

ENVIRONMENTAL JUSTICE, SOCIAL CHANGE AND PLURALISM

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Introduction

The aim of this paper is to re-build the idea of environmental justice to deal with the inequalities derived from the present model of the use and distribution of natural resources.¹ My argument is that the dominant idea of environmental justice does not provide space for a global redefinition of the rules for the distribution of benefits and harms associated with the use of natural resources. This is because the legal culture in which the concept of environmental justice was generated is dominated by the idea of limited government. In this context, social transformation is theoretically the result of individual decisions, not of a conscious political program. Therefore, the law in general (and, particularly, the constitution) works as a set of rules to solve particular conflicts, not to change society.²

The result is injustices in the distribution of goods. The most blatant injustices derived from our model of the use of natural resources are not, however, particular pathologies. They are instead the natural consequences of a model based on

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¹ On the origins and evolution of environmental justice see, for example: K. Bosselmann, 'Justice and the Environment: Building Blocks for a Theory on Ecological Justice' in K. Bosselmann and B. Richardson (eds), *Environmental Justice and Market Mechanisms. Key Challenges for Environmental Law and Policy* (1999) Kluwer, Den Haag-London-Boston, at 30-57.

² See L. Prieto Sanchís, 'Neoconstitucionalismo y Ponderación Judicial' in M. Carbonell (ed), *Neoconstitucionalismo(s)* (2003) Trotta, Madrid, at 124ff.

individualism, market assignation of resources and an idea of welfare based on consumerism. This social model leads to structural injustices in the global flow of resources and goods, and in the distribution of environmental harm. And, at present, inequalities between human beings and communities seem to be growing.³ This suggests that partial remedies (such as have been adopted before and are discussed below) are not useful and instead, a program of social change is required in order to guarantee real environmental justice. For this to be achieved we have to overcome the dominant idea of environmental justice as a response to individual cases of environmental harm unfairly distributed. Instead environmental justice has to be conceived as the regulative idea for:

- (i) building a fairer model of social exchange of benefits derived from the use of natural resources,
- (ii) reducing harm to human beings to that which is unavoidable to maintain an appropriate level of welfare and autonomy for human individuals,
- (iii) ensuring a fairer distribution of unavoidable harms,
- (iv) reducing our impact on nature and our consumption of natural resources to achieve sustainability,
- (v) giving individuals and communities enough room to pursue their projects of life and coexistence, and to define their own ideas of welfare.

Environmental justice in its traditional sense seems to cope only with (iii).⁴

To advance in the way we treat these five points, we need to take law as a tool of social transformation. The Western European constitutional tradition (WECT) may provide inspiration for such a transformation, although it presents some flaws regarding points (iv) and (v). The usefulness of this tradition is its commitment to a whole program of social change, with an active role played by the government.⁵ Underlying this commitment is the belief that no actual freedom is conceivable

³ See R. Margalef, 'Lo Que Se Llama Ecología y Posibles Condicionantes de Nuestro Futuro' in J. Alcina Franch and M. Calés Bourdet (eds), *Hacia una Ideología Para el Siglo XX. Ante la Crisis Civilizatoria de Nuestro Tiempo* (2000) Tres Cantos, Akal, at 330.

⁴ See, for example: L. Cole and S. Foster, *From the Ground Up. Environmental Racism and the Rise of Environmental Justice Movement* (2001) New York University Press, New York & London, at 66; or S. Cutter 'Race, Class and Environmental Justice' (1995) 19(1) *Progress in Human Geography*, at 112.

⁵ See Prieto Sanchís (supra note 2) at 124ff.

without a certain standard of living and achieving that standard of living requires a public program of social transformation⁶ which only the government can deliver.

The flaws referred to are related to the fact that the legitimacy of the social state in the WECT has depended on widening the number of people enjoying goods and services. Because of that, this tradition has relied on the continuity of the process of capitalist accumulation, exploiting natural resources, to be turned into goods. This, the social metabolism, is what has to be changed⁷ in order to design a matrix of social transformation to secure a comprehensive notion of environmental justice to operate as the fundamental principle upon which governance and the exploitation of natural resources will be based.

(Distributive) Justice and Environmental Justice: Re-building the Idea of Justice within the WECT

The idea of justice is pervasive in the WECT. It (and particularly social justice) has been the main inspiration of this tradition since the Weimar Constitution (1919) as a result of the historic compromise between the traditional values of freedom in the original conception of liberalism and a social commitment to provide adequate living conditions to all citizens in order to ensure 'real freedom'. Justice is here understood as basic equality in the conditions of existence of all citizens⁸ - in other words it is conceived of as distributive justice. The goal of distributive justice is to compensate the non-desired effects of commutative justice in traditional constitutionalism, diminishing inequalities and giving people the opportunity to achieve a minimal quality of life.⁹

This conception then underpins the idea of social transformation as justified. The problem with this approach, however, is that this transformation is achieved through

⁶ The WECT can be seen as a compromise between civil rights, rooted in the tradition of early constitutionalism, democratic rights and social rights, all linked with the idea of human dignity. See: R. Ávila, Santamaría *El Neoconstitucionalismo Transformador. El Estado y el Derecho en la Constitución de 2008* (2011) Abya-Yala & Universidad Andina Simón Bolívar, Quito, at 168-169; S. Crook, J. Patulski and M. Waters, *Postmodernization. Change in Advanced Society* (1992) Thousand Oaks (London) and Sage (New Delhi), at 84; and M. García Herrera and G. Maestro Buelga, *Marginación, Estado Social y Prestaciones Autonómicas* (1999) Cedecs, Barcelona, at 35.

⁷ See J. Jordano Fraga, *La Protección Del Derecho a un Medio Ambiente Adecuado* (1995) J. M. Bosch, Barcelona, at 110.

⁸ See M. García Herrera and G. Maestro Buelga, 'Regulación Constitucional y Posibilidad del Estado Social' (1998) 22 *Revista Vasca de Administración Pública*, 87.

⁹ See A. Llano, *La Nueva Sensibilidad* (1998) Espasa, Madrid, at 188.

the growing exploitation of natural resources. The idea of distributive justice hegemonic within the WECT is based on the belief that natural resources are both virtually inexhaustible and resistant to human exploitation.¹⁰ In the revised concept of justice proposed here environmental justice serves as a restraint on this conception of distributive justice by acting as the higher principle upon which the idea of social change propelled by public powers is based. This approach should ensure that some of the less desirable features of the WECT are avoided.

The first flaw to be addressed is the fact that the welfare achieved by irrational exploitation of natural resources is predicated on the degradation of the environment. This gives way to an internal contradiction posed by the actual limitation and vulnerability of natural resources: the more we exploit them to get more goods to achieve more welfare, the more they degenerate threatening the same welfare.¹¹ With that, environmental degradation leads to a new scenario regarding the promotion of a minimal standard of living, which cannot be conceived in the same terms as it has been in the past.¹² We must therefore revise the idea of distributive justice in this tradition, along with its notion of welfare.

Updating that idea of justice, to take into account scarcity and vulnerability of natural resources, and relying on a program of social transformation, provides a mechanism to address (i), (ii), (iii) and (iv), as formulated in the first section. That program would have to fix new rules for the global exchange of goods, protecting more vulnerable people. Moreover, it would be required to adapt the conception of welfare hegemonic in the West, (which is based more or less on consumerism and self-gratification) to the factual limitations given by nature. The result should be shared minimal living conditions, based on a realistic use of natural resources (*ökologisches Existenzminimum*).¹³

¹⁰ For that reason, when environmental questions are raised within the classic model of the European social state we must face up to sharp conflicts between constitutional goods: economic growth as a source of welfare vs. environmental protection as a (pre-)condition to welfare. See R. Alexy, 'Los Derechos Fundamentales en el Estado Constitucional Democrático' in Carbonell (supra note 2) at 37.

¹¹ See, among others and using only Spanish sources: R. Canosa Usera, 'Aspectos constitucionales del Derecho Ambiental' (1996) 94 *Revista de Estudios Políticos*, 73 at 81; and J. Serrano Moreno, *Ecología y Derecho: principios de Derecho Ambiental y Ecología Jurídica* (1992) Comares, Granada, at 52.

¹² See U. Karpen, 'Zu Einem Grundrecht auf Umweltschutz' in W. Thieme (ed), *Umweltschutz im Recht* (1998) Duncker & Humblot, Berlin, at 21.

¹³ See D. Murswiek, *Umweltschutz als Staatszweck* (1995) Economica, Bonn, at 47.

This result would be achieved through the redistribution of the available resources, in order to provide minimal conditions of welfare in the broader terms proposed here to all human beings, including future generations.¹⁴ This would imply limitations for some, the well-off individuals, who would lose a certain amount of autonomy - in terms of access to resources to pursue a certain project of life - to enhance the autonomy of those who have more limited access to resources and are more vulnerable to (environmental) harm.¹⁵

A (Renewed) Idea of Distributive Justice as a Model for Global Environmental Justice

Despite the WECT's aspirations to universality, the distribution of environmental benefits and harms is, as indicated above, inequitable. The majority of the global population bears the environmental cost derived from the use of natural resources that feeds the welfare of the minority.¹⁶ Reform of the concept of environmental justice requires us to acknowledge also that the concept must be conceived as having universal application and that this requires us to address the human community at the global level, designing a fairer distribution of the available resources and the (social and environmental) costs derived from their use.¹⁷ We have to extend the ideas of justice, solidarity, equity and fairness to all human beings, regardless of place and time.¹⁸

¹⁴ See the Third Principle of the *Rio Declaration on Environment and Development* (1992) (available at <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163>).

The idea of solidarity including all human community, present and future, seems clear.

¹⁵ There are different studies on the global distribution of goods, wealth and welfare. See, for example: J. Davies, S. Sandstrom, A. Shorrocks and E. Wolff, *The World Distribution of Household Wealth* (available at <http://www.iariw.org/papers/2006/davies.pdf>).

¹⁶ See E. Altvater, *El precio del Bienestar* (1994) Alfons el Magnànim, Valencia, at 188 (original edition in German: E. Altvater, *Der Preis Des Wohlstands: Oder Umweltplunderung Und Neue Welt(Un)ordnung* (1992) Westfälisches Dampfboot, Münster).

¹⁷ The international law principle of Common but Differentiated Responsibilities provides a good example of how a global community of solidarity for environmental protection and social (in-)justice reasons may be constituted. See, for example, Article 3(1) of the *United Nations Framework Convention on Climate Change* (UNFCCC, signed in Rio de Janeiro in 1992, within the framework the Earth Summit and available at <http://unfccc.int/resource/docs/convkp/conveng.pdf>). See further on this aspect: S. Clarkson and S. Wood, *A Perilous Imbalance. The Globalization of Canadian Law and Governance* (2009) UBC Press, Vancouver and Toronto, at 122ff; and M. Elizalde Carranza, 'Desarrollo y Cambio Climático' (2010) I-1 *Revista Catalana de Dret Ambiental*, at 11-12.

¹⁸ See D. Jositsch, 'Das Konzept Nachhaltigen Entwicklung (Sustainable Development) im Völkerrecht und Seine Innerstaatliche Umweltsetzung' (1997) *Umweltrecht in der Praxis / Le Droit de L'Environnement Dans la Pratique*, 93 at 99.

Without such reform current problems in the South and North, such as massive migration movements and innumerable episodes of violence, in the form of war or terrorism, will continue. The temptation to move towards isolation evidenced in the richer countries by security policies, border control, the war against terror, humanitarian military interventions, etc., with some elements of international charity, such as NGO activities and international aid, therefore, must be replaced by a commitment to justice.¹⁹ The social state clause in the WECT was originally an attempt to address an inner situation analogous to the present global one - distributing better welfare as a means to dignify the working class and prevent economic/political violence. This same conception could provide the inspiration now for reform at the global level. Guaranteeing a certain minimal welfare for all human beings would strengthen the legitimacy of international society. For this to work, however, the distribution of goods and harms under the conception of universal welfare has to be undertaken in awareness of the scarcity and vulnerability of natural resources. In this sense social justice and environmental protection are closely linked.²⁰

Combining environmental and social concerns demands a re-thinking of the ideas of development and welfare dominant in Western culture and, particularly, within the WECT. While there are quite marked differences between the American constitutional tradition and the WECT in terms of the contents of the constitution, the role of public powers and the procedures of distribution of goods and services, the idea of welfare is the same as is the idea of the essential elements of the human being. The former is based on consumption of goods and self-gratification; the latter, on individualism and submission of nature to human caprice.²¹ In fact, early liberalism, Marxism and social democracy are based on the same idea of domination of nature and its exploitation as a source of goods (merchandises) to be socially distributed (through the market or public assignment) in order to satisfy human

¹⁹ See S. Palidda, 'La Revolución Policial' in L. Puente Aba, M. Zapico Barbeito and L. Rodríguez Moro (eds), *Criminalidad Organizada, Terrorismo e Inmigración. Retos Contemporáneos de la Política Criminal* (2008) Comares, Granada.

²⁰ This has been underlined from the very moment when international public opinion began to be concerned about environmental protection, for example, in Stockholm, in 1972. See Jositsch (supra note 18) at 99.

²¹ See J. Baudrillard, *La Sociedad de Consumo. Sus Mitos, Sus Estructuras* (2009) Siglo XXI, Madrid, at 39ff (original edition in French: J. Baudrillard, *La Société de Consommation, ses Mythes, ses Structures* (1970) Éditions Denoël, Paris).

demands.²² This presents us with certain problems in moving to a new concept of environmental justice.

These conceptions of welfare underpin the behaviour of individuals and moving to a new concept of justice requires those same individuals to change some of their behaviour and some of their internal beliefs and aspirations. They will, for example, have to renounce a certain standard of living - even if it is only a potential standard they are renouncing - for environmental reasons, but this is not easy for individuals to do.²³ Consequently, it is difficult for active environmental policies addressed to the rationalization of the use of natural resources which involve slowing down development, or slowing down the rate of growth in the production of goods to obtain social support.²⁴

Normally, this difficulty is addressed through the idea of a new qualitative conception of development, different to the quantitative measuring of development in terms of capitalist accumulation.²⁵ During the Eighties, the idea of sustainable development became very popular as providing a suitable new concept of development. The idea underpinning it was that economic development, environmental protection and social justice would be combined in a single notion at the global level. The concept has, however, been criticized because of its ambiguity²⁶ and, in my opinion, it appears still to rely on the belief of the inexhaustibleness and resilience of natural resources.²⁷

Despite this, the idea of sustainable development has attained a certain level of success and has been incorporated into constitutional texts and used in the case-law

²² Social democracy tries to encapsulate the best of both worlds (liberalism and socialism), relying on the exploitation of natural resources to feed the social metabolism as well. See Crook et al (supra note 6) at 84.

²³ See, for example: R. Canosa Usera, *Constitución y Medio Ambiente* (2000) Dykinson, Madrid, at 37.

²⁴ See P. Knoepfel, 'Zur Wirksamkeit des heutigen Umweltschutzrechts', *Umweltrecht in der Praxis / Le Droit de l'environnement dans la pratique* (1994), at 231.

²⁵ Many environmental law scholars have pointed to this. Among Spanish academics, which are my primary source in this paper, see: Domper Ferrando, 'El Medio Ambiente: Planteamientos Constitucionales' in G. Gómez Orfanel (ed), *Derecho del Medio Ambiente* (1995) Ministerio de Justicia e Interior, Madrid, at 31; and D. Loperena Rota, *El Derecho al Medio Ambiente Adecuado* (1998) Civitas, Madrid, at 75.

²⁶ See Jositsch (supra note 18) at 117.

²⁷ For a similar opinion, see: N. Ridoux, *Menos es Más. Introducción a la filosofía del Decrecimiento* (2009) Los libros del lince, Barcelona, at 151 (original edition in French: N. Ridoux, *La Décroissance Pour Tous* (2006) Parangon, Lyon).

of constitutional courts.²⁸ The point is to improve the life of people at the global level, maintaining the environment capable of securing both inter- and intra-generational stability of welfare.²⁹ We therefore must reconsider the 'development' part of the idea of sustainable development and adopt a definition which moves away from a permanent process of capital accumulation, with a growing consumption of resources.³⁰

We need a new pattern of development within a global framework of justice for all, based on the idea of a fair use of natural resources. For this reason, the irresponsible stimulation of economic growth in terms of capital accumulation would have to be revised.³¹ To achieve this, I argue that the new definition of welfare must draw on a social ethos not based on possessive individualism,³² but adapted to the global ecosystem's carrying capacity.³³ The idea of the constitution as a project of social change and the use of public policies to put limits on individual economic behaviour, typical of the WECT, provides a good mechanism to do that.³⁴

Environmental Justice and New Lifestyles: A Critique of Consumerism as a Paradigm of Welfare

The next task is to address the question of which concept of welfare to use to define the minimal quality of life for the population around the world, recognising the scarcity and vulnerability of natural resources. Our first premise is that it is unsound to understand welfare in terms of the average capacity of consumption in richer countries. As discussed above, economic growth, social justice and environmental

²⁸ See, for example: Polish Constitution of 1997 (Article 6) (available at <http://www.senat.gov.pl/k5eng/dok/konstytu/2.htm>); Swiss Constitution of 2000 (Article 3(2) and 73) (available at <http://www.admin.ch/ch/e/rs/1/101.en.pdf>); and the Treaty of the European Union (Article 3(1) of the Consolidated Version after the entering in force of Treaty of Lisbon, 2007) (available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0013:0046:EN:PDF>). On case law from constitutional courts, see for example, the Spanish case: STC 64/1982, November 4th, FJ 2.

²⁹ See Jositsch (supra note 18) at 96.

³⁰ See, for example: Margalef (supra note 3) at 343.

³¹ See R. Meier and F. Walter, *Umweltabgaben für die Schweiz* (1991) Rüegger, Chur and Zurich, at 31ff.

³² See P. Macchia, *Normativa a Tutela Dell'Ambiente e Disciplina del sistema Produttivo Nell'Ordinamento Giuridico Elvetico* (1994) Jovene, Naples, at 4.

³³ See E. Gudynas, 'Derechos de la Naturaleza y Políticas Ambientales' in A. Acosta and E. Aguirre (eds), *Derechos de la Naturaleza. El Futuro es Ahora* (2009) Abya-Yala, Quito, at 49.

³⁴ See C. Gethmann, 'Individuelle Freiheit und Umweltschutz aus philosophischer Sicht', in M. Kloepfer (ed), *Umweltstaat als Zukunft* (1994) Economica, Bonn, at 42.

protection, seem to be impossible to attain for all given the limited carrying capacity of the system.³⁵

There are three possible tools to use to help address this question of welfare: technology (how efficiently we use natural resources), population (how many use natural resources) and consumption (how many natural resources are being used).³⁶ Theoretically we could rely on certain technological innovations and try to enhance our knowledge of nature.³⁷ The problem with this approach is, however, that, technology based on the Western modern techno-scientific paradigm has been part of the problem and it seems clear that new technologies can only solve old problems by creating new ones.³⁸ With regards to the question of population, measures suggested for its control tend to approach Neo-Malthusianism and conflict with the concepts of human dignity and freedom.³⁹

Given these limitations we must therefore focus on the third element - consumption and economic growth.⁴⁰ As indicated earlier this requires a redefinition of welfare. A key issue to be addressed in this reform is the notion of need, which has been given a very generous interpretation in the North in terms of consumption of goods and services.⁴¹ This gives rise to predatory attitudes regarding the environment and other people⁴² and so this conception must be revised.

This leads to two major problems: (i) how to make richer people consume less; (ii) how to define a sustainable lifestyle. I suggest that this is best achieved by moving away from a focus on rights and entitlements to a focus on responsibility towards

³⁵ See A. Dobson, *Justice and the Environment. Conceptions of Environmental Sustainability and Dimensions of Social Justice* (1998) Oxford University Press, Oxford, at 14ff.

³⁶ See Jositsch (supra note 18) at 117, for the three factors mentioned.

³⁷ See A. Petitpierre, *Environmental Law in Switzerland* (1999) Kluwer-Stämpfli, Den Haag-London-Boston-Bern, at 31-32.

³⁸ On a new (holistic and transcultural) paradigm of knowledge and the necessity of (a more open) social definition of the priorities of scientific research, see, among others: R. Fornet-Betancourt, 'Ciència, Tecnologia i Política en la Filosofia de Panikkar' in I. Boada (ed), *La Filosofia Intercultural de Raimon Panikkar* (2004) CETC, Barcelona, at 126; and M. Palacios 'La Cultura Bioética' (2001) 162/163 *Sistema*, at 110.

³⁹ See, for example: M. Gispert Cruells and A. De Albornoz de la Escosura, 'La Etnobotánica: Alternativa Para El Siglo XXI' (2000) Alcina Franch; and Calés Bourdet (supra note 3) at 347.

⁴⁰ See A. Gorz, 'Ecología y Libertad' in *Crítica de la Razón Productivista* (2008) Libros de la Catarata, Madrid, at 76 (original edition in French: A. Gorz, *Écologie et Liberté* (1977) Galilée, Paris; the Spanish text used is an abridged selection of the original Spanish translation, published in 1979).

⁴¹ See D. Murswiek, 'Freiheit und Umweltschutz aus Juristischer Sicht' in M. Klopfer (ed), *Umweltstaat als Zukunft* (1994) Economica, Bonn, at 65.

⁴² See M. Barnard, 'Advertising. The Rethorical Imperative', in C. Jenks, *Visual Culture* (1995) Routledge, London and New York, at 33-34.

others and nature. The concept of environmental justice would then draw its content not only from the notion of responsibility but also quality of life, stewardship, care and community solidarity.⁴³ This reinterpretation would move us from a parasitic idea of the environment to establishing a social trust over it.

It would also enable a new idea of human welfare to be built, based on the idea of quality of life and linked to new conceptions of public participation and responsibility.⁴⁴ This minimal quality of life for all human beings, would allow each to be autonomous and empowered, within the limitations placed on the use of natural resources and the requirements to respect other human beings, to pursue their own projects of life. This, as Nobel Prize winner Amartya Sen has underlined,⁴⁵ would prevent predatory capital accumulation and irrational economic growth.

Having reached this point, it seems that the WECT could have remarkable strengths in coping with environmental constraints and their implications, provided its idea of welfare is revised, but it would not really give individuals and communities enough room to pursue their projects of life and define their ideas of welfare. As it acts as a stimulus for government to engage actively in improving quality of life for their population, the WECT program of social transformation can reduce freedom of action for individuals and communities. Where this happens the Constitution can become closed and subsequently threaten pluralism.⁴⁶

⁴³ For these ideas, a major reference are the works of Hans Jonas. See, for example: H. Jonas, *El Principio de Responsabilidad - Ensayo de una Ética para la Civilización Tecnológica*, Herder, Barcelona (original edition in German: H. Jonas, *Das Prinzip Verantwortung: Versuch einer Ethik für die Technologische Zivilisation* (1979) Insel, Frankfurt; edition in English: H. Jonas, *The Imperative of Responsibility: In Search of an Ethics for the Technological Age* (1985) University of Chicago, Chicago). For the ecofeminist contribution to ethics of care, see: V. Held, *The Ethics of Care: Personal, Political, Global* (2006) University of Oxford Press, Oxford.

⁴⁴ See Jositsch (supra note 18) at 97; Murswiek (supra note 13) at 50.

⁴⁵ See: A. Cortina, *Por una Ética del Consumo* (2002) Taurus, Madrid, at 203ff; and D. Thürer, 'Recht der Internationalen Gemeinschaft und Wandel der Staatlichkeit' in D. Thürer, J. Aubert and J. Müller (eds), *Verfassungsrecht der Schweiz / Droit constitutionnel Suisse* (2001) Schulthess, Zurich, at 59.

⁴⁶ This has been underlined in the recent constitutional developments in Bolivia and Ecuador, where a robust social state - at least in the constitutional text - appears as a threat for discrepancy, political pluralism and cultural minorities. See J. Echeverría, 'Complejización del Campo Político en la Construcción Democrática en el Ecuador' in F. Burbano de Lara (ed), *Transiciones y Rupturas. El Ecuador en la Segunda Mitad del Siglo XX* (2010) FLACSO Ecuador & Ministerio de Cultura, Quito, at 86.

My idea of environmental justice demands government activity to propel social change and redistribution of goods and harms, but demands also government restraint in order to leave room for people to take their own decisions.

A Conclusion: Environmental Justice in a Plural World

The key arguments presented here are that we must both induce responsibility and care for nature and human beings, fix limits on social behaviour, and leave room within these limitations for pluralism in which individuals and communities would have the possibility of defining their own projects of life, their idea of happiness, their priorities and their idea of welfare. For this reason, we must be cautious in giving public powers tools of social intervention. There could, of course, be a temptation to define the contents of welfare from a (supposedly) universal point of view within the dense constitutional discourse of social change in the WECT, but this temptation must be avoided. The definition of the idea of welfare must be left to individuals and communities in a world of diversity and pluralism, with the proviso that they must take account of the limitations posed by the scarcity and vulnerability of natural resources.

Each community would then have its space for decision making in accordance with their own cultural background. This would give rise to different circles of consensus.⁴⁷ Within these different community consensuses, some autonomy must be left to individuals. Precisely how much autonomy was left or what its shape would be would be defined by the cultural priorities of that community. At a higher level, different communities can be aggregated to define a shared core of consensus. They would then agree to some limitations on their autonomy while leaving room to each of them to preserve its identity. I imagine a multi-space shaped by different ranges of consensus at community, state, regional or global level, where welfare is defined and re-defined in a permanent social debate in different spaces of social dialogue.

This requires an open attitude to allow rules to evolve within the flow of intercultural dialogue. In order to make decision making in complex multi-spaces of action possible, it is necessary to establish common rules and principles at each level which are based on the consensus of the communities located at lower levels (shared rule),

⁴⁷ It is not only a question of distribution, but of recognition of the political role of different individuals and communities in the definition of priorities and the way harms and benefits are to be distributed. See, in this sense, D. Schlosberg, 'Reconceiving Environmental Justice: Global Movements and Political Theories (2004) 13 *Environmental Politics*, at 537.

which would have their respective spaces for decisions within this framework (self-rule).⁴⁸ What the federal WECT brings to this is a good procedure in which this decision making can take place. It provides a tradition of designing rules to regulate processes to cope with diversity, entailing shared rule and self-rule. It is this that makes it the most suitable approach to dealing with the creation of consensus and limitation of rights at different levels of decision making.

At the highest level of consensus, human rights, redefined according to the idea of environmental justice presented before, would place limitations on decision making at all lower levels. The global consensus established in these terms would serve as a defence for the most vulnerable people, for people in the future and for the environment and the diversity of life. In this scenario, environmental justice serves to ensure a fair distribution of burdens and an equitable access to goods. It thus both provides the founding principle for global consensus and redefines human rights to address scarcity of resources.

In conclusion, I have (i) defined environmental justice in a wider way, taking into account the problems of distribution of environmental harms and of goods derived from the use of natural resources, (ii) linked this idea to a process of social transformation at the global level propelled by public action which has been inspired by the WECT, and (iii) avoided the menaces to pluralism implicit in any dense constitutional discourse. These three points seem to be a way to reach the goals posed by the five points in the introduction and make environmental justice a central idea in global governance.

⁴⁸ See J. Jaria i Manzano, 'Circles of Consensus. The Preservation of Cultural Diversity through Political Processes' (2012) 8 *Utrecht Law Review*, at 99.