights without undermining the stability of the existing constitutional framework, thus providing a more solid constitutional foundation for the rule of law in ecological civilization in China.

6. Conclusion

This paper has examined three principal pathways for the constitutionalization of environmental rights in China:

(1) A gradual transformation of existing constitutional provisions into rights-oriented norms;

(2) The construction of a composite system combining substantive and procedural environmental rights;

(3) The strengthening of judicial protection and institutional coordination. Among these, the gradual constitutionalization approach offers particular advantages. It preserves the stability of the current constitutional framework while enabling a progressive shift from policy-oriented provisions to enforceable rights, thereby reducing institutional resistance and enhancing feasibility.

At the same time, comparative experience-especially from France-demonstrates that constitutional recognition alone is insufficient without effective legislative concretization and judicial implementation. Therefore, future research should move beyond normative analysis and place greater emphasis on empirical judicial studies. In particular, examining how courts apply environmental norms in public interest litigation, administrative cases, and emerging constitutional review mechanisms will be crucial. Such empirical inquiry can provide practical insights into the justiciability and effectiveness of environmental rights, thereby contributing to a more grounded and operational model of environmental constitutionalism in China.

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