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The Italian Constitution in the Anthropocene
Tracing the European Tradition
of Environmental Constitutionalism

Enrico Buono

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The aim of this paper is to provide a comparative framework for the European tradition of solidaristic environmental constitutionalism, as the backdrop of the recent Italian environmental constitutional amendment. The paper will firstly present a historical analysis of the different cultural approaches to the constitutional protection of the environment. Secondly, the contribution will investigate how the methodological toolbox of comparative law could be employed to identify some prototypes of environmental constitutionalism (e.g., the European model of 'instrumental protection', the North American model of 'procedural protection', the recognition of the legal subjectivity of Nature in Global South constitutions). Finally, this contribution will briefly review three case studies, in an effort to underline the potential of ex ante (or physiological) instruments, like deliberative democracy, as well as ex post (or pathological) tools, like climate litigation. The French Convention citoyenne pour le climat of 2019, the order Neubauer, et al. v. Germany issued by the German Federal Constitutional Court and, lastly, the Italian environmental constitutional amendment approved in February 2022, will be examined.

I. Introductory Remarks: Environmental Constitutionalism between Promises and 'Rollbacks'

On the 20th of March 2023, António Guterres has described the Synthesis Report of the Intergovernmental Panel on Climate Change's 6th Assessment Report as a 'survival guide for humanity' and a 'practical guide to defusing the climate time bomb'. The report calls for urgent climate action on all fronts, necessitating coordinated efforts at a global level. The findings clearly confirm the *Anthropocene Thesis*:[1] the impact of human activity on Earth's

[1] P.J. Crutzen, E.F. Stoermer, *The "Anthropocene"*, in *IGBP Global Change Newsletter*, 41, 2000; L.J. Kotzé, *Global Environmental Constitutionalism in the Anthropocene*, Hart Publishing, Oxford and Portland, 2016, pp. 4-7; M. Lim, *Charting Environmental Law Futures in the Anthropocene*, Springer Nature, Singapore, 2019; S. Ryder, K. Powlen, M.

ecosystems has long reached geological proportions, creating the conditions for environmental 'repercussions'. Additionally, the report highlights the limitations of existing International Environmental Law, revealing that mitigation policies have expanded but fall short of what is needed to meet climate goals, making it likely that global warming will exceed 1.5°C during the 21st century.

Therefore, the recent inclusion of environmental protection as a fundamental principle within the Italian Constitution deserves significant attention. This amendment, passed by the Chamber of Deputies on 8 February 2022 with just one opposing vote, was compelled by the inadequacy of Article 117, paragraph 2, letter s) of the Constitution in fully embracing the universal recognition of environmental constitutionalism.

Although emergency constitutionalism is 'spilling' over environmental law, resulting in 'rollback' phenomena[2] that have triggered the worldwide legal downgrade of environmental policies, recent trends in global constitutionalism seem to contradict this conclusion: as of today, more than 80% of UN member states' constitutions explicitly mention environmental protection (156 out of 193).[3] It can be argued that environmental constitutionalism is the best-known byproduct of the 'confluence of constitutional law and international law',[4] living evidence of the global tendency towards the constitutionalization of International Environmental Law.

This analytical perspective is structurally linked to the multilevel nature of environmental law: environmental policies must take into account global perspectives, even when they regulate local issues, paving the way to the dynamic cross-fertilization of international, domestic and subnational legal models. And sometimes, environmental decisions issued by a domestic court (e.g., the *Neubauer, et al. v. Germany* order issued by the German Federal Constitutional Court in 2021, discussed in §IV.II) 'can play a role in addressing climate law conflicts […] from within a planetary context'.[5]

But the promises of environmental constitutionalism are facing the harsh reality of their effectiveness, as proved by the aforementioned 'rollbacks'.

Against the background of vague 'sustainability clauses' and of the short-sightedness of representative legislatures, institutional solutions aimed at enforcing environmental constitutional rules are rather weak and underdeveloped.

Almost all these provisions are substantive rules of programmatic nature ('fundamental' or

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Laituri, S.A. Malin, J. Sbicca, D. Stevis (eds), *Environmental Justice in the Anthropocene. From (Un)Just Presents to Just Futures*, Routledge, London-New York, 2021; P. Viola, *Climate Constitutionalism Momentum. Climate Change Management*, Springer Nature, Cham, 2022; D. Amirante, S. Bagni (eds), *Environmental Constitutionalism in the Anthropocene. Values, Principles and Actions*, Routledge, London-New York, 2022.

[2] For more on this topic, see E. Buono, *The Estado ambiental de derecho under the 'state of siege': COVID-19 and Spanish environmental law*, in D. Amirante, B. Pozzo (eds), *Studies in Comparative and National Law Impact of Coronavirus Emergency - Special Issue 2020*, *Opinio Juris in Comparatione*, pp. 229-244, with examples taken from the Spanish experience.

[3] D. Amirante, *Costituzionalismo ambientale. Atlante giuridico per l'Antropocene*, il Mulino, Bologna, 2022, p. 267.

[4] J.R. May, E. Daly, *Global Environmental Constitutionalism*, Cambridge University Press, Cambridge, 2014, p. 1.

[5] L.J. Kotzé, *Neubauer et al. versus Germany: Planetary Climate Litigation for the Anthropocene?*, in *German Law Journal*, 22, 2021, pp. 1423-1444, p. 1442.

'thick', according to Hudson[6] and Kotzé[7]), which require the active involvement of public authorities and—due to the inactivity of the former—courts; procedural provisions ('structural' or 'thin') are almost absent. The question is, therefore, whether a more efficient constitutional design can be engineered in order to cope with the challenges of climate change.

The aim of this paper, therefore, is to provide a comparative framework for the European tradition of solidaristic environmental constitutionalism, as the backdrop of the recent Italian environmental constitutional amendment. The paper will firstly present a comparative-historical analysis of the different ethical approaches to the constitutional protection of the environment (§II). Secondly, the contribution will investigate how the methodological toolbox of comparative law could be employed as a 'compass' in the multilevel (and intertemporal) dimensions of environmental law (§III), identifying some cultural prototypes (e.g., the European model of 'instrumental protection'—§III.III—the North American model of 'procedural protection'—§III.I—the recognition of the legal subjectivity of Nature in Global South constitutions—§III.II). Lastly, this contribution will briefly review three case studies, in an effort to underline the potential of *ex ante* (or *physiological*) instruments, like deliberative democracy, as well as *ex post* (or *pathological*) tools, like climate litigation, in promoting 'planetary climate stewardship'.[8] The French *Convention citoyenne pour le climat* of 2019 (§IV.I), the aforementioned order *Neubauer, et al. v. Germany* issued by the German Federal Constitutional Court (§IV.II) and, lastly, the Italian environmental constitutional amendment approved in February 2022 (§IV.III) will be examined.

II. Comparative Environmental Law at the Intersection of Legal Cultures and Environmental Ethics

The concept of *legal culture*, first introduced by Lawrence M. Friedman[9] as part of a socio-legal approach to comparative law, aims to reconcile systemological analysis with the contextual matrix in which law operates. This approach contrasts with the traditional categories of comparative law, such as 'legal families',[10] which are to be considered static. Legal cultures refer to socially-oriented behaviors that are characterized by relative stability—i.e., the so-called 'patterns'[11]—offering empirical observations on the interactions between legal and social experiences. Although the concept is complex and has multiple meanings, it

[6] B. Hudson, *Structural Environmental Constitutionalism*, in *Widener Law Review*, 21, 2015, p. 201.
[7] L.J. Kotzé, *Global Environmental Constitutionalism in the Anthropocene*, cit., pp. 146-147; cf. L.J. Kotzé, *Arguing Global Environmental Constitutionalism*, in *Transnational Environmental Law*, 1, 2012, p. 199.
[8] L.J. Kotzé, *Neubauer et al. versus Germany*, cit., p. 1442.
[9] L.M. Friedman, *The Legal System: A Social Science Perspective*, Russell Sage Foundation, New York, 1975.
[10] P. Arminjon, B. Nolde, M. Wolff, *Traité de droit comparé*, Librairie Génerale de Droit et de Jurisprudence, Paris, 1950-1951; R. Sacco, *Introduzione al diritto comparato*, Utet, Torino, 1992; U. Mattei, P.G. Monateri, *Introduzione breve al diritto comparato*, CEDAM, Padova, 1997; K. Zweigert, H. Kötz, *Introduzione al diritto comparato. I Principi fondamentali*, Giuffrè, Milano, 1998; A. Gambaro, R. Sacco (eds), *Sistemi giuridici comparati*, Utet, Torino, 2002; W.F. Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa*, Cambridge University Press, Cambridge, 2006; H.P. Glenn, *Legal Traditions of the World: Sustainable Diversity in Law*, Oxford University Press, Oxford, 2014; J. Husa, *A New Introduction to Comparative Law*, Hart Publishing, Oxford, 2015; R. David, C. Jauffret-Spinosi, M. Goré, *Les grands systèmes de droit contemporains*, Dalloz, Paris, 2016.
[11] W. Twining, *Globalisation and Legal Scholarship*, Wolf Legal Publishers, Nijmegen, 2011, pp. 24-25.

is useful for describing ideas, values, expectations, and attitudes towards law. While some authors, such as Roger Cotterrell, consider the term too vague and 'impressionistic',[12] legal cultures still offer a general category of comparison within which other less general categories can be subsumed.[13] It is important to acknowledge the porous and non-monolithic nature of culture and its self-referential tendencies.[14] From a 'relational'[15] perspective, the concept of legal culture has two main advantages. Firstly, it highlights the contingent nature of legal phenomena and avoids ethnocentric biases associated with *Legal Orientalism*.[16] Secondly, it facilitates an interdisciplinary approach through the use of comparative methodologies and identifies new fields of inquiry in postmodern subjects such as the environment,[17] which are shaped by a complex interplay of cultural, ethical, and legal elements.

To organize these elements and analyze the models of environmental constitutionalism discussed in the following section, we employ membership criteria developed by *fuzzy* logic.[18] Legal cultures can be seen as a fuzzy set, which intersects with other fuzzy sets representing different cultural perspectives on ethical-environmental issues. These issues arise in interdependent socio-ecological systems[19] and are shaped by complex interactions between cultural and ethical factors that can impact people living on the other side of the world or in the distant future.

Environmental ethics is, therefore, an essential tool for understanding the cultural and legal dimensions of environmental matters. It encompasses a wide range of theoretical perspectives that aim to guide policy makers in identifying the environmental values that require protection and the strategies that should be implemented. Environmental ethics has a normative character and has had legal implications since its inception. In fact, it was a legal scholar, Christopher D. Stone, who laid its foundations with his seminal essay *Should Trees Have Standing?* in 1972.[20] Since the early 2000s, scholars have been exploring the influences between environmental ethics and cultural traditions, including indigenous and religious

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[12] R. Cotterrell, *The Concept of Legal Culture*, in D. Nelken (ed.), *Comparing Legal Cultures*, Routledge, London-New York, 2016, p. 13.

[13] L.M. Friedman, *The Concept of Legal Culture: A Reply*, in D. Nelken (ed.), *Comparing Legal Cultures*, Routledge, London-New York, 2016, p. 33.

[14] M. King, *Comparing Legal Cultures in the Quest for Law's Identity*, in D. Nelken (ed.), *Comparing Legal Cultures*, Routledge, London-New York, 2016, pp. 121-122.

[15] D. Nelken, *Using The Concept of Legal Culture*, in *Australian Journal of Legal Philosophy*, 29, 2004, p. 7.

[16] T. Ruskola, *Legal Orientalism. China, the United States, and Modern Law*, Harvard University Press, Cambridge, 2013; cf. Id., *Legal Orientalism*, in *Michigan Law Review*, 101, 2002, pp. 179-234.

[17] D. Amirante, *Giustizia ambientale e green judges nel diritto comparato: il caso del National Green Tribunal of India*, in *DPCE online*, 4, 2018, p. 957, notes that environmental law is a better symbol of the transition from modern to postmodern law than any other branch. The postmodern era emphasizes sustainability as a key principle, which Daniele Porena discusses in his book, *Il principio di sostenibilità. Contributo allo studio di un programma costituzionale di solidarietà intergenerazionale*, Giappichelli, Torino, 2017. Porena argues that sustainability is not only a legal principle but also a postmodern paradigm: it is crucial to take into account ethical factors before the legal system can assign significance to this principle.

[18] On the use of *fuzzy* logic in comparative law see S. Baldin, *Classifications and fuzzy logic: a comparative law perspective*, in S. Bagni, G.A. Figueroa Mejía, G. Pavani (eds.), *La Ciencia del Derecho Constitucional Comparado. Estudios en Homenaje a Lucio Pegoraro*, Tomo I, Tirant lo Blanch, Ciudad de México, 2017, pp. 129-151; cf. H.P. Glenn, *Legal Traditions of the World*, cit., p. 572.

[19] K.K. Smith, *Exploring Environmental Ethics. An Introduction*, Springer, New York, 2018, p. 3.

[20] C.D. Stone, *Should Trees Have Standing? Towards Legal Rights for Natural Objects*, in *Southern California Law Review*, 45, 1972, pp. 450-501.

perspectives.[21] This approach has gained traction in comparative legal scholarship due to its compatibility with the methods that account for the role of cultural factors and non-verbalized data (*cryptotypes*[22]).

The relationship between ethics and law is reflected in the increasing number of constitutions that provide for environmental protection. As a result, a new form of constitutionalism—i.e., *environmental constitutionalism*—has emerged, seeking to redefine the relationship between individuals, sovereign states, and the environment. Environmental constitutionalism is not just an academic subject, but also a transformative project, drawing a 'power map'[23] for the paradigm shift required to 'help counter the Anthropocene's socio-ecological crisis'.[24] Although there is no single definition of environmental constitutionalism, it is commonly understood as the elevation of environmental principles to constitutional status. As a result, environmental protection can be recognized as a core obligation and responsibility of the state.

Over the past decade, there has been significant growth in literature on environmental constitutionalism, with seminal works such as *The Environmental Rights Revolution* by David R. Boyd,[25] *Global Environmental Constitutionalism* by James R. May and Erin Daly,[26] and *Global Environmental Constitutionalism in the Anthropocene* by Louis J. Kotzé.[27] Kotzé's work, in particular, discusses the aforementioned distinction between 'thin' and 'thick' environmental constitutionalism, which Blake Hudson has also described as 'fundamental' and 'structural' environmental constitutionalism. *Structural* environmental constitutionalism concerns descriptive elements, such as the division of administrative competences, while *fundamental* environmental constitutionalism pertains to the prescriptive dimension of environmental duties and rights. Fundamental environmental constitutionalism is essential because it is 'the *missing link* of the environmental law chain' and 'the only level able to give substance to the principles elaborated at the international level by applying them to the national legal system, without leaving the implementation of environmental law and policies to uncoordinated administrative rules and practices or only to judicial responses'.[28] However, Hudson observes that fundamental constitutional provisions may not always have an evident impact and may not be as practically significant as structural norms. While the purpose of fundamental provisions is to safeguard individual rights, they often establish imprecise, aspirational, and

[21] D. Jamieson (ed.), *A Companion to Environmental Philosophy*, Blackwell, Oxford, 2001.
[22] R. Sacco, *Legal Formants: A Dynamic Approach to Comparative Law*, in *Am. journ. comp. law*, 2, 1991; M. Bussani, *Strangers in the Law: Lawyers' Law and the Other Legal Dimensions*, in *Cardozo Law Review*, 40, 2019, p. 3127 ff.; S. Bagni, *The Enforcement of New Environmental Rights Through the Courts. Problems and Possible Solutions*, in D. Amirante, S. Bagni (eds.), *Environmental Constitutionalism in the Anthropocene*, cit., p. 224.
[23] E. Fisher, *Towards Environmental Constitutionalism: A Different Vision of the Resource Management Act 1991?*, in *Resource Management Theory and Practice*, 63, 2015, pp. 5-6.
[24] L.J. Kotzé, *Global Environmental Constitutionalism in the Anthropocene*, cit., p. 18.
[25] D.R. Boyd, *The Environmental Rights Revolution. A Global Study of Constitutions, Human Rights, and the Environment*, UBC Press, Vancouver-Toronto, 2012.
[26] J.R. May, E. Daly, *Global Environmental Constitutionalism*, cit.
[27] L.J. Kotzé, *Global Environmental Constitutionalism in the Anthropocene*, cit.
[28] D. Amirante, *Environmental Constitutionalism Through the Lens of Comparative Law. New Perspectives for the Anthropocene*, in D. Amirante, S. Bagni (eds.), *Environmental Constitutionalism in the Anthropocene*, cit., p. 150.

grandiose goals, whereas structural rules can directly relate to the quality of environmental governance and other practical issues.[29]
Environmental principles can thus be concretely established as an objective of the state by introducing a well-balanced combination of fundamental and structural constitutional norms. This can establish a justificatory framework that binds political and judicial actions, potentially reshaping the relationship between sovereignty and the environment.
Boyd points out the lack of empirical evidence regarding the positive or negative effects of constitutional recognition of the right to a healthy environment.[30] However, it should be noted that environmental constitutionalism, even in its ecocentric forms, does not depart from the liberal paradigm of balancing environmental and economic interests.[31] Furthermore, it cannot be considered a 'panacea'[32] for all the emergencies of the Anthropocene. Excessive constitutional 'crystallization' may even lead to a 'green arthritis'.[33]
From our standpoint, environmental constitutionalism can also be interpreted as a *dynamic* and evolutionary trend towards the *constitutionalization* of environmental protection, rather than solely as a *static* form of *constitutionalism*. This viewpoint aligns with the *Law as Culture* approach adopted so far, which considers the Constitution to be closely reflective[34] of the ethical principles of a particular society. A perspective that becomes especially manifest in legal contexts where environmental conservation is rooted in social, ethical, philosophical, and religious values that are interwoven into the constitutional framework.[35]

[29] B. Hudson, *Structural Environmental Constitutionalism*, cit., p. 202. Environmental constitutionalism might serve as an '*apex resilience construct*'. See L.J. Kotzé, *Global Environmental Constitutionalism in the Anthropocene*, cit., p. 133: 'part of the normative interventions to cope with the Anthropocene should be constitutional, since *constitutionalism* is an *apex juridical construct* that aims to establish order where there is none, and to improve a legal order and its regulatory effects, while countering forms of domination (in this case human domination of the Earth system and its constituents, as it is perpetuated through states and socio-institutional legal systems)'. The *state* is a *construct* as well: we adhere to Eoin Carolan's understanding of the state as a 'construct of constituent interests', a 'collaborative construct, the utility of which is that it allows for a more effective and universalist advancement of individual and collective interests than would be possible in a disorganized pre-social state': see E. Carolan, *The New Separation of Powers. A Theory for the Modern State*, Oxford University Press, Oxford, 2009, pp. 261-263. *Resilience* is also a *construct*; see E. Richardson, *The Metatheory of Resilience and Resiliency*, in *Journal of Clinical Psychology*, 58, 2002, pp. 307-321; D. Chandler, K. Grove, S. Wakefield (eds.), *Resilience in the Anthropocene. Governance and Politics at the End of the World*, Routledge, London-New York, 2020, p. 6: 'Situating resilience in the Anthropocene thus opens new conceptual, ethical and analytical challenges for both applied scholars and critical theorists alike'.
[30] D.R. Boyd, *The Environmental Rights Revolution,* cit., p. 14.
[31] As aptly noted by D.A. Kysar, *Global Environmental Constitutionalism: Getting There from Here*, in *Transnational Environmental Law*, 1, 2012, p. 86: 'sustainability constraints on the use of renewable and non-renewable resources […] can be implemented through tradable permit schemes in a manner that continues to promote allocative efficiency through decentralized private decision-making. Optimization simply occurs under a more ecologically astute set of constraints'.
[32] L.J. Kotzé, *Global Environmental Constitutionalism in the Anthropocene,* cit., p. 18: 'non-constitutional law will and must continue to form a fundamental component of the broader global environmental governance paradigm'.
[33] R.J. Lazarus, *The Making of Environmental Law*, University of Chicago Press, Chicago, 2004, p. 168.
[34] P.W. Hogg, *Constitutional Law of Canada*, Carswell, Scarborough, 1997, p. 3: 'a mirror reflecting the national soul'.
[35] M.S. Bussi, *Courting the Environment. Public Interest Actions in the Global South*, in D. Amirante, S. Bagni (eds.), *Environmental Constitutionalism in the Anthropocene*, cit., p. 201.

III. Comparing Culturally-Oriented Environmental Constitutionalism in the Global North and Global South

According to the conceptual framework introduced above, we would like to provide four examples of 'culturally oriented' environmental constitutionalism, without claiming to offer an exhaustive coverage of the field.

These models are partly built upon the *synchronic* and *diachronic* taxonomies previously proposed by Domenico Amirante.[36] Using a synchronic approach, three categories can be identified. The first category includes *Environmental Constitutions* (EC), which contain specific environmental provisions since their inception. Most European constitutions—including the German and Italian constitutions—fall under the second category: *Revised Environmental Constitutions* (REC), where environmental amendments must be integrated within an existing constitutional framework. The third and final category—*Silent Environmental Constitutions* (SEC)—will be further explored with particular reference to the US Model (§III.I). Additionally, the author's diachronic reconstruction provides a useful *counter-narrative* of the history of environmental constitutionalism in three phases: *nascent* (i.e., roughly from the 1972 Stockholm Declaration to the fall of the Berlin Wall in 1989), *adolescent* (i.e., the process of constitutional renewal across the countries emancipated from Soviet influence during the 1990s), and *adult* (i.e., driven by the development of 'transformative constitutionalism'[37] in the Global South during the 2000s).

A fundamental flaw has plagued environmental law since its inception in the international fora: the very basis of environmental law is rooted in the epistemic divide between the Global North and the Global South, with the former imposing consumption patterns over the latter.[38] This divide is confirmed by studies on the evolution of global constitutionalism, which display a polarization of constitutions into two distinct clusters: the *libertarian* and the *statist*.[39] Roderic O'Gorman has demonstrated that 35 constitutions belonging to the libertarian cluster and rooted in the common law legal tradition do not even mention the environment. This led the author to conclude that the common law model of governance resists environmental constitutionalism.[40] Amirante's taxonomy refers to these constitutions as *Silent Environmental Constitutions*, where environmental values and interests emerge mostly from ordinary legislation and court decisions.

In view of the previous observations, the upcoming sections briefly review four examples of 'culturally oriented' environmental constitutionalism: the North-South divide is reflected in a comparison between the US model of SEC, the Rights of Nature approach adopted in the

[36] D. Amirante, *Environmental Constitutionalism Through the Lens of Comparative Law*, cit., pp. 151-163.

[37] P. Viola, *From the Principles of International Environmental Law to Environmental Constitutionalism. Competitive or Cooperative Influences?*, in D. Amirante, S. Bagni (eds.), *Environmental Constitutionalism in the Anthropocene*, cit., p. 134.

[38] S. Atapattu, C.G. Gonzalez, *The North–South Divide in International Environmental Law: Framing the Issues*, in S. Alam, S. Atapattu, C.G. Gonzalez, J. Razzaque (eds.), *International Environmental Law and the Global South*, Cambridge University Press, Cambridge, 2015, pp. 10-11: 'Of course, the North–South divide is an oversimplification'.

[39] D.S. Law, M. Versteeg, *The Evolution and Ideology of Global Constitutionalism*, in *California Law Review*, 5, 2011, p. 1187.

[40] R. O'Gorman, *Environmental Constitutionalism: A Comparative Study*, in *Transnational Environmental Law*, 3, 2017, p. 452.

Andean *nuevo constitucionalismo*, the 'trusteeship' model in South-East Asia, and lastly, the 'intergenerational solidarity' model evolving in Europe.

III.1 *The US Model: Constitutional Silence and the Enlightenment Ethos*

The Constitution of the United States of America lacks any reference to the environment. In the pre-industrial era, the concepts of popular sovereignty and the separation of powers were prioritized over environmental concerns, which were not yet recognized as pressing or relevant. The very same principle of the pursuit of happiness is based on Enlightenment thought. In fact, some argue that the US constitution's features—such as the enumeration of federal powers, the emphasis on protecting private property, the standing and justiciability of rights—actually constrain the state's ability to respond to the environmental needs of present and future citizens.[41] While some state constitutions[42] were the first to introduce provisions that grant the right to clean air, pure water, and preservation of environmental values for future generations, their enforceability has been called into question by the very judges who are responsible for implementing them.

Since the constitution is silent on the issue, environment protection is entrusted to federal laws and administrative practices, delegated to specialized agencies. Congress has traditionally employed the *Commerce Clause* to legislate on environmental matters, assuming that it falls within the scope of interstate commerce.[43] Congress' authority over environmental protection was not completely refuted, even after the Supreme Court's ruling in the landmark case *United States v. Lopez* has limited the extensive use of federal commerce power for non-interstate commerce activities.[44]

Although some legal scholars support the notion of constitutionalizing environmental protection, this idea has not been widely embraced. It appears to find greater support through the means of judicial activism rather than concrete proposals to amend the constitutional text.[45] Most recently, the *West Virginia v. Environmental Protection Agency* ruling by the Supreme Court has highlighted all the shortcomings of this 'procedural' framework of environmental constitutionalism, with far-reaching implications for federal climate action in the United States. Chief Justice John Roberts led a majority of six conservative justices in quashing the

[41] D.A. Kysar, *Global Environmental Constitutionalism: Getting There from Here*, cit., pp. 83-84.

[42] Article I Section 27 of the Pennsylvania constitution, approved on May 18, 1971: 'The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people'.

[43] J. Salzman, *United States of America*, in E. Lees, J.E. Viñuales (eds.), *The Oxford Handbook of Comparative Environmental Law*, Oxford University Press, Oxford, 2019, p. 375.

[44] *Ibi*, p. 376.

[45] R. Pepper and H. Hobbs, *The Environment is All Rights: Human Rights, Constitutional Rights and Environmental Rights*, in *Melbourne University Law Review*, 2, 2020, pp. 657-658: 'the right to a healthy environment has been uncovered in 'constitutional provisions that guarantee citizens the right to life using similar or identical language to that of the Fifth and Fourteenth Amendments of the United States Constitution' […] Appeals recognised the relationship between environmental protection and the equal protection clause […] In *Juliana v United States*, the Court held that the Fifth Amendment encompasses 'the right to a climate system capable of sustaining human life'. Although that decision was subsequently overturned by the Ninth Circuit for lack of standing, the Court recognised that the plaintiffs presented 'compelling evidence' that failure to act may hasten an environmental apocalypse'.

EPA's *Clean Power Plan* (CPP), effectively limiting the options available to the agency. While some see the ruling as a recognition of the EPA's authority to set pollution reduction targets, others view it as a significant hurdle for the Biden administration to achieve its 2030 emissions reduction goals.[46]

The conservative orientation of the Supreme Court echoes the anthropocentric model of *Silent Environmental Constitutionalism*, rooted in Enlightenment thinking. This approach also upholds the idea that trade-offs between economic interests and environmental protection are 'inevitable',[47] thereby reflecting the prioritization of economic motives over environmental efforts. Certain scholars have gone so far as to label environmental constitutionalism as a 'combination of political idealism and scientific naivety',[48] deeming the 'constitutional enshrinement of any particular environmental policies'[49] premature.

III.2 *The Recognition of Nature's Rights in the Andean Nuevo Constitucionalismo and the Trusteeship model in Southeast Asia*

The adoption of one unifying term that comprises the constitutional and political structures of Africa, Southeast Asia and Latin America has been critically denied, but as a 'symbolical designation with political implications'[50] the Global South has the merit of moving beyond the postcolonial discourse[51] to draw new counter-hegemonic cartographies. Defying what Carl Schmitt described as 'global linear thinking'[52] and the 'flat earth' of contemporary global constitutionalism,[53] the Global South is 'everywhere, but always somewhere',[54] tracing 'human geographies in spite of utterly inhuman geographies of dispossession'.[55] Despite the existence of numerous common elements—such as post-colonial legacies, intercultural social structures, and recognition of indigenous peoples' rights—transcontinental comparisons of legal traditions in the Global South have been relatively neglected.[56] Furthermore, the

[46] H. Winters, *Climate v. the Court: How West Virginia v. Environmental Protection Agency will Impact the Next Generations*, in *Minnesota Law Review*, 1, 2022.
[47] D.A. Kysar, *Global Environmental Constitutionalism: Getting There from Here*, cit., p. 85.
[48] B.H. Thompson Jr., *Constitutionalizing the Environment: The History and Future of Montana's Environmental Provisions*, in *Montana Law Review*, 1, 2003, p. 187.
[49] D.A. Kysar, *Global Environmental Constitutionalism: Getting There from Here*, cit., p. 85.
[50] S. Grovogu, *A Revolution Nonetheless: The Global South in International Relations*, in *The Global South*, 5, 2011, p. 176.
[51] J. Comaroff – J. Comaroff, *Theory from the South: A Rejoinder*, in *Fieldsights – Cultural Anthropology Online*, 24 February 2012, pp. 4-5: 'The closest thing to a common denominator among them is that many once were colonies, though not all in the same epochs. "Postcolonial", therefore, is something of a synonym, but only an inexact one'.
[52] C. Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, Telos Press, New York, 2003, p. 87.
[53] See V. Kumar, *Towards a Constitutionalism of the Wretched*, in *Völkerrechtsblog*, 27 July 2017, pp. 5-6: 'The production of global constitutional theory by global constitutionalists involves the active non-production of the Global South – as an object or as a subject – of the global legal order. […] Well beyond the purview of the global constitutionalist is settler-colonial constitutionalism'.
[54] M. Sparke, *Everywhere but Always Somewhere: Critical Geographies of the Global South*, in *The Global South*, 1, 2007, pp. 117-126.
[55] *Ibi*, p. 124.
[56] With the noteworthy exception of P. Dann, P. Riegner and M. Bönnemann (eds.), *The Global South and Comparative Constitutional Law*, Oxford University Press, Oxford, 2020.

identification of Nature as an essential element of these constitutional systems is a striking feature that calls for greater scholarly interest.
The Global South has, in fact, served as a living laboratory for the implementation of ecocentric paradigms of environmental constitutionalism. Namely, the constitutions of the Andean *nuevo constitucionalismo*[57], such as the *Constitución de la República del Ecuador* (CRE) of 2008 and the *Constitución Política del Estado Plurinacional de Bolivia* (CPE) of 2009, have garnered significant attention in comparative legal scholarship due to their groundbreaking recognition of Nature's legal personality. The preambles of these constitutions reinforce a cosmocentric[58] worldview, which draws on indigenous philosophy and acknowledges the holistic interconnectedness of human and natural realms. Emphasizing a community-oriented approach, human life is viewed as an integral part of the *whole* (*Pacha*), promoting communal coexistence in harmony with Nature rather than libertarian individualism.
This novel vision of the relationship between humanity and nature, which forms the basis for the adoption of new economic models,[59] has an ancient name: in the Ecuadorian and Bolivian constitutions, it is known as *buen vivir* (or *sumak kawsay*) and *vivir bien* (or *suma qamaña*), respectively. As a structural model, *buen vivir*[60] proposes an alternative to the unsustainability of perpetual economic growth, by acknowledging the legal personality of Nature and abstaining from objectifying its resources.
According to Ramiro Ávila Santamaría, the rights of Nature can be characterized by three fundamental principles: *differentiation*, *autopoiesis*, and *communion*.[61] These principles correspond, respectively, to the recognition of the uniqueness of each living species, the protection of self-regenerating natural cycles, and the acknowledgment of solidarity as a fundamental dimension of the relationship between humanity and Nature. In Ecuador, these principles are enshrined in Articles 71-74 of the CRE. Article 71 CRE states that 'Nature, or *Pacha Mama*, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes', giving these rights universal legal standing since 'all persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature'. The active role of this legal system in safeguarding the rights of Nature is evident in numerous landmark decisions, the most recent being *Judgment No. 1149-19-JP/21* of 10 November 2021. In this ruling, the Constitutional Court of Ecuador emphatically reiterated

[57] See R. Iannaccone, *La salvaguardia della natura nelle nuove costituzioni andine: declinazioni, tutele e partecipazione popolare*, in this *Review*, 13, 2, 2022, pp. 57-73, p. 58.
[58] S. Baldin, *The Concept of Harmony in the Andean Transformative Constitutionalism: a Subversive Narrative and its Interpretations*, in *Revista General de Derecho Público Comparado*, 17, 2015.
[59] S. Bagni, *Hitos de democratización de la justicia constitucional en América latina: una mirada desde afuera*, in R. Tur Ausina (ed.), *Problemas actuales de Derecho constitucional en un contexto de crisis*, Editorial Comares, Granada, 2015, p. 222.
[60] *Buen vivir* is one of the most controversial aspects of Andean *nuevo constitucionalismo*: this indigenous *cosmovision* has been thoroughly analyzed in its contradictory terms, evoking contrasting opinions: 'chimera' or 'attainable utopia?' See E.M. Ranta, *Vivir bien governance in Bolivia: chimera or attainable utopia?*, in *Third World Quarterly*, 38, 2017, p. 1603.
[61] R. Ávila Santamaría, *Rights of Nature vs. Human Rights? An Urgent Shift of Paradigms*, in D. Amirante, S. Bagni (eds.), *Environmental Constitutionalism in the Anthropocene*, cit., p. 82.

the central role of Nature in the country's legal framework and condemned the violation of the rights of the *Bosque Protector Los Cedros*.[62]

Nevertheless, the recognition of Nature's legal personality presents a complex challenge for both Western observers and Ecuadorian constitutionalists alike. As Ávila Santamaría himself admits, this concept initially seemed 'absurd', 'ridiculous' and a meaningless 'novelty',[63] reflecting a prejudice that Boaventura de Sousa Santos labels 'epistemology of blindness'.[64]

An alternative model of environmental constitutionalism can also be observed in Southeast Asia, in stark contrast to reductionist approaches often found in the Global North. Some constitutions within the Buddhist tradition[65] suggest a move away from the Western dichotomy between duties and rights, dealing holistically with both environmental protection and cultural heritage conservation. Buddhist perspectives on environmental constitutionalism emphasize 'interdependence' and 'antagonistic symbiosis' of opposites, enshrining such noble concepts as 'balance', 'wisdom', 'well-being', 'harmony', and 'participation'.[66]

The Constitution of Bhutan might exemplify a model of Buddhist environmental constitutionalism. For instance, Article 5 considers 'every Bhutanese […] a *trustee* of the Kingdom's natural resources and environment for the benefit of the present and future generations and it is the fundamental duty of every citizen to contribute to the protection of the natural environment', thus bridging the gap between environmental rights and duties. Likewise, Article 9 has been the subject of extensive discussions among comparative scholars[67] as it obliges the state 'to promote those conditions that will enable the pursuit of *Gross National Happiness*' (GNH). The concept of Gross National Happiness (GNH) in the Bhutanese constitution encompasses spiritual and material aspects, aimed at fostering the growth of the well-being of society as a whole. The four pillars of GNH—namely economic development, environmental protection, cultural heritage conservation, and good governance[68]—reflect deeply-rooted Buddhist beliefs about the transient nature of the world. Rather than viewing environmental protection as an opposition between state property and private ownership, the principle of *trusteeship* underpins the notion of reciprocal environmental responsibility, according to the 'cosmic law' of interdependence. As stated by

[62] L.A. Nocera, *La Corte costituzionale dell'Ecuador si pronuncia sulla lesione dei diritti della natura del Bosque Protector Los Cedros*, in *Diritti Comparati*, 17 January 2022, p. 5.
[63] R. Ávila Santamaría, *Rights of Nature vs. Human Rights?*, cit., pp. 68-69; cf. R. Iannaccone, *La salvaguardia della natura nelle nuove costituzioni andine*, cit., pp. 72-73.
[64] B. de Sousa Santos, *Toward an Epistemology of Blindness. Why the New Forms of 'Ceremonial Adequacy' Neither Regulate nor Emancipate*, in *European Journal of Social Theory*, 3, 2001, pp. 251-279.
[65] Please refer to E. Buono, *The Noble Eightfold Path in the Anthropocene: Buddhist Perspectives on Environmental Constitutionalism*, in D. Amirante, S. Bagni (eds.), *Environmental Constitutionalism in the Anthropocene*, cit., p. 104 ff.
[66] Recurring in the constitutions of Cambodia (Art. 59), Laos (Arts. 13, 19 and 21), Myanmar (Sections 45 and 390), Sri Lanka (Arts. 14 and 28) and Thailand (Sections 43, 50, 57 and 58).
[67] A. Cenerelli, *The Constitutional System of the Kingdom of Bhutan*, in D. Amirante (ed.), *South Asian Constitutional Systems*, Eleven International Publishing, Amsterdam, 2020.
[68] R.W. Whitecross, *Buddhism and Constitutions in Bhutan*, in R.R. French and M.A. Nathan (eds.), *Buddhism and Law. An Introduction*, Cambridge University Press, Cambridge, 2014, p. 365.

the Dalai Lama, 'ignorance of interdependence has wounded not just our natural environment, but our human society as well'.[69]

In order to transcend the aforementioned epistemological barriers, comparative legal scholars should cultivate a 'cosmopolitan openness'[70] to the perspectives and beliefs of non-Western cultures. This approach requires an empathetic and informed study of legal systems beyond the Western paradigm, and a willingness to engage in dialogue and collaboration with legal practitioners and scholars from different traditions.

III.3 *A Potential Common Core for European Environmental Constitutionalism: from 'Instrumental' Sustainability towards Intergenerational Solidarity?*

The legal transplant of the personification of Nature into the Western legal tradition—firmly rooted in Judeo-Christian anthropocentric and dichotomous understandings of the relationship between humanity and the environment[71]—appears to be a rather difficult proposition. Instead, it may be more fitting to identify a unique constitutional 'grammar' that is specifically tailored to the peculiarities of European legal culture.

An extensive quantitative analysis of the Constitutions of the member states of the European Union reveals that this distinctive European constitutional grammar is primarily of a 'deontic' nature. In fact, the prevalence of the deontic dimension characterizes European environmental constitutionalism, setting it apart from the declaration of hardly enforceable subjective environmental rights. A review of European environmental constitutions demonstrates that 'duty' and 'responsibility' are the most commonly recurring terms, with 28 European Constitutions incorporating deontic markers, while only 21 texts contain references to subjective rights.[72]

When viewed through the lens of duties and responsibilities, we argue that 'sustainability' and 'solidarity' are the two *key concepts*[73] of European environmental constitutionalism.

In the pursuit of reconciling economic growth and environmental protection, the principle of sustainable development[74] is inherently economistic, a 'two-faced Janus' seeking to bridge

[69] H.H. the XIV Dalai Lama, *Message for Earth Day 2021*, 22 April 2021.

[70] W. Twining (ed.), *Human Rights, Southern Voices. Francis Deng, Abdullahi An-Na'im, Yash Ghai and Upendra Baxi*, Cambridge University Press, Cambridge, 2009, p. 1.

[71] R. Ávila Santamaría, *Rights of Nature vs. Human Rights?*, cit., p. 71: 'The respect and admiration for nature persists and is reflected in our religious rites and our deities, except perhaps the Judeo-Christian, who dared to imagine that the human being, and only the human being, is the incarnation of God and is the central being in the universe'. See also L. Colella, *Integral Ecology and Environmental Law in the Anthropocene: The Perspective of the Catholic Church*, in D. Amirante, S. Bagni (eds.), *Environmental Constitutionalism in the Anthropocene*, cit., p. 13 ff.

[72] D. Amirante, *Costituzionalismo ambientale. Atlante giuridico per l'Antropocene*, cit., pp. 186-207, esp. Tab. 3.

[73] T. Groppi, *Sostenibilità e costituzioni: lo Stato costituzionale alla prova del futuro*, in *DPCE*, 1, 2016, p. 44.

[74] The definition of sustainable development adopted by the World Commission on Environment and Development (WCED) in the Brundtland Report of 1987 is widely recognized: sustainable development refers to 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'. This statement can be traced back to the Stockholm Declaration of 1972, and has since been reiterated in Principle 4 of the Rio Declaration of 1992. In EU legal sources, the principle of sustainable development was first introduced in the Treaty of Amsterdam (Article 2) and later defined in Regulation (EC) No 2493/2000. The Treaty of Lisbon incorporated the principle of sustainable development in the preamble of the TEU, as well as in Art. 3(3) and (5) TEU, and Art. 37(14) of the Nice Charter. However, the enforcement of this principle remains predominantly dependent on the political actions of EU institutions and falls on a spectrum between non-legal policies and legal norms, as aptly noted by Klaus Bosselmann: K. Bosselmann, *The Principle of Sustainability*, Routledge, London-New York, 2017, p. 64; cf. G. Bándi, *Principles of EU Environmental*

seemingly incompatible objectives. Traditionally, environmental values have been considered subordinate—or, at most, instrumental—to economic growth. This view has garnered increasing criticism, as it perpetuates the 'illusion of unlimited economic growth on a finite planet'.[75] Relying on the same economic system that led to the Anthropocene[76] crisis for its resolution could be perceived as a limited and shortsighted approach: 'as long as infinite economic growth remains as a dogma we will be cruising the *Titanic* and be part of its fateful destiny'.[77]

The principles of sustainable development and solidarity share an 'intergenerational' (or 'intertemporal') dimension: the scope of environmental concerns extends over time and space, inevitably spanning multiple generations. Edith Brown Weiss portrayed present generations as both *beneficiaries*—towards their contemporaries, from an *intra*-generational perspective—and *trustees*—towards future generations, from an *inter*-generational perspective—of a *planetary trust*.[78] However, the principle of intergenerational solidarity has been met with criticism in two respects. Firstly, uncertainty has arisen regarding the 'sentimental'[79] fallacy of protecting future subjects who lack legal standing. Secondly, given the nature of solidarity, the establishment of a relationship of reciprocity between present and future generations seems ontologically impossible.[80]

Nevertheless, in order to identify a *Common Core*[81] of European environmental constitutionalism, solidarity helps bridge the gap between the common constitutional traditions (CCTs) of the member states and the Union's primary law. With regards to the latter, Article 3 TEU, Article 37 of the Nice Charter, and Article 191 TFEU would form the legal basis for 'giving new legal content' to the 'concept of environmental intragenerational solidarity', to be taken into account 'in the interpretation of the environmental objectives and principles of EU environmental law'.[82]

Law Including (the Objective of) Sustainable Development, in M. Peeters, M. Eliantonio (eds.), *Research Handbook on EU Environmental Law*, Edward Elgar Publishing, Cheltenham and Northampton, 2020, p. 39.

[75] S.A. Atapattu, C.G. Gonzalez, S.L. Seck, *Intersections of Environmental Justice and Sustainable Development. Framing the Issues*, in S.A. Atapattu, C.G. Gonzalez, S.L. Seck (eds.), *The Cambridge Handbook of Environmental Justice and Sustainable Development*, Cambridge University Press, Cambridge, 2021, p. 5.

[76] Thus raising the question addressed by J.W. Moore (ed.), *Anthropocene or Capitalocene? Nature, History, and the Crisis of Capitalism*, PM Press, Oakland, 2016, p. xi.

[77] B. de Sousa Santos, *Foreword (on Living in an Interregnum)*, in S.A. Atapattu, C.G. Gonzalez, S.L. Seck (eds.), *The Cambridge Handbook of Environmental Justice and Sustainable Development*, cit., pp. xvii-xviii.

[78] E. Brown Weiss, *The Planetary Trust: Conservation and Intergenerational Equity*, in *EcologyLQ*, 1984, p. 499; see also E. Brown Weiss, *In Fairness to Future Generations*, in *Environment: Science and Policy for Sustainable Development*, 3, 1990, pp. 37-38.

[79] G. Kirsch, *Solidarity Between Generations: Intergenerational Distributional Problems in Environmental and Resource Policy*, in A. Schnaiberg, N. Watts, K. Zimmerman (eds.), *Distributional Conflicts in Environmental-Resource Policy*, WZB Publications, Berlin, 1986, p. 381.

[80] A. Wildt, *Solidarity: Its History and Contemporary Definition*, in K. Bayertz (ed.), *Solidarity*, Kluwer Academic, Dordrecht, 1999, p. 217.

[81] The *Common Core of European Private Law Project* was spearheaded by Mauro Bussani and Ugo Mattei and guided by Rodolfo Sacco and Rudolf B. Schlesinger. In this paper, we take inspiration from these Masters to propose a *Common Core* for European environmental constitutionalism. See also M. Bussani, *'The Common Core of European Administrative Law' Project: Methodological Roots*, 24 April 2018, https://ssrn.com/abstract=3168171.

[82] A. Sikora, *Constitutionalisation of Environmental Protection in EU Law*, Europa Law Publishing, Zutphen, 2020, p. 193.

As such, intergenerational solidarity is a recurrent theme in twelve environmental constitutions of EU member states, unveiling a common constitutional grammar. The Kingdom of Belgium pursues 'the objectives of sustainable development in its social, economic and environmental aspects, taking into account the solidarity between the generations' (Art. 7-bis, introduced with the revision of 25 April 2007). The 2005 *Charter for the Environment*, belonging to the French *bloc de constitutionnalité*, dictates that 'in order to ensure sustainable development, choices designed to meet the needs of the present generation should not jeopardize the ability of future generations and other peoples to meet their own needs' (preamble; see also Art. 6). The Federal Republic of Germany recognizes the constitutional protection of the 'natural foundations of life', 'mindful also of its responsibility toward future generations' (Art. 20a GG, introduced in 1994). Most recently, the Italian Parliament approved the amendment of Article 9 of the constitution on 8 February 2022, which now includes the protection of 'environment, biodiversity and ecosystems, also in the interest of future generations'. The preamble of the Latvian constitution enshrines the duty of responsibility of 'each individual […] toward […] future generations, the environment and nature'. Art. 11-bis of the Luxembourg constitution, introduced in 1999, guarantees the 'the protection of the human and cultural environment, […] for the establishment of a durable equilibrium between the conservation of nature, in particular its capacity for renewal, and the satisfaction of the needs of present and future generations'. The Maltese state 'must protect […] the environment and its resources for the benefit of present and future generations' (Art. 9, amended in 2018). The preamble of the Polish constitution mentions the obligation to 'bequeath to future generations all that is valuable from our over one thousand years' heritage', stating that 'public authorities shall pursue policies ensuring the ecological security of current and future generations' (Art. 74). The Portuguese constitution of 1976, among the first European environmental constitutions, promotes 'the rational use of natural resources, while safeguarding their ability to renew themselves and maintain ecological stability, with respect for the principle of inter-generational solidarity' (Art. 66). The Slovak Republic 'makes careful and effective use of mineral resources and natural heritage to the benefit of its citizens and subsequent generations' (Art. 4). Art. 2 of the Swedish *Instrument of Government* (*Regierungsformen*) encourages 'sustainable development leading to a good environment for present and future generations'. Lastly, the preamble to the Hungarian constitution recognizes the responsibility 'for our descendants; therefore we shall protect the living conditions of future generations by making prudent use of our material, intellectual and natural resources'.

In conclusion, the preceding analysis has highlighted the widespread recognition of intergenerational solidarity across the constitutions of EU Member States, thereby offering a possible yardstick for integrating environmental concerns into the general clause of common constitutional traditions, as invoked by the CJEU.[83] The emergence of a *Common Core* of European environmental constitutionalism is already manifest in domestic case law,

[83] M. Graziadei, R. de Caria, *The «Constitutional Traditions Common to the Member States» in the Case Law of the Court of Justice of the European Union: Judicial Dialogue at its Finest*, in *Rivista trimestrale di diritto pubblico*, 4, 2017, pp. 949-971.

such as the *Urgenda*[84] judgment of The Hague District Court[85] and the *Neubauer* order of the *Bundesverfassungsgericht*, both of which applied intergenerational justice principles to enforce environmental protection. Moving forward, the upcoming section will delve, albeit briefly, into three case studies that exemplify the European model of environmental constitutionalism, including the French experience of citizens' assemblies (*ex ante* or *physiological* model of environmental democracy), the aforementioned *Neubauer* ruling in Germany (*ex post* or *pathological* model of environmental justice), and the debate surrounding the recent constitutional amendment in Italy.

IV. Taking Environmental Constitutionalism Seriously: Three Recent Case Studies in Europe

IV.1 *Citizens' Assemblies as a Tool for Environmental Democracy: the French Convention citoyenne pour le climat*

As a preventive environmental measure, citizen contributions can be channeled into various forms of participatory democracy,[86] actively involving citizens' assemblies in the co-creation of regulatory solutions through open discussion fora. There has been growing confidence in the implementation of deliberative and participatory correctives within the democratic-representative framework. These mitigations aim to encourage citizen participation in a proactive and preventive phase, rather than compelling resort to judicial intervention in subsequent and reactive stages. The adoption of 'specific deliberative practices,'[87] such as the increasingly widespread *Citizens' Assemblies on Climate Change*,[88] appears particularly promising. Delphine Hedary has recently observed that, without the 2019 *Convention citoyenne pour le climat* (Citizens Convention for Climate) in France—which is believed to be the world's first

[84] M.F. Cavalcanti, M.J. Terstegge, *The Urgenda case: The Dutch Path Towards a New Climate Constitutionalism*, in *DPCE Online*, 2, 2020, p. 1388 ff.
[85] Indeed, the courts issuing decisions on these matters are not always of apex or constitutional rank. Gallarati aptly employs the notion of 'climate litigation of a constitutional *tone*' to describe sub-constitutional domestic courts that invoke constitutional clauses in addressing climate change cases. See F. Gallarati, *Il contenzioso climatico di tono costituzionale: studio comparato sull'invocazione delle costituzioni nazionali nei contenziosi climatici*, in *BioLaw Journal. Rivista di BioDiritto*, 2, 2022, p. 159.
[86] For a sharp critique of deliberative instruments in the process of constitutional change in Ireland, see E. Carolan, *Ireland's Constitutional Convention: Behind the hype about citizen-led constitutional change*, in *International Journal of Constitutional Law*, 13, 2015, pp. 733-748. On the concept of environmental democracy, see R. Louvin, *Democrazia ambientale e accesso alla giustizia*, in *DPCE online*, Sp-2, 2023, pp. 185-204.
[87] On the distinctions between *additional representative bodies* and *specific deliberative practices*, please refer to our E. Buono, C. Pizi, *La democrazia climatica tra climate change mitigation e climate change litigation. Spunti comparati per l'elaborazione di strumenti partecipativi*, in *DPCE online*, 2, 2023, pp. 1943-1956, p. 1949.
[88] According to data gathered by the Knowledge Network on Climate Assemblies (KNOCA), we can distinguish between *national-level assemblies* and *local-level assemblies*. The KNOCA reports 13 notable national-level citizens' assemblies on climate change in Europe. These include countries like Poland, Luxembourg, Austria, Spain, and Germany, each with its unique structure and focus. The French *Convention Citoyenne pour le Climat* (2019) and Ireland's *Citizens Assembly on Biodiversity Loss* (2022-2023) serve as benchmarks, demonstrating how citizen participation can shape national environmental policies and contribute to democratic governance.

citizens convention on climate issues—transformative citizen proposals would never have contributed to the 2021 *Loi Climat et Résilience*.[89]

It is essential to emphasize the influence of the Aarhus Convention on the *Convention citoyenne pour le climat*. The Aarhus Convention's significance lies in its promotion of public participation in environmental matters, primarily through its second pillar. This convention has facilitated various avenues for citizen involvement in climate change discussions, critical in the evolution of governance models for climate transition. Regulation (EC) No. 1367/2006, on the application of the provisions of the Aarhus Convention, encompasses a wide range of natural or legal persons, and groups, granting them public participation rights.[90] Thus, the Aarhus Convention's framework has significantly shaped the format and impact of the *Convention Citoyenne pour le Climat*, illustrating a shift towards more inclusive and deliberative environmental governance, where citizen input is not only sought but also instrumental in shaping legislative outcomes.

The *Convention citoyenne pour le climat* consisted of one hundred and fifty citizens from diverse backgrounds and regions, selected randomly to deliberate on measures to effectively reduce national greenhouse gas emissions by at least 40% by 2030. It has been described as an 'unprecedented exercise of deliberative democracy'.[91]

Following the discussions and debates, the *Convention citoyenne pour le climat* produced a total of 149 proposals. A Committee was appointed to oversee the proceedings, involving experts in economics, law, climate science, and other representatives of civil society. The contributions of these experts allowed the drafted citizens to gain knowledge in environmental matters and to put forward legally sound proposals. On 21 June 2020, these proposals were submitted to the government, with the President of the Republic committing to implement 146 of them through regulation and legislation. The French experience of *débat public*[92] has represented a significant reference point for the *Convention citoyenne pour le climat*. The aim of *débat public* is to provide a plurality of different knowledge sources, encouraging adversarial debate and enabling citizens to articulate their opinions based on a comprehensive range of information. The *Commission nationale du débat public* (CNDP or National Commission for Public Debate) authorizes the use of *débat public*, without expressing opinions on the merits of the issue or filtering the contributions emerging from the debate.

However, some scholars[93] have criticized the effectiveness of *débat public* in environmental matters, as public debate risks becoming a mere democratic practice, detached from any tangible environmental protection effect. Despite this criticism, *débat public* can still serve as an inspiration to other countries interested in adopting participatory procedures, as it

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[89] D. Hedary, *The Citizens' Climate Convention: A new approach to participatory democracy, and its effectiveness on changing public policy*, in *French Yearbook of Public Law*, 1, 2023, pp. 271-280, p. 279.

[90] E. Chevalier, *European Union law in times of climate crisis: change through continuity*, in *French Yearbook of Public Law*, 1, 2023, pp. 51-68, p. 64.

[91] L. Colella, *La "transizione ecologica" nella Loi climat et résilience in Francia. Brevi note introduttive*, in *Amministrazione e Contabilità dello Stato e degli enti pubblici*, 27 September 2021, p. 10.

[92] M. Revel, C. Blatrix, L. Blondiaux, J. Fourniau, B. Heriard Dubreuil and R. Lefebvre (eds.), *Le débat public: une expérience française de démocratie participative*, La Découverte, Paris, 2007. A. Mercier, *Débat public*, in *Publictionnaire. Dictionnaire encyclopédique et critique des publics*, 12 April 2017.

[93] I. Casillo, *Il débat public francese: difesa dell'ambiente o difesa della democrazia? Una lettura critica dell'offerta istituzionale di democrazia partecipativa in Francia in occasione dei venticinque anni del débat public*, in *Istituzioni del Federalismo*, 3, 2020.

promotes individual rights of information and strengthens decision-making processes through direct citizen involvement.
The *Loi climat et résilience* was officially enacted on 22 August 2021. The law aims to integrate environmental values into French society, with a particular focus on education, public services, urban planning, building renovations, consumption patterns, and sanctioning mechanisms. The *Loi climat et résilience* has been clearly influenced by the participatory process that was undertaken prior to its enactment.
The law under examination bears the promise of incentivizing the adherence to environmental regulations, given its responsiveness to the multiple requests advanced by citizens. Notably, it encompasses a set of ambitious goals aimed at mainstreaming environmental concerns within French cultural and social practices. However, certain commentators have expressed reservations as to its capacity to attain its objectives, given its perceived dearth of concrete measures and its inadequate response to pressing environmental challenges. Some scholars have argued that the law's reliance on voluntary measures might fall short of achieving the desired outcomes, calling for more stringent actions to address the ecological crisis.[94]

IV.2 *Karlsruhe in the Anthropocene: the Neubauer Case in a Multilevel Perspective*

Citizens' Assemblies—as an *ex ante* or *physiological* measure—find themselves at one end of the environmental remedies' scale. At the other end—as an *ex post* or *pathological* solution—lies *Climate Change Litigation*[95] (also known as *Environmental Justice*[96]), which has garnered increasing attention in comparative legal scholarship. Most notably, a decision handed down by a domestic constitutional court has raised significant interest amongst constitutionalists from all over the globe: the *Neubauer et al v. Germany* order of 24 March 2021.[97]
In a first-of-its-kind move since the introduction of Article 20a in 1994, the *Bundesverfassungsgericht* recognized the unconstitutionality of the Federal Climate Protection Act (*Klimaschutzgesetz* or KSG) of 2019, due to its failure to distribute the carbon budget proportionally between present and future generations. This decision was urged by four constitutional complaints (*Verfassungsbeschwerden*). The court emphasized that 'one generation must not be allowed to consume large portions of the CO2 budget […] if this would involve leaving subsequent generations with a drastic reduction burden and expose their lives to serious losses of freedom'.[98]
In the German constitutional framework, Article 20a *Grundgesetz* is strategically placed among the provisions concerning the objectives of the State (*Staatszielbestimmung*). The

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[94] P. Savin and R. Romi, *Radiographie de la loi portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets*, in *Droit de l'Environnement. La Revue du développement durable*, 303, 2021, pp. 311-312.
[95] B. Pozzo, *Climate Change Litigation in a Comparative Law Perspective*, in F. Sindico, M.M. Mbengue (eds.), *Comparative Climate Change Litigation: Beyond the Usual Suspects*, Springer, Cham, 2021, p. 593 ff. J. Peel and R. Markey-Towler, *Recipe for Success?: Lessons for Strategic Climate Litigation from the Sharma, Neubauer, and Shell Cases*, in *German Law Journal*, 22, 2021, pp. 1484-1498.
[96] S. Ryder, K. Powlen, M. Laituri, S.A. Malin, J. Sbicca and D. Stevis (eds.), *Environmental Justice in the Anthropocene: From (Un)Just Presents to Just Futures*, Routledge, Abingdon Oxon, 2021.
[97] Hereinafter *Neubauer*.
[98] *Neubauer*, para. 192.

environmental state principle (*Umweltstaatsprinzip*) has thus direct and binding content, albeit of an objective nature. Therefore, it serves as a guiding criterion for the activity of the State, including its territorial branches and public authorities. In a system which provides for direct appeal to the Constitutional Court by means of the *Verfassungsbeschwerde*, Article 20a can only be invoked in support (*ad adiuvandum*) of alleged violations of the fundamental right to life and physical integrity (Article 2 GG).[99]

Among the various interpretations of this 'epoch-making'[100] order, Louis Kotzé's analysis of the Karlsruhe judge' decision within the 'cognitive framework' of the Anthropocene is particularly noteworthy. Kotzé's approach stems from the pioneering dimension of *Earth system law*,[101] and identifies three instances of transnationality in the *Neubauer* order: the authoritative use of climate science, the application of the 'tipping point' concept, and the references to planetary climate justice and environmental stewardship. With respect to the first instance, the German court explicitly relies on the Assessment Reports of the UN Intergovernmental Panel on Climate Change (IPCC) to ground its judicial decision on an objective scientific basis.[102] Additionally, the environmental obligation placed on the state under Article 20a mandates the continual adaptation of the legal system to the most recent scientific findings.[103] In the second instance, the Court identifies three points of no return from a planetary perspective: the melting of glaciers, the Atlantic Meridional Overturning Circulation, and Amazon deforestation.[104] The Court's use of the theory of tipping points confers transnational relevance to the decision and validates the necessary 'intertwining' of constitutional and international law in a multilevel perspective.[105]

The international legal openness clause (*Völkerrechtsfreundlichkeit*) becomes, in fact, a critical hermeneutical key to interpreting the *Grundgesetz* with regard to climate obligations.[106] Ultimately, the most significant aspect of the ruling is the affirmation of the principle of

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[99] L.J. Kotzé, *Neubauer et al. versus Germany: Planetary Climate Litigation for the Anthropocene?*, in *German Law Journal*, 22, 2021, p. 1424: 'The constitutional complaint specifically derives from the State's duties of protection arising from the rights to life, physical integrity and personal freedom, the right to property, and the right to a future consistent with human dignity (*menschenwürdige Zukunft*) and its associated right to an ecological minimum standard of living (*ökologisches Existenzminimum*)'. See also N. Weiss, *How to Integrate Environmental Law into Constitutional Law: The German Experience*, in *Revue juridique de l'Océan Indien*, 31, 2021, pp. 171-175.

[100] R. Krämer-Hoppe, *The Climate Protection Order of the Federal Constitutional Court of Germany and the North-South Divide*, in *German Law Journal*, 22, 2021, p. 1394: 'this decision has been labelled far-reaching, a historical success, ground-breaking, international and epoch-making, as well as post-colonial'. See also: G. Winter, *The Intergenerational Effect of Fundamental Rights: A Contribution of the German Federal Constitutional Court to Climate Protection*, in *Journal of Environmental Law*, 34, 2022, pp. 209-221; P. Minnerop, The 'Advance Interference-Like Effect' of Climate Targets: Fundamental Rights, Intergenerational Equity and the German Federal Constitutional Court, in *Journal of Environmental Law*, 34, 2022, pp. 135-162; A. Buser, *Of Carbon Budgets, Factual Uncertainties, and Intergenerational Equity–The German Constitutional Court's Climate Decision*, in *German Law Journal*, 22, 2021, pp. 1409-1422.

[101] L.J. Kotzé, *Neubauer et al. versus Germany*, cit., pp. 1429-1430.

[102] *Neubauer*, para. 16.

[103] *Neubauer*, para. 212.

[104] *Neubauer*, para. 21.

[105] M. Goldmann, *Judges for Future: The Climate Action Judgment as a Postcolonial Turn in Constitutional Law?*, in *Verfassungsblog*, 30 April 2021; cf. L.J. Kotzé, *Neubauer et al. versus Germany*, cit., p. 1437.

[106] L.J. Kotzé, *Neubauer et al. versus Germany*, cit., p. 1438.

intergenerational climate justice,[107] activating Article 20a as a constitutional norm that 'imposes an obligation to safeguard fundamental freedom over time and to spread the opportunities associated with freedom proportionately across generations. As intertemporal guarantees of freedom, fundamental rights afford the complainants protection against the greenhouse gas reduction burdens imposed by Art. 20a GG being unilaterally offloaded onto the future'.[108] The novelty of this decision, however, lies also in the statement that 'no state can resolve the problems of climate change on its own due to the worldwide nature of the climate and global warming'.[109] Therefore, Kotzé's depiction of a 'domestic court' elevated to the role of 'planetary climate steward' seems to resonate with the ruling's groundbreaking transnational scope.[110]

IV.3 *'Also in the interest of future generations?' Italy's (Belated) Constitutional Pledge to Environmental Stewardship*

Akin to the proverbial *bull in a china shop*,[111] the advent of the Anthropocene has irreversibly reached the *core* of the (allegedly) unalterable *supreme principles* of the Italian constitution, with a sense of impending doom that necessitated constitutional change. This section seeks to provide a brief overview of the revised Articles 9 and 41[112] of the Italian constitution, while also examining the ongoing scholarly debate on their potential impact.

The Italian amendment—between lights and shadows[113]—was approved with only one opposing vote on 8 February 2022 and appears to be fully consistent with the tradition of European solidaristic environmental constitutionalism, as outlined above.

It seems necessary to recall that, before the 2022 amendment, the construction of the 'implicit' model of Italian environmental constitutionalism rested on the principle of

107 M. Schröder, *The Concept of Intergenerational Justice in German Constitutional Law*, in *Ritsumeikan Law Review*, 28, 2011, pp. 321-330.

108 *Neubauer*, para. 183.

109 *Neubauer*, para. 197.

110 L.J. Kotzé, *Neubauer et al. versus Germany*, cit., p. 1442.

111 E.R.D. Goldsmith, *A Blueprint for Survival*, in *New York Times*, 5 February 1972.

112 Under the amended text of Article 9, 'The Republic shall promote the development of culture and of scientific and technical research. It shall safeguard the natural beauties and the historical and artistic heritage of the Nation. It shall safeguard the *environment*, *biodiversity* and *ecosystems*, *also in the interest of future generations*. State law shall regulate the methods and means of safeguarding animals'. Before 2022, it simply stated that 'The Republic promotes the development of culture and of scientific and technical research. It safeguards natural landscape and the historical and artistic heritage of the Nation'. Article 41 has been amended to include health and environmental protection as limits to private economic initiatives, alongside security, freedom, and human dignity. Additionally, the law may now direct and coordinate economic activity for both social and environmental purposes. Delving into the nuanced implications of the revised Article 41 of the Italian Constitution is beyond the scope of this discussion. For a more comprehensive exploration of the subject, see M. Malvicini, *Costituzione, legge e interesse intergenerazionale: tutela dei diritti e vincoli legislativi*, in *BioLaw Journal. Rivista di BioDiritto*, 2, 2022, pp. 183-202; L. Longhi, *Note minime sulle recenti modifiche all'art. 41 Cost.*, in *PasSaggi Costituzionali*, 1, 2022, pp. 53-57. M. Cavino, *La revisione degli articoli 9 e 41 della Costituzione nel quadro dei principi supremi*, in *PasSaggi Costituzionali*, 1, 2022, p. 24: 'The revision of Article 41 introduces new terms to the legislative provision, yet as these terms are related to concepts of a similar nature—among which no hierarchical distinction in meaning exists—the outcome of this amendment is not to narrow the possibilities for balancing interests. Rather, it serves to broaden the scope within the *conflict's topography*'.

113 D. Fuschi, *Environmental Protection in the Italian Constitution: Lights and Shadows of the New Constitutional Reform*, in *Int'l J. Const. L. Blog*, 13 February 2022.

solidarity. The enshrinement of the environment as a constitutional value is owed not only to the interpretative efforts of the Constitutional Court,[114] but also to two insightful doctrinal contributions.

On one hand, Alberto Predieri expanded the concept of 'natural landscape' in Article 9 of the Constitution to encompass the 'form' of the environment, shaped by the 'continuous interaction of nature and humanity'.[115] On the other hand, Temistocle Martines was the first to bring environmental protection back to the sphere of constitutional duties of solidarity, pursuant to Article 2,[116] on the assumption that 'the most appropriate dimension to grasp the characteristics of environmental law appears to be that of dutifulness'.[117]

This allows for the alignment of both passive and active environmental situations on an objective basis, balancing demands and obligations, an idea that has been partially incorporated in the 2022 revision through the concept of 'intergenerational openness', already predicted by the aforementioned authors. Thus, a once-minoritarian doctrine deserves reexamination in light of the recent amendment: 'imposing duties on individuals in the context of solidarity […] primarily concerns the environment, but […] in reality, […] binds us to future generations'.[118]

The unanimous and monotonous discourse that characterized the parliamentary approval—evidenced by stenographic records—stands in stark contrast to the divisive reception of the reform from legal scholars, highlighting the mismatch between *internal legal culture* and the heightened environmental awareness of the public. This awareness is characterized by a sense of urgency that cannot be attributed solely to greenwashing.

The approved amendment has not only stirred controversy among domestic constitutional legal scholars, but has also failed to satisfy many authors who advocated for the inclusion of environmental protection in the Italian constitution. The debate has thus become polarized between those who considered it unnecessary to incorporate a principle already established by the Italian Constitutional Court and those who sought a more radical revision.[119]

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114 The Court's rulings have included: (1) the 'protection of the landscape' in its dynamic and environmental factors (Sentence No. 151/1986); (2) the 'unitary treatment of environmental protection as a fundamental right' (Sentence No. 210/1987); (3) the use of land as an ecological good (Sentence No. 391/1989); (4) a strand of case law on environmental limits to private economic initiative (Order No. 181/1996, Sentence No. 196/1998); (5) the recognition of the environment as a system 'considered in its dynamic aspect' and as 'an organic entity' (Sentence No. 378/2007). The Court has also recognized the environment as a constitutionally protected 'value', adopting the method of reasonable balancing between the different values at stake (in the infamous 'ILVA judgments': Sentences Nos. 85/2013, 182/2017, 58/2018). Most recent rulings (Sentence No. 179/2019; cf. Sentence No. 71/2020) have defined soil as a 'non-renewable natural eco-systemic resource, essential for environmental balance, capable of expressing a social function and incorporating a plurality of collective interests and utilities, including those of an *intergenerational* nature'.

115 A. Predieri, *Paesaggio*, in *Enciclopedia del Diritto*, Giuffrè, Milano, 1981, p. 507 ff.

116 Article 2: 'The Republic recognises and guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed. The Republic expects that the *fundamental duties of* political, economic and social *solidarity* be fulfilled'.

117 T. Martines, *L'ambiente come oggetto di diritti e di doveri*, in V. Pepe (ed.), *Politica e legislazione ambientale*, Edizioni Scientifiche Italiane, Napoli, 1996, p. 15 ff.

118 F. Fracchia, *La tutela dell'ambiente come dovere di solidarietà*, in *Il diritto dell'economia*, 3-4, 2009, pp. 493-494; cf. M. Greco, *La dimensione costituzionale dell'ambiente. Fondamento, limiti e prospettive di riforma*, in *Quaderni costituzionali*, 2, 2021, p. 289.

119 A. D'Aloia, *La Costituzione e il dovere di pensare al futuro*, in *BioLaw Journal. Rivista di BioDiritto*, 2, 2022), p. 4: 'Despite the extensive parliamentary consensus, this reform has not been universally welcomed'. Cf. D.

The primary criticism pertained to the revision method and its connection to the broader issue of the immutability of supreme principles. Frosini has suggested that modifying fundamental principles, even with the intention of improvement, risks setting a dangerous precedent. Today's positive change might lead to negative alterations in the future, implying that once fundamental principles are open to modification, their alteration, whether for better or worse, becomes a matter of parliamentary majority decision.[120]
While we acknowledge the value of these concerns, it seems unlikely that fundamental principles will be vulnerable to whimsical, 'seasonal' adjustments without the backing of established case law, as demonstrated by the amendment under review.
The discussion also addresses the literal interpretation of terms like 'environment', 'ecosystems'—rendered in *singular* form in Article 117, paragraph 2, letter s), and in *plural* form in Article 9, paragraph 3—and 'biodiversity', including the question of whether animals can be separated from these concepts.[121] Additionally, there are obvious hermeneutical challenges concerning the 'interest of future generations'.
While a less invasive amendment was proposed—a constitutional law of principles along the lines of the French *Charte de l'environnement*[122]—the Constitutional Court[123] has specified that supreme principles do not necessarily coincide with their *topographical* position in the first twelve articles of the Constitution.
Even the most environmentally conscious scholars have expressed concerns regarding the approach adopted by the reformer in incorporating environmental issues into the constitutional text. A noteworthy point of criticism revolves around the absence of explicit recognition of European environmental principles,[124] akin to the French model. Nonetheless, this 'omission' seems consistent with the reformers' '*stating the obvious*' strategy, aiming to avoid the dilution of the substantial scope of the amendment in a list of technical principles, unfamiliar to the general population.
From a comparative perspective, we might conclude that the Italian amendment is far less than courageous, a merely belated adjustment to mainstream international environmental principles.[125] Later comments, on the other hand, have pointed out the potential positive outcomes of the amendment: first of all, a *paradigm shift*[126] in Italian environmental law, which entails the direct responsibility of all political actors, akin to the affirmation of the

Amirante, *La reformette dell'ambiente in Italia e le ambizioni del costituzionalismo ambientale*, in *DPCE*, 2, 2022, pp. V-XIV.
[120] T.E. Frosini, *La Costituzione in senso ambientale. Una critica*, in *federalismi.it*, 23 June 2021.
[121] The reformer's intention, discernible from parliamentary research dossiers, defines the environment in a 'systemic' and 'dynamic' context, as outlined by the European Union's primary and secondary law. Nonetheless, this leaves considerable room for interpretative discretion, potentially leading to reliance on metalegal definitions from biological sciences.
[122] R. Montaldo, *Il valore costituzionale dell'ambiente, tra doveri di solidarietà e prospettive di riforma*, in *Forum di Quaderni Costituzionali*, 2, 2021, p. 454.
[123] Decision No. 1146/1988.
[124] G. Fontanella, *La dimensione spaziale del diritto e la comparazione giuridica come ponte. Il caso del diritto ambientale*, in *federalismi.it*, 1, 2024, pp. 24-40.
[125] Cf. D. Amirante, *La reformette dell'ambiente in Italia e le ambizioni del costituzionalismo ambientale*, cit., pp. X-XI.
[126] F. Fracchia, *L'ambiente nell'art. 9 della Costituzione: un approccio in "negativo"*, in *Il diritto dell'economia*, 1, 2022, p. 28.

Umweltstaatsprinzip in Germany. Secondly, the enshrinement of this '*anthropocentrism of duty*'[127] places environmental protection within the 'non-controversial sector'[128]—as an implicit principle of 'non-regression'—and further reinforces the intertwined relationship between the principle of solidarity and the protection of the environment.

Despite the aforementioned limitations, the amendment has already achieved one notable accomplishment, comprised in the words '*also in the interest of future generations*'. Intergenerational solidarity has been thus introduced into the fundamental principles of the Italian constitution, linking Articles 2[129] and 9 of the Constitution even more intimately and giving new constitutional status to the ethical foundation that characterizes the duty of environmental solidarity.[130]

V. BY WAY OF CONCLUSION: IS THE ITALIAN AMENDMENT A '*LAMPEDUSIAN LEOPARD*'?

Reconnecting the comparative threads woven throughout this discussion, it becomes clear that Italian environmental constitutionalism significantly diverges from the '*silent*' ethos of U.S. constitutionalism (§III.I) and the broader common law tradition. This was true even before the explicit inclusion of the environment in the constitutional text.

The trajectory drawn by the Italian reformers aligns more closely with the European Union's common constitutional traditions and their foundation of 'deontic ethics'—namely intergenerational environmental solidarity—previously identified as the *Common Core* (§III.III) of European Environmental Constitutionalism. Italy's integration into this framework reinforces the shared commitment to future generations of the European Union. This *anthropocentrism of duty* also differs from the ecocentric perspectives (§III.II) advocated by Global South constitutionalism(s), unlikely to thrive in contexts where holistic chthonic traditions[131] and animistic indigenous views of Nature (*cosmovisions*) are overshadowed by the dichotomic thought of Greco-Judeo-Christian culture. Instead, the emphasis on duties appears to closely mirror the German model. Gallarati aptly remarks that the German Federal Constitutional Court does not bolster the ecocentric paradigm advocated by some Ibero-American apex courts.[132] Instead, the *BVerfG*'s stance on duty-centered anthropocentrism places Germany on the forefront of the deontic tradition of European environmental constitutionalism. The formulation adopted in Article 20a of the German Constitution is, in fact, quintessentially deontic,[133] and it is within the *Grundgesetz*—as acknowledged by the

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[127] *Ibi*, p. 20.

[128] M. Cecchetti, *La riforma degli articoli 9 e 41 Cost.: un'occasione mancata per il futuro delle politiche ambientali?*, in *Quaderni costituzionali*, 2, 2022, p. 352.

[129] Article 2: 'The Republic recognises and guarantees inviolable human rights, both for the individual and within social groups where the individual's personality is expressed, and it requires the fulfilment of the imperative duties of political, economic and social solidarity'.

[130] See P. Lombardi, *Ambiente e generazioni future: la dimensione temporale della solidarietà*, in *federalismi.it*, 1, 2023, pp. 86-103.

[131] H.P. Glenn, *Tradizioni giuridiche nel mondo. La sostenibilità della differenza*, il Mulino, Bologna, 2011, p. 154.

[132] F. Gallarati, *Generazioni a processo: modelli teorici di responsabilità intergenerazionale alla prova del contenzioso climatico*, in *BioLaw Journal. Rivista di BioDiritto*, 2, 2023, pp. 159-177, p. 177.

[133] Article 20a GG: 'Mindful also of its responsibility towards future generations, the state shall protect the natural foundations of life and animals by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order'.

drafters of the reform themselves—that the primary cultural reference for the Italian constitutional amendment can be identified.

This observation does not diminish interest in the Andean experiences, especially considering the potential for '*countercolonial*' dissemination, evidenced by the recent legal personification of the *Mar Menor*[134] in the *Región de Murcia* (Spain) and the proposal of an *EU Charter of the Fundamental Rights of Nature*.[135]

Two years following the constitutional reform represents an unavoidably provisional timeframe for any evaluation. However, some preliminary remarks on its potential impact on both *ex post* (or *pathological*) and *ex ante* (or *physiological*) measures can be drawn.

In terms of climate change litigation, there's hope that the Italian Constitutional Court won't need the 27 years that the *BVerfG* took—from the introduction of Art. 20a in 1994—to deliver a landmark ruling akin to *Neubauer* (IV.II.). But at the present time, the Italian Constitutional Court's environmental case law has been laconic, bordering on 'silent'. Over the past two years, the Court has made only passing references to the revised norms in decisions related to the traditional topic of landscape protection,[136] occasionally citing the updated constitutional provisions on the safeguarding of the environment, biodiversity, and ecosystems in the interest of future generations.[137] In just one notable instance, the Court declared a regional law in Sicily unconstitutional due to its failure to meet the yardstick set up by the amended Article 9, specifically addressing the 'rollback' in environmental protection fostered by the regional regulatory framework.[138]

Administrative adjudication has been even less reassuring: the Council of State, in a key ruling, [139] rejected the primacy of environmental interests, despite acknowledging the innovative climate change mitigation approach under the newly added paragraph 3 of Article 9. In a somewhat paradoxical turn, the Civil Section of the Court of Cassation demonstrated greater receptivity to constitutional innovation. Our Supreme Court emphasized the prominence of allegations over proof in potential environmental harm, recognizing the environment as a constitutionally protected asset following the 2022 amendment.[140]

Within the realm of civil adjudication, it remains to be seen how the evocatively named *Giudizio Universale* (Last Judgment) case—initiated in June 2021 at the Civil Court of Rome—will unfold. The plaintiffs have held the Italian state accountable, under Article 2043 of the Civil Code, for failing to fulfill its duties to prevent damage in situations of urgent threat, as

[134] J.M. Ayllón Díaz-González, *Sobre derechos de la naturaleza y otras prosopopeyas jurídicas, a propósito de una persona llamada "Mar Menor"*, in *Actualidad Jurídica Ambiental*, 138, 2023, pp. 1-88.
[135] M. Carducci, S. Bagni, V. Lorubbio, E. Musarò, M. Montini, A. Barreca, C. Di Francesco Maesa, M. Ito, L. Spinks, P. Powlesland, *Towards an EU Charter of the Fundamental Rights of Nature*, Study for The European Economic and Social Committee (EESC), 13 December 2019.
[136] Decisions Nos. 135/2022, 221/2022, 17/2023, 19/2023.
[137] Decisions Nos. 187/2022, 236/2022, 11/2023.
[138] Decision No. 8610/2023.
[139] Decision No. 8167/2022.
[140] Decision No. 20869/2022.

is precisely the case with the climate emergency. The hearing for this case is scheduled for later in 2024.[141]

Conversely, in terms of deliberative/participatory correctives to conventional representative democracy (§III.I), the emergence of citizens' assemblies across Italy appears more promising. These grassroots democratic initiatives aim to address the environmental concerns of specific urban communities, contributing valuable local perspectives to regional and national climate strategies. Examples like the *Assemblea cittadina per il clima* (Bologna), *Firenze per il Clima* (*FIX Clima*, Florence), and the *Assemblea Permanente dei Cittadini sul Clima* (Milan) should be observed with keen interest, as they engage communities in dialogue about local environmental policies, urban sustainability and development, also in line with EU's Mission '*100 Climate-Neutral and Smart Cities by 2030*'.

The renowned Italian novelist Giuseppe Tomasi di Lampedusa poignantly stated in '*The Leopard*' that '*If we want everything to stay as it is, everything has to change*'.[142] Does this amendment represent such a '*Lampedusian Leopard*'? Certainly, two years is too brief a timespan for definitive conclusions. As noted by Pegoraro, legal formants travel at different speeds: while the global economy operates at a rapid pace, constitutional law evolves slowly, and constitutional culture changes at an even slower pace.[143]

The paradigm shift implied by the Italian environmental amendment necessitates reconciling two distinct temporal dimensions: the geological timescale of the Anthropocene and the generational aspect of intertemporal solidarity. This process undeniably requires *time*. At the very least, this amendment broadens the horizon of European environmental constitutionalism and the tradition of intergenerational environmental solidarity. Italy, although belatedly, has now firmly embraced this movement.

[141] M. Carducci, *Giudizio Universale contro lo Stato*, in *comune-info.net*, 1 August 2019; Id., *Il cambiamento climatico nella giurisprudenza italiana*, in *Diritti Comparati*, 8 March 2021; R. Louvin, *Espaces et opportunités pour la justice climatique en Italie*, in *Politeia*, 40, 2021, pp. 531-548.

[142] G. Tomasi di Lampedusa, *The Leopard*, Pantheon Books, New York, 1960, p. 40.

[143] L. Pegoraro, *Introduzione metodologica*, in G. Morbidelli, L. Pegoraro, A. Rinella, M. Volpi, *Diritto pubblico comparato*, Giappichelli, Torino, 2016, p. 26.