


RESEARCH ARTICLE

The School Strike for Climate as people's engagement in the transnational legal process and global constitutionalism

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Abstract

What is the significance of the School Strike for Climate from an international constitutional perspective? In this article, I compare the School Strike for Climate with the Hong Kong protests of 2019–20. Both these movements became necessary because of gaps in their countries' respective domestic and international legal frameworks – what I term constitutionalism gaps. The immediate cause of each protest was how state and non-state actors exploited these constitutionalism gaps in the existing legal framework. Protests in Hong Kong were triggered by the attempt to enact an Extradition Law that threatened people's autonomy, whereas the School Strike for Climate is a response to the failure of the state to deliver climate justice. Both these movements use similar strategies of advocacy and they have relied extensively on new technology. Based on this comparison, I argue that the School Strike for Climate promotes procedural and substantive values of constitutionalism at the international level, similar to the Hong Kong Protests at the domestic level. Through the School Strike for Climate, people seek to engage directly in the transnational legal process. In attempting to bridge the constitutionalism gap at the international level, the School Strike for Climate promotes values of global constitutionalism.

Keywords: School Strike for Climate; Hong Kong protests; transnational legal process; global constitutionalism; constitutionalism gap; political engagement

1. Introduction

Constitutionalism regulates the powers of the state and facilitates the engagement of people in governance to achieve meaningful public benefits. Where the states have denied these rights and freedoms, the people have mobilized themselves to engage in country-wide protests to assert their sovereignty. Even though international law was developed based on sovereignty and legal primacy of the states, the concept of a transnational legal process acknowledges the multiplicity of actors that are involved in creating and crystallizing international legal norms. While people have been drivers of this process in a range of different capacities, engagement of people through mass mobilization and movements to directly assert their entitlements, remains to be evaluated. The purpose of this article is to analyze how School Strike for Climate promotes the procedural and

substantive values of global constitutionalism and hence acquires significance as a constitutionalist approach to international law.

I will substantiate the above argument by comparing the School Strike for Climate with Hong Kong Protests of 2019–20. In [Section II](#), I will briefly introduce these two movements. In [section III](#), I will focus on three aspects of the public protests in Hong Kong and the School Strike for Climate to highlight similarities in their trajectories. In [Section IV](#), I will argue that, just as the Hong Kong protestors attempted to engage in their domestic legal process, people engaged in the School Strike for Climate attempt to directly engage in the transnational legal process through their movement at the international level. In [Section V](#), I will argue that, just as the Hong Protests can be categorized as an instance of popular constitutionalism at the domestic level, the School Strike for Climate is an instance of global constitutionalism.

II. People's protests at the domestic and international levels

Kleinlein (2011: 109) states that global constitutionalism attempts to 'describe and explain already existing developments in international law in terms borrowed from domestic constitutionalism with the incentive to contribute to a normative, internationalist project'. On this basis, I will present my two arguments on comparing the 2019–20 Hong Kong Protests, which were primarily a domestic pro-democracy protest movement, with the School Strike for Climate, an example of a people's protest at the international level in support of climate justice. In this section, I will briefly introduce the nature and development of these two movements.

Protests in Hong Kong 2019–20

The Hong Kong protests of 2019–20 began in June 2019 to challenge the Hong Kong legislature's attempt to introduce a law that would allow for criminals to be extradited to mainland China (O'Grady, Mellen and Berger 2019; Purbrick 2019; Shek 2020). The protestors viewed this law as compromising the semi-autonomous status of Hong Kong under the 'one country, two systems' arrangement and as undermining the fundamental freedoms of Hong Kong's people (O'Grady, Mellen and Berger 2019). Even though the Bill was withdrawn in September 2019 due to the continuing pressure of the protests, the purpose of protests itself had by then evolved (O'Grady, Mellen and Berger 2019).

By then, protestors were seeking justice for their fellow protestors who faced persecution while being under arrest and also a higher degree of constitutionalism than was afforded by the 'one country, two systems' arrangement by allowing Hong Kong people universal suffrage to vote their representatives into the office without Chinese interference. Even though the Hong Kong administration continued to ruthlessly suppress the protests, they persisted, spanning over a year (Jha 2020; Ramzy and Ives 2020). Because the leaders of the earlier 2014 Umbrella Movement in Hong Kong faced state persecution, the protests in 2019–20 were exceedingly decentralized. Various social media platforms were used to mobilize people so as not to compromise the identities of individual protestors (Bell and Jakhar, 2019; Friedman 2019; Lijiam 2019; Shao 2019).

Nevertheless, pro-democracy activists such as Joshua Wong, Agnes Chow and Andy Chan were targeted by the authorities (Human Rights Watch 2020; Lyons 2019). They have led pro-democracy groups and have continually attempted to run for office in Hong Kong but were barred by the administration due to their pro-democracy manifestos

(Mahtani and Shih 2019). They were persecuted for their involvement in the 2014 protests as well (Lyons 2019). Nevertheless, they have used their position within the public sphere to highlight the importance of the 2019–20 protests as well as to call for international support for their cause (Borter 2019). Yet many of these individuals, as well as pro-democracy activist groups, have had to cease their activities as China introduced the most recent National Security Law (Pang and Chow 2020).

The National Security Law came into effect in June 2020 amidst protests (BBC News 2020b). Many pro-democracy protestors, including Joshua Wong, Agnes Chow, Ivan Lam and Jimmy Lai, were prosecuted and sentenced under this law (BBC News 2021; Davidson 2020). Other pro-democracy activists sought asylum abroad. For instance, the United Kingdom granted asylum for Nathan Law in April 2021 (Aljazeera 2021). While protesting domestically has become increasingly dangerous due to the National Security Law, the Hong Kong pro-democracy activists who live abroad continue their mobilization online as well as through the Milk Tea Alliance, which has developed into a regional pro-democracy movement of like-minded activists in Thailand, Hong Kong, Taiwan and Myanmar (*The Economist* 2021).

School Strike for Climate

The School Strike for Climate began at the individual level with the Swedish teenager Greta Thunberg skipping school and protesting before her national parliament on Fridays from August 2018 (BBC News 2020a; Crouch 2018; Weyler 2019). The initial aim of her solitary protest was to demand that Sweden comply with its obligations under the Paris Agreement (BBC News 2020a). Her call for action was shared online and soon millions of people around the world, led by students, joined the strikes and demanded that their governments take action against the climate crisis (Carrington 2019; Glenza et al. 2019; Knight 2019; Morris 2020). Greta Thunberg received global acclaim for raising public awareness on climate change and inspiring many of her peers to take action to mitigate the impending climate crisis. She has received numerous honours for her work, including *Time* magazine's Person of the Year Award and the Nordic Council's Environmental Award, which she refused to accept (BBC News, 2019b). She has also spoken at many UN conferences and meetings to urge governments, businesses and investors to comply with the international environmental law and take further steps to protect the environment (Chasan and Wainer 2019; Wearden 2020). Now she demands that world political leaders and businesses heed the gravity of the climate crisis and take the necessary mitigating steps with urgency (Rowlatt 2020).

However, Thunberg is just one among many climate activists who have pioneered climate strikes in their own countries and regions (Earth Day 2020; Jha 2019; Laville 2019; Mogoatlhe 2020). They have also taken different actions, ranging from youth movements to campaigns and negotiations with authorities to respond to the climate crisis, both domestically and internationally. These activists include Xiye Bastida, Kallan Benson, Vic Barrett, Isra Hirs, Xiuhtezcatl Martinez, Jamie Margolin, Jerome Froster II, Alexandria Villaseñor, Haven Coleman and Mari Copeny from United States, John Paul Jose and Aditya Mukarji from India, Luisa Neubauer from Germany, Holly Gillibrand from Scotland, David Wicker from Italy, Lilly Platt from the Netherlands, Saoi O'Conner from Ireland, Lea Namugerwa from Uganda, Anuna De Wever from Belgium, Eyal Weintraub and Bruno Rodriguez from Argentina, Autumn Peltier from Canada, Helena Gualinga from Ecuadorian Amazon, Lesein Mutunkei from

Kenya and Ella and Caitlin McEwan from the United Kingdom (Asmelash 2019; BBC News 2019a; Earth Day Network 2019).

The movement has become global, with many activists around the world playing active roles in demanding domestic, regional, and international action. They call for active compliance with the state commitments undertaken through the Paris Agreement 2016, which are soft law and non-binding. Therefore, one of their main aims is to reiterate the importance of international law and demand the effective implementation of international legal norms.

III. Similarities between the 2019–20 Hong Kong protests and the School Strike for Climate

Even though these two protest movements have campaigned for different causes in different spheres, parallels can be drawn between them. I compare the School Strike for Climate with the Hong Kong protests to show the similarities in their trajectories and to argue that both movements promote the procedural and substantive values of constitutionalism at the international and domestic levels. Promoting global and domestic constitutionalism is interlinked and the two reinforce each other. For example, the School Strike for Climate seeks actions at the domestic level while the Hong Kong protestors have sought international solidarity in support of their pro-democracy goals. Therefore, comparisons between the international and domestic reiterate the cross-cutting significance of people's movements to uphold the values of constitutionalism.

In this section, I focus on three internal characteristics of the protests in Hong Kong and the School Strike for Climate to highlight their similar trajectories. First, I delineate the legal framework and the gaps within that legal framework that made both these movements necessary. Second, I focus on how the other actors in the domestic and the international sphere exploited the gaps within the existing legal framework, which is the immediate cause of both protests. Third, I note the similar methods and strategies used by both movements. My aim in comparing the movements and highlighting their similarities is to support my two main claims that each constitutes people's participation in their respective spheres and promotes constitutionalism at their respective levels.

Constitutionalism gap created by the existing legal framework

The concept of constitutionalism upholds limits on the powers of those who wield political power and are responsible for the design of public institutions to promote the public interest. The legal structures that form the backdrop of both the movements have weaknesses in terms of holding the stakeholders accountable and in check – what I term a constitutionalism gap. For instance, the 'one country, two systems' constitutional model leaves space for mainland China to interfere in Hong Kong's autonomy and the Paris Agreement has a weak capacity for enforceability.

Hong Kong is in a unique constitutional position due to historic circumstances. At the end of British colonization, Hong Kong was returned to China under the arrangement of 'one country, two systems' (Yeung and Huang 2015; Yip 2015). The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China 1997 lays down the framework for the functioning of this system. While Article 1 of the Basic Law states that Hong Kong is 'an inalienable part of the People's Republic of China', Article 2 provides that Hong Kong is allowed to enjoy a high degree of autonomy and

governmental power, including independent judicial power. Therefore, Yash Ghai states that 'Not only is [Basic Law] expected to act as a kind of Great Wall of China against its architects, the PRC, but it also has to provide a framework for the resolution of numerous domestic social conflicts, some now only dimly perceived' (Ghai 1991: 797).

However, the constitutional mechanism in Hong Kong since British colonialism was negotiated with the overarching aim of protecting the free market (Ghai 1991: 801–04). Therefore, the stakeholders of the market have heavily influenced constitutional law and politics to ensure that the status quo is preserved (Wang and Leung 1998: 288–89). The process of drafting the 1997 Basic Law was therefore dominated by the political actors and the business community. The lack of participation of people in the process of drafting the Basic Law of Hong Kong compromises its constitutional legitimacy because there is no invocation of the constituent power of people that legitimizes the constitution (Nootens 2015). The transfer of sovereignty from Britain to China does not accommodate the principle of sovereignty of people and the governmental power being drawn from the constituent power of people.

Nevertheless, while conceding that the constitutional legitimacy emanates from the people's participation, Yash Ghai (1991: 805) does not consider it essential. He further states (1991: 805) that in the specific domestic context there is 'little tradition of it'. He contends (1991: 805–06) that 'for the pragmatic people of Hong Kong the proof of the pudding is in the eating, not in the baking'. The Basic Law of Hong Kong consists of provisions that provide for the rights and freedoms of people, but they focus on ensuring economic autonomy to preserve Hong Kong's capitalist market structures from the economic ideologies of China. However, the Basic Law recognizes that Hong Kong is a democracy – hence, the autonomy provided for the governance structures. Moreover, final adjudication powers accorded to the judiciary and the citizens' fundamental rights are constitutionally protected (Yeung and Huang 2015). These provisions are able to ensure that state powers are regulated for the public benefit.

However, simultaneously, some provisions allow for China to extend its legislation to Hong Kong on certain specific issues and on the appointment of the Chief Executive of Hong Kong, who has powers to override the locally elected legislature. These provisions allow China to exert significant political control over Hong Kong and for the Chief Executive to act in a manner that undermines the autonomy of the people. It is at this point that the framework provided by the Basic Law of Hong Kong fails to restrain governmental powers to protect the basic freedoms of the citizens, thus violating the primary purpose of constitutionalism. This constitutional structure creates a *constitutionalism gap* because of this failure to effectively check governmental powers.

At the international level, a similar constitutional gap is created by the existing framework on international law to combat the climate crisis. The 2015 Paris Agreement contains the consensus of state parties to respond to the global threat posed by climate change (United Nations Climate Change, 2020b). The Agreement aims to maintain the global temperature rise of this century below 2°C above pre-industrial levels, to limit the temperature increase further to 1.5°C, to take steps for global emissions to peak while taking into account the position of developing countries and to continue with the reduction of emissions thereafter (United Nations Climate Change 2020b). The state parties are required to 'prepare, communicate, and maintain' the National Determined Contributions (NDCs), which convey the domestic benchmarks regarding climate change and the progress they make thereunder (United Nations Climate Change, 2020a).

However, this framework has several weaknesses, namely difficulties in urging the states to meet their current commitment under the Agreement, demanding higher

commitments, and the challenge of garnering the necessary financial resources to meet the goals set by the Agreement (Calliari, D'Aprile and Davide 2016). The Paris Agreement is in the form of non-binding soft law, relying primarily on political will and diplomatic pressure for enforcement of these obligations (Lawrence and Wong 2017). Therefore, while the Paris Agreement is a milestone in achieving international consensus on measures to prevent and mitigate the climate crisis, the Agreement falls short in terms of ensuring that the state upholds environmental rights and protects the rights of the people affected by the climate crisis.

The exploitation of the constitutionalism gap as the immediate cause of the protests

The immediate trigger of both the protests is the exploitation of this constitutionalism gap to undermine the interests of the people. The Hong Kong protests were a result of the increasing Chinese intervention within the island's territory in a way that hinders the fundamental rights of the people. In the case of School Strike for the Climate, it was the failure of the states, and in certain instances, their outright refusal, to fulfil the obligations of the Paris Agreement commitments that led to the protests.

The Hong Kong protests began in June 2019 with the Hong Kong legislature's attempt to introduce a Bill to extradite criminals to China (Lo 2020; O'Grady, Mellen and Berger 2019; Purbrick 2019; Shek 2020). The attempt to introduce the Extradition Law that expanded the powers of China was perceived by people as undermining the principle of constitutionalism, despite the assurances to the contrary by the Hong Kong government. The constitutionalism gap in the existing framework was thus exploited by China and the Chief Executive of Hong Kong to introduce a law that people perceived as threatening their autonomy. This was the immediate trigger for the protests. While the Bill was withdrawn in September 2019 under the continuing pressure of the protests, by then the goals of the protests had expanded into five demands (O'Grady, Mellen and Berger 2019). Four of the demands focused upon the withdrawal of the Bill that people saw as offending the autonomy of Hong Kong and taking measures against the excessive use of force by police during the protests. The final demand was to grant the people of Hong Kong universal suffrage to ensure that they could directly elect their government without the involvement of Beijing.

At the international level, the School Strike for Climate and the activism surrounding these protests arose for several reasons. Whereas the states entered into the Paris Agreement in 2015 and undertook to make binding commitments to reduce emissions, since the Paris Agreement does not set any legally binding target, the states have the freedom to set their national targets. However, the states began to back-pedal from even these commitments, and the United States under Donald Trump went on to withdraw from its commitment altogether (Holden 2020). Non-state actors such as transnational corporations could therefore engage in activities that aggravated the climate crisis with minimum checks, especially as they were only regulated indirectly via the states. Moreover, transnational corporations engaged with the international legal process as non-state actors to protect and promote their own goals (Rowlands 2001: 143–44).

Meanwhile, the consequences of the climate crisis were disproportionately borne by countries of the Global South (Beer 2014). It also affected the most vulnerable groups of people, such as children and the poor, the most (Oxfam 2019; UNICEF 2021). These communities comparatively had the least capacity to engage in the transnational legal

process to hold the states and the relevant non-state actors accountable. However, people around the world also severely lacked awareness about the direness of the climate crisis and the urgent steps that the world and its leaders must take to mitigate the consequences. These actions, and inaction, of the states as well as non-state actors, showcased their lack of commitment to take effective actions against the climate crisis and their exploitation of the constitutionalism gap.

The fact that exploitation of a constitutionalism gap was the immediate trigger for both the Hong Kong Protests and the School Strike for Climate sets them apart from other grassroots movements. For instance, the pro-Trump protestors seeking to challenge the results of the 2020 US election, while being motivated by the need to take actions for what they believed to be a rigged election, was a result of misinformation and polarized partisan interest (Cummins, Garrison and Sergeant 2021; Fandos and Cochrane 2021). Similarly, anti-lockdown and anti-vaccine protests across the globe in 2020–21 during the COVID-19 pandemic (Carothers and Press 2020; Germani and Biller-Andorno 2021; Reiss 2021) – even though they advocated freedom of movement and freedom of choice in the context of pandemic – spread misinformation that overburdened the healthcare system and risked the lives of the immunocompromised. In both these instances, the protestors were not seeking to call out the exploitation of a constitutionalism gap. However, both the Hong Kong protests and the School Strike for Climate were protesting against the exploitation of a constitutionalism gap by the state and non-state actors in a way that undermines the public interest. Thus, these protests aim to reinforce constitutional and democratic values.

Strategies used by people's protests

Both the movements use the same strategies of a personalized approach, decentralization of protest mechanisms, and use of technology in their protesting. Mobilization of people for the 2019–20 Hong Kong protests happened through anonymous and impersonal mechanisms provided by various social media platforms. This was of paramount importance because the leaders of the 2014 Umbrella Revolution in Hong Kong were targeted and faced persecution at the hands of the domestic administration. Nevertheless, the protests of 2019–20 were also spearheaded by young activists and pro-democracy activist groups. Universities were at the forefront of the protests in 2019 and 40 per cent of the arrested protestors were students (DW 2020).

Similarly, the School Strike for Climate has been spearheaded by young student activists and globally coordinated through online social media platforms. Activists from around the world share images and footage of their protests via social media. Apart from the disruptive act of cutting school on Fridays, the protests have been comparatively peaceful throughout the world. However, depending on the political climate of their respective countries, some of the activists have faced state backlash (Watts 2019). Due to the restrictions on freedom of movement and assembly due to the COVID-19 outbreak, the School Strike has shifted towards online platforms (Finnegan 2020). Nevertheless, the protestors continue to highlight the importance of taking urgent action to deal with the climate crisis, drawing on the urgency of dealing with the COVID-19 pandemic and gaining inspiration from the Black Lives Matter protests that erupted globally in response to police brutality against African Americans in the United States (Murray and Mohdin 2020; Thomas and Haynes 2020; Tindall 2020).

IV. The Hong Kong protests and the School Strike for Climate as people's direct engagement in the domestic and transnational legal process

International law operates on the basis of states being the primary actors within the international legal sphere. Object theory holds that 'individuals constitute only the subject matter of intended legal regulation' in international law (Shaw 2017: 204). However, Shaw argues that 'the centrality and even exclusivity of the state' in international law are the result of 'the growth of positivist theories, particularly in the nineteenth century' (2017: 204). He claims that 'the essence of international law has always been its ultimate concern for the human being and this was manifest in the Natural Law origins of classical international law' (2017: 204). But despite international law being concerned primarily with human wellbeing, this doesn't necessarily highlight the importance of individuals as actors in international law and the importance of their participation in international law. Therefore, treatises of international law only mention individuals in passing, and even the treatises on non-state actors do not focus specifically on people's direct participation in international law. Kleinlein (2011: 107) identifies a range of non-state actors 'ranging from individuals, non-governmental organizations (NGOs), transnational corporations (TNCs), hybrid actors such as public-private partnerships (PPPs) and quasi-non-governmental organizations (quangos) to terrorist groups'. However, he also does not provide a primary focus to individuals as actors in international law.

Nevertheless, Kleinlein (2011: 108) states that international law is 'decreasingly dependent on the will and interests of individual states and increasingly focuses on the realization of community interests and the promotion of global public goods'. When international law is conceptualized as an autonomous legal order with constitutional characteristics, the conceptualization of people and their constituent power becomes a significant factor that legitimizes such order. Therefore, the study of the role of individuals in international law becomes important.

My focus in this article is on how individuals engage with international law through mass protests and movements. Focusing first on the Hong Kong protests, I highlight the agency gap between people and administration in Hong Kong that required people to directly engage with the domestic legal process. Such pro-democracy protests have erupted in different domestic contexts, with people demanding that the states prioritize the public interest. Examples of such pro-democracy domestic movements include the Arab Spring of 2011, the South Korean Candlelight protests of 2016–17, Taiwan's Sunflower Movement of 2014, and the Chilean protests of 2019–20. Similarly, through the School Strike for Climate, people mobilize themselves directly to engage with the transnational legal process to bridge the perceived agency gap at the international level. Such people's mobilization at the domestic and international levels promotes the procedural values of constitutionalism, such as representation, participation, and inclusion.

The Hong Kong protests as an instance of people's engagement in the domestic legal process

Constitutionalism gaps in the domestic legal framework result in an agency gap between the people and their representatives, who purport to rule on their behalf. The result is that the representatives fail to represent the public interests. In such a situation, people are compelled to mobilize themselves in a more formidable manner due to advances in communication technologies, to directly assert their will. People of Hong Kong observed

that their executive was influenced by mainland China over protecting their rights and freedoms when they tried to introduce the new extradition law. Therefore, through the protests, people attempt to engage directly in the domestic legal process to uphold the public interest. For example, the Hong Kong protests managed to block the passing of the extradition law temporarily and the protestors continue to mobilize themselves through various forms of protest to democratize their domestic legal framework.

Through these pro-democracy protests in Hong Kong, people sought to engage directly in the governance of their state. This is evident in the individual activists of Hong Kong repeatedly seeking to run for elections and pro-democracy groups attempting to establish a secure place within the civil society. They attempted to bridge the social media and street-based protests with the existing structures of governance. However, they faced dilemmas because outreach and activism through social media have their limitations and because these movements might ultimately lack the capacity to influence the institutions of the state and bring about long-term transformations (Perera 2020).

The Hong Kong pro-democracy protests used social media as a springboard and they have generally been excessively decentralized (Pomfret et al., 2019). In the case of Hong Kong, this is necessary to ensure the protection of the people involved in the face of ruthless suppression of protestors by the state authorities. However, as a result, the people's protests suffer from a lack of ideological and institutional coherence required to stabilize the changes in governance that they seek. Nevertheless, while being haphazard, the pro-democracy protests have spurred people to action, to express their views on governance, and to mobilize themselves in a quest to transform the existing governance structures. The momentum created by such movements presents a crucial opportunity to establish constitutionalism within the country. For instance, Bruce Ackerman's (1991) conceptualization of 'constitutional moments' formulates the importance of 'seizing the moment' presented through such a movement to engage in higher law-making to secure lasting changes in constitutional governance.

The School Strike for Climate as an instance of people's engagement in the transnational legal process

International legal scholars, such as McDougal (2014), have attempted to conceptualize international law as a process whereby one state 'unilaterally put forward claims of the most diverse and conflicting character' (Damrosch and Murphy 2014: 69). Harold Koh (1996: 205) suggests that 'law is enforced through complex enforcement processes' and that 'as an independent variable, the law affected conduct'. He argues (1996: 199–205) that the transnational legal process is the sophisticated means through which states are compelled to establish and obey certain legal norms influenced by factors of interest, identity, interaction, and internalization. Therefore, he asserts that 'nations will come into compliance with international norms if transitional legal processes are aggressively triggered by other transnational actors in a way that forces interaction in forums capable of generating norms, followed by norm-internalization' (1996: 206).

While McDougal (2014) focuses on the actions and reactions of the state as the primary force in shaping international law, Koh's formulation of the transnational legal process acknowledges the role played by the other transnational actors as well. However, he also concentrates on the actions of the state and how the state enforces or evades

international norms under such influence. This maintains the prominence accorded to the state under conventional conceptualizations of international law (Shaw, 2017: 1).

The international legal scholarship has also attempted to study the influence of these different actors on the transnational legal process. For example, Lang (2012: 114) takes the trade regime as a case study to explore how the internal mechanics of the international trade regime are formulated and how its 'normative biases' are created. Similarly, my argument is that the School Strike for Climate is an attempt by people to engage directly in the transnational legal process. These movements aim to influence and compel action by the states as well as the various other actors in the transnational legal process, such as businesses, international organizations, and the media.

People have received secondary focus in international law as subjects of the state, while the state themselves has been accorded the position of primary actor or subject of international law. While developments of international human rights law have emphasized the importance of upholding the fundamental rights of people and the state's obligations to this end, the people have remained passive subjects within the legal sovereignty of the state. While people certainly shaped the transnational legal process in many capacities through different actors, they did not mobilize themselves directly to influence the transnational legal process. Even though conventionally, people have been represented by the state in international law, the people have perceived an agency gap – they understand that their interests are not sufficiently represented by the state.

The School Strike for Climate is an attempt by the people to mobilize themselves to engage in the transnational legal process independent of other various institutional mechanisms. It is a result of frustration by the people that the international institutions and mechanisms do not represent their interests by taking urgent actions against the climate crisis. Therefore, to bridge this agency gap, people are attempting to directly engage in the transnational legal process and coax action from the other actors within the transnational legal process. Through their movements, they invoke the constituent power at the international level upon which state sovereignty is based and people's movements become a key actor engaging in the transnational legal process (Bailey and Mattei 2013; Fassbender, 2008; Kumm 2016).

Koh conceptualizes that the states are compelled to internalize and obey the international legal norms when 'the transnational legal processes are aggressively triggered by the other transnational actors.' In the case of the climate crisis, the activists view that the other transnational actors do not appreciate the need for urgent actions and the gravity of the consequences faced by people -especially in the global south. Therefore, the school strike for climate highlights the personal and communal effects of climate change in support of scientific knowledge and the activists attempt to trigger the transnational legal processes through multiple actions at the domestic, regional, and international levels. The activists have used street protests, social media activism, awareness raising. They have participated in UN mechanisms and regional mechanisms to urge climate action. They have also attempted to extend their movement's pressure across thematic areas – from the human rights-based processes to international economic forums (UNICEF 2019; World Economic Forum 2020).

This is significant because people's participation and representation within the transnational legal process itself are values of global constitutionalism. Constitutionalism requires representation and participation of people in the creation and crystallization of constitutional norms, and people's direct participation and the representation of diverse communities uphold this aspect.

V. The Hong Kong Protests and School Strike for Climate as upholding constitutionalism

In this section, I analyze how both these protests aim to achieve similar substantive goals of upholding and promoting constitutionalism at the domestic and international levels respectively. Kleinlein (2011: 108) states that the international constitutionalists interpret ‘the autonomy of international law’ by discerning autonomous, constitutionalist norms through the developments in international law. For this purpose, they focus on developments in *jus cogens* and *erga omnes* obligations, judicialization, and institutionalization of international law and international legal institutions. Kleinlein (2011: 108) also points out that the constitutionalists regard international law ‘as supplementing domestic constitutions and thus limiting the traditional *domaine réservé* of states’. Kleinlein provides international human rights treaties, the principle of democratic governance, and organizations such as the World Trade Organization (WTO) as examples of this phenomenon. The School Strike for Climate is an instance in which people are mobilizing themselves to uphold global constitutionalism. Through upholding values of global constitutionalism, the School Strike for Climate demands that the states regulate themselves in a manner that promotes the global public interest.

This section analyses how the people of Hong Kong, through their direct engagement with the legal process through protests, attempted to promote democracy and constitutionalism in their domestic context. I then assess how the School Strike for Climate promotes global constitutionalism in a similar manner.

People’s movements as an attempt to reassert constitutionalism at the domestic level

These movements are a strand of popular constitutionalism because through them the people make a direct attempt to transform the domestic constitutional structures that no longer restrain the wielders of state power (Perera 2020). For example, in Hong Kong, people have demanded the universal adult franchise to choose their political representatives and have sought democratic institutions of governance.

The purpose of constitutionalism at the domestic level is to regulate governmental power through the legal device of a constitution to guarantee individual rights and freedoms (Patterson, 1948). Constitutionalism thus generally consists of three elements: constituent power of the people, which provides legitimacy to the constitution; the constitution, which is the supreme law of the nation; and a form of government limited by the constitution. These three elements may be present in different domestic contexts in varying degrees (Patterson 1948), but the ultimate measure of adherence to constitutionalism in a country is based on the extent to which the purpose of constitutionalism is served by the domestic governance structures (Patterson 1948). Therefore, the concept of constitutionalism is distinct from the mere existence of a constitution following a lawful process.

A constitution that fails to act as an effective check on governmental or political powers does not meet the standard of constitutionalism. A constitutionalism gap is created in this situation, whereby the country’s existing constitutional structures fail to hold the governmental powers in check. The constitutionalism gap generally coincides with the agency gap, whereby the people’s representatives fail to represent them. This is because the agency gap is created as a result of the constitutionalism gap, which fails to restrain and hold the representatives to account. Therefore, the people’s movements seek to fill the constitutionalism gap, which is a result of domestic governance superseding the

constitutional restraints in a manner that oppresses people. In an attempt to fill in this gap in existing institutional structures, the people mobilize themselves and engage in protests to demand constitutionalism. The constitutional principles of democracy, rule of law, and protection of fundamental rights thus become a rallying point in these pro-democracy movements (Perera 2020). The purpose of such people's protests is to promote these values of constitutionalism. This is seen in the context of Hong Kong, where people have demanded democracy, the universal adult franchise, and protection of their autonomy, as well as Hong Kong's autonomy from mainland China.

The School Strike for Climate as promoting global constitutionalism

Global constitutionalism promotes 'the application of constitutionalist principles in the international legal sphere to improve the effectiveness and the fairness of the international legal order' (Peters 2009). Three schools of scholars have taken varying approaches to global constitutionalism, namely normative, functionalist, and pluralist (Wiener et al. 2012). The normative school views global constitutionalism as 'a legal or moral conceptual framework that guides the interpretation, progressive development or political reform of legal and political practices beyond the state to reflect a commitment to constitutional standards' (Wiener et al. 2012:7). The functionalist school focuses on 'processes of constitutionalization which are revealed through bargaining and negotiations in the environment of international organizations' (Wiener et al. 2012:7). Meanwhile, the pluralist school gives equal importance to 'mapping and shaping constitutional quality beyond the state' (Wiener et al. 2012: 7–8). While constitutionalism in the domestic context has a singular purpose of restraining state power for the public benefit and to promote the rights and liberties of people, global constitutionalism has a diversified purpose of establishing constitutionalist principles within the fragmented transnational legal process.

While the international treaty regimes are based on the equality of the states and equality of people within the state, this is a legal fiction whereas the transnational legal process is beset with an asymmetry of power. Different legal scholars, including those who study developing world approaches to international law, such as Anghie (2014), Shalaky (2000), Bedjaoui (1979), and Rajagopal (2003), have exposed the power asymmetries inherent in international law and the transnational legal process. Even though people of colour are affected more by environmental pollution, they have been underrepresented in environmental movements and organizations (Geiling 2017). As a result, A constitutionalism gap is created at the international level. Therefore, even though the climate crisis threatens the people and the planet, international organizations and most states are not taking sufficiently swift and urgent actions to prevent and mitigate the effects of the climate crisis.

Therefore, people attempt to engage in the transnational legal process directly through such people's movements to reassert the sovereignty of people and the constituent power of the people at the international level (Fassbender 2008; Kumm 2016). Popular sovereignty and the constituent power of people are closely related concepts that justify the upholding of democracy and constitutionalism (Doyle 2019). The constitutional theorists have argued that 'the constituent power of the people should be allowed to reemerge to challenge an existing constitutional order' (Doyle 2019). This attempt by the people to mobilize and engage directly with the transnational legal process is an attempt to bridge

the constitutionalism gap in the transnational legal process by holding the states and other transnational actors accountable to international law.

The School Strike for Climate is a movement through which people highlight the need for the transnational legal process to serve to uphold the people's rights and environmental rights. The movement further calls out the inadequacy of the existing political and economic structures to provide an effective response to the climate crisis. The climate activists from the African, East Asian, and Latin American regions have specifically attempted to expose the contextual challenges faced by their countries. The strike also exposes the asymmetry of geopolitical power among the states and how some states and regions are more vulnerable to the consequences of the climate crisis.

The movement itself is premised on values such as solidarity, democracy, and sovereignty of people. It also aims to uphold human rights and environmental rights and to serve the global public interest. Therefore, the reasons that triggered the school strike for climate, its trajectory, and its goals promote constitutionalist principles. Therefore, I argue that the School Strike for Climate is an instance of global constitutionalism. The School Strike for Climate shows how the procedural and substantive values of domestic and global constitutionalism are interlinked and how they reinforce each other. Therefore, this movement is an instance of domestic popular constitutionalism translating into global popular constitutionalism. Furthermore, the School Strike for Climate shows that upholding global constitutionalism needs to be approached as a process of interconnected individual and collective actions.

Constitutional framework and norms are given supremacy in the domestic context and, similarly, constitutionalist elements in international law have received priority. Therefore, the conceptualization of the School Strike for Climate as an instance of global constitutionalism provides the basis for this strike to be prioritized within international law. Moreover, such prioritization will be applicable across all thematic and institutional mechanisms of international law without being limited to international environmental law. This opens up further avenues for cross-cutting research on how the different branches of international law recognize the School Strike for Climate.

Conceptualization of the School Strike for Climate as an instance of global constitutionalism also provides the people involved in the strike legitimacy as members exercising constituent power and popular sovereignty within the international legal order to engage even more rigorously with the transnational legal process and to insist on the accountability of various actors to serve the global public interest. This reiterates Peters' (2009: 398) position that 'the normative status of sovereignty is derived from humanity, that is, the legal principle that human rights, interests, needs, and security must be respected and promoted'. Given the global impact of the climate crisis, insistence on upholding global public interest as a unifying factor is important for the states and other non-state actors to rise above their siloed interests.

VI. Conclusion

The School Strike for Climate is a response to the agency gap that is prevalent at the international level, whereby the states do not proactively represent the interests of the people. Just as the people of Hong Kong have attempted to assert their constituent power and popular sovereignty by striving to transform their domestic legal system in line with democratic principles, people are seeking to directly engage with the transnational legal process through their mobilization in the School Strike for Climate. This promotes the

procedural values of constitutionalism, such as representation, participation, and inclusion. The School Strike for Climate is also an attempt by the people to bridge the constitutionalism gap in the international sphere and uphold the substantive values of constitutionalism. Similar to how the Hong Kong Protestors have called for the establishment and strengthening of democracy by providing for the universal adult franchise domestically, the School Strike for Climate is promoting the values of global constitutionalism, such as human rights, democracy, the sovereignty of people, and solidarity, in its quest for climate justice. Recognizing that the School Strike for Climate as an instance of global constitutionalism enhances the legitimacy of the movement in the international sphere. This allows for enhanced recognition of people's mass mobilization to participate in the transnational legal process to promote the global public interest. Such recognition can also serve to enhance the legitimacy of similar movements seeking to bridge constitutionalism gaps at the international as well as the transnational and domestic levels.

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