7 What's so good about environmental human rights?

Constitutional versus international environmental rights

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Over the past few decades there has been increasing development of environmental rights at both the national (constitutional) and international levels, with a corresponding increase in the number of cases involving environmental rights being adjudicated in both constitutional courts and international human rights courts (hereafter cited as IHRCs). This raises the question as to whether it is better to develop and adjudicate environmental rights at the national or international level. I seek to show that international environmental human rights (hereafter cited as IEHR[s]) offer some unique advantages that systematically benefit environmental protection and that IHRCs and adjudication are a key part of that process.

May and Daly (2015) argue that environmental rights are best developed at the national constitutional level, and that constitutional courts are the most effective and appropriate institutions for adjudicating such rights. Their case is based on a number of purported problems with advancing environmental claims via international human rights, and the comparative advantages of advancing these claims via constitutional rights and adjudication in constitutional courts. I respond to this challenge and also show there are unique benefits that only IEHRs can provide. This involves drawing on Buchanan's argument (2013), which seeks to provide a justification for a system of international legal human rights by appealing to the benefits such a system can provide. I develop this argument to show that it not only justifies a system of international legal human rights, but provides an even stronger justification for adjudication of IEHRs in IHRCs. More specifically, I develop the argument by showing how adjudication can provide both a mechanism for realizing the benefits, while also facilitating a mutually supportive or reinforcing relationship among them, and in this way enhance the realization of these benefits and the value that they yield. I refer to this as a "value added" approach, as it explores the value that adjudication of IEHRs can add to environmental protection. I conclude that IEHRs and the adjudication of such rights in IHRCs have a valuable and legitimate role to play in environmental protection.

It is obvious that IHRCs, with their limited mandate and capacities, will not be able to address *all* environmental concerns. I claim simply that IHRCs currently

have a unique and justifiable role to play in environmental protection, not that they are sufficient institutions for addressing all environmental concerns.

Environmental rights in international and constitutional legal systems

When the Universal Declaration of Human Rights (UDHR) was adopted in 1948, environmental concerns were not yet a focus of the human rights movement. Thus, the UDHR contains little mention of the environmental dimensions of human rights. Even by 1966, when the legally binding International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social, and Cultural Rights (ICESCR) were drafted, environmental concerns were still largely absent from the human rights agenda.

Public awareness of global environmental problems began to emerge during the 1960's, prompted by a number high-profile ecological disasters and the publication of Carson's *Silent Spring* (1962). By the 1970's, world leaders had convened the first global eco-summit in Stockholm, Sweden. This summit produced the Stockholm Declaration of 1972, which marks the first formal recognition of the human right to a healthy environment in an international treaty. Principle 1 of the Declaration states:

> Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.

However, as with the UDHR, this document is merely a declaration, and hence is hortatory rather than legally binding.

During the 1970's and 1980's a number of specialized international human rights treatises, which are legally binding, recognized environmental rights. The Convention on the Elimination of All Forms of Discrimination Against Women (1979), in the course of discussing the rights of rural women, requires that such women "enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity, and water supply" (Article 14). The Convention on the Rights of the Child (1989), as part of the human right to health, recognizes that children are entitled to "the provision of adequate and nutritious food and clean drinking water, taking into consideration the dangers and risks of environmental pollution" and that they have knowledge of "hygiene and environmental sanitation" (Article 24). In addition, as part of the right to education, the treaty requires that a child's education shall include "development of respect for the natural environment" (Article 29).

Another milestone came from the 1992 United Nations Conference on Environment and Development (UNCED), also known as the Earth Summit, which

produced the Rio Declaration. The Declaration recognizes a human right to sustainable development (Principle 3), and also asserts that people should have procedural entitlements to public participation, access to information, and access to judicial remedies in the case of environmental matters (Principle 10). Like the UDHR and Stockholm Declaration, the Rio Declaration is a hortatory document that is not legally binding.

However, many of the most important developments in IEHRs have occurred not at the global level, but within regional human rights systems. The African Charter on Human and Peoples' Rights (1981) was the first regional human rights treaty to explicitly recognize a human right to a satisfactory environment. The African human rights system includes a court, but has not issued any rulings in environmental cases.

While the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) predates the environmental movement, and as a result lacks explicit recognition of the environmental dimensions of human rights, in 1998 the European human rights system adopted the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. This convention is a legally binding treaty that explicitly recognizes procedural environmental human rights. Furthermore, the European system includes a court that has not only adjudicated cases involving these procedural environmental rights, but has also developed jurisprudence recognizing the substantive environmental dimensions of human rights included in the European Convention. Perhaps most notably, the court has developed the environmental dimensions of the right to private and family life.

The American Convention on Human Rights (1969) was also adopted before environmental issues were on the human rights agenda; however, in 1988 the parties to the Inter-American system of human rights adopted the Additional Protocol to the American Convention on Human Rights, which recognizes a human right to a healthy environment. The Inter-American system includes both a commission and a court. While the Additional Protocol is not legally binding, as is the American Convention on Human Rights itself, the Court has nevertheless cited the right to a healthy environment in a few of its decisions. Furthermore, the Inter-American Court has developed jurisprudence concerning the substantive environmental dimensions of traditional human rights, notably in the area of the human right to property as it concerns indigenous peoples and the right over their traditional lands.

The newest regional human rights treaties, The Arab Charter of Human Rights (2004) and the ASEAN Human Rights Declaration (2012), both include a right to a healthy environment. However, both systems lack a court and have not developed this right.

The 1970's were also a period when environmental constitutional rights began to be adopted. The first countries to constitutionalize a right to a healthy environment were Portugal (1976) and Spain (1978). As of 2012, 147 of 193 UN member states have a constitution that addresses environmental matters in some form (May and Daly 2015, 55–56). More specifically, 76 nations have constitutions that recognize a right to a quality environment (May and Daly 2015, 56), while 60 nations have constitutions that recognize rights or state duties relating to issues such as sustainable development, future generations, and climate change (May and Daly 2015, 329–342). When we consider constitutional environmental provisions, beyond simply environmental rights, we find that 108 nations have constitutions that impose duties on the state to protect the environment (May and Daly 2015, 304–324), and 13 nations have constitutions that recognize environmental protection as a national policy matter (May and Daly 2015, 325–328).

The case for constitutional environmental rights

May and Daly strongly advocate for environmental constitutionalism, which "embodies the recognition that the environment is a proper subject of protection in constitutional texts and for vindication by constitutional courts worldwide" (2015, 1). Environmental constitutionalism obviously involves a broader agenda relating to the valuation and protection of the environment, with environmental constitutional rights merely one aspect of this agenda. The broader goals of environmental constitutionalism may involve preservation and protection of the environment for its own sake. However, like human rights, constitutional rights tend to focus on protecting the interests of human individuals and groups. So both IEHRs and constitutional environmental rights are concerned with environmental issues as they relate to the interests of human individuals and groups. The focus of this chapter will be confined to the matter of environmental constitutional rights, rather than the broader agenda of environmental constitutionalism.

May and Daly repeatedly insist they are not claiming that constitutional law and constitutional environmental rights should predominate over international law and IEHRs (2015, 3, 54). However, they argue at some length for the advantages of the former over the latter. They recognize three general problems with advancing environmental claims via IEHRs:

1 International human rights were never designed to address environmental rights. Global (but not regional) human rights systems lack any direct right to a healthy environment. Therefore, referencing human rights conventions will largely fail as a means to advance environmental rights (2015, 26–28).
2 In order for environmental claims to be seriously considered in existing

> human rights regimes, they must be linked to a recognized human right (2015, 27). If an environmental claim cannot be linked to such a right, then it will not receive serious consideration.
> 3 While international human rights regimes are formally enforceable, they involve weak compliance mechanisms.
>
> (2015, 27)

In contrast, environmental constitutionalism presents a number of advantages. First, about three-quarters of the world's nations have a constitution that addresses environmental matters in some form (May and Daly 2015, 55–56). This can provide a good framework for advancing environmental rights. Second, the fact that so many constitutions contain rights explicitly pertaining to a quality environment or to other environmental issues such as sustainable development or climate change means that for environmental claims to be seriously considered, they do not have to be linked to more traditional rights. Finally, May and Daly contend that national courts are much better institutions for ensuring compliance with environmental rights (2015, 46).

The basis for this last claim comes in large part from a deeper criticism of IEHRs than those mentioned so far. May and Daly suggest that environmental rights are inherently intertwined with cultural relativism because there is no universal value that underlies the concept of environmental protection (2015, 29). Each nation has its own values concerning the balance between economic development and environmental protection and governing the allocation and use of natural resources.

> Each nation will want to calibrate these matters in its own way, according to its own political calculations, cultural and economic history, and contemporary needs; each nation has a slightly different commitment to development, and ways of protecting against excessive privatization on the one hand and nationalization on the other. And each nation has its own political discourse . . . Naturally, this affects public and political discourse concerning environmental protection.
>
> (2015, 46)

These contrasting values become especially apparent when we view the world in terms of the global North-South divide. The values of the global North have come to predominate over the values of the global South, facilitated by international economic institutions, such as the International Monetary Fund and the World Bank, which favour "privatization and development over ecological and cultural values" (2015, 29).

According to May and Daly, this issue of cultural relativism explains why constitutions and constitutional courts are best placed to develop and adjudicate

environmental rights. Constitutional courts avoid cultural bias by allowing domestic judges to interpret and apply constitutional environmental rights in terms of their own domestic values and priorities, in contrast with international tribunals attempting to develop and impose uniform values in the form of IEHRs (2015, 46). Furthermore, since the judgments of national courts are likely to conform to the values and political culture of domestic society, these judgments are more likely to be followed by other domestic judges and to be accepted by domestic stakeholders. Finally, national courts are more accessible to those asserting environmental claims. Those who wish to assert environmental rights are more likely to have access to local lawyers who can bring suit in such courts (2015, 47). Thus, they conclude, "National courts are better suited to implement the norms that have been articulated at the international level, given their ability to translate those universal values into local vernaculars and to do so with authority and impact" (2015, 8).

Taking all of these factors into account, May and Daly contend that developing environmental rights at the constitutional level is the best approach:

> Constitutionalizing the environmental debate (as opposed to relegating it to the international level) avoids the problems of cultural bias that internationalization presents by allowing each nation to develop its own discourse with its own vocabulary and based on its own priorities and commitments.
>
> (2015, 46)

There is an additional aspect of May and Daly's case that bears mentioning. They rely on the method of comparative constitutionalism in their study and advocacy of environmental constitutionalism (2015, 3). However, they emphasize that comparative constitutionalism is not only the methodology for their research, but also "the practice by constitutional courts of comparing and contrasting texts, contexts, and outcomes elsewhere" (2015, 4). Thus, comparative constitutionalism is an approach that can be employed by constitutional courts in adjudicating and developing constitutional environmental rights. This method offers the distinct advantage of allowing a court to look not only at its own national history, constitutional origins, and best practices, but also at the "best practices among nations" (2015, 5).

The case that May and Daly develop in favour of a constitutional approach raises the following question: Do IEHRs have any value to add, or are environmental rights best developed at the constitutional level, perhaps in conjunction with the method of comparative constitutionalism? Given the possibility of such an approach, and its advantages as outlined by May and Daly, it may seem that IEHRs have little to offer. For this reason, the rest of this chapter will defend an international human rights approach to environmental rights, by more precisely identifying the value that such an approach can add. I do not argue that we

should develop IEHRs instead of constitutional environmental rights, but simply that there are some benefits which can only be realised through IEHRs.

Are international environmental human rights problematic?

Before exploring the benefits that IEHRs can provide, let us first consider May and Daly's criticism. The first problem is that many international human rights treatises do not explicitly address environmental rights and that in order for environmental claims to be given serious consideration under this framework they must be linked to a recognized human right. A number of things can be said in response: First, the fact that many international human rights treatises were drafted prior to the emergence of environmental protection as a political objective does not prevent the subsequent recognition of their environmental dimensions. Second, many of the rights included in these treatises do not differ from the environmental rights found in constitutions. The most notable exception is the right to a safe, healthy, or adequate environment. However, while it is true that this right is not included in the major global human rights treatises, such as the UDHR, ICCPR, or ICESCR, it is included in some regional international human rights treatises, including the African Charter on Human and Peoples' Rights, the Additional Protocol to the American Convention on Human Rights, the Arab Charter of Human Rights, and the ASEAN Human Rights Declaration. Very few constitutions include more specific environmental objectives, and if they do, these typically take the form of state duties, rather than of individual rights. Therefore, the primary difference seems to revolve around the right to a safe, healthy, or adequate environment. My argument supports the idea that the right to a clean, healthy, or adequate environment should be added to global human rights treatises, but it is important to recognize that the inclusion of this right in many regional human rights treatises goes a long way towards realizing the benefits that this particular IEHR can offer.

Another purported problem concerns the claim that while international human rights regimes are formally enforceable, they involve weak compliance mechanisms. There are a variety of ways in which international human rights are enforced, ranging from "naming and shaming" states that fail in their human rights responsibilities, to review and reporting mechanisms, to economic and military sanctions. The argument I present in this chapter will focus on the role of IHRCs. Judgments by IHRCs are perhaps one of the stronger mechanisms for the enforcement of international human rights. States will generally want to avoid the reputation that comes with shirking a formal judgment by an IHRC. Furthermore, if a particular state disregards the judgment of an IHRC, it may be doubtful that the judgment of a domestic court would be more effective. Such a state may have a general disregard for the rule of law. Thus, enforcement of environmental rights through the judgments of IHRC may be as likely, or nearly as likely, to succeed as enforcement of such rights through domestic courts.

Perhaps the deepest aspect of May and Daly's case is the claim that environmental protection is a culturally relative idea or value. The reason this aspect is so important is not merely because it underpins the purported benefits that derive from the sensitivity and understanding of domestic practices with regard to national values and political contexts, but also because of its implications for the formulation and development of IEHRs. IEHRs cannot embody a multitude of incompatible conceptions of environmental protection, if in fact there are varying conceptions found in societies around the world. Rather, the development of such rights requires the creation and development of uniform rights that can be recognized and shared by all nations. Alternatively, there could be creation and development of IEHRs at the regional level, so that different regional systems have different environmental human rights. But even with this structure, there would need to be a uniform conception of IEHRs that could be recognized and shared by all nations within a given regional human rights system.

May and Daly's claim of cultural relativism seems to rest on the idea that different nations choose to balance the competing values of development and environmental protection/preservation in different ways. But balancing values is not the same thing as values themselves, and so differences in choices about how to balance these values is not the same thing as differences concerning the values themselves. Thus, it is possible that both development and environmental protection are objective universal values, but that different nations simply make different choices about how to balance these objective values. Based on their relatively brief comments, May and Daly have certainly not established the relativity of the values themselves. Rather, they seem to point to different social and political institutions for implementing these values, different "ways of protecting against excessive privatization on the one hand and nationalization on the other . . . [of] including notions of separation and sharing of powers, federalism, and individual rights and responsibilities" (2015, 46). There is no doubt that different nations have different institutions, processes, and political frameworks for implementing such values. But this simply implies that a system of IEHRs will need to take these factors into consideration; it does not show there is relativism about the values that underpin IEHRs.

Since nations have different institutions, processes, and political frameworks for realizing the competing values of development and environmental protection/preservation, this will tend to press for a minimalism in the formulation and development of IEHRs. Minimalism has been a common theme in the work of many human rights theorists.[1] To claim that something is a human right is to invoke a powerful political vocabulary, and hence many political movements seek to

have their concerns framed as a human rights issue. If these claims are too prolific and include claims that are implausible, this will devalue the currency of human rights more generally. Due to this concern, many theorists have advocated for a human rights minimalism, a position that holds only the most basic human interests as rising to the level of a genuine human right. This same line of reasoning can be employed in the case of IEHR. Despite the aforementioned differences, there are likely to be basic objective interests of human beings relating to each of these values that can provide the basis of IEHRs. Identifying such a basis for IEHRs will allow us to conceptualize rights that can be universally recognized and shared by all nations, while recognition of political and institutional differences will help to keep the content of these rights minimal.

The case for international environmental human rights

After examining May and Daly's case for constitutionalizing environmental rights, and raising the question of whether this approach, in conjunction with the method of comparative constitutionalism, is best for instituting environmental rights, let us now turn to the case for IEHRs. In *The Heart of Human Rights*, Buchanan presents "The Argument from Benefits" (2013, 107–121) to justify a system of international legal human rights. I will develop The Argument from Benefits and apply it to environmental human rights in particular. In this way, I hope to identify the distinct contributions that IEHRs, in contrast to constitutional environmental rights, are able to make.

Before a justification can be offered for the existing system of international legal human rights, it is first necessary to provide a characterization of that system. Buchanan characterizes the general function as follows: "to provide a set of universal standards, in the form of international law, whose primary purpose is to regulate the behaviour of states towards individuals under their jurisdiction, considered as social individuals, and for their own sakes" (2013, 86). The final phrase, "for their own sakes," is meant to point out that the system is aimed at regulating state behaviour for the sake of individuals, not states. Buchanan believes that we can also identify two more particular aims, based on the content of the human rights norms themselves. These more particular aims are called the well-being function and the status-egalitarian function. The well-being function aims at regulating state conduct in order to help ensure that individuals have an opportunity to lead a minimally good life by providing protections and resources generally needed to lead such a life, and the status-egalitarian function aims at regulating state conduct for the purposes of affirming and promoting the equal basic status of all people (2013, 87).

It is worth pointing out the well-being function and the status-egalitarian function may provide a basis for conceptualizing and developing IEHRs that

all nations can recognize and share. The idea would be that regardless of how nations choose to balance and implement the competing values of development and environmental protection/preservation, these choices are constrained by the considerations of well-being (opportunity to lead a minimally good life) and status-egalitarianism (equal basic status of all people) embodied in international human rights. This approach would involve identifying the environmental-related protections and resources generally needed to lead a minimally good life, as well as the environmental-related regulation of state conduct necessary to affirm and promote the equal basic status of all people, and formulating IEHRs that embody these requirements. Certainly some uniform environmental human rights can be developed on the basis of these functions. For example, we can formulate a uniform human right to water, which is an essential requirement for human well-being, by determining what the state is required to do with regard to access to potable water. Beyond meeting these basic universal constraints and requirements imposed by IEHRs, each nation would be free to balance the competing values of development and environmental protection/preservation as it sees fit, using the institutions, processes, and frameworks that it chooses.

The motivation for Buchanan's Argument from Benefits juxtaposes nicely with the case presented by May and Daly. One reason it is important to provide a justification for a system of international legal human rights, Buchanan contends, is because we can imagine alternative approaches to achieving the goals this system is designed to achieve. For example, in the wake of World War II, when the existing international legal human rights system was founded, there were some domestic constitutional rights systems that seemed to be doing a good job of protecting the interests of individuals. Given these examples, powerful states might have pressured states that lacked a system of domestic constitutional rights to create and implement one. So the question arises, what justifies developing a system of international legal human rights, rather than taking some other approach (Buchanan 2013, 106)? This is precisely the issue raised by May and Daly's case for constitutional environmental rights. In answer to this concern, Buchanan's Argument from Benefits appeals to six benefits that a system of international legal human rights can provide:

1) Improve and develop the understanding of domestic constitutional bills of rights[2]
2) Play a back-up role when domestic rights protections fail
3) Contribute to the legitimacy of states
4) Provide a resource for the development of international humanitarian law
5) Provide a unified framework for coping with global problems
6) Correct an inherent flaw in democracy

Furthermore, Buchanan mentions an additional benefit that the system has the *potential* to offer:

7) Provide a potential resource for the regulation of international economic institutions

I outline how six of these benefits are supposed to justify a system of international legal human rights. I then argue that these benefits are realized in the case of IEHR. In other words, I show that (most of) the benefits which justify the system as a whole are also realized through this part of the system, or this family of rights. Finally, I show that five of these benefits are not merely realized, but also realized in an enhanced way.through adjudication of IEHR in IHRC. This is because adjudication facilitates mutual reinforcement among the benefits, a possibility Buchanan does not fully explore. If these benefits justify the international legal human rights system as a whole, and the degree to which the benefits are realized is enhanced by adjudication of IEHR, then the Argument from Benefits provides an even stronger justification for adjudication of IEHRs. This is because the value added by the benefits is even greater in the case of adjudication of IEHRs in IHRCs.

The added benefits from adjudication of international environmental human rights

1. *Improving and developing domestic constitutional rights*

There are at least three ways in which a system of international legal human rights can improve domestic constitutional rights by establishing international legal obligations. First, the international human rights system establishes a list of recognized human rights that impose legal obligations on states. This can encourage states that lack a domestic bill of rights to create one and include these rights. Second, international human rights provide model rights for states to emulate (2013, 109). Third, it helps to counter-act a tendency in international law that Buchanan refers to as a "veil of sovereignty" (2013, 110), which gives states robust rights against outside interference in domestic affairs, so that they have broad discretion in terms of how they may treat individuals within their jurisdiction (2013, 122). If a state is encouraged to incorporate the list of international legal human rights into its system of domestic constitutional rights, this helps to remedy the "veil of sovereignty" by creating standards that limit how a state may permissibly treat those within its jurisdiction.

A system of international legal human rights can also contribute to a better understanding of domestic constitutional rights. It has sometimes been questioned whether international human rights express a cultural bias rather than genuinely universal rights (2013, 113–114). Buchanan suggests a number of

reasons to believe this is not the case. First, there is ample evidence that the drafters of the UDHR took strong efforts to avoid cultural bias. For example, the drafters included a wide range of cultural perspectives, the initiative for an international bill of rights came from weaker states in the face of opposition from stronger states, and certain anti-colonial views were incorporated into the document. Second, the international human rights system has continued to be developed with the participation of people from many different cultures (2013, 115). This inclusion of participants from diverse cultural backgrounds gives the system what Buchanan calls an "epistemic advantage" (2013, 116), because it creates safeguards against parochial bias.

May and Daly's concern is not that the concept of rights represents "Western" values, but that the notion of environmental protection – which may serve as a basis for environmental rights – is culturally relative. They may be sceptical that we can develop uniform IEHRs on the basis of participation of people from diverse social and cultural backgrounds, because they believe that cultural relativism pervades the values of development and environmental protection/preservation and would therefore prevent agreement. However, as argued previously, differing ways of balancing competing values are not the same thing as the underlying values themselves. Give this distinction, we might retain confidence that including the perspectives and participation of people from diverse backgrounds will allow us to identify fundamental environmental values – in the form of rights – that all nations must comply with when striking the balance between these competing goods.

Buchanan's model treats international human rights as a sort of "global learning platform," as it is inclusive of people from many different cultures and perspectives. While May and Daly's comparative constitutional approach merely offers national courts the possibility of observing and incorporating "global best practices" into their decision-making, Buchanan's global learning platform seeks to embody those global best practices in the form of international human rights themselves, through the participation and input of people from a diversity of cultures and societies. Sometimes this input will take the form of a domestic constitutional right. In such cases, there is a reflexive relation between constitutional rights and international human rights. If a particular society's constitutional right represents a "global best practice," this can inform the conceptualization and development of an international human right. The international human right can in turn provide a model for other constitutional systems to emulate.

Buchanan suggests that rather than be concerned about parochial bias in international human rights, we should instead be concerned about such bias in domestic bills of rights. The most influential and widely imitated domestic bills of rights have been the U.S. Bill of Rights and the French Declaration of the Rights of Man and the Citizen. Yet these documents originated in particular historical-cultural contexts. By contrast, the "epistemic advantage" of the international human

rights system can lead to a better understanding of domestic constitutional rights, because it helps to limit such bias as it influences either the initial formulation or subsequent interpretation of domestic constitutional rights (Buchanan 2013, 114). So, while May and Daly praise the domestic values and understanding that can be embodied in constitutional environmental rights and informs national courts, Buchanan raises the concern that these rights and institutions have a higher likelihood of involving a parochialism, which the international human rights system can help to rectify.

Now consider this benefit in the case of IEHRs. When IEHRs are part of the system of international legal human rights, this can encourage revision of domestic legislation accordingly. First, IEHRs make it clear that states have legal obligations with respect to environmental matters that impact individuals' rights. This can be particularly important in societies where protecting the environment is seen as a laudatory goal, rather than a legal obligation. Furthermore, IEHRs create the possibility of holding states accountable for such obligations through legal institutions. Second, inclusion of IEHRs in the list of international human rights can provide a model for states to emulate. The issue is, however, more complex. Many IEHRs, both substantive and procedural, involve more general rights that have implications when it comes to environmental matters. This implies that the modelling of rights involves not just those rights whose object is some aspect of the environment, such as the right to water, but also appreciating the potential environmental dimension of the objects of rights more generally. Human rights can be formulated in ways that either encompasses or fails to appreciate the environmental dimensions of a right. For example, the right to health can be formulated with or without taking into account a healthy environment (see Committee on Economic, Social, and Cultural Rights 2000). Third, IEHRs help to counteract the "veil of sovereignty," as states are encouraged to incorporate domestic constitutional rights that prohibit the state from neglecting or threatening the environmental interests of individuals within the state's jurisdiction.

IEHRs can also be particularly important in developing new understandings of domestic constitutional rights, if domestic legislation was formulated before the current awareness of environmental problems. In other cases, domestic constitutional rights may have been formulated or developed in ways that reflect only the experiences and interests of members of certain classes or groups within society, and fail to fully account for the environmental dimensions of these rights as they affect all individuals, especially the members of marginalized groups. IEHRs provide a model that can be emulated in the formulation and development of domestic constitutional rights. In this way, the "epistemic advantage" embodied in international human rights can also be instantiated in the formulation of domestic environmental rights, so as to genuinely recognize and protect the environmental interests of all.

Adjudication of environmental human rights in IHRCs can facilitate this benefit in at least two ways. First, the process of adjudication serves the purpose of norm specification, as the precise duties and obligations associated with these rights are determined by applying these norms in particular cases. As IHRCs carry out this process, they further develop the model provided for domestic constitutional rights. Second, the process of adjudication can help to identify the environmental dimensions of various human rights, which may not have been specified in human rights treatises or the interpretations of treatise bodies. For example, the European Court of Human Rights has identified the environmental aspects of the right to private/family life. This has been the chief right appealed to in the European human rights system when contesting environmental pollution. In *Lopez Ostra v. Spain*, the Court declared "severe environmental pollution [from a waste treatment facility] may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely" (*Lopez Ostra v Spain* [1995] 20 EHRR 277). The Court has built on this precedent in subsequent cases, continuing to develop the jurisprudence concerning the environmental dimensions of this human right.

As discussed above, adjudication in IHRCs can provide a mechanism for the interpretation and specification of these norms. This mechanism involves an "epistemic advantage" through its inclusion of judges from different regions and cultural backgrounds who bring internationally diverse perspectives to these courts. Furthermore, adjudication in IHRCs allows human rights norms to be applied to a diverse range of cases, drawn from the experiences of different societies and cultural settings. These aspects of adjudication in IHRCs help to ensure that IEHRs avoid parochial bias. For example, the Inter-American Court of Human Rights has developed the human right to property as it relates to indigenous peoples and natural resource extraction. Beginning with *Mayagna (Sumo) Awas Tingni v. Nicaragua*, the Inter-American Court recognized that the human right to property can constitute a communal right to ancestral lands, which protected the Awas Tigni against a timber concession the state had granted to a logging company. In subsequent cases, such as *Saramaka People v. Suriname* and *Kichwa Indigenous People of Sarayaku v. Ecuador*, the Court has gone on to determine that the human right to (communal) property of indigenous peoples requires consultation and participation, receipt of a reasonable benefit, and an environmental impact assessment if natural resources are to be extracted from their lands. So adjudication of IEHRs in IHRCs plays a fundamental role in facilitating the "epistemic advantage" that the international legal human rights system can provide.

2. *The back-up role*

Another area of added value derives from the back-up role that international human rights can play when domestic rights protection fails. Even in societies

that have a system of domestic constitutional rights, there are often failures to implement these rights. Historically, this has been especially true when it comes to the rights of members of certain groups, such as women, racial and ethnic minorities, migrants, and indigenous peoples (Buchanan 2013, 110–111). International human rights can remedy these failures by providing a back-up. This back-up role can function even where there are no international institutions to enforce human rights, as for example, when domestic courts appeal to international human rights in their rulings and states comply with such rulings. Domestic courts are able to make such appeals because international human rights are part of international law (2013, 111–112).

May and Daly's comparative constitutional approach merely allows a national court to consider or examine jurisprudence from other countries, but this jurisprudence is not legally binding on the domestic court. On the other hand, international human rights involve norms that are legally binding on all nations, and thus must be taken into account by domestic courts. Similarly, domestic individuals or groups might appeal to the constitutional environmental rights of a foreign nation, but such an appeal is unlikely to create much pressure in the domestic context, whereas appeals to IEHRs involve international standards, and thus are much more likely to create pressure within the domestic context.

In the case of IEHRs, the benefit provided by the back-up role can be particularly important. States can have strong interests in, for example, development projects that threaten the environmental interests of individuals. Furthermore, powerful private interests, such as corporations, often have great resources and influence in society, and may be able to pressure the state to proceed with such projects. In such cases, IEHRs function as back-ups that explicate the state's legal duty to respect and protect the environmental interests of individuals within their jurisdiction. This can be particularly beneficial in the case of members of marginalized groups.

While Buchanan emphasizes that the back-up role does not require external enforcement mechanisms, adjudication in IHRCs provides one of the strongest forms the back-up role can take. IHRCs are able to render a legal judgment that explicitly declares a state's obligations in a given case. This enforcement mechanism and the related external pressure can be especially important in the case of IEHRs. It helps to ensure compliance with the IEHRs obligations of the state in cases where the state or powerful private agents can have strong interests, and in the case of members of groups who have traditionally borne environmental harms.

The back-up role is well illustrated by *Kawas Fernandez v. Honduras*, which involved the murder of a Honduran environmental activist and human rights defender. Ms. Kawas Fernandez formed a foundation to improve the lives of the people of the Tela Bay region of Honduras through protection of the environment and preservation of natural resources. Through the work of her foundation, she succeeded in having the Punta Sal area designated as a national park, reporting

cases of illegal wood exploitation and damage to the national park, and organized demonstrations against state initiatives to grant land titles and economic development projects in the area (*Kawas Fernandez v. Honduras*, para. 50–52). In 1995, Kawas Fernandez was murdered in her home. The subsequent investigation of the case involved obstruction by police authorities, threats against investigators and witnesses, and the cover-up of evidence (ibid, para. 85–89). There was also groundless annulment of arrest warrants issued by a domestic court (*ibid*, para. 57, 65–66). In 2009, when the Inter-American Court finally ruled on the case, the investigation was still stalled at the preliminary stage (*ibid*, para. 68).

In 2003, a petition was filed with the Inter-American Commission on Human Rights. The Commission was unable to reach a settlement with Honduras in the matter, and eventually submitted the case to the Inter-American Court seeking a judgment. The Court found that Kawas Fernandez was murdered in connection with her work as an environmental activist (*ibid*, para. 98), that state agents had colluded with private interests who caused her murder (*ibid*, para. 99), and that the state failed to properly investigate the case (*ibid*, para. 100–108). Furthermore, the Court recognized that the murder of Kawas Fernandez occurred within the context of a series of murders of environmental activists in Honduras (*ibid*, para. 5, 69).

The Court held that there was a violation of Kawas Fernandez's right to life (American Convention on Human Rights, art. 4), as well as her right to freedom of association (American Convention on Human Rights, art. 16),[3] connecting the violation of her right to life with the violation of her right to freedom of association (*Kawas Fernandez v Honduras*, para. 150). After affirming a positive duty of the state to protect the right to freedom of association, the Court specifically articulates this duty with regard to the activities of human rights activists (*ibid*, para. 145). Furthermore, the Court treats environmental activism as a form of human rights activism, stating that:

> there is an undeniable link between protection of the environment and the enjoyment of other human rights . . . The recognition of the work in defense of the environment and its link to human rights is becoming more prominent across the countries of the region, in which an increasing number of incidents have been reported involving threats and acts of violence against and murders of environmentalists owing to their work.
>
> (*Kawas Fernandez v Honduras*, para. 147, 149)

As remedies in the case, the Court required that the state pay compensation to Kawas Fernandez's relatives, hold a public ceremony recognizing responsibility in the matter, conclude the investigation and have it settled within a reasonable period, and "carry out a national awareness and sensitivity campaign regarding the importance of the work performed by environmentalists in Honduras and

their contribution to the defense of human rights" (*Kawas Fernandez v Honduras*, para. 162–214).

The *Kawas Fernandez* case provides an excellent example of how adjudication of IEHRs in IHRCs can provide a back-up role. This case involved collusion between Honduran authorities and private interests concerning environmentally threatening projects, which ultimately led to the murder of Kawas Fernandez for her activism against these projects. Adjudication of this case in an IHRC allowed recognition that her rights were violated and led to a judgment against the state. Furthermore, it demonstrates the severe limitations of domestic courts in some countries, particularly when it comes to the rights of environmental activists who may create problems for powerful economic and political interests.

Now let us consider the way in which adjudication of IEHRs facilitates a mutually supportive or reinforcing relationship between the first and second benefits. In the case of the first benefit, adjudication allows for the development and specification of human rights, which can then contribute to improving and developing the understanding of domestic constitutional rights. As human rights are developed and specified through adjudication, they are better able to provide the second benefit, the back-up role. This shows that adjudication facilitates a supportive relationship from the first benefit to the second, but it can also facilitate support in the other direction, from the second benefit to the first. If individuals bring claims in IHRCs when domestic rights protections fail, adjudication of such cases helps to develop and specify human rights. In other words, pursuing the back-up role through adjudication in IHRCs helps to develop and specify better model rights. Better model human rights can then contribute to the improvement and understanding of domestic constitutional rights, through inclusion and emulation of these model rights. So, adjudication facilitates a mutually supportive or reinforcing relationship between the first and second benefits.

3. *Contributing to a state's legitimacy*

State legitimacy partially depends on providing adequate protection of its citizens' human rights. There are two types of legitimacy: normative and sociological. Normative legitimacy refers to the actual authority of a state to rule, and involves a public standing that warrants certain types of respect. Sociological legitimacy involves widely held belief that a state has such authority and warrants respect, which can be important when it comes to the ability of an institution to properly function (Buchanan 2013, 112). The back-up function of international legal human rights can contribute to both types of legitimacy. The back-up function can contribute to a state's normative legitimacy by ensuring that a state does provide adequate protection of its citizens' human rights. It can contribute to a state's sociological legitimacy by allowing citizens to know that the state is not arbiter in its own case when human rights claims are made against the state (Buchanan 2013, 113).

This benefit also applies in the case of IEHRs. Since the state itself can have strong interests in development projects that threaten the environmental interests of individuals, and there can also be pressure and influence from powerful private agents with interests in projects that threaten the environmental interests of individuals, both the normative and sociological legitimacy of the state can be in doubt. The back-up role can contribute to a state's normative legitimacy, by helping to ensure that a state does respect and protect the environmental rights of its citizens, and can contribute to a state's sociological legitimacy by allowing citizens to know that the state will not be arbiter in its own case when environmental rights claims are brought against the state. Thus, the back-up role can make an important contribution to a state's legitimacy in the case of IEHRs. If environmental rights are developed only at the national level and adjudicated by constitutional courts, the added contribution to the normative and sociological legitimacy of the state could not be realized.

As discussed previously, adjudication is one of the strongest forms that the back-up role can take, and thus can make some of the greatest contributions to the legitimacy of the state. Adjudication in IHRC can make a powerful contribution to the normative legitimacy of a state by creating an external enforcement mechanism and external pressure to ensure that the state does fulfil its human rights obligations, including IEHR obligations. Adjudication in IHRCs can contribute to the sociological legitimacy of a state by providing an institution where citizens can bring claims against the state, including IEHR claims, and know the state is not arbiter in its own case. After the ruling in the *Kawas Fernandez* case, Honduras recognized responsibility in the matter and paid compensation to the next of kin. In this way, the normative legitimacy of the Honduran government was enhanced, because there was recognition and compensation for the human rights violation that occurred. Furthermore, the sociological legitimacy of the Honduran government was enhanced because this ruling by an IHRC allows the citizens of Honduras to know that the state is not the ultimate arbiter in its own case in such situations.

Now let us turn to the relationship between the third benefit and the first and second. Buchanan discusses the relationship between the second and third benefits: The back-up role enables the system of international legal human rights to contribute to the legitimacy of states. This relationship works in just one direction; the second benefit supports the third. However, as with the first and second benefits, adjudication can facilitate a mutually supportive relationship between the first and the third benefits. As discussed above, adjudication in IHRCs contributes to the legitimacy of a state by ensuring that the state respects and protects the human rights of its residents, and by allowing citizens to know that the state is not arbiter in its own cases when human rights claims are brought against it. In the process of adjudicating these cases, IHRCs develop and specify human rights, which in turn creates better model rights that can contribute to the improvement and understanding of domestic constitutional rights. So adjudication facilitates

a supportive relationship from the third benefit to the first. It can also facilitate support in the other direction, from the first benefit to the third. If adjudication in IHRCs helps to develop and specify better model human rights, it can then contribute to the improvement and understanding of domestic constitutional rights. If domestic constitutional systems include and emulate these model human rights, this makes it more likely that states will respect and protect the human rights of their residents, which is a key component of normative legitimacy. So adjudication facilitates a mutually supportive relationship between the first and third benefits.

4. *Provide a unified framework for coping with global problems*

Human rights can provide a unified legal framework for coping with global problems. In particular, this applies to problems which involve harms states are unable to cope with individually, but that it would be inappropriate to hold them responsible for in the absence of any voluntarily assumed international legal obligation. The solution to these sorts of problems requires states to cooperate and coordinate using a single set of standards. Human rights provide an excellent standard for this purpose, both because they have greater legal weight than goals, and because they allow for the enlistment of the extensive political and legal resources of the international human rights system (Buchanan 2013, 118).

Environmental degradation is often a problem of this variety. Many environmental threats transcend national borders. Furthermore, they can present problems that states individually are unable to solve, and would thus be inappropriate to treat as the responsibility of a single state. Human rights will not always be the best set of standards for coordinating state action concerning environmental problems. However, there are certainly some types of pollution that negatively affect populations and may be usefully dealt with in terms of IEHR protections. In such cases, IEHR offer a number of advantages: They provide a way of conceptualizing the impacts as harms and create a presumption that such harms should be remedied, in addition to the greater legal weight of these norms and the ability to enlist the extensive political and legal resources of the international human rights system.

In order for environmental rights to provide a framework for coping with global environmental problems, uniform IEHRs will be required. If environmental rights are developed only at constitutional level, they will lack uniform norms that are capable of facilitating international coordination and cooperation among nations. Once again, while nations may choose to balance the values of development and environmental protection/preservation differently, IEHRs should be able to embody basic environmental interests that can be recognized and shared universally. It is these universal values that can facilitate international coordination and cooperation.

Adjudication of IEHRs in IHRCs provides a mechanism to help ensure that states comply with these coordination norms. Furthermore it allows for the enlistment of individuals as part of the enforcement structure, as individuals can bring suit in IHRCs. Thus, this approach enables individuals to become a part of the policing structure that ensures states comply with their obligations.

Climate change is an example of an environmental problem that is global and cannot be treated as the responsibility of a single state. Human rights may be able to offer a legal framework for coordinating action to deal with this problem, or at least comprise part of such a framework. Indeed, there have been attempts to bring the issue of climate change before a human rights tribunal. For example, in 2005 Shelia Watt-Cloutier, International Chair of the Inuit Circumpolar Council, along with 62 Inuit elders, filed a petition before the Inter-American Commission on Human Rights concerning the impact of climate change on the human rights of the Inuit (Earthjustice 2005). The Inter-American Commission declined to consider the petition, stating that it had received insufficient information for making a decision. However, the Commission decided to hold hearings on the impact of climate change on human rights, and invited representatives of the Inuit communities to testify at these hearings in 2007.

Subsequent to the Inuit petition to the Inter-American Commission, the UN Human Rights Council adopted a number of resolutions recognizing the impact of climate change on human rights. Resolution 10/4, adopted in 2009, recognized that "Human rights obligations and commitments have the potential to inform and strengthen international and national policymaking in the area of climate change, promoting policy coherence, legitimacy and sustainable outcomes" (United Nations Human Rights Council 2009). In 2011, the UN Framework Convention on Climate Change arrived at a set of decisions, known as the Cancun Agreements, which included a number of references to human rights, and "emphasizes that Parties should, in all climate change related actions, fully respect human rights" (United Nations Framework Convention on Climate Change 2011). Finally, the Paris Agreement of 2015 includes in its Preamble the first mention of human rights in an international environmental treaty, which states

> *Acknowledging* that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights.
>
> (United Nations Framework Convention on Climate Change 2015)

These developments show progress towards incorporating a human rights approach into international action to deal with climate change, including recognizing that human rights can provide norms for policy coherence, legitimacy, and determining appropriate outcomes, as well as acknowledgment that actions dealing with climate change must respect, promote, and consider human rights. While more precise obligations need to be defined, this demonstrates the potential for human rights to provide a standard or benchmark for coordinating

state actions in response to climate change and setting permissible limits on emissions.

Adjudication of human rights relative to climate change could provide a mechanism for helping to ensure compliance with these norms. This is true with respect to both substantive and procedural IEHRs. In the case of substantive IEHRs, right-holders could bring suit when their substantive human rights have been violated or impacted by the effects of climate change and receive redress for such impacts. In the case of procedural IEHRs, suit can be brought to gain access to governmental information and to demand public participation, which can enlist individual right-holders to help ensure that states comply with their climate change–related human rights obligations through transparency and participation.

5. *Correcting an inherent flaw in democracy at the national level*

Democracy makes governments almost exclusively accountable to their citizens, and leads them to disregard the legitimate interests of non-citizens (Buchanan 2013, 119). A system of international legal human rights provides a mechanism for exerting pressure on governments to take account of the legitimate interest of foreigners and to counter-act the bias of democracy. This shows that a system of international legal human rights provides added value even for states where the back-up function is rendered superfluous because the state has such a good record of domestic rights implementation (Buchanan 2013, 120). While current human rights law is more successful in assigning duties to states regarding individuals under their jurisdiction, there has been development in the direction of assigning extraterritorial duties. This can be particularly seen over the past decade, with the elaboration of the Responsibility to Protect (R2P) doctrine, which entails both an obligation to help other states build capacity to protect the human rights of those under their jurisdictions, as well as an obligation of the society of states to act when a state egregiously fails to protect the human rights of those under its jurisdiction (Buchanan 2013, 121).

If environmental rights are only realized at the constitutional level, they will remain subject to this inherent flaw in democracy and fail to take into account the legitimate environmental interests of non-citizens. This is not a problem that can be corrected through comparative constitutionalism, which simply allows a domestic court to consider the judgments and legal opinions of foreign courts that bear on the constitutional rights of citizens of the country. While May and Daly believe it is an advantage that national courts can make decisions which are sensitive to domestic values and political contexts, this can involve a bias on the part of such courts that allows them to ignore the legitimate environmental interests of foreigners.

Counter-acting this bias in democracy can be particularly important with regard to environmental concerns, since environmental problems are commonly trans-boundary. If the structure of democracy causes governments to be

accountable to the interests of their citizens while ignoring the interests of foreigners, IEHRs provide a set of universal international norms that protect the interests of all people beyond national boundaries. The R2P doctrine could be particularly useful in the case of environmental human rights concerns, where certain states either are not concerned with environmental harms affecting their citizens' human rights or lack the resources to address such issues. Thus, IEHRs, as they develop, have the potential to mobilize international resources and action regarding environmental harms related to these rights.

Adjudication of IEHRs in IHRCs provides one of the best mechanisms for exerting pressure on democratic states to recognize the legitimate environmental interests of foreigners. These institutions enable suits to be brought by individuals against a state, regardless of a plaintiff's citizenship. Further, IHRCs can render legal judgments against a state, making it clear the state has a legal obligation to address violations of the environmental human rights of foreigners.

So far, there have been no extraterritorial environmental human rights cases decided by IHRCs. However, John Knox, UN Special Rapporteur on Human Rights and the Environment, states that "there is no obvious reason why a state should not bear responsibility for actions that otherwise would violate its human rights obligations, merely because the harm was felt beyond its borders" (UNHRC 2013, para. 63). Furthermore, most of the human rights instruments that he reviewed indicate that states have "obligations to protect human rights, particularly economic, social and cultural rights, from the extraterritorial environmental effects of actions taken within their territory" (UNHRC 2013, para. 64). He cautions that the application of human rights in cases of trans-boundary environmental harms will not always be clear, due primarily to the fact that different human rights instruments treat the issue of jurisdiction differently (UNHRC 2013, para. 63). Thus, Knox's report offers support for the idea that adjudication of IEHRs can indeed provide the benefit of counter-acting the bias inherent in democracies.

Now let us consider the way in which adjudication can facilitate a mutually supporting relation between the last two benefits. The first three benefits are ultimately concerned with the role of human rights in the relationship between states and their domestic residents. The fourth and fifth benefits, by contrast, are internationally focused. Thus, it is not surprising that we would find supportive relations among the first three benefits on the one hand, and the latter two on the other. Adjudication of IEHRs can facilitate a mutually supportive relationship between the fourth and fifth benefits. It can function as a policing mechanism to ensure that states comply with human rights when they are used as coordination norms for addressing global or international problems. When such cases involve issues that affect the human rights of foreigners, adjudication can also help to correct the inherent bias in democracy and lead states to address the legitimate interests of foreigners. This shows that adjudication facilitates a supportive relationship from the fourth benefit to the fifth. It can also facilitate a supportive relationship in the other direction, from the fifth benefit to the fourth. Adjudication in IHRCs

provides a mechanism for ensuring that states respect the legitimate interests of foreigners, by allowing individuals to bring suits against foreign states. In cases where the human right concerned also serves as a coordination norm for addressing a global or international problem, such adjudication can be used to police and ensure state compliance with the coordination norm. Thus, adjudication can facilitate a supportive relationship from the fifth benefit to the fourth.

Now that we have discussed these five benefits, we can see that adjudication of IEHRs in IHRCs actually enhances most of these benefits, and thus provides additional value. Adjudication enhances the benefits in at least two ways: First, it provides a stronger mechanism for realizing some of the benefits; and second, it facilitates a mutually supportive or reinforcing relationship among some of the benefits. Given that adjudication is able to enhance the benefits in these ways, it is likely to increase the degree to which the benefits are realized, and thus the value that they add. If the benefits are realized to a greater degree by adjudication of human rights in IHRCs, then the Argument from Benefits provides an even stronger justification for adjudicating IEHRs than it does for having a system of international legal human rights as whole, which may or may not include such courts. Buchanan emphasizes that many of these benefits could be realized, at least to some degree, in the absence of external pressure or an external enforcement mechanism, such as IHRCs. However, we should recognize the way in which adjudication of IEHRs in such courts can enhance these benefits, and thus the greater value that it can add.

6. *Provides a potential resource for regulating global economic institutions*

Finally, let us consider an additional potential benefit that a system of international legal human rights could contribute. Buchanan points out that a limitation of existing international human rights law is that it allows only for the regulation of states, and not for the regulation of other international actors, such as international economic organizations and multi-national corporations. However, in principle there is no obstacle to an agreement among states to modify the international human rights system in this way. Thus, the international legal human rights system has the potential to provide the benefit of imposing obligations on international economic institutions, such as the International Monetary Fund and World Bank (Buchanan 2013, 283–284).

This potential benefit could be very important in the area of IEHRs. May and Daly argue that the terms of the global environmental debate have been dictated by the values of the global North, and that these terms have been facilitated in particular through the policies and actions of global economic institutions such as the International Monetary Fund and World Bank. International human rights law could be modified to constrain and regulate the policies and actions of these institutions. Obviously, this benefit could only be realized through uniform

IEHRs, and could not be achieved if there are only a myriad of different constitutional environmental rights. Furthermore, the fact that international human rights are developed with the input of people from a variety of cultures and societies means that IEHRs can embody environmental values that are non-parochial, and thus provide constraints on these institutions that do not merely represent the values of only certain cultures or societies.

Conclusion

In this chapter, I have outlined how a cosmopolitan environmental theory can be realized through a system of international human rights. It should be clear that the Argument from Benefits provides a very strong justification for IEHRs and the adjudication of such rights in IHRCs. Most of the added value that helps to justify the international legal human rights system generally is also manifested in a particular family of rights which are a part of that system, namely, IEHRs. Furthermore, these same benefits are realized, and enhanced, by adjudication of IEHRs in IHRCs. So the benefits that justify the system of international legal human rights also justify to an even stronger degree the adjudication of IEHRs in IHRCs. The justification works all the way down. This is because the same benefits add value in all of these domains. Therefore, since the Argument from Benefits offers good reason to create and implement a system of international legal human rights, it also provides strong justification for the adjudication of IEHRs in IHRCs. Furthermore, it demonstrates why environmental constitutional rights alone cannot provide the benefits that a system which includes IEHRs has the ability to offer.

Notes

1 See for example (Nickel 2007, 10).
2 Buchanan actually characterizes the Argument from Benefits as appealing to seven benefits. However, two of these benefits are so closely related, improving domestic constitutional bills of rights and developing a better understanding of domestic constitutional rights, that I have combined them and treat them as a single benefit.
3 The Court also found that Fernandez's next of kin had suffered violations of their right to due process and right to judicial protection (Article 8(1) and Article 25 of the American Convention on Human Rights).

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Environmental Human Rights

A Political Theory Perspective

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