Exploration of the role of CBNRM in wildlife crime driven by organized criminals and an expanding Chinese diaspora is a worthy exercise and could be the subject of future writings. However, here, Warchol is remiss in not presenting a fuller picture of CBNRM, and his conclusion that CAMPFIRE in particular offers a solution to the current poaching crisis seems ill informed.

The current poaching crisis is unprecedented, and Warchol stands to offer significant contributions to activists, practitioners, students, academics, and policy-makers working to reverse the flow of wildlife out of Africa. While this attempt falls short in several key ways, it does tee up several topics for further analysis and reflection. By tackling the topic from a more narrowly construed perspective, his in-depth personal experience and his knowledge of criminological theory and enforcement techniques could inform future efforts to combat wildlife trafficking.

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The Global Emergence of Constitutional Environmental Rights, by Joshua C. Gellers
Routledge, 2017, 150 pp, £95 hb, £36.99 pb, £35.99 e-bk
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One of the more interesting yet less well-understood phenomena in modern environmental law is the constitutionalization of environmental norms through the incorporation of environmental provisions in domestic constitutions. At present, more than 100 constitutions contain some reference to the environment.[1] These provisions typically take two forms: either (i) as directive statements, mandating or requiring executive environmental actions, or (ii) by referring to the environment in the vocabulary of human rights. In a subset of constitutions, the rights terminology is reserved not for humans but for the environment itself, extending the application of rights beyond the ordinary anthropogenic application of human rights.

Of most interest to scholars have been the constitutional provisions that conceptualize environmental problems within the perspective of fundamental rights by granting individuals a right to environment (typically prefaced by terms such as 'healthy', 'favourable' or 'sustainable'). Much of the scholarship on the constitutionalization of environmental rights has so far served the important purpose of mapping the terrain, setting out the extent of the trend of constitutionalization and describing its most common forms. Joshua Gellers' *The*

[1] R. O'Gorman, 'Environmental Constitutionalism: A Comparative Study' (2017) 6(3) *Transnational Environmental Law*, pp. 435–62.

Global Emergence of Constitutional Environmental Rights takes the scholarly examination of constitutional environmental provisions a step further by presenting a two-part empirical analysis of constitutions containing so-called substantive environmental rights. The first part involves a quantitative study of domestic constitutions containing such rights; the second is a qualitative study of two specific jurisdictions, Sri Lanka and Nepal. Notwithstanding its relative brevity, the book contains several significant insights of importance to debates on constitutional environmental rights.

The main point put forward by Gellers is that, although the likely explanation for the constitutional convergence around environmental rights across jurisdictions 'might be complex and multi-level' (p. 64), it is best explained by reference to norm socialization that reflects a world society theory. Gellers hypothesizes that states are 'situated within a broader world culture [in which] a country would be socialized through interactions in international society to adopt environmental rights as a "symbol of national identity and democratic commitment"' (p. 61).[2] Often this norm socialization is pursued by agents of transnational networks and epistemic communities, promoting institutional change by advocating progressive environmental ideas. Gellers' hypothesis stands in contrast to theories which posit that constitutional convergence around environmental rights is best explained by reference to, for example, rational state behaviour, suggesting that a state might adopt constitutional provisions in order to increase the likelihood of foreign direct investment or virtue signalling in the context of the rule of law and other constitutional norms.

To test this hypothesis, Gellers executes a complex statistical analysis against a range of variables, which include the influence exerted by international non-governmental organizations (NGOs) in countries with environmental rights, the frequency of countries with substantive environmental rights in a given region, the human rights legacy of a given country, the extent to which a country depends on natural resources for wealth generation, and the extent to which a state receives foreign aid (see pp. 67–73 for a detailed explanation). Ultimately, this analysis yields results that suggest that the more democratic a country is, the higher is the likelihood that it will entrench environmental rights in its constitution. This is likely to surprise few. Linked to this, however, are results showing that developing countries in the process of democratization are more likely to adopt substantive environmental rights in constitutional documents and that international NGOs play an important role in supporting this adoption. Surprisingly, perhaps, Gellers' results also suggest that the legal tradition of a state does not seem to be a significant predictor for the adoption of constitutional environmental rights. The endorsement of constitutional environmental norms by developing countries seemingly challenges the argument that environmental law and human rights law form part of a Western hegemonic legal culture. These findings are in part supported by the accompanying qualitative

[2] Citing B. Ackerman, 'The Rise of World Constitutionalism' (2007) 83(4) *Virginia Law Review*, pp. 771–97, at 771.

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analyses of Sri Lanka and Nepal, where Gellers finds that domestic features play an important role in shaping the approach taken to constitutional environmental rights (though the research samples are rather small). In the case of Nepal this includes the formal adoption of one such right, whereas no such right has been adopted in the case of Sri Lanka. In Nepal, domestic civil society organizations played a prominent role in paving the way for the adoption of a right, after earlier constitutional changes had allowed the formation of political non-governmental and citizens organizations. In Sri Lanka, a combination of historical and institutional factors serve to explain the failure to adopt an express constitutional right (though Sri Lankan courts have effectively furnished a right to a healthy environment from other parts of the constitution through interpretation influenced by international environmental law instruments).

One point of critique of *The Global Emergence of Constitutional Environmental Rights* and some of the antecedent scholarship on constitutional environmental rights is its insistence on a sharp delineation between so-called substantive and procedural environmental rights. Often this distinction plays out where a right is afforded to, say, a healthy environment but contrasted by a right to, for example, access to environmental information, public participation, or independent oversight of administrative decisions. Gellers argues, for instance, that the fact that so-called substantive constitutional rights are adopted with higher frequency than procedural environmental rights may be explained by the relatively low cost associated with adopting ambiguous rights that lack specific commitments. However, the twin assumptions that substantive environmental rights generate entitlements that are more ambiguous than those conveyed via procedural rights, and that ambiguously formulated provisions cost less to implement than precisely formulated ones, may not always be reliable. For example, the ambiguity of a constitutional right may be eradicated over time through judicial interpretation. All things being equal, lack of terminological clarity is likely to invite judicial scrutiny. Where judicial scrutiny emerges, there is a real risk that courts will be compelled to elaborate on the content of a right.

A good example of this evolution – albeit not one from a domestic constitutional setting – is that of environmental rights adjudication by the European Court of Human Rights under the European Convention on Human Rights (ECHR).[3] Here the Court has, by interpretive fiat and the 'living instrument' doctrine, developed a right to environment in all but name,[4] notwithstanding the fact that the ECHR contains no explicit reference to the environment.[5] The emergence of this right has come with significant institutional costs on two levels. Firstly, judged by the growing number of environmental claims which find their way to the Court and the resulting

[3] European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Rome (Italy), 4 Nov. 1950, in force 3 Sept. 1953, available at: http://www.echr.coe.int.

[4] See, e.g., O.W. Pedersen, 'The European Court of Human Rights and International Environmental Law', in J. Knox & R. Pejan (eds), *The Human Right to a Healthy Environment* (Cambridge University Press, 2018), pp. 86–96.

[5] A similar example emerges in the context of the Indian Supreme Court and the Indian Constitution.

increase in the Court's case load, the emergence of an ECHR-derived environmental right has come with substantial costs to the institutional system of human rights law in Europe. Secondly, and more importantly in this context, when called upon to give force to and interpret what was initially a vague and ambiguous right, the Court has developed a regime which consists of specific procedural obligations that governments will have to fulfil in their administrative environmental decision-making procedures. In other words, compliance is ensured through the adherence to often costly administrative safeguards such as public participation provisions, allowing access to environmental information and the right to remedial proceedings before independent tribunals. This suggests that what might appear a low-cost operation at first sight will eventually entail high-cost obligations.

Moreover, the judicial expansion of environmental rights suggests that the distinction between procedural and substantive environmental rights might not be as firm as Gellers, and indeed much of the literature on environmental rights, maintains (e.g., pp. 5–7). As illustrated, the substantive obligation imposed upon contracting states under the ECHR takes the form of a raft of procedural requirements. The interconnectedness of substantive and procedural environmental rights is also found in the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)[6] – the only multilateral environmental agreement dedicated exclusively to environmental rights – where the aspirational 'substantive' right to environment in Article 1 is achieved through the procedural mechanisms referenced above – that is, a substantive commitment is given force through procedural mechanisms. This suggests that the distinction between substantive and procedural rights might not be as clear cut when we are dealing with environmental rights.

These minor issues aside, *The Global Emergence of Constitutional Environmental Rights* emerges as a thoughtful and significant contribution to the environmental rights literature because of its originality and methodological rigour. By framing its focus around empirical analysis, it moves the scholarly debate on constitutional environmental rights forward. Having highlighted the importance of international and domestic cultural factors, Gellers provides a solid platform for the next steps in constitutional environmental rights scholarship. This might usefully include a closer examination of the cultures shaping not just the adoption of constitutional environmental rights, but also the cultures shaping the subsequent application and implementation of these rights in domestic systems, including the actual legal obligations arising from constitutionally enshrined environmental rights, and of whether the distinction between substantive and procedural rights is maintained in practice.

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[6] Aarhus (Denmark), 25 June 1998, in force 30 Oct. 2001, available at: http://www.unece.org/env/pp/welcome.html.

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