

12-14-2024

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Recommended Citation

Luigi Ferrajoli, *A Constitution of the Earth, to Save Humanity*, 72 Buff. L. Rev. (2024).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol72/iss5/14>

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A Constitution of the Earth, to Save Humanity

LUIGI FERRAJOLI†

I. GLOBAL CATASTROPHES, NOT COPEABLE BY TODAY'S INSTITUTIONS

Humanity is facing one of the most dramatic moments in its history. There are several global challenges and problems that are not part of the political agenda of national governments, even though their solution is crucial for the survival of humanity.

The first catastrophe is environmental.¹ Our generation is causing irreversible and increasing damage to our natural environment.² Every year, the amount of carbon dioxide released into the atmosphere increases, endangering the habitability of our planet. It is crucial to address this issue urgently. The effects of ecologically unsustainable industrial development, such as global warming, melting ice caps in Greenland and Antarctica, air and sea pollution, reduced biodiversity, droughts, fires, and floods, are damaging the conditions of life on our planet. Non-renewable energy resources, such as oil, coal, and natural gas, which took

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1. LUIGI FERRAJOLI, PER UNA COSTITUZIONE DELLA TERRA. L'UMANITÀ AL BIVIO 29–30 (2022).

2. So much that our current era is sometimes called as a new phase in the history of the Earth, that deserves the name of “Anthropocene.” Jeremy Rifkin has also used the term “ecocide,” with special reference to the costs and consequences—ecological instability, animal mistreatment, diseases and growth in global inequality—of the dietary habits of rich countries. *See* JEREMY RIFKIN, ECOCIDIO: ASCESA E CADUTA DELLA CULTURA DELLA CARNE (Paolo Canton tran., 2014); JEREMY RIFKIN, BEYOND BEEF: THE RISE AND FALL OF THE CATTLE CULTURE (1st ed., 1992). *See also* JEREMY RIFKIN, THE THIRD INDUSTRIAL REVOLUTION: HOW LATERAL POWER IS TRANSFORMING ENERGY, THE ECONOMY, AND THE WORLD (2013).

millions of years to accumulate, are being depleted in just two centuries due to unsustainable development. This is leading to the destruction of nature's commons, as if we were the last generation living on Earth.³

The second catastrophe is wars and threats to peace fostered by the production, trade, and possession of increasingly lethal weapons.⁴ The repudiation of war, as expressed in the Italian Constitution and the UN Charter, has disappeared from the international political horizon. Since the end of the Soviet Union, new wars of aggression have been unleashed by the great powers as a means of resolving international disputes. In recent years, there have been conflicts in Iraq, the former Yugoslavia, Afghanistan, Libya, Syria, Ukraine, and Gaza. The situation in Ukraine is of particular concern due to the ongoing war initiated by Putin, which has the potential to escalate into a nuclear conflict. In Gaza, Israel has responded to a terrorist attack by Hamas with a war of retaliation that has resulted in the deaths of many innocent civilians. Today's conflicts differ from those of the past due to the use of increasingly lethal weaponry and the growing number of civilian casualties.

3. In the dramatically prophetic words of Carla Benedetti,

the living of now—or a part of them, as we are not all responsible in equal measure—are altering the biosphere, damaging the reserves of the planet accumulated over millions of years, are consuming the polar glaciers, forests, natural oil, exterminating the fauna, the flora, so condemning the future generations to a terrible agony. The history of humanity is filled with exterminations and atrocities. But never before today, it has occurred that violence could be exercised against the living of tomorrow.

CARLA BENEDETTI, *LA LETTERATURA CI SALVERÀ DALL'ESTINZIONE* 4–5 (2021). She adds later:

We are the first generations that live the perspective of a possible extinction of the species. Such experience was never lived before for any men in any other historical era, nor discussed by any philosopher, psychologist, historian, artist, poet, novelist, anthropologist, or scientist, and it should provoke an earthquake in the minds of the men of today and their prehistorical brains, it should shake our feelings; generate a chasm in the structure of our individual and social lives, and displace the spatiotemporal axes and references from which we are used to perceiving history.

Id. at 8.

4. FERRAJOLI, *supra* note 1 at 30–32.

The third catastrophe is the growing global inequality, poverty, hunger, and untreated disease, increasingly visible in a fully interconnected world.⁵ The statistics are grim. According to Oxfam's 2024 report, the wealth of the world's five richest people has more than doubled in the last four years, from 405 billion in 2020 to 869 billion today, while 60 per cent of the world's population is impoverished.⁶ In 2018, 821 million people suffered from hunger and thirst, and more than 2 billion people do not have access to the 460 essential or life-saving medicines that the World Health Organization has said should be available to all since 1977.⁷ The consequences of these scourges are appalling. More than 8 million people—24,000 per day—most of them children, die every year from lack of clean water and basic nutrition.⁸ Just as many die from the unavailability of life-saving medicines,⁹ victims of the market as much as of disease, because some of these medicines are patented or, worse, not produced for lack of demand in rich countries where some of the diseases they treat have disappeared.

The fourth disaster is the brutal exploitation of labor.¹⁰ As a result of the downward competition generated by globalization between workers in rich countries and workers in poor countries, where companies can freely relocate their production, the rights guarantees of the former have been dismantled and the exploitation of the latter has reached

5. *Id.* at 32–4.

6. Rebecca Riddell et al., *Inequality Inc.*, OXFAM INT'L (2024), <https://www.oxfam.org/en/research/inequality-inc> (last visited Oct 9, 2024).

7. See *Essential medicines and pharmaceutical policies*, World Health Org. Reg'l Off. for the E. Mediterranean, <http://www.emro.who.int/essential-medicines/strategy-access/> (last visited Oct 9, 2024).

8. See Anna Pasquale, *Nuovi dati FAO sulla fame nel mondo: uno scandalo che continua*, OXFAM ITALIA (2012), <https://www.oxfamitalia.org/nuovi-dati-fao-sulla-fame-nel-mondo-uno-scandalo-che-continua/> (last visited Oct 9, 2024).

9. In 2017, 2 billion people lack access to essential medicines, and more than three million people dies due to the lack of life-saving medicines, according to data from DANIELA PADOAN, NIENTE DI QUESTO MONDO CI RISULTA INDIFFERENTE. ASSOCIAZIONE LAUDATO SÌ. UN'ALLEANZA PER IL CLIMA, LA TERRA E LA GIUSTIZIA SOCIALE 184 (2020).

10. FERRAJOLI, *supra* note 1, at 34–36.

para-slavery forms.¹¹ In developed countries, where the workers, in a century and a half of struggle, had won civil living conditions, fundamental rights, and dignity as human beings, labor law has been destroyed.¹² Labor, through increasing precariousness and the pressure of liberalist measures, has been turned into a commodity, as in the origins of capitalism. In less developed countries, wages are less than one dollar an hour, and slave labor has reappeared: it is estimated that there are over 45 million people in the world working in conditions of slavery.¹³

The fifth catastrophe is the tragedy of the hundreds of thousands of migrants who, every year, flee from one or more of these tragedies, are turned back at our borders, and, if they do not die in their odyssey, are subjected to oppression and racist discrimination in our countries.¹⁴ This is a flagrant violation of the right to emigrate, which was theorized in Spain since the 16th century to legitimize the conquest and colonization of the “New World” by Spaniards,¹⁵ and which today is codified in the Universal Declaration of Human Rights of 1948,¹⁶ the International

11. On the transformation of labor caused in the last decades by the joint action of globalization, technological revolution and the prominence of information production. See DOMENICO DE MASI, *IL LAVORO NEL XXI SECOLO* (2018).

12. See LUCIANO GALLINO, *IL LAVORO NON È UNA MERCE. CONTRO LA FLESSIBILITÀ* x and 38 (6th ed., 2009).

13. See ENRICO GIOVANNINI, *L'UTOPIA SOSTENIBILE* vi (6 edizione ed. 2018). Naturally, the precise number is indeterminate due to the invisible character of this embarrassment. See also Tomasso Cardinale, *La schiavitù oggi nel mondo*, DOCUMENTAZIONE.INFO (2017), <https://www.documentazione.info/la-schiavitù-oggi-nel-mondo> (last visited Oct 9, 2024). Moreover, the phenomenon is growing. It has at least duplicated from twenty years ago, when K. Bales estimated 27 million people in slavery. KEVIN BALES, *DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY* 8 (Revised, Updated ed. 1999).

14. FERRAJOLI, *supra* note 1 at 37–39.

15. The right to emigrate was the first natural right theorized by political philosophy. First, by Francisco de Vitorias as part of his argument for the Spaniard Conquest of the “New World.” Francisco de Vitorias, *De Indis et de Iure Belli Relectiones* in *Relectiones Theologicae* XII 257–63 (Ernest Nys, ed., 1964) (1539).

16. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 8, 1948), arts. 13–14.

Covenant on Civil and Political Rights of 1966,¹⁷ and the Italian Constitution.¹⁸ All agreements with countries of emigration aimed at preventing the departure of migrants are a violation of a fundamental right, that is, of international law and existing constitutional law, and at the same time, of the principle of equal dignity of all human beings. Even more serious is the project promoted by the right-wing government in Italy to deport migrants to detention centers in Albania.¹⁹ Migrants are not things, they are people, and their transfer outside our borders against their will would be not only a violation of the right to migrate, but also a kidnapping.

These catastrophes are not and cannot be addressed by national policies, which are inert and impotent because they are anchored in the narrow spaces of constituencies and the short time frames of elections and polls. However, it is certain that 8 billion people, 193 sovereign states, nine of them nuclear-armed, a voracious and predatory anarcho-capitalism, and an ecologically unsustainable industrial system cannot survive long without producing catastrophes capable of endangering the habitability of the planet and the very survival of humanity.

This is a fact. As a result of globalization, the very coordinates and assumptions of constitutionalism, as they were drawn up in that great constituent season, the five-year period 1945–1949, by the rigid constitutions of the post-World War II period, the UN Charter,²⁰ the Universal Declaration of 1948,²¹ and then the many international charters of human rights, have changed. If it is true that constitutionalism is a system of limits and restraints imposed on otherwise savage powers in order to guarantee

17. Int'l Covenant on Civil and Pol. Rts, art. 12, Dec. 16, 1966, U.N.T.S. 171; S. Treaty Doc. No. 95-20.

18. Costituzione Italiana, art. 35.

19. See *Italy: New Detention Centres in Albania are a "Stain on the Italian Government,"* Amnesty International (July 31, 2024), <https://www.amnesty.org/en/latest/press-release/2024/07/italy-new-detention-centres-in-albania-are-a-stain-on-the-italian-government/>.

20. G.A. Res. 832 (IX), (Oct. 21, 1954).

21. Universal Declaration of Human Rights, *supra* note 16.

constitutionally established principles of justice and fundamental rights, then we must recognize that since that constitutional period both the powers to be restrained and their assaults on fundamental goods and rights have changed. First and foremost, the geography of power has changed. The powers that matter, the powers on whose exercise the future of humanity depends, have moved beyond the borders of nation states. There has also been a change in the nature of the attacks on law and rights, which are all global in nature. If humanity is to survive, global powers and global aggression demand a civilizational leap, an extension of constitutionalism beyond the state to match the global powers from which the threats to our future emanate.

The result is that today's constitutionalism is inadequate to meet the challenges posed by these global aggressions.²² Because of their spatial limitations, national governments and their constitutions are objectively powerless in the face of the ongoing global catastrophes, all of which are destined to get worse. It is not just a matter of bad governance, or national selfishness, or the desire for political or economic domination. It is a dramatically objective problem. Even if we wanted to, no actor in world politics or economics, no matter how powerful—no state, even the most militarily powerful, no large multinational corporation, even if run by philanthropists—ever single-handedly solve the problems of global warming, global disarmament, and global inequality. Only a new global social contract between all the planet's states and peoples can make binding the guarantees of peace, the fundamental rights of all human beings and the vital goods of nature.

22. I have argued for the need of global constitutionalism in Luigi Ferrajoli, *Democrazia Senza Stato?*, in RIPENSARE LO STATO 199 (2003); LUIGI FERRAJOLI, *PRINCIPIA IURIS: TEORIA DEL DIRITTO E DELLA DEMOCRAZIA* (2d ed. TEORIA DELLA DEMOCRAZIA 2007); Luigi Ferrajoli, *Costituzione e Globalizzazione*, in IL FUTURO DI NORBERTO BOBBIO 118 (Michaelangelo Bovero ed., 2011); LUIGI FERRAJOLI, *LA DEMOCRAZIA ATTRAVERSO I DIRITTI POLITICO: IL COSTITUZIONALISMO GARANTISTA COME MODELLO TEORICO E COME PROGETTO POLITICO* 181–255 (2013); LUIGI FERRAJOLI, *COSTITUZIONALISMO OLTRE LO STATO* (2017); LUIGI FERRAJOLI, *LA COSTRUZIONE DELLA DEMOCRAZIA: TEORIA DEL GARANTISMO COSTITUZIONALE* 176–224, 394–450 (2021).

That social contract, let us not forget, was made in the aftermath of the Second World War through that embryonic world constitution formed by the UN Charter and the many international human rights charters. But it failed for two reasons. The first was that contrary to the principles of peace and human rights, the UN Charter enshrined the sovereignty of states and their different citizenships. All international law, institutions, and organizations are modeled on the paradigm of the sovereign nation-state. States are the only actors and recipients of international law. It is clear that the sovereignty of states and, consequently, the diversity and inequality of national citizenships, render illusory the principles of peace and equality of fundamental rights, even though they are enshrined in so many human rights charters, because they are not superior to them and therefore not rigidly binding.²³ The second, and even more serious, reason for the failure of these charters is that they have failed to provide what we might call “primary guarantee institutions” for the freedoms and social rights they enshrine. The principles of peace and equality and the fundamental rights of human beings, as proclaimed in so many human rights charters, have thus remained on paper as unfulfilled promises for the vast majority of humanity.

This is why we urgently need to re-think the covenant of coexistence between all peoples and states, to give birth to a *global constitutionalism* capable of filling the *public law vacuum* created by the asymmetry between the global character of today’s unbridled market forces and the most powerful states, and the still predominantly local character of politics and law. This is the project for an Earth Constitution formulated in a volume originally published in Italian translated into several languages and summarized

23. It is true also for the United Nations what is claimed in the *Manifest di Ventotene*: “It is already demonstrated the uselessness, and even harmful character, of organisms such as the League of Nations, which attempted to advanced international law without force capable of imposing its decisions and respecting the absolute sovereignty of the participating states.” ALTIERO SPINELLI & ERNESTO ROSSI, *IL MANIFESTO DI VENTOTENE* 21 (2024).

here.²⁴ It is not a utopian hypothesis. It is the only rational and realistic response to the same dilemma that Thomas Hobbes faced almost four centuries ago: the general insecurity brought about by the savage freedom of the fittest or the pact of peaceful coexistence based on the prohibition of war and the guarantee of life.²⁵

There are two dramatic differences between the natural society of *homo homini lupus* hypothesized by Hobbes and the state of nature in which the 193 sovereign states and the great global economic and financial powers find themselves. The first is that the present savage society of global powers is a society no longer populated by natural wolves but by artificial wolves—states and markets—essentially removed from the control of their creators and endowed with a destructive capacity incomparably greater than any armament of the past. The second is that, unlike all other past catastrophes—the world wars, the horrors of totalitarianism—ecological and nuclear catastrophes are largely irreversible, and we may not be in time to formulate new “never again” policies. Indeed, there is a real danger that we will not come to realize that we need a new covenant until it is too late.

Hence there is a need for a new social contract of a global nature, between all the states and peoples of the planet, to remedy the shortcomings of the UN Charter and the many international human rights charters. It is not enough to proclaim peace and fundamental rights. It is necessary to introduce the means, in other words the guarantees, without which the goals represented by peace and rights are doomed to remain on paper. The proclamation of peace, equality and human rights in so many supranational charters would have required, in order to be effective, two conditions that these charters lack. First, the guarantee of their rigidity, as a set of norms superior to all other sources, national and international, and second, above all, the introduction of their

24. LUIGI FERRAJOLI, *PER UNA COSTITUZIONE DELLA TERRA: L'UMANITÀ AL BIVIO* (1st ed., 2022); LUIGI FERRAJOLI, *POR UNA CONSTITUCIÓN DE LA TIERRA: LA HUMANIDAD EN LA ENCRUCIJADA* (Perfecto Andrés Ibáñez trans., 2nd ed., 2023).

25. See THOMAS HOBBS, *LEVIATHAN, OR THE MATTER, FORM, & POWER OF A COMMON-WEALTH ECCLESIASTICALL AND CIVIL* (JCA Gaskin ed., 1996).

guarantee institutions, in order to create a global public sphere. This would include guarantees of peace, through global disarmament; guarantees of the social rights to health, education and subsistence, through the transformation of the World Health Organization, the UNESCO and the FAO into effective global guarantee institutions, adequately financed by a global treasury; guarantees of the commons against environmental degradation, through the establishment of supranational state estates; and judicial guarantees, beginning with constitutional review, against violations of the prohibitions and obligations in which all guarantees consist.

II. THE PROJECT OF A CONSTITUTION OF THE EARTH.
WHAT DISTINGUISHES IT FROM ALL OTHER EXISTING OR
PLANNED CHARTERS OF RIGHTS:
THE INTRODUCTION OF GLOBAL GUARANTEE FUNCTIONS
AND INSTITUTIONS.

The proposal for an Earth Constitution presented here is not a new concept. Other proposals have been put forward, often involving the democratization of existing political institutions within the UN governance or as seen in the 2000 Earth Charter,²⁶ the declaration of principles relating to peace, social justice, and human rights. The one-hundred-article draft proposed for public debate by our *Earth Constituent* introduces two requirements that were lacking in previous international charters, which caused their failure. Firstly, the proposed constitution is rigid, meaning that any norm in conflict with it will be annulled by a special global jurisdiction of constitutionality. Secondly, adequate *guarantees* and related institutions are imposed as limits and constraints on the unbridled powers of sovereign states and global markets. Our project provides *primary guarantees*, which consist of prohibitions against negative expectations of harm, such as the right to life, peace, and all rights of immunity and freedom, as well as obligations to fulfill positive expectations, such as all social rights,

26. What is the Earth Charter?, <https://web.archive.org/web/20100726184340/http://www.earthcharterinaction.org/content/pages/What-is-the-Earth-Charter%3F.html> (last visited Oct. 16, 2024).

including the right to health, education, and subsistence. Additionally, the project provides *secondary guarantees*, which involve identifying and sanctioning violations of fundamental rights and their primary guarantees through mandatory jurisdictions.

This is the major innovation of the constitutional paradigm proposed by our draft Earth Constitution. The draft does not limit itself to principled declarations of peace, equality, and human rights. Instead, it introduces appropriate guarantee techniques to make them effective. This includes providing not only the traditional legislative, executive, and judicial functions but also the far more important functions and institutions of the primary guarantee of constitutionally established fundamental rights and goods.

The theoretical hypothesis underlying our project is in fact a revision of the classical separation of powers formulated by Montesquieu almost three centuries ago,²⁷ in the presence of an institutional arrangement that has nothing to do with that of contemporary states, and even less with the prospect of constitutional democracy at the international level. This tripartition—between legislative, executive, and judicial powers—was conceived at a time when executive power was held by the monarch and the autonomy and primacy of the legislative bodies and the independence of the judiciary had to be guaranteed. However, in modern democracies, Montesquieu's division of powers is no longer sufficient to account for the complexity of the public sphere. At a descriptive level, it is inadequate because it contradicts all democratic systems. In fact, in these systems, the executive, after the disappearance of the monarch, has the same electoral legitimacy as the legislative. Furthermore, the relationship between the executive and the legislative, particularly in parliamentary systems, is one of connection rather than separation. Above all, however, Montesquieu's division of powers is inadequate on the axiological level because it is responsible for the fact that the new primary guarantee functions—such as

27. CHARLES DE MONTESQUIEU, *MONTESQUIEU: THE SPIRIT OF THE LAWS* (Anne M. Cohler, Basia Carolyn Miller, & Harold Samuel Stone eds., 1989).

education, public health, protection of the natural environment—that did not exist or were unthinkable in Montesquieu’s time. Since they could not be placed within the legislative or judicial powers, they have developed into bureaucratic forms within the public administration under the executive power, despite their counter-majoritarian character.

In my view, beyond the classical Montesquieu separation, there is a need for a further separation of public functions, based on their fundamental distinction corresponding to the two great dimensions of experience: will and knowledge, production, and application of law, *legis-latio* and *iuris-dictio*. Indeed, the separation of public powers must be based on the different nature of these activities and the diversity of their sources of legitimation. This means a distinction between the functions and institutions of government, legitimized by political representativeness, and the functions and institutions of guarantee, legitimized by subjection to the law and the universality of constitutionally established fundamental rights.²⁸ In fact, government institutions are those responsible for political production and discretionary innovation in what can be called the sphere of the decidable. This includes not only the governmental functions of political direction and administrative choice, but also legislative functions. On the other hand, guarantee institutions are responsible for ensuring what could be referred to as the sphere of the undecidable. This includes not only judicial or secondary guarantee functions, which intervene to eliminate or remedy violations of the law, but also primary guarantee functions, which directly ensure social rights, such as health, education, welfare, social security, and the protection of peace and the natural environment. Unlike government functions, all guarantee functions, both primary and secondary, are counter-majoritarian. They are legitimized by their role in protecting fundamental rights and goods for all, even against

28. On this distinction, which is the foundation for my reformulation of the separation of powers and, on the distinction between primary and secondary guarantee institutions, along with their functions and institutions of primary guarantee and secondary guarantee. See FERRAJOLI, *supra* note 21, at 822–31 (2007); *Id.* at 193–213, 531–35; *Id.* at 112–20, 160–68, 254–63, 399–405.

majorities, rather than by the majority principle representing the will of the people.

Furthermore, fundamental rights have a unique characteristic that explains their current lack of effectiveness in the international order.²⁹ Unlike property rights, fundamental rights do not come into existence simultaneously with their guarantees. In fact, such protections are entirely absent in international law. Therefore, there is a global need to establish norms that provide primary guarantees and the necessary institutions. These proposals include the establishment of a global health service, a universal education system, a labor organization that provides equal guarantees to all workers, a universal basic income funded by taxation on the wealthy, global state ownership, disarmament, the dissolution of armies, and a progressive global tax system.

To ensure peace, protect the environment, and uphold human rights, it is essential to establish institutions and functions that guarantee the implementation of the principles outlined in the Constitution. It is not necessary to create an improbable replica of the state's form at the supranational level, such as a world superstate. The functions and institutions of government should primarily remain within nation-states, as they are legitimized by political representation. On a global level, it is crucial to establish institutions that serve as the primary guarantee of fundamental rights. In fact, these rights are not legitimized by a majority consensus but by their universality, and those institutions are necessary to address any possible violation of these rights at the local level.

The absence of global institutions of guarantee is a significant gap in today's international law. Indeed, to ensure the survival of humankind, guarantee functions and institutions must be devised and normatively introduced and imposed in a Constitution of the Earth. This is necessary due

29. There are structural distinctions between property and fundamental rights connected to their different logical structures. See LUIGI FERRAJOLI, *DIRITTI FUNDAMENTALI: UN DIBATTITO TEORICO* 26–33, 156–71 (2001); FERRAJOLI, *supra* note 27, at 684–95; FERRAJOLI, *supra* note 21, at 219–24; FERRAJOLI, *supra* note 21, at 66–68, 128–31, 182–92.

to the unprecedented threat posed by our own irresponsible policies. The absence of these institutions, along with the limits and constraints they impose on global markets, has turned the relationship between politics and economics upside down. This developed an asymmetry between the global character of economics and the still state-centric character of politics, leading to a crisis in our democracies. Due to this asymmetry, it is no longer the states that ensure competition among businesses. Instead, large transnational corporations put the states in competition by favoring investments in countries where labor and fundamental rights guarantees are absent, environmental protections are fewer or non-existent, taxes are lower, and the possibilities of corrupting or otherwise conditioning governments are greater. Therefore, the only alternative today is radical: we must establish the constituent process of a supranational public sphere, capable of imposing limits and constraints on the unbridled sovereignty of markets and the most powerful states. To do so, we must create global institutions that guarantee the rights and vital goods of all, or our democracies, peace, and the livability of the planet will continue to be in danger.

Compared to traditional constitutionalism, an Earth Constitution will require a more extensive and complex structure. Today's constitutionalism is a public law constitutionalism, anchored in the form of the nation-state and designed as a system of limits and constraints that guarantee fundamental rights. The terms "rule of law," "legislative state of law," and "constitutional state of law" are significant. In our tradition, the state and politics should be the only locus of power, and they should be subject to rules and controls in domestic law and to the weak constraint of treaty compliance in international law. Civil society and the market, on the other hand, should not be places of power, but rather places of liberties, mainly concerned with protecting against the abuses and excesses of public powers.

The proposed Earth Constitution will expand the constitutional paradigm beyond the state in four directions: (1) it will move toward supranational constitutionalism, in addition to state constitutionalism as expressed in the constitutions of various countries, to overcome the state of

nature and virtual warfare in which international society still exists; (2) it will move toward social constitutionalism, in addition to liberal constitutionalism, by guaranteeing social rights in the form of a welfare of law or rights, as opposed to today's bureaucratic welfare state; (3) the direction of private-law constitutionalism should be considered along with public-law constitutionalism, which is built to protect against public powers, but not against private economic powers that are often misconceived as freedoms rather than powers; and (4) a constitutionalism of goods should also be considered in addition to that of rights., which would provide for the fundamental protection of common goods such as nature and life-saving drugs, while also prohibiting deadly goods such as weapons, toxic waste, and polluting emissions.

The development of global constitutionalism beyond the state is simply the implementation of existing constitutionalism. The fundamental rights stipulated in the various international charters logically imply their guarantees, and therefore must be introduced to avoid violating them and creating an undue gap. Article 1 of the "duties" section of the French Constitution of the Year III stipulates that the declaration of rights contains the obligations of legislators.³⁰ This includes the prohibition of injuring the rights of liberty and the obligation to fulfill social rights, which are guarantees implied by those negative or positive expectations in which all the rights in these stipulated charters include.

The duties that ensure peace, protect the environment and freedoms, and guarantee social rights must be introduced as universal guarantees. It is evident that the universalism of human rights and their guarantees are incompatible with citizenship, which is determined by the ultimate accident of birth and differentiates people by status. The principle of peace is incompatible with sovereignty, as rigid constitutions do not allow for unlimited constituted

30. La Déclaration des droits contient les obligations des législateurs: le maintien de la société demande que ceux qui la composent connaissent et remplissent également leurs devoirs. 1795 Const. 1 (Fr.).

powers. Democratic constitutions affirm that “sovereignty belongs to the people.”³¹

But this rule is compatible with the constitutional paradigm, which does not recognize sovereign powers only if it is understood in two related senses: negatively, in the sense that sovereignty belongs to the people and to no one else, and that no constituted power—representative assembly or elected president—can appropriate and usurp it; positively, in the sense that, since the people are not a macro-subject but the totality of all citizens, sovereignty belongs to each and every one of them, identifying with those fragments of sovereignty which are the fundamental rights possessed by each and every one of them.³² Citizenship and sovereignty belong to everyone, which is the same, or to no one if we take the principles of equality and peace seriously.

III. THE BLINDNESS OF PUBLIC OPINION AND THE IRRESPONSIBILITY OF TODAY’S POLICIES.

The failure to acknowledge the catastrophes listed at the beginning is the most insidious and dramatic aspect of our inaction. We are unwilling to acknowledge them because we are lucky enough to live in the rich part of the world, where we can respond to climate change by simply adjusting the thermostat.³³ In particular, the wealthy classes, and especially those in political office or with significant economic power, do not experience the emergencies described in the preceding pages. This lack of awareness is a major problem for our future since public opinion, politics, and

31. Article 1 of Title III of the French Constitution, 1791 establishes: “Sovereignty . . . appertains to the nation; no section of the people nor any individual may assume the exercise thereof.” See 1791 Const. 1 (Fr.).

32. I have proposed an illustrated definition of popular sovereignty in *Teoria della democrazia*. FERRAJOLI, *supra* note 21, at 13–14; FERRAJOLI, *supra* note 21, at 239–47.

33. According to research from some time ago, the great majority of the world’s population does not consider climate change as a relevant problem, and most of the rest are convinced that humanity won’t be able to do anything to face it. See United Nations Development Programme (UNDP), *Human Development Report 2007/2008: Fighting climate change: Human solidarity in a divided world*, 65–67. <https://hdr.undp.org/system/files/documents/2008-english.2008-english>.

economics are blind to the issue, even denying its existence. Despite increasingly severe cataclysms, such as changing seasons, extreme temperatures, fires, hailstorms, droughts, floods, melting glaciers, rising seas, and drying rivers and lakes, those who can address global challenges are not taking action and are instead continuing their carefree lifestyles.

But a lesson should have been learned from a major emergency in recent years that has affected the whole world and demonstrated all our common fragility and interdependence: the COVID-19 pandemic, which suddenly exploded in February 2020 and has not yet subsided.³⁴ The virus knows no borders, and in a matter of weeks, it has swept across the world, regardless of nationality or wealth. It has crippled and disrupted economies, changed the daily lives of everyone on the planet, and, with its horrific daily toll of infected and dead, has highlighted the lack of global institutions to guarantee health. It has also revealed the futility and short-sightedness of liberal policies which, in Italy as in many other countries, had slashed public health spending, closed hospitals, eliminated beds, and cut health workers to reduce taxes for the rich and favor private health care. Above all, the pandemic caught all governments unprepared, as they had done nothing to prevent the pandemic's effects and were found to lack the most basic measures—from masks to swabs, from respirators to an adequate number of doctors and nurses and intensive care units—to deal with it. States, regions, and municipalities quickly adopted different and heterogeneous measures and strategies, most of which were inadequate because they were driven by the fear of damaging the economy, thus favoring the spread of infection and multiplying the number of deaths.

We should have learned two lessons from such a tragedy, both of which are vital. Firstly, the tragedy of the epidemics demonstrated the irreplaceable value of public health and its universal and free nature, which is the only guarantee of equality in the enjoyment of health as a fundamental right for all. Only the public sphere is capable of investing resources in the prevention and control of epidemics and in planning health care for the interests of all, without privilege

34. FERRAJOLI, *supra* note 1, at 20–27.

or discrimination, beyond the contingent economic conveniences that condition private healthcare instead. Secondly, another lesson should have been learnt from the pandemic, related to its global nature, which is no different from that of the five even more serious emergencies mentioned in the first paragraph: the need for global responses, which can only be provided by guaranteeing global health institutions. Indeed, only global institutions can guarantee the equal fulfilment of the right to health for all human beings. Compared to this role, the current World Health Organization is totally inadequate.³⁵ To guarantee care and vaccines for all human beings, as the right to health is enshrined in so many constitutional and international charters, it would need a budget thousands of times larger than its current one: not the \$4 billion every two years, mostly from private sources, but \$4 trillion every year, and perhaps more, to finance the construction of hospitals and the presence of doctors, nurses and medicines throughout the world.

Instead, no lessons have been learned by politics and public opinion. There has been a general dismissal, or worse, an explicit denial of the danger of the virus and the need for defensive measures, from compulsory face masks to restrictions on freedom of movement, and even vaccines. Populist movements around the world, whether in government or in opposition, have been quick to foment mistrust and hostility towards the measures prescribed by medical science, and then to give voice and representation to those who deny the efficacy of these measures in order to win votes. This matter has revealed the high degree of irrationality on which all populisms, particularly those on the right, rely.

If this has been the reaction of our political class and no small part of public opinion to a phenomenon as obvious as the pandemic that has kept us all indoors for two years and threatened everyone's life, it is easy to understand the blindness and lack of foresight in the face of the other, far

35. On the control of the World Health Organization by its financial supporters, in particular private ones. See NICOLETTA DENTICO, *RICCHI E BUONI? LE TRAME OSCURE DEL FILANTROCAPITALISMO* (2020).

more serious global catastrophes that loom over our future. The reasons for this general ignorance and for our moral insensitivity are many. There is the more or less conscious denial of inconvenient truths, fueled in any case by an aversion to science and publicity. There is our indifference, also generated by the “view of man that,” as Joseph E. Stiglitz has written, “underlies prevailing economic models, which is of a calculating, rational, self-serving, and self-interested individual. There is no room for human empathy, public spiritedness, or altruism.”³⁶ It is a terrible creature that we do not want to resemble, that we certainly do not want to associate with, and yet it is presented as a model of rationality. Despite, as Stiglitz optimistically adds, it “provides a better description of economists than it does of others,” to the point that “the longer students study economics, the more like the model they become.”³⁷

But there is another factor in the impotence and disengagement: a kind of infantile regression that favors the deresponsibilization and blank delegation to the powers that be of decisions that matter for our future. It is the disempowerment that Kant illustrated in his 1784 essay *Answer to the Question: What is the Enlightenment?*, “[e]nlightenment is the human being’s emergence from his self-incurred minority,” that is, from the “inability to make use of one’s own understanding without direction from another.”³⁸ It is this minority, this anesthetization of the public mind, this passivization, this need to rely on a leader, that is encouraged today by the collapse of political participation. “It is so comfortable to be a minor! . . . I need not think . . . others will readily undertake the irksome business for me.”³⁹ These “guardians who have kindly taken it upon themselves to supervise them” will show them—“after they have made their domesticated animals” and prevented them from “from daring to take a single step

36. JOSEPH E. STIGLITZ, *FREEFALL: AMERICA, FREE MARKETS, AND THE SINKING OF THE WORLD ECONOMY* 238 (1st ed. 2010).

37. *Id.*

38. Immanuel Kant, *An Answer to the Question: What Is Enlightenment? (1784)*, in *PRACTICAL PHILOSOPHY* 13, 17 (Mary J. Gregor ed., 1999).

39. *Id.*

without the walking cart in which they have confined them”—“the danger that threatens them if they try to walk alone.”⁴⁰ For enlightenment maturity, Kant added, “nothing is required but freedom, and indeed the least harmful of anything that could even be called freedom: namely, freedom to make public use of one’s reason in all matters”⁴¹:that is, reasoning independently, in the knowledge that in the use of reason lies our dignity as persons, and that each of us can be the architect of our own future, and all of us can be the architects of the future of democracy, peace, and the survival of humanity. On the contrary, it is a sign of infantilism and immaturity to be unwilling to think of the future as a non-future and to refuse to open our eyes to the literally unthinkable self-destruction of humanity.

Stupidity is, therefore, the main enemy of humanity. The most frightening thing is that this stupidity, infantilism, and blindness is also shared by our guardians and rulers, who are, above all, sickened by presentism and localism. It is on this blindness that the vulgar realism is based, expressed in the idea that there is no alternative to what is happening. Against this realism, which legitimizes what exists as inevitable, we must at least distinguish what is improbable from what is impossible. This is the first step towards a global extension of the constitutional paradigm: the fact that such an extension is not considered impossible. The second step is that we begin to talk about it, to plan for it, to promote it in public debate, and to demonstrate not only its possibility but also its necessity and urgency. In short, it is necessary for the prospect of global constitutionalism to become a political goal for all progressive forces.

It is precisely this blindness that imposes on legal and political culture a radical updating of its conceptual apparatus, in order to enable us to see reality and to think about possible solutions to problems. Only by showing that an alternative to the current state of the world is possible, and that it depends on the commitment of all, can an awakening of reason and the development of a new constitutive energy be produced. To this end, we need to

40. *Id.*

41. *Id.* at 18.

address three theoretical issues. The first concerns the need to update the theoretical concept of legal wrong, which cannot fail to include the global catastrophes outlined above. The second concerns the need to update the constitutional paradigm to make it capable of preventing such catastrophes through appropriate guarantees. The third concerns the need to rethink the current notion of political realism in order to identify such guarantees as the only realistic alternative to the end of humanity.

IV. TWO OPPOSING CONCEPTIONS OF CURRENT
CATASTROPHES:
THEIR TRIVIALIZATION AS NATURAL PHENOMENA OR THEIR
CONFIGURATION AS SYSTEMIC CRIMES.

The first question considers the nature of the catastrophes listed in the previous pages. We can say that they cannot be configured as crimes as defined by the criminal law. Their perpetrators, like their victims, who are entire peoples and sometimes the whole of humanity, cannot be identified with individuals but with the mechanisms of the economic and political system. The actions that provoked them are not individual and determined behaviors, as such prefigurable as crimes, but rather complex sets of political and economic activities enacted by an indeterminate plurality of subjects. Although they are attacks on people's rights, they cannot be addressed by criminal law, except by violating the guarantees of the criminal trial: the determinacy of punishable acts, the causal link between individual actions and environmental and social disasters, and the principle of personal responsibility in criminal matters.

These tragedies are not natural phenomena; Neither is the rush by states to arm themselves with ever more lethal weapons, nor the devastation caused by today's uncontrolled industrial development. Nor are the millions of deaths from hunger, thirst, and untreated diseases that result from the misery caused by the plundering policies of the rich countries and their total failure to provide aid. Nor are they the various measures of *refoulement* to which tens of thousands of migrants are subjected every year. These disasters are not just injustices. They are massive violations of fundamental

rights enshrined in so many constitutional charters, both national and supranational.

There is, then, a fundamental question to be answered: whether it is permissible for criminology, law, political science, and public debate to ignore the illegitimacy of such violations, which, if not prevented by law and politics with appropriate guarantees, are capable of putting an end to peaceful coexistence and to the very habitability of the planet. This question is at the heart of the concept of “crime,” which traditional criminology and public debate, because of its subordination to criminal law, have always used to designate as crimes only those deviant behaviors defined by criminal law. The criminological sciences have thus played, and continue to play, a powerful role in the ideological legitimization of the status quo: disqualifying as unjust and reprehensible only those acts envisaged as crimes by our criminal law systems, and legitimizing as permissible and not unjust all those acts not configured as crimes. In this way political and moral judgement, not only legal, has been anchored in the parameters of criminal law alone, which has thus become the only key in public debate and common sense for interpreting the mistakes and responsibilities of politics. Only those facts that are foreseen and judged as crimes in the criminal sense provoke moral and political indignation and stigmatization. Everything that is not prohibited as a crime is considered permissible. Violations such as those described here, incomparably more catastrophic than any other crime, do not arouse scandal, but rather an uncritical acceptance—today’s trivialization of evil—as if they were natural phenomena and, in any case, inevitable.

It is therefore necessary to recognize the inadequacy of the current concept of “crime” and to extend it to include those aggressions—the environmental degradation, the nuclear explosions and threats, the massacres of migrants at sea and the millions of deaths every year due to the lack of life-saving medicines, water and basic food—that are not attributable to individuals, but which are nevertheless illegal and devastating for entire peoples and sometimes for the whole of humanity. In order to prevent and deal with these violations, it is necessary to promote their social perception as intolerable crimes of constitutional

significance, even if they cannot be attributed to the criminal responsibility of individual and specific persons. Legal language, let us not forget, always has a performative role in common sense. That is why I have proposed to introduce into the legal and political lexicon a broader concept of crime than that of a criminal offence, in order to include that broad class of violations of fundamental rights and goods which do not consist of individual acts attributable to the responsibility of particular persons. I have called these violations *systemic crimes*.⁴² It is then clear that the existence of such crimes could well justify the establishment of one or more international truth-seeking tribunals—along the lines of the Truth Commission established in South Africa at the end of apartheid—with the power to identify them, together with the political responsibility for their commission, and to order the measures necessary to prevent them: for example, an international tribunal on assaults on the environment, another on world hunger and treatable but untreated diseases, yet another on the millions of deaths caused each year by the use of weapons. Only the stigmatization of these violations as very serious systemic crimes responsible for enormous damage to the whole of humanity can provoke an awakening of reason and the elaboration, at the global level, of appropriate guarantees aimed at preventing them, in the interest of all.

V. TWO OPPOSING CONCEPTIONS OF CONSTITUTIONALISM,
ONE NATIONALIST, THE OTHER UNIVERSALIST: ON THE
CONCEPT OF PEOPLE, THE PEOPLE OF THE EARTH.

Even more important is the second question raised by the global catastrophes, here called systemic crimes: that of the institutional response capable of dealing with them. Such a response, for example an adequate system of limits and constraints on the global powers from which these catastrophes emanate, can only consist in extending beyond the state the paradigm of rigid constitutionalism as adopted

42. I have advanced this proposal for widening the idea of crime in Luigi Ferrajoli, *Crimenes de Sistema*, 3 REVISTA DE DERECHO PENAL Y CRIMINOLOGIA 7 (2019); Luigi Ferrajoli, *Crimini Di Sistema e Crisi Dell'ordine Internazionale*, 9 TEORIA POLITICA 401 (2019); FERRAJOLI, *supra* note 21 at 411–38.

by today's constitutional democracies after the Nazi-fascist period. From this perspective, the problem of democracy is not so much one of power, but rather one of limits, constraints, and controls on the exercise of any power, whether public or private, state, or supra-state. The real democratic revolution, both liberal and social, consists not in the conquest of power, but in the imposition of strict safeguards on its otherwise arbitrary exercise: guarantees consisting of limits and constraints of form, aimed at ensuring popular representativeness, and, above all, limits and constraints of substance, imposed in favor of peace and equality in the fundamental rights of all.

This raises a fundamental theoretical question about the role of constitutions and the concept of constitutionalism itself. The concept of the Constitution that prevails in our tradition, and from which legal culture is finding it difficult to free itself, is diametrically opposed to the one outlined above. According to this conception, there is a link between the Constitution, the people, and the nation-state. "A proper understanding requires that the meaning of the term 'constitution'"—Carl Schmitt wrote in his 1928 *Constitutional Theory*—"be limited to the constitution of the state, that is to say, the political unity of the people."⁴³ It expresses—as Schmitt added in *The Guardian of the Constitution* (1931)—"the unity of the people as a political whole" in accordance with "the basic democratic axiom of the identity of the will of all citizens."⁴⁴ Constitutions, according to this nationalist conception still prevalent in our legal doctrine, would be possible and desirable only if they were based on the existence of the people and its sovereign state. Its axiological foundation would lie in its ability to represent the identity of a homogeneous *demos* and a unified will as the source not only of its effectiveness but also of its legitimacy. Obviously, such unity and identity do not exist at the international level. But in democratic societies—based on pluralism, political conflict, and class struggle—they do

43. CARL SCHMITT, *CONSTITUTIONAL THEORY* 59 (Jeffrey Seitzer trans., 2008).

44. Carl Schmitt, *The Guardian of the Constitution: Schmitt on Pluralism and the President as the Guardian of the Constitution*, in *THE GUARDIAN OF THE CONSTITUTION: HANS KELSEN AND CARL SCHMITT ON THE LIMITS OF CONSTITUTIONAL LAW* 125, 140, and 172 (Lars Vinx ed., 2015).

not, and should not, exist at the national level either. In fact, they are only conceivable on the basis of the Schmittian, authoritarian and illiberal idea of the demos as a homogeneous entity, in an oppositional and exclusionary relationship with other peoples, but also with those who, in relation to this supposed homogeneity, are different or dissenting and therefore virtually enemies.⁴⁵ Even when purged of these nefarious corollaries, the idea of the need for the people, for example civil society and pre-political bonds, as a precondition for constitutions and constitutionalism is still present in much of constitutionalist culture.

Well, this idea is not only contrary to the theoretical and formal notion of the “constitution” as a system of limits and constraints imposed on all powers in order to guarantee the principles established by the constitution itself. It is also a conception of constitutionalism that literally contradicts the universalism of human rights and the principle of equality—as the equal value of all differences in identity and the disvalue of economic and material inequalities—enshrined in all advanced constitutions.⁴⁶ In fact, democratic constitutions are pacts of peaceful coexistence that aim to guarantee all personal differences through the rights of freedom and to reduce material inequalities through social rights. They exclude between different subjects either conflict and mutual exclusion or intolerance, or assimilation and isolation, promoting instead their mutual respect, dialogue and the mutual contamination of their cultures. Their source of legitimacy is not the will of the people or of the majorities, but the equality of established rights. For this reason, even more than at the national level, they are legitimate and necessary at the global level, where the diversity of identities—ethnic, linguistic, political, religious, cultural—which they must protect, and the economic and material inequalities which they must reduce, are all the greater.

45. CARL SCHMITT, *THE CONCEPT OF THE POLITICAL* 26–27 (George Schwab trans., 2008).

46. I have compared two alternative conceptions of constitutions, people and democracy, in FERRAJOLI, *supra* note 21, at 46–57; FERRAJOLI, *supra* note 21, at 173–75, 239–47, 282–88.

By virtue of this universalistic valence, constitutionalism is not only an achievement of the past. It is also, and above all, a normative program for the future. Its historical journey has not yet been completed, since its other face, the active face of effectiveness, with which garantism can be identified, has not yet been implemented and its expansion in the four directions indicated here in Part II has not yet taken place. The history of constitutionalism is the history of a progressive extension both of the powers that constitutions are supposed to limit and bind and of the rights and goods that they are supposed to guarantee: The rights of freedom in the first declarations and constitutions of the nineteenth century; the right to strike and social rights in the constitutions of the last century; the new rights to peace, to information, to subsistence and to basic food that are being claimed today; and finally, the vital goods to be protected and the deadly goods to be prohibited in the face of the challenges of ecological catastrophe and nuclear danger that loom over our future today.

It is not only a theoretical history, but also a social and political one, since none of these rights and protections were ever imposed from above but were all won by revolutionary movements: the great American and French liberal revolutions, then the constitutional uprisings of the nineteenth century, and finally the struggles of workers, feminists, pacifists and ecologists in the last century and in this one. Fundamental rights and the principles of peace and the protection of nature have always prevailed as the law of the weaker, as an alternative to the law of the stronger, which has prevailed and would prevail in their absence: the law of the physically stronger, as in the Hobbesian state of nature; the law of the politically stronger, as in illiberal regimes; the law of the economically and socially stronger, as in the capitalist market; the law of the militarily stronger, as in the community of states. Throughout history, every conquest of rights and every advance in equality has been accompanied by the revelation of discrimination or oppression that eventually became intolerable: The persecution of heretics and the struggle for freedom of conscience at the beginning of the modern age; then that of political dissent and the battles for freedom of the press; then the exploitation of labor and the social struggles for workers'

rights; then the struggles for guarantees of social rights; then again the oppression and discrimination of women and the struggles for their liberation. Each time, the veil of normality that hid the oppression of the weaker ones was torn by their struggles and demands.

Fundamental rights do not belong to what I have called the sphere of the decidable, which in democracy is entrusted to the will of the people and their representatives. These rights are not intended to be the expression of the will of the electorate: if the Declaration of 1789 had been put to the vote in France at the end of the 18th century, it would have been approved by only a tiny minority. Rather, charters of rights are pacts of peaceful coexistence in solidarity between different and unequal people, in which the undecidable is defined: that which no majority can decide, that is, the limitation of the rights of freedom, which are all rights to the protection and affirmation of one's personal differences, and that which all majorities must decide, that is, the satisfaction of social rights, which are all rights to the elimination or reduction of economic and material inequalities. Charters of rights are therefore necessary and democratic, as pre-political conditions of politics itself, not because they are desired by all, that is, by majorities of voters or their representatives, but because they guarantee everyone, majorities and minorities alike, and thus allude to peoples in an even more pregnant way than political representation: to peoples in their entirety, as a set of all human beings who are part of the people.

On the other hand, the contrary thesis of a link between the constitution, the sovereign nation-state, the territory and the people, which still weighs on constitutionalist culture, is at odds with the very idea of a constitution, as expressed in all the international charters of rights and the democratic constitutions of the post-World War II era, which enshrine the equality of all human beings and the universalism of fundamental rights. But this is not just a theoretical issue. The most dramatic aspect of this contrast is that national constitutionalism is not up to the challenges posed by globalization and global powers, which, even more than traditional state powers, threaten the fundamental rights and goods of all. In fact, this thesis suggests an identitarian

and statist conception of constitutionalism that is in tune today with the sovereignisms and populisms that are growing all over the world and poisoning both foreign and domestic politics with their enemy logic. It is this nationalist and statist connotation that must be abandoned. This link between constitution, people, territory, and sovereignty, which is proclaimed at the beginning of all public law textbooks, can indeed be maintained—in a progressive, pacifist and humanitarian function—even for global constitutionalism, on one condition: that we understand by people the whole of humanity, by territory the planet Earth, and by popular sovereignty the ownership by all human beings of those fragments of sovereignty that are fundamental human rights.

The only meaning of the word “people” that is compatible with today’s constitutions and their universalist and democratic character is precisely the opposite of the Schmittian meaning of the people as a political “totality” based on its supposed identity and homogeneity. The concept of people is different from any mass of human beings only because the human beings who make it up, though different and unequal among themselves and precisely because they are different and unequal, are equal among themselves in fundamental rights. It is therefore equality in these rights that constitutes the people as a political entity. This is the beautiful Ciceronian definition of the “people” as a community based on the “*par condicio civium*” guaranteed by the “*iura paria*,” that is, by those equal rights which are nothing other than the fundamental rights of which all are possessors and by which all are united.⁴⁷ Equality is the principal cement of the unity of peoples precisely because it consists in the equal value and equal protection of the infinite differences between human beings, by establishing and guaranteeing the rights of freedom, and in the reduction and elimination of their economic and material inequalities, by establishing and guaranteeing social rights. Therefore, it is not the peoples that make the constitutions, but the constitutions that make the peoples.

47. Marcus Tullius Cicero, Cicero: On the Commonwealth and On the Laws (James E. G. Zetzel ed., trans., Cambridge Univ. Press 2d ed. 2017) (n.p.).

It follows that the establishment of an Earth Constitution is not only an obligation imposed by the many charters of rights to be taken seriously, but a necessity determined by the danger of human suicide. It is also a political operation aimed at creating unity among humanity as people of the Earth. For humanity to assert itself as one people, it is indeed necessary that the equality of rights, which at present is only proclaimed in so many charters and conventions, be put into practice by means of an Earth Constitution, which, as a guarantee of the infinite differences of all human beings and the reduction of their material inequalities, abolishes borders and citizenships, nationalism and racism, terrorism and fundamentalism, armed against each other, and guarantees peaceful coexistence, the preservation of the natural environment, fundamental freedoms and decent living conditions for all human beings.

Nor is it superfluous to insist that the rejection of aggressive nationalisms based on mutual exclusion and intolerance in no way excludes, but on the contrary implies, the recognition of the value of the diverse national, political, and cultural identities of the countless peoples of the earth. There is the same relationship between the coexistence of peoples and their national differences as there must be between the coexistence of people and their personal differences. Just as the peaceful coexistence of people is based on the equal dignity of all the different identities that make each person an individual different from all the others and each individual a person equal to all the others, so the peaceful coexistence of peoples must be based on the equal value, and therefore respect, of all their different national, religious, linguistic, political and cultural identities within that one heterogeneous, mixed and differentiated people that is humanity. This is a perspective that stands in contrast to the two current practices—integration and ghettoization—promoted by contemporary policies towards migrant minorities. For it is not authoritarian homogenization, nor even mutual isolation and self-protection, but mutual understanding and constant interaction that must shape relations between peoples and their diverse cultures. “United in diversity” is the maxim adopted by the European Union in 2000 to express the unity of the European people while respecting and protecting the diversity of all its member

peoples and countries.⁴⁸ It is, of course, a maxim that applies even more to the whole world and to the whole of humanity, protecting the mestizaje generated by the coexistence of its innumerable differences.

All nationalisms are therefore the obstacles, not the social and cultural foundations, of constitutionalism. In turn, the sovereign states invented by Western culture, with their diverse citizenships, not unlike global markets, also intolerant of legal limits and controls, are the real enemies of constitutionalism, the principle of equality and fundamental rights. Fundamental rights and their guarantees are either universal and supranational or they are not at all. Democratic constitutions, far from being the expression of the identity of one people conceived as a “political totality,” are in fact pacts of coexistence designed to guarantee political pluralism and multiculturalism, while at the same time guaranteeing the conditions of a decent life for all human beings. They are internationalist by nature, for example anti-nationalist, anti-identitarian, and anti-fascist. Its logic, expressed in human rights and the principle of equality, is not national but universal. It is no coincidence that the 1948 Declaration of Human Rights wanted to call itself “universal.” The extension of constitutionalism beyond the state is therefore not only an extension of the state. It is also, and more importantly, its consistent implementation.

Constitutionalism will only be able to limit the wild powers of the global markets and the sovereign powers of the great states, and to raise itself to their height, if it is reversed and implemented in this way. The globalization of capital and finance, and more generally of the powers that matter, but not of law and politics, makes it necessary and urgent to develop a constitutive thought capable of re-founding, using all the categories developed by the theory of guaranteeism and constitutional democracy, that embryonic constitution of the world constituted by the UN Charter and the many international declarations and conventions on human rights. As Kant wrote in 1784 in the seventh thesis of the essay “Idea for a Universal History with a Cosmopolitan Aim,” it is

48. *EU motto*, EUR. UNION, https://european-union.europa.eu/principles-countries-history/symbols/eu-motto_en (last visited Oct. 16, 2024).

necessary for states, by analogy with what human beings have done, to enter into a social contract with each other in order “to go beyond a lawless condition of savages and enter into a federation of nations, where every state, even the smallest, could expect its security and rights.”⁴⁹ This contract can only consist of a constitution of the earth, endowed with rigidity. Just as the state of nature among men is a pre-political and pre-civilized state, from which we have emerged by disarming men and giving the state the monopoly of legitimate force and the role of guaranteeing equality in the fundamental rights of citizens, in the same way, the state of nature among states is a pre-political and pre-civilized state from which we can only emerge by disarming the states, abolishing national armies and giving a global public sphere the monopoly of legitimate force and the role of guaranteeing the fundamental rights of all human beings.

VI. TWO OPPOSING CONCEPTIONS OF POLITICAL REALISM,
ONE NATURALIST, THE OTHER RATIONALIST. THE ROLE OF
LEGAL AND POLITICAL CULTURE.

Of course, there is no reason to be optimistic about this expansion beyond the state of the constitutional paradigm. Humanity is moving in exactly the opposite direction. Everything suggests that the short-sightedness and irresponsibility of governments and the interests of the major global economic and financial powers will continue to prevail. However, it is necessary to distinguish between what is improbable because of the short-sightedness of politics and the obstacles put in its way by powerful, but no less short-sighted, private interests, and what is theoretically impossible: not to legitimize as inevitable what is instead the result of the will of the powerful.

It is this confusion—between the improbable and the impossible—that is usually made instead, and that allows the prospect of a possible global extension of the

49. IMMANUEL KANT, *IDEA FOR A UNIVERSAL HISTORY WITH A COSMOPOLITAN AIM* (1784), *reprinted in* KANT'S *IDEA FOR A UNIVERSAL HISTORY WITH A COSMOPOLITAN AIM* 9, 16 (Amélie Rorty & James Schmidt eds., 2009).

constitutional paradigm to be disqualified as utopian and unrealizable in the name of political realism. This brings me to a final basic theoretical question—or to be more precise, a meta-theoretical question—that I believe is imposed on political philosophy and legal studies: the meaning of political and legal realism itself, which has been an obsession in political theory and legal studies in recent decades, reducing them to a description of the existing, annihilating their critical standpoint, and paralyzing their capacities for theoretical innovation and policy design.⁵⁰

I believe that a distinction should be made between two opposing kinds of realism. There is the realism expressed by the well-known thesis that “there is no alternative” to what is actually happening. It is a vulgar realism that naturalizes social reality—law, economics, and politics—while ignoring the natural reality of the disasters tolerated or caused by the policies it legitimizes. It is an ideological realism that produces a kind of cross-legitimation: the scientific legitimation of the theoretical thesis of the lack of alternatives to the existing state of affairs through the description of the *de facto* functioning of institutions, and, conversely, the political legitimation of the existing state of affairs through the theoretical thesis of the lack of alternatives to the real, because effective, laws of the fittest, conceived as fundamental norms far more than the ineffective constitutional charters. It is a realism that ignores the normativity of law and, in particular, of constitutions, and that therefore ends up legitimizing and conducting as inviable what remains the work of men and for which the actors of our economic and political life bear responsibility. Above all, it is a realism that contradicts reality: humanity has always had an alternative. It was an alternative to the *ancien régime* and royal absolutism: the Declaration of Rights of 1789 and the subsequent development of the rule of law. It was an alternative to Nazi-fascism, building constitutional democracy in Italy and Germany on the basis of rigid constitutions. It was an alternative—though only promised, not implemented—to the creation of the UN and the many human rights charters.

50. FERRAJOLI, *supra* note 1, at 128–37.

It is in the nature of human beings to be able to build their own future. The best question I was asked in one of the many debates on our Earth Constitution project came from an eighteen-year-old boy: not how it was possible to create such a constitution, he asked me, but on the contrary, how it was possible, in the face of so many global catastrophes and so many announced dangers, that such a constitution had not yet been realized.

We must promote today the realism that I will call critical or rational realism—the realism of Hobbes, Kant, Marx, but also and above all of advanced constitutions—which, in the face of the injustices and catastrophes caused by the “natural” and uncontrolled play of power relations, prefigures on the theoretical level and formulates on the normative level the rational remedies capable of guaranteeing the dignity of men and their peaceful coexistence. It is the same realism that Kant expresses in a beautiful page on the nature of peace and war, but one that is illuminating for any political or social problem. “Peace,” Kant wrote in “Perpetual Peace: A Philosophical Sketch,” “is not the natural state (*status naturalis*).”⁵¹ The state of nature “is rather a state of war,” while peace is an artificial phenomenon that must be “established” by law, that is to say, constructed by covenants of coexistence and institutions of guarantee.⁵² This is the same thesis that Thomas Hobbes formulated: The state of nature is the state of *bellum omnium*, which can only be overcome by the social contract that disarms the consociates and establishes the public monopoly of force.⁵³ But the same can be said for democracy, for the equality of human beings, for their dignity as persons, for all fundamental rights. The law of the jungle is natural. The laws of the weaker, on the other hand, are artificial, as are all fundamental rights and their guarantees. Political domination, realized by illiberal despotisms, is natural.

51. IMMANUEL KANT, *TO PERPETUAL PEACE: A PHILOSOPHICAL SKETCH* 7 (Ted Humphrey trans., Hackett Publishing Co. 2003) (1795).

52. *Id.*

53. THOMAS HOBBS, *LEVIATHAN, OR THE MATTER, FORM, & POWER OF A COMMON-WEALTH ECCLESIASTICALL AND CIVIL* (JCA Gaskin ed., Oxford Univ. Press 1996) (1651).

Basic freedoms are artificial. Ignorance, poverty, labor exploitation, disease, criminal violence are natural. Guarantees of education, health, livelihood, work, and security are artificial. Destruction of nature is natural because there are no limits to ecologically unsustainable industrial development. Guarantees consisting of such limits, such as a ban on greenhouse gas emissions and global public property to protect the vital goods of nature from commodification and destruction, would be artificial. All international charters, such as the UN Charter, the Universal Declaration of Human Rights, and the Covenants of 1966, which anticipate the future of the world by drawing the sphere of the undecidable: that which no majority can and must decide, for example the implementation of the promises of peace and justice they contain, are artificial.

Rationalist realism is nothing more than an awareness of this artificial character of the responses that can be given—and have always been given—by legal and political reason to the injustices or social catastrophes produced by the natural unfolding of power relations in society. According to this realism, the alternatives are there, they are offered by the very tradition of modern constitutionalism as a system of guarantees, that is, of rigid limits and constraints on the wild powers of the strongest, and it is up to legal culture to update them, to democratic movements and forces to claim them, and to a politics of progress to embrace them. The real utopia, the most unrealistic hypothesis, is the idea that reality can remain as it is for a long time to come: that we can continue to base our democracies and our spent standards of living on the hunger and poverty of the rest of the world, on the power of weapons and the environmentally unsustainable development of our economies. All this cannot continue. It is the same preamble to the Universal Declaration of Rights of 1948, which established, in a rational way, a sense of mutual implication between peace and rights, between security and equality, and, we must add today, between the salvation of nature and the salvation of humanity.⁵⁴ This is why global

54. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948). PIERO CALAMANDREI, *CONTRO LE BELVE, CONTRO LE INTEMPERIE. UN PROGETTO PER L'EUROPA* (Anna Longoni ed., LF trans. 2021).

constitutionalism is not a utopia. It is, on the contrary, the only rational and realistic response to the same dilemma, now enormously more dramatic, that Thomas Hobbes faced four centuries ago: the general insecurity and global chaos brought about by the unbridled freedom of the fittest, or the rational pact of survival, peaceful coexistence and mutual aid based on the prohibition of war and the guarantee of life.

If this is true, then jurists have an extraordinary and irreplaceable task. Rigid constitutions have imposed limits and constraints on the savage powers of the strongest. They have shown high horizons and projects, difficult but possible, for politics and social struggles. In doing so, they have overturned the ancient social function of law and jurisprudence: no longer mere preservation, but transformation of the order of powers and social relations, through the application of the principles established therein. Hence a new role and appeal for law and legal culture, called to critique present reality and to shape future reality, and thus transformed, from the perspective of a global constitutionalism, into the privileged place of a revival of theoretical reflection on otherwise neglected global issues and problems.

Certainly, we cannot and should not have too many illusions about the protective capacity and progressive role of law. Rights, guarantees and constitutional principles are the laws of the weakest, who have the power of reason, law, and constitutions on their side. The strongest, on the other hand, have brute force on their side, for example money, violence, bullying, unscrupulousness, the capacity for ideological mystification, and the total willingness to violate law and rights whenever it is in their interests to do so. But this is all the more reason for jurists to take seriously the existing law and their own profession, which does not allow them to ignore the gaps between the positively established rights and principles of justice and their conspicuous violations to the detriment of billions of human beings. It is precisely in the face of these violations that jurisprudence has a role to play in exposing, criticizing, delegitimizing and, above all, urging the updating and implementation of the constitutional paradigm.

These are the aims of our Earth Constitution project: To show, starting with a 100-article draft, that the alternative is possible; that it is possible to guarantee the rights to health, education and subsistence of all human beings and to make violations of fundamental freedoms by despotic regimes legally enforceable; that nothing but short-sightedness, racism and political obtuseness prevents universal citizenship, the abolition of weapons and armies, the creation of a global public property to protect the environment, and the introduction of a highly progressive world tax on large estates and very high incomes, capable of financing global guarantee institutions; that, finally, if we take law and constitutions seriously, the alternative is obligatory, necessary and urgent, because it is, in fact, the only possible alternative to a future of catastrophes.

VII. A NOTE OF OPTIMISM:

THE INTERDEPENDENCE OF THE PEOPLES OF THE EARTH, THE
COMMON INTEREST IN SURVIVAL AND THE SOLIDARITY THAT
THIS GENERATES.

In this perspective, it is possible to express a note of optimism. Something new is emerging, as the world is becoming increasingly interdependent. Seventy years ago, there were two billion of us on Earth, but what was happening on the other side of the planet was unknown to us and, in any case, irrelevant and indifferent. Today there are eight billion of us, and yet the world is much smaller than it was then: just think of the pandemic virus that originated in China and spread around the world in a matter of weeks. Piero Calamandrei wrote in 1953:

The world has shrunk the State today has less geographical and political significance than municipality had five hundred years ago . . . Today, through this intercontinental conversation in which each of us can take part by turning on the radio in our living room, the peoples are much more united and homogeneous than the borders of states, vestiges of a political fiction that is in the process of being

erased by the social reality that surpasses it, would have us believe.⁵⁵

He added:

Borders, once considered the bulwarks of a people's freedom, now seem to be the gates of its imprisonment . . . [today it is] understood that war is averted not by strengthening borders, but by breaking them down: by opening ever wider breaches in them through which peoples can go out into the open and meet in a larger homeland.⁵⁶

Well, in the last 70 years, world communication has reached levels unimaginable in 1953 when these pages were written. Humanity is more and more integrated, more and more fragile and, I repeat, more and more interdependent: because we are all interconnected; because we are all governed by global economic and financial powers and exposed to the same supranational threats and emergencies; because borders no longer mean anything and between Russians and Ukrainians, between Israelis and Palestinians, between Americans and Chinese, between Europeans and Africans, there are no differences and oppositions, except those artificially created by the nationalisms and sovereignisms of the ruling political classes in defense of their miserable powers.

Therefore, for the first time in history, there is only one people: humanity, both mestizo and differentiated, united because it is interconnected, exposed to the same global challenges and dangers, united by the same interest in peaceful coexistence and general survival, and united by the same subalternity towards the global economic and political powers. In the age of globalization, the defense of national interests as practiced by today's sovereignisms is illusory and mystifying, not only because the real sovereigns today are the great political, military and economic powers, but also because no national interest is superior to the common interest of all in the survival of humanity, which requires the prohibition of national arms and armies and the guarantee

55. PIERO CALAMANDREI, *CONTRO LE BELVE, CONTRO LE INTEMPERIE*. UN PROGETTO PER L'EUROPA (Anna Longoni ed., LF trans. 2021).

56. *Id.*

of the common goods of nature and the fundamental rights of all as limits and constraints on all powers. On the other hand, the growing interdependence of all the peoples of the world is becoming more and more evident, and is capable of generating an awareness of the common interest in a re-foundation of politics as the design and construction of the future, equal to the great problems that unite us all: A politics from below, which young people in particular should promote, in the awareness that the future belongs to them as it always has, and that never before has it depended so much on them; but also a politics from above, where it rediscovers the ambition to return to the governance of the economy and to the representation of the interests of its representatives.

The strength and novelty of the civilizational leap envisaged here lies in the fact that a Constitution of the Earth, unlike any other revolutionary project of the past, is capable of realizing the interests of all, rich and poor, weak, and strong, powerful, and marginalized, not against anyone but for the benefit of all. But humanity today is not only united by the common interest of survival. It is even more united by the solidarity, or rather the fraternity, that this common interest and, above all, the common subordination to the new masters of the world, who have become the markets, can generate. Hannah Arendt wrote in 1968:

Fraternity, which the French Revolution added to the liberty and equality which have always been categories of man's political sphere—that fraternity has its natural place among the repressed and persecuted, the exploited and humiliated, whom the eighteenth century called the unfortunates, *les malheureux*, and the nineteenth century the wretched, *les misérables*.⁵⁷

Today, all or most of us are oppressed, persecuted, exploited, humiliated by the domination of markets. But there are billions of people—all of them holders of violated or unfulfilled fundamental rights: migrants, the unemployed, the very poor, the marginalized, people living in misery, and oppressed women in so many parts of the world—who are more humiliated and disemboweled than anyone else. It is

57. Hannah Arendt, *On Humanity in Dark Times: Thoughts about Lessing*, in *MEN IN DARK TIMES* 3, 14 (Clara Winston & Richard Winston trans., 1968).

this part of humanity that can become the constituent subject of a new world order, if it succeeds in winning the solidarity of the majority of humanity with the most distant and unfortunate peoples, and in extending its horizons to future generations.

Of course, this prospect of the unification of humanity on the basis of the common interest, of reason, law and brotherhood, is bound to encounter very powerful obstacles: the short-sightedness of the political class, which is interested in maintaining its own petty powers and privileges, and the equally short-sighted interests, if they are to have a future, of the great economic and financial powers. On the other hand, the timetable of constitutive processes is much slower than the destructive processes set in motion by systemic crimes. But in the face of the challenges and threats that unite everyone, poor and rich, weak, and strong—the Earth, as an old slogan says, is for everyone the only planet we have—an awakening of reason is inevitable. We are all in this together, and we must realize that humanity's presence on Earth is an ephemeral phenomenon, which can and probably will end if there is no change of course. The real big problem is time. We have lost time, we are losing time. We have little time left—50 years, maybe a century or two—and we may not make it in time to change course.

APPENDIX: DRAFT CONSTITUTION OF THE EARTH.

Ferrajoli draft in 100 articles proposed for discussion.

The Draft presented here was written following a request made by the Executive Committee of the School of Constituent Earth. In the months of pandemic and enforced inertia during which it has been impossible to hold the seminars planned at the inaugural meeting of the School, held in Rome on 21 February 2020, it has seemed useful to prepare a first draft of the Constitution, which will serve to facilitate the debate and to invite additions or modifications, based on the systematic identification of the most relevant normative issues that need to be addressed.

Before outlining this draft, a few observations seem appropriate. The first concerns the political significance of this initiative. The purpose of the project is to demonstrate that the establishment of an Earth Constitution, i.e. a system of limits and constraints on the unbridled powers of sovereign states and global markets, is firstly possible, despite the cultural differences, political conflicts, powerful interests and entrenched prejudices that oppose it, and secondly necessary and urgent, as a rational and unifying response to the many global emergencies—ecological catastrophe, the nuclear threat, the misery and hunger of billions of people—that threaten peaceful coexistence and the very survival of humanity, and that only a new constitutional pact among all the peoples of the earth can address.

The second observation is linked to the first. Precisely because this project is the fruit of reflection on the most rational response to the great emergencies we face, it draws a boundary model, an ideal and regulatory one: the *ought* of a public sphere equal to the challenges and global emergencies, as suitable as possible to guarantee the principles of justice proclaimed in the many charters of rights that crowd our legal systems. Hence the radical and apparently utopian character of many of its norms: from the judicial recognition of violations of fundamental freedoms by despotic regimes to the global guarantee of the right to health and subsistence for all human beings, from universal citizenship to the abolition of arms and armies, from the

creation of a global public property to protect the environment to the introduction of a worldwide tax on large estates and high incomes to finance global guarantee institutions.

The third observation concerns the specificity of this draft compared to existing constitutional charters. This draft follows what we might call, in the words of the preamble to the Charter of Fundamental Rights of the European Union, the “common constitutional traditions” of more advanced constitutional and international charters. But an Earth Constitution will inevitably be very different from all existing charters, because it will have to respond to global problems completely unknown in other eras, and it will have to protect new rights and new vital goods against new powers and new aggressions unimaginable before, requiring new systems of guarantees far more incisive and complex than those handed down by our legal tradition. Radical and innovative as they are, however, if one takes seriously the many existing constitutional and international charters, I believe that the guarantees envisaged here are all already logically implied and normatively imposed by the universal character of those negative or positive expectations that make up fundamental rights.

The draft consists of one hundred articles, divided into two parts: the first part is devoted to the principles of justice, which express the purposes and *raison d'être* of a constitution of the earth; the second part is devoted to the global institutions established by the constitution as instruments suitable, by their functions and the means assigned to them, to ensure the realization of the stated purposes.

The first part of the draft, after a programmatic preamble paraphrasing the *incipit* of the Charter of the United Nations, is divided into four titles devoted respectively to supreme principles, fundamental rights, fundamental goods, and illicit goods.

The *supreme principles*, set out in Title I (Articles 1–6), define the purposes of the Earth Federation that the new constitutional pact is intended to establish: the maintenance of peace, the preservation of nature, the protection of vital goods, the prohibition of lethal goods, and the guarantee of

the dignity, equality, and fundamental rights of all human beings. In particular, two classical notions of equality are established: equality before the law, which requires the clarity and absence of ambiguity of normative languages as a condition for the semantic consistency of the principle of legality; and equality in fundamental rights, which in turn requires, for the benefit of all human beings, the equal and effective guarantee of these rights—the prohibition of their violation and the obligation to respect them—by appropriate global guarantee institutions, where national guarantee institutions do not exist.

The *fundamental rights* enshrined in Title II (arts. 7–47) are the traditional rights that are universally guaranteed in international charters, but which are in fact systematically violated in many parts of the world for lack of guarantees: first, against the many despotic regimes that plague our planet, the rights of immunity and liberty (arts. 9–23), from personal freedom to the right to life, from the classical freedoms of thought, assembly, and association to the right to emigrate and, consequently, to settle anywhere in the world; secondly, against the current inequalities and against world poverty and hunger, the social rights (arts. 24–29), such as the right to health, education, subsistence, and housing; thirdly, against today’s state sovereignties, which are increasingly detached from their social foundations, political rights (Arts. 30–36), from the principle of peace and the right of peoples to internal and external self-determination to the right of peoples to political participation through voting and collective organization in parties, including global parties; fourthly, against today’s invisible and impersonal sovereignty of the markets, civil rights of entrepreneurial autonomy (Arts. 37–47), which are powers whose exercise must not only be guaranteed but also limited by environmental protection, consumer protection and equal rights for all workers.

But the two most important innovations in the first part of this draft concern *fundamental goods* and *illicit goods*. Indeed, it is the guarantees relating to these goods that need to be introduced in order to respond to all of today’s global challenges and emergencies—humanitarian, environmental

and nuclear—that the individualist language of rights is usually unable to address.

First and foremost, the *fundamental goods* listed in Title III (Articles 48–51) must be guaranteed by removing them from the market and by making them inviolable and accessible to all: these are the *common goods* (art. 49), such as air, drinking water, the great glaciers and the great forests, which require multiple guarantees, starting with their protection as global public property; the *social goods* (art. 50), which include vaccines and life-saving medicines, the universal guarantee of which consists in the obligation to distribute them to all human beings; the *strictly personal goods* (art. 51), which concern the integrity of the human body and the identity of persons.

On the other hand, it is necessary to introduce the guarantees against *illicit goods* provided for in Title IV (Art. 52–58). These guarantees consist of prohibitions on their production and/or trade and/or possession. Unlike goods that are fundamental because they are vital, these goods—such as nuclear weapons, but also common firearms, toxic or otherwise dangerous waste, and greenhouse gas emissions—must be prohibited as illicit because they threaten the lives of individuals and sometimes entire peoples.

The second part of this draft is also divided into four titles.

Title I (arts. 59–63) defines the role and functions of the *Earth Federation* as a political community open to membership by all states of the world. It distinguishes three classes of global institutions on the basis of their different sources of legitimacy: governmental institutions, guarantee institutions and economic institutions.

Title II is devoted to *global institutions and functions of government*. These are the existing institutions created by the UN Charter: the General Assembly, the Security Council, the Economic and Social Council and the Secretariat (arts. 64–70). The draft Constitution provides for the political democratization of these institutions on the basis of their representativeness of the peoples of the earth and entrusts them with the task of establishing the global guarantee institutions and all the functions of government required by

the purposes of the federation, starting with the functions of international public security. But apart from these functions of a global nature, it is clear that the functions of government, since their legitimacy depends on their political representativeness, should for the most part remain in the hands of the nation-states, which are closest to the electorate.

Much more decisive for the construction of a global public sphere equal to the global challenges is the introduction of what we might call *global institutions and functions of guarantee*, legitimized precisely by the guarantees of the equality of all persons in human rights, the protection of fundamental goods because they are vital, and the protection against illicit goods because they are lethal. These institutions are provided for in Title III (arts. 71–90), which is itself divided into two sections: the first is devoted to the *global institutions and functions of primary guarantee* of the principles established in Part I, i.e. the immediate and direct guarantee of peace, security, the environment and human rights (art. 74-85); the second section is devoted to the *global institutions and functions of secondary guarantee*, entrusted with the judicial recognition of violations of the above principles, whether by action or omission, and with the international settlement of disputes (art. 86-90).

Certain primary global guarantee institutions already exist: the World Health Organization, the FAO, UNESCO, and the International Labor Organization. Provision is made for strengthening both their functions and their apparatus to enable them to effectively ensure the universal guarantee of the rights to health, education, basic food, and fair and decent working conditions. Other global institutions of primary guarantee, however, are established by the norms of this second part, implementing as many of the principles established in the first part. First and foremost, an International Human Rights Council will be established with the function of coordinating the activities of the other guarantee institutions and distributing resources to them. As a guarantee of peace, it provides for the prohibition of weapons, the monopoly of military force in the hands of global and local police forces alone, and thus the disbandment of national armies, as called for by Immanuel

Kant more than two centuries ago. There will also be an Environmental Protection Agency with the task of protecting nature by declaring all natural resources identified as vital as assets of a global public property, and also of monitoring compliance with prohibitions on the production of greenhouse gases and toxic or otherwise lethal waste. Finally, there is an International Social Security Organization to guarantee people's livelihoods, a World Water Agency to guarantee everyone's access to clean drinking water, and a World Digital Communications Committee to guarantee human rights that may be violated by such communications.

Two global institutions of secondary guarantee would be the existing International Court of Justice, whose jurisdiction would be made compulsory and extended to other disputes involving states, and the existing International Criminal Court, whose jurisdiction would be extended to include serious violations of freedoms by despotic regimes, violence to prevent the exercise of fundamental rights, including the right to migration, and the illegal production and trafficking of arms. Two new, no less important jurisdictions will then be established. The first is the Global Constitutional Court, whose role of reviewing the invalidity of any source of law that conflicts with the norms of this Constitution is worthy of placing these norms at the top of the hierarchy of sources, thus giving them the requirement of rigidity that is the hallmark of today's constitutional guaranteeism. The second is the International Criminal Court for Systemic Crimes, which will be responsible for promoting the investigation and eradication of crimes so called because they are systemic violations of rights or fundamental goods, which are not due to the criminal responsibility of specific individuals, but rather to the irrationality and social irresponsibility of the current political and economic system: environmental degradation, the risk of nuclear conflict, and the growth of hunger and poverty in the world's peripheries.

Finally, Title IV of Part II is devoted to *economic and financial institutions* (arts. 91—99). These are the institutions that already exist in the international legal system: the World Bank and the International Monetary

Fund, created in 1945 following the Bretton Woods agreements, and the World Trade Organization, created in 1995. The composition of the governing bodies of these institutions is being reformed because their control by the richest countries, due to the fact that they are representative of their wealth rather than their population, has so far rendered ineffective and sometimes reversed the role of promoting the development of poor countries and the reduction of economic imbalances entrusted to them by their statutes.

The latter Title also provides for a *global budget* and a *global tax*, with details of both budget shares and tax rates. The global tax system consists of a series of taxes on global activities and taxation based on highly progressive rates on great wealth, inheritance of large estates and very high incomes. These rates are undoubtedly high: their purpose is not only to raise the revenue needed to finance the global guarantee institutions, but also to reduce the excessive and pathological concentration of wealth and to discourage the distribution of unlimited income. The *global budget* consists of allocating to the various global institutions, and in particular to the primary guarantee institutions, parts of the budget intended to finance their social expenditure. The quantification of both the tax rates and the portions of the public budget earmarked for social spending seemed necessary in order to effectively bind both fiscal policy and global public spending to a real redistribution of wealth, the guarantee of various social rights and effective environmental protection, beyond the general rules of principle of tax progressivity and social solidarity. Finally, it provides for the transfer of the public debt of poor countries to the Earth Federation as compensation for the damage caused so far by the free use and abuse of the global commons by the rich countries, and for the World Bank to guarantee the public debt of other countries.

PREAMBLE

We, the peoples of the Earth, who, over the past generations, have accumulated deadly weapons capable of destroying humanity many times over, have devastated the natural environment and, through our industrial activities, have endangered the habitability of our planet;

Aware of the ecological catastrophe threatening the Earth, of the link between the survival of humanity and the preservation of the environment, and of the danger that, for the first time in history, humanity may be heading for extinction because of its aggression against nature;

Determined to save the Earth and future generations from the scourges of unsustainable development, wars, despotism, and the spread of poverty and hunger, which have already caused irreversible damage to our natural environment, millions of deaths every year, the most serious affronts to human dignity, and an infinite amount of incomprehensible deprivation and suffering;

Resolved to live together, without exclusion, in peace, without deadly weapons, hunger or hostile walls, in order to guarantee a future for humanity and other living species, and to achieve equality in fundamental rights and solidarity among all human beings, assuring them the guarantees of life, dignity, freedoms, health, education and vital minimums,

We promote a constituent process of the Earth Federation, open to membership by all peoples and all existing states, with the aim of establishing this covenant of peaceful coexistence and solidarity:

PART ONE

Principles. The Purposes

Title One

Supreme principles

ARTICLE 1

Earth, common home of all living beings

The Earth is a living planet. It belongs as a common home to all living beings: humans, animals, and plants. It also belongs to future generations, to whom our generation has a duty to ensure, through the continuation of history, that they can come into the world and survive.

Humanity is part of nature. Its survival and health depend on the vitality and health of the natural world and of other living beings, animals, and plants, which together with human beings form a family united by the same origin and global interdependence.

ARTICLE 2

Purposes of the Earth Federation

The purposes of the Earth Federation are:

To safeguard present and future life on our planet in all its forms and to end greenhouse gas emissions and global warming, air, water and soil pollution, deforestation, attacks on biodiversity and cruelty to animals;

To maintain international peace and security through the prohibition of all weapons—nuclear, chemical, microbiological and conventional—and the abolition of national armies, thus achieving the disarmament of states and peoples and the monopoly of force in the hands of public security institutions;

To ensure the equal dignity of all peoples and persons and the preservation and protection of all vital goods, and to promote friendly relations of solidarity and cooperation

among peoples in the solution of global environmental, political, economic and social problems;

To realize the equality of all human beings with regard to fundamental rights and, to this end, to establish, within the framework of appropriate institutions and global guarantee functions, prohibitions of violations and duties of performance corresponding to these rights as their guarantees.

ARTICLE 3

Human dignity

Human dignity is inviolable. It is the duty of all to respect and protect the human person, both as an individual and in the social formations in which his or her personality is exercised.

In the richness of their manifold differences, which this Constitution seeks to protect, human beings constitute the people of the Earth, equal in dignity and rights, users of common goods, jointly responsible for life on the planet and bound to preserve it and transmit it from one generation to the next.

Genetic modification of human beings is permitted only for strictly therapeutic purposes.

ARTICLE 4

Equality

Everyone is equal before the law.

Equality before the law means that the rules of the law should not be obscure or vague, but as clear, unambiguous, and precise as possible.

Everyone is equal in fundamental rights.

Equality in fundamental rights means the right of everyone to respect and affirm all their personal differences and to minimize economic and social inequalities.

The guarantees of these rights, where they are absent or inadequate in State systems, shall be ensured by the global

guarantee institutions provided for in Title Three of Part Two of this Constitution.

ARTICLE 5

Earth citizenship

All human beings are citizens of the Earth. All are endowed with legal capacity from the moment of birth. No one may be deprived of legal capacity or name.

All human beings acquire full legal capacity when they reach the age of majority.

ARTICLE 6

Peace

The Earth Federation rejects war as the greatest crime against humanity.

The right to peace is a fundamental right of all human beings. Its guarantee is an absolute duty of all public institutions, both national and global.

Fraternity is the primary form of relationship between all human beings who belong to the people of Earth.

All human beings and all public institutions have a duty of political, economic, and social solidarity.

Title Two

Fundamental Rights

ARTICLE 7

The universality, indivisibility, and inalienability of fundamental rights

The fundamental rights to life, physical and mental integrity, liberty, health, education, sustenance, security, and free development of the person are universal rights that belong to all human beings and are therefore indivisible and inalienable.

They are in the interest of each of their holders and in the public interest of the whole of humanity. They cannot be negotiated or renounced by their holders.

ARTICLE 8

Fundamental rights and their guarantees

The fundamental rights enshrined in this Constitution are negative or positive expectations of a universal character, to which correspond, as guarantees, the prohibitions of their violation and the obligations of performance appropriate to their satisfaction.

They impose on the global institutions of government the obligation to create the global institutions and functions of guarantee which, in the absence of State institutions of guarantee, are delegated to their protection and enforcement.

The guarantees of these rights are limits and constraints on the exercise of all powers, both public and private, in relation to which they determine what is not to be decided and what is not to be left undecided.

Fundamental rights are liberty rights, social rights, political rights, and civil rights.

Section One

Freedoms

ARTICLE 9

Guarantees of freedoms

The rights of immunities and freedoms imply that everyone is prohibited from violating them and from preventing or restricting their exercise.

ARTICLE 10

Right to life and personal integrity

Everyone has the inviolable right to life.

No one shall be subjected to torture or to inhuman or degrading treatment or punishment or to mental treatment which impairs his personality.

No one shall be held in conditions of slavery or servitude.

No one shall be required to perform forced or compulsory labor.

ARTICLE 11

Freedom of thought

Freedom of thought, conscience and religion is inviolable.

No one may restrict or compel it.

ARTICLE 12

Religious freedom

Everyone has the right to manifest freely his or her religious beliefs, while respecting the freedom of others. No one may be compelled to practice a religion against his or her will.

All religious denominations are free to ordain and practice their cults and to propagate their beliefs, with respect for other religious denominations and the freedom rights of all and everyone.

Public and religious institutions are autonomous and independent of each other.

ARTICLE 13

Freedom of expression

Everyone has the right to free manifestation of thought by any means of dissemination.

Freedom of expression is limited by the prohibition of insult, defamation, and violation of the privacy of others.

The freedom of the media is guaranteed by the right of journalists to participate in determining the direction of the media and, at the same time, by public funding, which is

conditional on the absence of censorship and master control and is paid in inverse proportion to advertising revenue.

Everyone has the right to communicate, to seek, receive and impart information, regardless of frontiers or political barriers, and to have equal access to the Internet and information technology.

Everyone has the right to be informed of the content and grounds of acts of public authorities which affect his or her fundamental rights.

ARTICLE 14

Freedom of movement on Earth

Everyone has the right to move freely throughout the world, subject to such restrictions as may be prescribed by law for reasons of health.

Everyone has the right to emigrate from any country, including his own, and to return to his own country. This right is guaranteed by the prohibition of any violence or coercion designed to prevent its exercise, and by the obligation of the Earth Federation to permit and regulate immigration.

A person who is denied in his or her own country the effective enjoyment of the fundamental rights guaranteed by this Constitution shall have the right of asylum in the territories of States which have acceded to this Constitution.

ARTICLE 15

Freedom of assembly

Everyone has the right to freedom of peaceful assembly, unarmed and without authorization, subject to restrictions imposed by the public authorities for reasons of public health or safety.

ARTICLE 16

Freedom of association

Everyone has the right to freedom of association, within the limits set by the prohibition of associations of a criminal or military nature.

ARTICLE 17

Freedom of the arts, sciences, and teaching

Art and science are free, and their teaching is free.

Everyone has the right of access to science and knowledge.

ARTICLE 18

Personal liberty

Personal liberty may not be restricted except by a motivated decision of the judicial authority and only in the cases and in the manner prescribed by law.

Restrictions on personal liberty may be authorized by the police authorities in exceptional cases of necessity and urgency, as exhaustively defined by law, and shall cease if they are not confirmed by the judicial authority the following day.

No one may be deprived of his personal liberty for the sole reason that he is unable to fulfil a contractual obligation.

Anyone deprived of personal liberty must be treated with humanity and with the respect due to his or her dignity as a person. Any physical or moral violence against persons otherwise deprived of their personal liberty shall be punished.

ARTICLE 19

Immunity from technological impositions

No one may be subjected to automated decisions, based solely on algorithms, that affect his or her person or otherwise interfere with his or her life.

Any application of artificial intelligence or robotics capable of violating the dignity, privacy or freedom of persons shall be prohibited and punished.

Any technological application to the human person capable of causing harmful and permanent changes to his or her identity is prohibited.

ARTICLE 20

Right to privacy

Everyone has the right to respect for his or her privacy, home and the confidentiality of his or her correspondence and all forms of communication.

No one shall be compelled to disclose his political, religious, or other opinions.

Inspections, searches, detentions, seizures and any other interference with the private life of persons shall be permitted only in the cases, in the manner and with the same guarantees as those prescribed for the protection of personal freedom.

ARTICLE 21

Principle of legality of criminal offences and penalties

No one may be punished for an act or omission which has not previously been provided for by law as a criminal offence, or with more severe penalties than those in force at the time when the offence was committed.

The law may punish as crimes only such acts as are strictly defined by it, are attributable to the personal responsibility of the perpetrators, and are harmful to the property or rights of others or to important constitutional interests.

ARTICLE 22

Principles of due process

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty by a motivated judgement, rendered within a reasonable time and on the

basis of evidence obtained in a public trial at which the accused has had the right to reply to reasoned and clear charges and to defend himself in person and with the assistance of counsel of his choice or of a defense counsel.

Anyone found guilty by a court of law shall be entitled to a further examination of his responsibility by a higher court.

ARTICLE 23

Humanity of punishments

Punishments shall not consist of treatment contrary to the sense of humanity.

The death penalty, life imprisonment, corporal punishment, infamous punishment, and imprisonment for a term exceeding twenty years shall be prohibited.

ARTICLE 24

Natural liberty

Natural liberty is the power to do anything that does not harm others. It can only be restricted by law. Laws may not prohibit actions that are not harmful to others or to society.

Behavior that is not formally prohibited by law cannot be prevented by anyone.

No one may be compelled to do what is not required by lawful norms.

Everyone has the right to disobey an unjust order that involves the unlawful use of force or the violation of the rights of others.

Section Two

Social Rights

ARTICLE 25

Guarantees of social rights

Social rights entail an obligation on the part of national guarantee institutions and, where this obligation is not adequately fulfilled, on the part of global guarantee

institutions, to provide free of charge to all human beings the benefits which are the subject of these rights.

ARTICLE 26

Right to health

Everyone has the right to health.

The right to health entails an obligation on the part of both national and global guarantee health institutions to prevent disease and to provide all human beings, free of charge, with the necessary treatment and medicines.

No one shall be compelled to undergo medical treatment against his or her will, except under provisions of law authorized solely to ensure public safety and health.

ARTICLE 27

Right to education

Everyone has the right to education, which shall be compulsory and free of charge for at least 10 years in public schools.

Private schools may be established without any direct or indirect burden on public institutions.

Education, whether in public or private schools, aims to promote the free development of the personality and to educate people to respect the principles of peace, dignity and equality of persons, their fundamental rights and common goods.

Those who are able and deserving have the right to be provided with the means necessary to attain the highest levels of education.

Public educational institutions, local and global, shall ensure the widest possible networked dissemination of scientific knowledge as knowledge accessible to all.

ARTICLE 28

Right to food

Everyone has the right to adequate food, in the form of wholesome and nutritious food, sufficient to ensure his or her healthy physical and mental development.

ARTICLE 29

Right to basic income

Everyone has the right to a basic income sufficient to ensure the dignity of every human being.

In case of accident, sickness, disability or old age, everyone has the right to be guaranteed sufficient means to live in freedom and dignity.

ARTICLE 30

Right to housing

Everyone has the right to adequate and safe housing.

Section Three

Political Rights

ARTICLE 31

Equality of peoples in dignity and rights

All peoples are equal in dignity and rights.

All peoples have the right to existence and subsistence, to respect for their national and cultural identities, to the use of their languages, and to the conservation and protection of their natural environment, historical traditions and artistic treasures.

ARTICLE 32

Minority rights

Persons belonging to linguistic, cultural, religious, national, or political minorities shall have the right to the protection and affirmation of their identity as defined by these affiliations, to the use of their languages and to respect for their cultures and traditions.

ARTICLE 33

Popular sovereignty

Sovereignty belongs to the people of the Earth and to no one else. No constituted power can appropriate or usurp it.

It consists in the sum of those fragments of sovereignty which are the powers and counter-powers which make up the fundamental rights which all human beings possess.

ARTICLE 34

Right of peoples to self-determination

Every person has the right to self-determination, both internal and external, so that it may freely choose its civil, political, economic, and cultural development.

Internal self-determination consists in democracy, by which all are guaranteed their rights and can participate in the conduct of their country's affairs through free elections, held at reasonable intervals by secret ballot and suitable to ensure the maximum representativeness of the governing institutions.

External self-determination consists in the immunity of peoples from any form of domination, direct or indirect, and from any other violation of fundamental rights or oppression based on their ethnic, national, religious, linguistic or political identity.

ARTICLE 35

Right to vote and political participation

Everyone has the right to participate in public life and in the political decisions of the organs of government.

Everyone who has reached the age of majority is a voter and has the right to vote in the territory in which he or she has his or her permanent residence.

Voting is personal, equal, free, and secret.

ARTICLE 36

Political parties

Everyone has the right to associate in political parties or in free associations or social movements, including those of a global character, for the purpose of jointly determining local, national and global policy.

Political parties are social formations with autonomous political functions compared to the representative institutions of government. Their organization is free in terms of programs and is bound by the democratic method and the duty to respect the principle of peace and fundamental rights.

The budgets of political parties, made up of contributions from members or sympathizers and public funds, are subject to transparency. Parties may not receive hidden private donations or donations which, because of their size, could influence their political choices.

ARTICLE 37

Right of access to public office

Everyone with full legal capacity has the right to access public functions and elected offices on equal terms.

Section Four

Civil Rights

ARTICLE 38

Civil rights and their exercise in accordance with the law

The civil rights of bargaining and entrepreneurial autonomy are powers that belong to all persons of full legal capacity.

They shall be exercised in accordance with the law, which shall determine their limits, which shall consist in the prohibition of causing unjustified damage to the rights and property of others.

ARTICLE 39

Right to property

Private property and other patrimonial rights shall be recognized and guaranteed in respect of the modes of acquisition and enjoyment, and in respect of the limitations imposed on their exercise by their very nature as powers, in order to protect the rights of others and the public interest.

Private property, including intellectual property underlying patents, may be expropriated by local or global public authorities for reasons of public interest, subject to compensation.

ARTICLE 40

Private economic initiative and its limits

The civil rights of bargaining autonomy and private economic initiative may not be exercised in such a way as to harm the safety, health, freedom, and dignity of persons.

Companies must have their registered office in the place where they carry out the majority of their activities.

Public functions and the civil rights of entrepreneurial autonomy and private property are incompatible in the same subjects when the exercise of the former may be affected by the interests that inform the exercise of the latter.

Economic growth cannot be unlimited. It is conditioned by its environmental sustainability and by the finite nature of natural resources.

ARTICLE 41

Rights and duties within the family

Men and women of full age and of free consent have the right to live together in different ways, without restrictions on their identity, and to form a family.

Spouses have equal rights and duties in their relations with each other and with their children. They have the duty to maintain, care for and educate their minor children, respecting their rights and dignity as persons.

They also have the right, at the request of either of them, to obtain the legal dissolution of the marriage bond, with the consequent duty of care towards the economically more needy spouse.

Underage marriages are prohibited and legally void.

Motherhood is the result of a woman's free and responsible self-determination.

Children have the right to be treated as persons and to participate, according to their maturity, in decisions affecting them.

Members of the family have a duty of mutual care.

ARTICLE 42

Dignity of work

Work is not a commodity. It is a factor of human dignity and of a person's role in society and must be protected in all its forms.

Everyone has the right to free choice of work under conditions of equal opportunity.

It is the duty of public institutions, both national and international, to promote full employment.

ARTICLE 43

Workers' rights

Every worker has the right to a healthy, hygienic, safe, and dignified working environment and to working conditions that prevent accidents, occupational diseases, and injury to his or her health and physical or mental safety. Work that endangers the life or health of workers is prohibited.

Child labor is prohibited.

Workers have the right to equal working conditions and equal pay for equal work, without discrimination based on sex, nationality, religion, political opinion, party, or trade union membership.

All workers have the right to a weekly rest period, to a working day not exceeding eight hours, to paid annual leave

and to fair remuneration, the minimum level of which, determined in accordance with international standards, shall be sufficient to ensure a free and decent existence.

Every worker has the right to improve his or her working skills by participating in apprenticeship or vocational training courses.

No worker may be dismissed without just cause, as defined by law and duly justified and substantiated.

Employment contracts may be fixed-term only in the case of seasonal work, exceptional and proven objective needs or a significant temporary increase in the normal activities of the enterprise.

All workers have the right to a pension that provides them with adequate means of subsistence.

The use of audiovisual or other equipment for the purpose of remote control of workers' activities is prohibited.

Discrimination on the basis of gender in terms of promotion and career is prohibited.

All female workers are entitled to protection of their maternity status and to adequate rest periods before and after childbirth in the form of paid maternity leave. Dismissal or discrimination in employment on the grounds of maternity is unlawful.

ARTICLE 44

Workers' participation in decisions affecting their lives

Workers shall have the right to be informed and consulted, including through the trade unions to which they belong, on all matters of the employer which may affect their employment relationship.

In enterprises managed by corporate bodies, workers shall have the right to be represented in these bodies in order to participate in a decisive manner in all decisions affecting their lives and future, including those concerning the sale or relocation of production activities, unless there is a demonstrated need to safeguard the survival of the enterprise.

ARTICLE 45

Right to strike

All workers have the right to strike, the exercise of which may be restricted by law only to protect the fundamental rights of others or services essential to the life of the community.

ARTICLE 46

Trade union freedoms

All workers have the right to form or join trade union organizations, including those of a global nature, and to engage in trade union activities at the workplace, including through the establishment of workplace trade union representatives and the exercise of the right of assembly.

Trade unions draw up internal rules of a democratic nature.

They have the right to conclude collective agreements, including global agreements, with representatives of the employers, which are binding on all labor relations for the categories of workers they represent.

Local or national trade unions may form or join supranational trade unions, whether general or category-based, whose aim is to obtain guarantees of rights that are as equal as possible for all workers in the world.

ARTICLE 47

The right to take legal action to protect your rights

Everyone has the right to a fair and public hearing, within a reasonable time, before impartial and independent tribunals established by law, to obtain the recognition and protection of his rights.

Everyone has the right to take collective action in defense of common rights and interests.

Against violations of the rights established by this Constitution, persons and, through their representatives, aggrieved peoples shall have the right of recourse, in the

event of failure or denial of justice in the territories of the States, to the comprehensive courts provided for in this Constitution in Section Two of Title Three of Part Two.

Title Three

Fundamental Goods

ARTICLE 48

Guarantees of fundamental goods

Fundamental goods are those essential goods whose protection and accessibility must be guaranteed for all.

Fundamental goods are common goods, social goods and strictly personal goods.

Common goods, which are taken off the market, are natural vital goods: air, drinking water and its sources, rivers, lakes, seas, large forests, large glaciers, biodiversity, the seabed, Antarctica, airspace, electromagnetic waves, extra-atmospheric space, the moon, and other celestial bodies.

Social goods are artificial life goods: life-saving medicines, vaccines, healthy and uncontaminated food necessary for basic nutrition, and the Internet.

Strictly personal goods are the vital parts of the human body, which may not be disposed of in any way for profit, and personal identity data, which may not be used without the consent of the person who owns it.

ARTICLE 49

Common goods. A global public property

The common goods, to which everyone must have access, are the common heritage of humanity and all other living beings.

They are part of the global public property. They are therefore beyond the reach of private appropriation, commercialization and any activity that could irreversibly damage them.

Intensive agriculture and livestock farming, which can seriously damage the common goods, are prohibited.

Everyone has the right to live in a healthy environment and to influence decisions concerning the common goods and the environment in which they live.

ARTICLE 50

Social goods

Social goods are goods whose availability and accessibility must be guaranteed free of charge for all.

The production of social goods and the scientific research necessary for this purpose must be adequately financed by institutions of primary guarantee, both national and global.

Government institutions, both national and global, may use patented social goods in cases of national emergency or other circumstances of extreme urgency, with fair compensation, after seeking, but not obtaining, the consent of their owners.

Access to the Internet is a fundamental right of all people on equal terms.

The fundamental rights set forth in this Constitution shall be guaranteed on the Internet in such a way that their substantive effectiveness is ensured equally for all people.

ARTICLE 51

Strictly personal goods

Strictly personal goods belong to each person to the exclusion of all others.

Any act that causes permanent damage to strictly personal goods consisting of parts of the human body is prohibited.

The processing of personal data that may reveal the identity of a natural person, such as political or religious beliefs, health, DNA, economic situation, location, movements, interests, sex life, membership of political parties or other associations, shall be permitted only with the free and informed consent of the data subject and with

respect for his or her dignity and privacy. Such data may not be kept for longer than is necessary to achieve the legitimate purposes for which they were collected.

Everyone has the right to access personal data concerning him or her, to request and obtain its rectification and updating, to know the purposes for which it is held and, if not justified on the basis of the principles of this Constitution, to request its deletion.

The trading of personal databases with a view to their use for purposes other than those for which they were created is prohibited.

Title Four

Illicit goods

ARTICLE 52

Prohibition of production, trade, and possession of lethal goods

Illicit goods are those lethal goods whose production, trade and/or possession are prohibited and punished.

Illicit goods include nuclear weapons, other weapons of aggression and death, killer drones, hard drugs, radioactive waste, greenhouse gas emissions and any toxic or hazardous waste.

ARTICLE 53

Prohibition of weapons and the public monopoly on force

The production, testing, trade, possession and transfer of nuclear weapons, chemical weapons, bacteriological weapons, or other types of weapons similar in nature or effect shall be prohibited and punished.

The possession of and trade in firearms shall be prohibited and punished. The manufacture and possession of such weapons shall be a public monopoly in the hands of local, state and world police forces.

ARTICLE 54

Prohibition of activities that cause irreversible damage to the Earth

Activities that may cause irreversible damage to nature, alter essential ecological processes, or destroy or reduce the diversity of life forms shall be prohibited.

ARTICLE 55

Limits on the production of non-renewable energies

The production and use of non-renewable energy will be subject to the limits imposed by the protection of the environment and human health.

The extraction, trade and use of non-renewable fossil energy sources will be subject to a global tax of at least 10% of their market value by 2030, at least 20% of that value by 2040 and at least 30% of that value by 2050. After 2050, they will be banned and penalized.

ARTICLE 56

Radioactive and toxic waste

The production, as a result of industrial or domestic activities, of radioactive or otherwise toxic waste likely to cause death or serious damage to human health shall be prohibited.

ARTICLE 57

Hard drugs

The production of hard drugs is permitted only by the public pharmaceutical industry or by private companies on the basis of specific licenses issued by the health guarantee institutions.

Their sale shall be restricted to pharmacies on prescription.

Government institutions shall take direct measures to reduce the harm caused to people by drug addiction and abuse.

ARTICLE 58

Consumer rights

As consumers, all people have the right to a market supply of goods that are not spoiled or otherwise harmful to their health and safety.

PART TWO

The institutions. The instruments

Title One

The Earth Federation

ARTICLE 59

Admission of States to the Earth Federation

The Earth Federation is open to all member states of the United Nations and other existing states.

ARTICLE 60

Duties of States

States have the duty to maintain among themselves relations of peace, friendship, solidarity and cooperation and to guarantee within their territories the fundamental rights of all human beings, the protection of basic goods and their universal accessibility.

ARTICLE 61

Disputes between States

Disputes between States shall be settled by negotiation or by conciliation, or by submission to arbitration, or to the judgment of the International Court of Justice, or by any other appropriate means to ensure their peaceful settlement.

ARTICLE 62

Competence of global institutions

The competence of the global institutions includes the protection of the natural environment and common property, the guarantee of peace and security, the guarantee of fundamental rights which are not guaranteed in the territories where their holders live, the prohibition of illicit goods, the reduction of economic imbalances, the promotion

of the development of poor countries, and all measures aimed at achieving the purposes set out in Article 2.

ARTICLE 63

Government institutions, guarantee institutions, institutions of an economic nature

The following are global institutions and functions of the Earth Federation: (a) global institutions and functions of government, (b) global institutions and functions of guarantee, and (c) global institutions and functions of an economic and financial nature.

Government functions are legitimized by the political representativeness of their holders, the more effective the more local.

Guarantee functions are legitimized by the equality of fundamental rights they guarantee, the more effective the more global they are.

Global functions of an economic or financial nature are legitimized by their ability to promote economic stability, environmental protection, and maximum equality in the living conditions of the peoples of the earth.

Title Two

The global institutions and functions of government

ARTICLE 64

The Global Institutions of Government

The global governmental institutions of the Earth Federation are: (a) the General Assembly, (b) the Security Council, (c) the Economic and Social Council, and (d) the Secretariat.

ARTICLE 65

The General Assembly and its composition

The General Assembly shall consist of representatives of all the peoples and states of the Earth Federation, elected by free suffrage every five years.

Each federated state shall have a number of representatives in the General Assembly proportional to the number of its inhabitants, up to one representative for every 10 million inhabitants or fraction thereof.

Federated States with a population of more than 50 million shall have five representatives in the General Assembly, plus one representative for each additional 50 million inhabitants or fraction of 50 million.

ARTICLE 66

The General Assembly and its powers

The General Assembly shall consider and approve measures relating to all the purposes of the Earth Federation set forth in Article 2.

In addition to the powers specified in Chapter IV of the Charter of the United Nations, it shall be the duty of the General Assembly, acting ex officio or on a proposal from the Security Council, to establish, by rules for the implementation of this Constitution, all the global guarantee institutions provided for in Title III of this Part II.

The General Assembly shall annually approve the budget of the Earth Federation as proposed by the Economic and Social Council.

ARTICLE 67

Security Council and its composition

The Security Council shall be composed of the representatives of the 15 States of the Federation, appointed by the General Assembly every five years.

The representatives of the States on the Security Council are nominated from time to time by the national governments.

Once a State has nominated a representative to the Security Council, it may not be re-nominated until 20 years after the expiry of its term of office.

The Security Council acts by a majority of its members. The right of veto is excluded.

ARTICLE 68

The Security Council and its powers

In addition to the powers provided for in Chapters V to VIII of the Charter of the United Nations, the Security Council shall:

- (a) propose to the General Assembly rules for the implementation of this Constitution and, in particular, for the strengthening or establishment of the global guarantee institutions provided for in Title III of this Part Two;
- (b) promote peaceful relations among States;
- (c) ensure international public security through the monopoly of force exercised under its authority by the Committee of Global Staff and Security and by national police institutions.

ARTICLE 69

The Economic and Social Council, its composition, and powers

The Economic and Social Council shall be composed of 54 members elected by the General Assembly for a term of three years from among economists, jurists or social scientists of international repute and high moral standing.

In addition to the powers set forth in Chapter X of the Charter of the United Nations and in Part IV of the International Covenant on Economic, Social and Cultural Rights of 16 December 1966, the Economic and Social Council shall:

- (a) coordinate the activities of the global institutions of an economic or financial nature referred to in Title IV of this Part II;
- (b) appoint the heads of these institutions from among persons of high moral character and recognized ability, from among several candidates proposed by the same institutions; and
- (c) organize the operations required by the Global Treasury;
- (d) formulate the budget of the Earth Federation and propose it annually to the General Assembly;
- (e) promote a global economic policy as an industrial, social, and fiscal policy aimed at ensuring the ecological sustainability of economic development, overcoming global economic crises, promoting the production of vital goods through fiscal incentives and discouraging or prohibiting the production of lethal goods.

ARTICLE 70

The General Secretariat, its composition, and powers

The General Secretariat shall be coordinated by a General Secretary and shall consist of all administrative officers of the Earth Federation.

The Secretary-General shall be appointed by the General Assembly, on the recommendation of the Security Council, for a term of five years.

In addition to the responsibilities set forth in Chapter XV of the Charter of the United Nations, the Secretary-General shall be responsible for all administrative and executive functions required by the purposes of the Earth Federation as set forth in Article 2.

Title Three

The global institutions and functions of guarantee

ARTICLE 71

The global institutions of guarantee, primary and secondary

The Global Guarantee Institutions of the Earth Federation, established to ensure the observance and implementation of the principles set forth in this Constitution, are: (a) the Primary Global Guarantee Institutions, (b) the Secondary Global Guarantee Institutions.

ARTICLE 72

Independence of the Guarantee Institutions

The global guarantee institutions and functions shall be separate and independent from the global government institutions and functions.

To ensure this separation, the Global Guarantee Institutions shall enjoy self-governance and financial autonomy guaranteed by the portions of the global budget allocated to them pursuant to Article 99.

The officers of the Global Guarantee Institutions shall be independent and subject only to this Constitution. During their term of office, they shall not engage in any activity incompatible with their independence and impartiality. They shall be appointed for a term of seven years and shall not be eligible for re-election.

ARTICLE 73

Principle of subsidiarity

The competence of the global guarantee institutions is determined by the principle of subsidiarity, according to which they are activated when the corresponding State or sub-State government or guarantee institutions do not have sufficient economic resources, or when the corresponding State or sub-State government or guarantee institutions require it due to the proven inadequacy of the resources at their disposal.

Section One

Global institutions and functions of primary guarantee

ARTICLE 74

Global institutions of primary guarantee

The global institutions of primary guarantee are: (a) the International Human Rights Council; (b) the Global Security Staff Committee; (c) the World Health Organization; (d) the Food and Agriculture Organization; (e) the United Nations Educational, Scientific and Cultural Organization; (f) the Environmental Protection Agency; (g) the International Social Security Organization; (h) the International Labor Organization; (i) the World Water Agency; and (l) the World Digital Communications Committee.

ARTICLE 75

International Human Rights Council

The International Human Rights Council shall be composed of 42 members appointed from among scholars of international repute and high moral standing by each of the other global guarantee institutions referred to in Articles 74 and 86, each of which shall be responsible for appointing three members.

In addition to the functions of the United Nations Human Rights Council, the International Human Rights Council shall:

- (a) coordinate the activities of all guarantee institutions in the exercise of their guarantee functions;
- (b) appoint the holders of these functions from among persons of high moral character and recognized ability, from lists of several candidates proposed by the same institutions;
- (c) distribute among these institutions the shares of the budget of the Earth Federation, at least the amounts reserved for each of them by Article 99;
- (d) report to the Global Prosecutor's Offices of the International Courts all human rights violations submitted to their jurisdiction;
- (e) promote the greatest possible homogenization and simplification of the basic legislation of the

federated States, while respecting the different legal and cultural traditions.

ARTICLE 76

Global Security Staff Committee

In order to guarantee peace and security, the monopoly of armed force, limited to the weapons necessary for police functions, shall be vested in the Global Security Staff Committee and in the territorial police institutions established in the States of the Federation.

In addition to the powers set forth in Article 47 of the Charter of the United Nations, the Global Security Staff Committee, assisted as necessary by the territorial police institutions, shall exercise, under the direction of the Security Council, public security functions and, under the direction of the Global Prosecutor's Offices, judicial police functions with respect to crimes within the jurisdiction of the International Criminal Court and the International Court for Systemic Crimes.

ARTICLE 77

Abolition of national armies

National armies shall be abolished. Where national police forces are insufficient to perform the police functions provided for in Article 76, the necessary forces of the national armies shall be converted into territorial branches of the Global Security Staff Committee

The Global Security Staff Committee shall promote and supervise the progressive disarmament of all States of the Earth Federation and the observance of the prohibition of the manufacture, trade and possession of arms as set forth in Article 53.

ARTICLE 78

World Health Organization

The World Health Organization, in addition to the powers set out in its Charter, has the duty to ensure the

health of all people through free medical care and medicines.
To this end it shall:

- (a) promote medical and pharmaceutical research and the production of vaccines and life-saving drugs on a global scale;
- (b) prevent pandemics and coordinate the necessary measures to contain the spread of disease;
- (c) provide for the establishment of hospitals and local health facilities and the distribution of life-saving medicines and vaccines to all countries in the world that lack them.

ARTICLE 79

Food and Agriculture Organization of the United Nations

The Food and Agriculture Organization of the United Nations, in addition to the powers set forth in its Charter, shall ensure the fulfilment of the right to food of all human beings and shall promote in all countries of the Earth Federation a rational, ecological and organic agriculture which does not harm the environment and ensures the regenerative capacity of the soil.

To this end, the Food and Agriculture Organization of the United Nations:

- (a) impose limits and restrictions on industrial crops and intensive livestock farming, which damage the environment and consume excessive amounts of water;
- (b) encourage small farms to maintain and restore soil fertility;
- (c) ensure the participation of farmers and their trade union representatives in agricultural policy-making;
- (d) distribute agricultural surpluses to poor countries and the quantities of food necessary to prevent hunger and malnutrition among their populations;
- (e) promote scientific research and technical cooperation among producing countries for the purpose of developing rational agriculture throughout the world.

ARTICLE 80

United Nations Educational, Scientific and Cultural Organization

The United Nations Educational, Scientific and Cultural Organization, in addition to the powers set forth in its Charter, shall:

- (a) establish public schools at all levels wherever public schools of a national or local character do not exist;
- (b) promote the guarantee of the right to knowledge for all human beings.

ARTICLE 81

Environmental Protection Agency

The Environmental Protection Agency, through its territorial branches and in accordance with other existing international environmental institutions, promotes the protection of the natural environment and the improvement of its quality.

It protects the natural commons, oversees their conservation as the common heritage of mankind, and ensures their removal from the availability of both the market and politics by qualifying them as assets that are part of the global public property.

It shall ensure that activities involving such property are carried out for the benefit of all humanity and that the economic benefits derived therefrom are distributed equitably and without discrimination.

It shall monitor the application of taxes on the extraction and use of non-renewable energy sources and compliance with prohibitions on the production of toxic or otherwise harmful emissions or wastes in accordance with Article 55.

Adopt regulations aimed at the environmentally sound disposal of various types of waste and at reducing the production of non-biodegradable waste.

Organizing and coordinating reforestation activities in all countries of the world.

Financing the research and application in industrial, agricultural, and commercial activities of technologies capable of producing energy without emitting greenhouse gases.

It considers the financing of the ecological transition in poor countries.

ARTICLE 82

International Social Security Organization

The International Social Security Organization shall organize the provision in poor countries of the social services necessary for the survival of human beings.

It shall guarantee the subsistence of all human beings, including through the provision of a universal citizen's income.

ARTICLE 83

International Labor Organization

In addition to the powers and purposes set forth in the Philadelphia Declaration of 10 May 1944, the International Labor Organization shall:

- (a) supervise, through its territorial organs, the observance of the labor rights and trade union freedoms set forth in this Constitution;
- (b) promote the maximum equality of all workers in the world in the guarantee of their fundamental rights, including the right to a standard minimum wage;
- (c) report to the International Criminal Court all cases of enslavement which have not been prosecuted in the State in whose territory they occurred.

ARTICLE 84

World Water Agency

The World Water Agency shall:

- (a) establish and promote appropriate global policies to secure drinking water and water resources as a common good for all;

- (b) organize the distribution of potable water free of charge to all
- (c) monitor compliance with the prohibition of leakage and waste of drinking water above a maximum limit;
- (d) tax the consumption of drinking water above the minimum and below the maximum mentioned above.

ARTICLE 85

World Digital Communications Committee

The World Digital Communications Committee shall be responsible for monitoring and ensuring that such communications respect the freedom of the media and all other fundamental rights set forth in this Constitution.

It shall have the power to order the removal from the network of any message or image that contains threats, insults, harassment, incitement to hatred or violence, or otherwise violates the fundamental rights of any person.

Section Two

Global institutions and functions of secondary guarantee

ARTICLE 86

Global institutions of secondary guarantee

The global institutions of secondary guarantee are: (a) the International Court of Justice, (b) the International Constitutional Court, (c) the International Criminal Court, and (d) the International Court for Systemic Crimes.

ARTICLE 87

International Court of Justice

The International Court of Justice shall have compulsory jurisdiction in disputes between States concerning the matters set forth in Article 36 of this Statute.

The International Court of Justice shall also have compulsory jurisdiction in disputes between multinational business corporations and States in whose territories they

carry on their activities but where they do not have their registered offices.

ARTICLE 88

International Constitutional Court

An International Constitutional Court shall be established for the judicial review of provisions established by global institutions or international treaties or by national sources which, in the course of other judgments, are suspected of being contrary to the provisions of this Constitution.

An International Constitutional Prosecutor's Office shall be established at the International Constitutional Court to raise ex officio the questions of constitutionality referred to in the first paragraph.

The International Constitutional Court shall also decide on conflicts of responsibilities between different global institutions.

ARTICLE 89

International Criminal Court

In addition to the crimes set forth in Article 5 of the present Statute, the International Criminal Court shall have jurisdiction, as a complement to national criminal jurisdictions, over:

- (a) serious violations of the rights of immunity and liberty established in this Constitution, committed or tolerated by organs of nation-States;
- (b) the production, trade, possession and installation of nuclear weapons;
- (c) the production of and trade in conventional weapons other than those intended for police functions;
- (d) serious damage to the natural environment and to common property attributable to the personal responsibility of the perpetrators;
- (e) violence and coercion aimed at preventing or suppressing the exercise of the right to emigrate.

For crimes within the jurisdiction of the International Criminal Court, the Prosecutor of the International Criminal Court has the duty to prosecute.

The International Criminal Court may be addressed by any person who considers himself or herself to be a victim of any of the crimes within its jurisdiction, after exhausting domestic remedies under the systems of the States.

ARTICLE 90

International Court for Systemic Crimes

An International Criminal Court for Systemic Crimes shall be established.

Systemic crimes, which are unpunishable because they cannot be attributed to the actions and responsibility of individual and specific persons, are those activities that cause or threaten to cause massive damage to entire peoples or the whole of humanity, such as environmental degradation, the failure of States to disarm, the failure to implement the social rights established by this Constitution, and the failure to provide relief to masses of people deprived of means of subsistence or otherwise in danger of life.

A World Prosecutor's Office shall be established at the International Court for Systemic Crimes to deal with these crimes. This Court may be approached by peoples or individuals who consider themselves aggrieved by a systemic crime.

Actions and judgments on systemic crimes shall have the character of actions and judgments of truth, aimed at identifying their systemic causes and political responsibilities, without making criminal judgments.

The International Criminal Court for Systemic Crimes shall also have jurisdiction to try crimes provided for in the Statute of the International Criminal Court, but which do not fall within the jurisdiction of the International Criminal Court because they were committed by subjects of countries that were not parties to its founding treaty. Also in these cases, the judgement of the Court shall have the character of a truth judgement.

Title Four

Economic and financial institutions

ARTICLE 91

The World Bank, the International Monetary Fund and the World Trade Organization

The economic and financial institutions of the Earth Federation are: (a) the World Bank, (b) the International Monetary Fund, and (c) the World Trade Organization.

The task of these institutions shall be to ensure the equitable development of the economy and trade, based on a project of international inclusiveness.

ARTICLE 92

Budget of the Earth Federation

The Economic and Social Council shall draw up the budget of the Earth Federation each year and propose it to the General Assembly for approval.

The budget of the Federation shall:

- (a) determine the amount of the contributions of the federated states to the Earth Federation, the global taxes and, at least in the measures established in Articles 96 and 97, the global taxes;
- (b) allocate to the global guarantee institutions, at least in the measures established in Article 99, the portions of the planetary budget intended for the guarantee of peace, rights and fundamental goods.

ARTICLE 93

Global register of large estates

To ensure the transparency of large estates, a register will be set up to record the owners of all estates worth more than the equivalent of \$500 million today.

ARTICLE 94

Global taxation

As a necessary condition for the effective guarantee of the fundamental rights and vital goods of all, a global tax is established, consisting of: (a) a tax on the use of common property and other activities of a global nature, and (b) a tax, based on criteria of strong progressivity, on large estates and very high incomes of individuals.

ARTICLE 95

Global taxes

Global taxes shall be levied: (a) on financial transactions (Tobin tax); (b) on the use of energy resources that emit greenhouse gases into the atmosphere (Carbon tax); (c) on the digital profits of multinational corporations operating outside the countries in which they are headquartered (Web tax); (d) on the enrichment resulting from the use of common property assets, such as satellite orbits, airlines, radio frequencies, outer space, the resources of the high seas and the mineral resources of the oceans.

ARTICLE 96

Progressive global estate taxes

An annual global tax of at least 5% on estates in excess of today's equivalent of \$500 million and at least 10% on the portion of such estates in excess of today's equivalent of \$5 billion will be introduced.

A global inheritance tax of at least 15% on estates in excess of today's \$500 million equivalent and at least 30% on the portion of such estates in excess of today's \$5 billion equivalent will be introduced.

ARTICLE 97

Progressive global income taxes

An annual global tax will be introduced: (a) of at least 5% on personal income in excess of the equivalent of today's \$500,000; (b) of at least 10% on the portion of the same income in excess of the equivalent of today's \$1 million per annum; (c) of at least 40% on the portion of the same income in excess of the equivalent of today's \$4 million per annum;

(d) of at least 80% on the portion of the same income in excess of the equivalent of today's \$8 million per annum.

ARTICLE 98

Public debts

As compensation for the damage caused so far to the common property of humanity and future generations by the ecologically unsustainable industrial development of the rich countries, the public debt of poor countries where the average per capita income of the population is less than an amount equivalent to today's \$20,000 per year shall be charged to the Earth Federation.

The public debt of the remaining countries will be guaranteed by the World Bank, subject to the obligation of the debtor countries to pay its interest, which will be lent in equal and constant amounts.

ARTICLE 99

Shares of the global budget to guarantee global expenditure

Global public expenditure should promote the economic development of poor countries and finance all global institutions, both governmental and guarantee.

To enable them to effectively guarantee fundamental rights and public goods in poor countries, global guarantee institutions should be allocated minimum shares of annual global revenues: (a) 10% for global policing functions; (b) 10% for global health guarantee functions; (c) 10% for global guarantee functions for staple foods and the development of nature-friendly agriculture; (d) 10% for global guarantee functions for education; (e) 10% for environmental protection; (f) and 10% for global secondary guarantee functions.

ARTICLE 100

The constitution-making process

This Draft Constitution, after discussion and amendment by the largest number, shall be deposited at the Headquarters of the United Nations and submitted to the General Assembly for consideration, amendment, and approval, and shall be open to accession and ratification by all States.

It shall enter into force as the Constitution of the Earth on the thirtieth day after the date of deposit of the thirtieth instrument of ratification or accession with the Secretary-General of the United Nations.