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V CONGRESO INTERNACIONAL DE ACTUALIZACIÓN JURÍDICA

"Por una Constitución para la Tierra"

COMPILACIÓN ACADÉMICA

Del 25 al 27 de marzo 2026

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"Towards a Constitution for the Earth"

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To the memory of Dr.
Plutarco Hernán Arrocha Rodríguez,
founder of ISAE University,
who opened the doors of university education
to generations of Panamanians.

FOREWORD

From March 25 to 27, 2026, Panama City hosted the V Congreso Internacional de Actualización Jurídica, organized by ISAE University and the Center for International Studies under the theme "Towards a Constitution for the Earth." The conference centered on the proposal advanced by Luigi Ferrajoli in Por una Constitución de la Tierra. La humanidad en la encrucijada (Towards a Constitution of the Earth: Humanity at the Crossroads): a draft global constitution designed to address emergencies that no single state can tackle alone, such as global warming, the nuclear threat, growing inequality, forced migration, and the unchecked concentration of economic power.

The presence of Ferrajoli himself and of Miguel Carbonell, both of whom received honorary doctorates from ISAE University on the opening day, gave the event a distinctive character: the proposal was examined not from a distance but in dialogue with its author and with some of his closest collaborators in Ibero-America.

This volume collects the proceedings of the conference in three parts.

Part I, devoted to global constitutionalism and the Constitution of the Earth, opens with a summary of the keynote discussion in which Luigi Ferrajoli, Miguel Carbonell, and Cristian Ibarra, prompted by a deliberately critical moderator, debated the origin, novelty, and feasibility of the proposal. Five studies follow, each testing the proposal from a different angle. Miguel Carbonell identifies a crisis of scale in constitutionalism: a system designed to limit power within the state now confronts powers and risks that transcend its borders. Jorge Enrique Ibáñez Najar, drawing on the experience of the Constitutional Court of Colombia, highlights the territorial limits of constitutional adjudication and argues for a Universal Constitutional Court. Carlo Ferrajoli takes labor rights as a case study to argue that international guarantee institutions are now a precondition for the effective realization of the rights recognized in national constitutions. Claudia E. Zalazar examines the impact of climate change on health and migration and calls for enhanced protection of the rights of the most vulnerable. Finally, Rodolfo Godoy Peña asks who can bring the proposal to fruition and identifies the university as the setting in which to cultivate leadership grounded in intergenerational responsibility.

Part II, on administrative law, contains the lecture by Grettel Villalaz de Allen, Attorney General for Administrative Affairs (Procuradora de la Administración), on State liability for administrative silence. Her study of Panamanian law begins with the Administration's duty to decide and concludes with the need for an administrative culture of timely response.

Part III, on criminal procedure, contains summaries of the two expert panels that examined Panama's adversarial (accusatory) criminal justice system in light of due process guarantees. The first panel asked whether courts act as interpreters or as legislators in criminal proceedings; the second assessed the effectiveness of annulment and cassation appeals as guarantees of appellate review. Both panels reached a conclusion that connects with the central theme of the conference: the remaining challenge lies less in proclaiming guarantees than in securing their effective enforcement.

That thread runs through the entire volume. Whether at the global scale, in the handling of an administrative petition, or in the review of a criminal conviction, the contributions gathered here return to the gap between rights as proclaimed and rights as guaranteed, a problem that Ferrajoli has placed at the center of legal scholarship. The Constitution of the Earth is presented in these pages not as a utopia but as a normative program open to criticism, and the task of examining it falls largely to universities. With the creation of the Traveling Chair, ISAE University has taken on that commitment; with the publication of these proceedings, it makes the conference debates available to the legal community.

This volume is dedicated to the memory of Dr. Plutarco Hernán Arrocha Rodríguez, founder of ISAE University.

Editorial Committee
Revista Jurídica Latinoamericana (REJURLAT)
ISAE University
Panama City, nov 2026

EDITORIAL NOTE

The texts in this volume are based on transcripts of the video recordings of the conference. The editors have adapted them to the requirements of a written publication and applied uniform standards throughout.

The texts were not reviewed by their authors. The written version published here is therefore the sole responsibility of the editors, who have endeavored to reflect faithfully the content and meaning of each presentation. Where the transcript contained inaccuracies in data, dates, legal references, or scholarly attributions, the editors have clarified them in footnotes. Any errors or omissions in the written version are attributable to the editors, not to the presenters.

The lectures have been adapted into chapters structured as scholarly articles: title, contents, abstract and keywords, a main body divided into numbered sections, and a bibliography. Features of oral delivery, such as greetings, formal acknowledgments, repetitions, and digressions, have been omitted, while every effort has been made to preserve each speaker's theses, arguments, and tone.

The keynote discussion and the expert panels are not reproduced as dialogue. They are presented as analytical summaries written in the third person, setting out each participant's position, the points of agreement and disagreement that emerged in the debate, and the panel's conclusions.

The legislation, case law, and scholarship mentioned by the speakers have been converted into footnotes in bibliographic form. Notes ending with "(Ed. note)" are by the editors: they clarify a detail, identify the source of a statement, or supply additional information, and are not part of the original presentation. Notes ending with "(Trans. note)" were added in this English edition to explain civil-law institutions that have no exact equivalent in common-law systems.

Quotations from Luigi Ferrajoli's Por una Constitución de la Tierra. La humanidad en la encrucijada are taken from the Spanish translation by Perfecto Andrés Ibáñez (Madrid, Trotta, 2022, digital edition, ISBN 978-84-1364-073-0) and have been rendered into English by the editors. Because the digital edition has no fixed pagination, references are to the chapter or, where applicable, to the article of the Draft Constitution of the Earth that closes the work, which should also help readers locate them in the English edition, Towards a Constitution of the Earth: Humanity at the Crossroads (Oxford, Hart Publishing, 2026). Other quotations from works published in Spanish or Italian are likewise the editors' translations. Where an international or foreign instrument has an official English text, that text is quoted.

Works cited in a Spanish or Italian edition are listed under their original title, followed where helpful by an English rendering of the title in square brackets. Civil-law terms of art are given in English, with the original term in italics and parentheses on first use. Terms in languages other than English are italicized.

The Editors

RECTOR'S EDITORIAL

Proceedings of the 5th International Congress on Legal Updating
"Toward a Constitution for the Earth"
Panama City, March 25–27, 2026
Revista latinoamericana jurídica, REVJURLAT, No. 5 (2026–2027)

The publication of the **Proceedings of the 5th International Congress on Legal Updating "Toward a Constitution for the Earth"** coincides with a moment in which legal science is challenged by emergencies that no State can confront alone: global warming, the nuclear threat, inequalities, forced migrations, and the concentration of uncontrolled economic powers. The congress, held in Panama City from March 25 to 27, 2026 and organized by ISAE Universidad and the Center for International Studies INTERCENTEC, took as its axis Luigi Ferrajoli's proposal in Toward a Constitution for the Earth. Humanity at the Crossroads. The presence of Ferrajoli himself and of Miguel Carbonell, to whom our university conferred the honorary doctorate on their first visit to Panama, made it possible to examine the proposal in direct dialogue with its author, which constitutes a milestone in the academic trajectory of our institution.

Unlike an ordinary issue of the **Revista latinoamericana jurídica REVJURLAT**, this volume of proceedings originates in the spoken word—lectures, a conversation, and expert panels—and therefore has a broader architecture: three parts, preceded by a presentation and an editorial note, and a documentary annex with the list of speakers, the congress fact sheet, the development of the sessions, and institutional acts.

The first part opens with the **synthesis of the keynote conversation** among Luigi Ferrajoli, Miguel Carbonell, and Cristian Ibarra, critically moderated by Edwin Teira, from which theses of notable density emerge: what must be globalized are the functions of guarantee and not those of government, in a federalism of guarantees and not a world State; the protection of nature requires objective guarantees, such as a planetary public domain; and the distinction between the impossible and the improbable makes it possible to understand the Constitution for the Earth as a normative program and not as a utopia. Five studies follow. Miguel Carbonell diagnoses a crisis of scale in constitutionalism in the face of powers and risks that overflow state borders. Jorge Enrique Ibáñez Najar shows from Colombia's Constitutional Court the territorial limits of constitutional justice and proposes a Universal Constitutional Court. Carlo Ferrajoli argues, on the basis of labor rights, that international institutions of guarantee are already a condition for the effectiveness of constitutional rights. Claudia E. Zalazar examines the impact of climate change on health and migration and calls for reinforced protection of the most vulnerable persons. Finally, Rodolfo Godoy Peña situates in the university the formation of leadership with intergenerational responsibility; as rector and researcher, I underscore the relevance of this thesis, for the Constitution for the Earth requires institutions, but also persons formed to sustain them.

The second part collects the lecture by Grettel Villalaz de Allen, Procurator of the Administration, on State pecuniary liability for administrative silence. The third part brings together the syntheses of two panels on the Panamanian adversarial criminal system, which warned that the challenge is less normative than applicative and conceived the double instance as a material guarantee of review.

Taken together, these contributions share a common thread: the distance between proclaimed rights and guaranteed rights. From the planetary scale to an administrative petition or the review of a criminal judgment, the authors agree that the challenge is not to proclaim new rights, but to build the guarantees that make them effective.

The editorial work that made this volume possible deserves special consideration. The texts come from the video recordings of the congress, which required their full transcription and careful removal of marks of orality, while preserving the theses and tone of each speaker. Normative, jurisprudential, and doctrinal references were verified and converted into footnotes. I express my recognition to Dr. Aura Franco Gutiérrez, Editor-in-Chief; Dr. Rodolfo Godoy, Editor; Dr. Sebastián Reyes Alvarado, Co-editor; and Eng. Luis Rodríguez, Technical Editor, who transformed a set of recordings into a reference academic document.

With the creation of the Itinerant Chair, ISAE Universidad assumes the commitment to keep this debate alive in the region. The work is dedicated to the memory of Doctor Plutarco Hernán Arrocha Rodríguez, founder of ISAE Universidad.

With the conviction that law must reaffirm its function as an instrument of peace, justice, and protection of human dignity, we present these proceedings to the legal community, trusting that they will help make the distance between proclaimed and guaranteed rights ever smaller.

Dr. Gustavo Mizraim González-Rodríguez, Ed. D.
Rector
ISAE Universidad
Panama City, November 2026

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Part I

GLOBAL CONSTITUTIONALISM AND THE CONSTITUTION OF THE EARTH

SUMMARY OF THE KEYNOTE DISCUSSION

The Constitution of the Earth and the Challenges of Global Constitutionalism

PANEL OVERVIEW

Format: Keynote discussion (*conversatorio magistral*). March 25, 2026.

Panelists: Luigi Ferrajoli (Italy), Professor Emeritus of Philosophy of Law at Roma Tre University and leading exponent of legal guarantism (*garantismo*); Miguel Carbonell (Mexico), researcher at the Institute for Legal Research of the National Autonomous University of Mexico (UNAM); Cristian Ibarra (Colombia), Santo Tomás University, Tunja Campus, Complutense University of Madrid.

Moderator: Edwin Teira, Coordinator of the School of Law and Political Science, ISAE University.

I. Introductory Note

The discussion brought together the author of the proposed Constitution of the Earth and two scholars familiar with his work to examine the challenges that global phenomena such as war, migration, inequality, environmental crises, and the concentration of economic and political power pose to humanity. The moderator announced at the outset that he would take a deliberately critical stance in order to subject the proposal to rigorous scrutiny.

The discussion followed two main threads: first, the foundations, novelty, and scope of the Constitution of the Earth in relation to earlier cosmopolitan traditions; second, its practical feasibility in a world still organized around state sovereignty and marked by the accumulation of military power.

II. The Participants' Positions

1. Origin of the Proposal: A Global Economy Without a Global Public Sphere

Asked about the origin of the idea, Ferrajoli traced it to the observation that globalization has produced economic powers that operate beyond the confines of states without a corresponding public sphere. While the economy has become global, politics and law have remained confined to the state and local levels, and the public sphere has thus become subordinate to the economy: major economic powers move their investments wherever they can exploit labor, destroy the environment, evade taxes, or corrupt governments, and states, in order to retain those investments, weaken labor rights and tolerate tax evasion and environmental devastation.

Against these unchecked powers, he argued, the only answer is a global constitutionalism equipped with effective guarantees: international institutions to guarantee peace, bodies to guarantee labor rights, a universal basic income, and minimum standards for a dignified life. He recalled that guarantism is, precisely, the theory of the effectiveness of rights.

2. The Realism of the Proposal and Its Four Challenges

The moderator then turned to the regional level: despite the American Convention on Human Rights and its adjudicatory mechanisms, rights violations persist and the number of petitions filed with the protection bodies keeps rising. Carbonell replied that the Constitution of the Earth, far from

being naïve, stems from realism: the great powers, risks, and threats of our time no longer fit within the borders of any single state, while legal responses remain national and fragmented.

To structure the debate, he identified four challenges: the political challenge, arising from the persistence of the logic of state sovereignty; the institutional challenge, which calls for effective bodies, procedures, and enforcement mechanisms rather than merely proclaimed principles; the material challenge, since there can be no constitutionalism worthy of the name amid extreme inequality, which drains freedom of meaning and turns rights into privileges; and the cultural and intellectual challenge, which requires the twenty-first-century lawyer to understand the interplay between normative levels, jurisdictions, and decision-making arenas. The proposal's main virtue, he concluded, is that it compels us to abandon intellectual complacency.

3. The Novelty of the Proposal: A Federalism of Guarantees, not a World State

Ibarra asked what makes the Constitution of the Earth novel compared with the cosmopolitan tradition running from Kant to Kelsen, Habermas, Nussbaum, and Adela Cortina, and how states might be persuaded to adhere to it and citizens to accept it as legitimate, so as to turn Diogenes's ancient aspiration to be a "citizen of the world" into a legal reality.[1]

Ferrajoli replied that the novelty lies in the fact that the proposal does not seek to establish a world state of the kind envisaged by Kelsen or Bobbio.[2] The functions of government, legitimated by democratic representation, should remain primarily with states; what must be globalized are the functions of guarantee, that is, the limits and constraints imposed on political and economic powers. This distinction corresponds to the one between matters of universal concern to humanity (peace, the environment, equality, and fundamental rights) and matters of political choice. A world state, he warned, following Kant, would risk degenerating into despotism,[3] and states are unlikely to surrender their governmental functions; by contrast, a new compact within the framework of the United Nations to safeguard the common good is achievable. It would be a more viable, effective, and just form of federalism, respectful of the diversity of legal systems and of the political autonomy of states, and built on existing institutions, such as the General Assembly and the Security Council, duly democratized and strengthened.

4. Rights of Nature and Objective Guarantees: A Constitutionalism of Survival

Ibarra then turned the discussion to the Latin American context, where Colombia, Ecuador, and Bolivia have recognized nature as a subject of rights, and asked how such non-human subjects, as in the cases of Chucho the bear or Lake Tota, would fit within a global constitutional framework.[4]

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[1] DIOGENES LAERTIUS, *Lives of Eminent Philosophers*, VI, 63. (Ed. note)

[2] FERRAJOLI, Luigi, *Por una Constitución de la Tierra. La humanidad en la encrucijada* [Towards a Constitution of the Earth: Humanity at the Crossroads], trans. Perfecto Andrés Ibáñez, Madrid, Trotta, 2022, ch. 8: what is required at the global level "is not so much the establishment of an improbable, and not even desirable, replication of the state on a supranational scale" as, above all, "the introduction of appropriate functions and institutions of guarantee of peace and of human rights." On the federal form of this system, redefined as "multilevel constitutionalism," see ibid., ch. 7.

[3] KANT, Immanuel, *Toward Perpetual Peace: A Philosophical Sketch* (*Zum ewigen Frieden*), Königsberg, 1795, First Supplement, where a universal monarchy is said to end in "soulless despotism." (Ed. note)

[4] See, among others, Constitution of the Republic of Ecuador, 2008, arts. 71–74; Law No. 071 on the Rights of Mother Earth, Bolivia, December 21, 2010; and Constitutional Court of Colombia, Judgment T-622 of 2016, November 10, 2016, reporting Justice Jorge Iván Palacio Palacio (Atrato River). In the two Colombian cases mentioned, the initial

Ferrajoli welcomed these developments because they bring the issue into view but argued that declaring nature a subject of rights is not enough: what is needed are objective guarantees. He proposed removing goods vital to survival, such as drinking water, major forest reserves, and biodiversity, from the market by establishing a planetary public domain,[5,6] and developing a constitutionalism of common and vital goods alongside one that limits or prohibits lethal goods whose use threatens humanity. The language of rights, which was decisive in building the constitutionalism of equality, must now be complemented by a system of guarantees of survival; the two forms of constitutionalism, he stressed, are complementary and both necessary.

5. Peace, Disarmament, and Security: Between Utopia and a Normative Agenda

The moderator then raised the most direct objection: from a Latin American perspective, a ban on the production of weapons may seem utopian in the face of military powers whose leaders are unlikely to give up their arsenals; and even if a significant reduction were achieved, the question of how to guarantee security against drug trafficking, terrorism, and organized violence would remain unanswered.[7]

Carbonell, drawing on *Derecho y razón* and *Principia iuris*,[8] distinguished between what is politically implausible in the short term and the need to formulate normative programs capable of guiding the future development of institutions, even if they cannot yet be fully realized. Constitutionalism itself once seemed impossible: the equality proclaimed in 1789 took centuries to reach even minimal levels of realization, in societies that practiced slavery and systematic discrimination against women and other groups. The gap between law and reality, as Ferrajoli has shown, is not an anomaly of the constitutional state but part of its very nature; the response to unfulfilled rights is not to abolish them but to mobilize, in words that recall Habermas, the utopian energies of society to make them effective.[9]

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decisions were reversed: in Unification Judgment SU-016 of 2020, January 23, 2020, reporting Justice Luis Guillermo Guerrero Pérez, the Constitutional Court vacated the writ of habeas corpus granted in favor of the bear Chucho; and the first-instance ruling of February 23, 2021, recognizing Lake Tota as a subject of rights was reversed on appeal by the Superior Court of the Judicial District of Santa Rosa de Viterbo. (Ed. note)

[5] See FERRAJOLI, Luigi, *Por una Constitución de la Tierra*, op. cit., ch. 3, which proposes "the establishment of a planetary public domain capable of ensuring their inviolability"; ch. 11, "Towards a constitutionalism of goods: C) to guarantee vital goods; D) against lethal goods"; and Draft, art. 49, "The commons. A planetary public domain."

[6] In civil-law systems, the "public domain" (*dominio público*) is the category of public property that is inalienable, imprescriptible, and exempt from private appropriation. It bears no relation to the "public domain" of intellectual property law and is closer in function to the common-law public trust doctrine. (Trans. note)

[7] Article 53 of the Draft Constitution of the Earth prohibits the production, trade, possession, and dissemination of nuclear, chemical, or bacteriological weapons and the like, as well as the possession of and trade in firearms, whose production and possession "are reserved, as a public monopoly, to local, state, and global police forces": FERRAJOLI, Luigi, *Por una Constitución de la Tierra*, op. cit., Draft, art. 53. (Ed. note)

[8] FERRAJOLI, Luigi, *Derecho y razón. Teoría del garantismo penal* [Law and Reason: A Theory of Criminal Guarantism], trans. Perfecto Andrés Ibáñez et al., Madrid, Trotta, 1995; and idem, *Principia iuris. Teoría del derecho y de la democracia* [Principia iuris: A Theory of Law and Democracy], 3 vols., trans. Perfecto Andrés Ibáñez et al., Madrid, Trotta, 2011.

[9] Cf. HABERMAS, Jürgen, "La crisis del Estado de bienestar y el agotamiento de las energías utópicas" [The Crisis of the Welfare State and the Exhaustion of Utopian Energies], in idem, *Ensayos políticos*, Barcelona, Península, 1988. (Ed. note)

Ferrajoli completed the answer by distinguishing between the impossible and the merely improbable within the prevailing political culture.[10] The abolition of slavery, the prohibition of torture, and the universalization of political rights were all regarded as utopian before they became reality. At a time when, for the first time, the survival of the species is under threat and much of the world's fate depends on the decisions of a very few people who refuse to accept limits, it is essential to show that an alternative exists. Its realization depends on the capacity to turn the principles already recognized in international charters, which to a large extent remain mere words, into effective institutions: the challenge is not to proclaim new rights but to build the institutions that will make them effective.

6. Closing Remarks

In closing, Ibarra highlighted the work of the Association for the Earth Constitution and the need for a collective voice in defense of peace, human dignity, and fundamental rights, as well as Ferrajoli's influence on the construction of a cosmopolitan democracy. Carbonell stressed that the proposal is not a finished text but one open to criticism and refinement, and he called on universities, research centers, legal scholars, and students in Latin America to study, debate, and enrich its one hundred articles. The moderator noted that the recent creation of the Traveling Chair is a first step toward continuing that study in the region.

III. Points of Agreement and Disagreement

The panelists agreed on three points: that global problems require legal responses of global reach; that the core of the proposal lies not in proclaiming new rights but in establishing guarantees and institutions capable of making them effective; and that the Constitution of the Earth should be understood as a normative framework open to academic debate.

The counterpoint came from the moderator's critical stance, which focused on feasibility: the persistence of rights violations despite regional protection systems, the foreseeable resistance of military powers, and the tension between disarmament and security. The panelists did not deny the short-term political difficulties, but they rejected the idea that those difficulties make the proposal unworkable, relying on the distinction between the impossible and the improbable and on the historical experience of constitutionalism itself. The debate also brought out two significant nuances: the choice of a federalism of guarantees over the idea of a world state, and the complementarity between the language of the rights of nature and the objective guarantees of vital goods.

IV. Conclusions of the Discussion

The discussion offered an opportunity to examine critically the Constitution of the Earth as a legal and political alternative in the face of the global challenges of the twenty-first century. Its contributions may be summarized as follows: the proposal differs from earlier cosmopolitan traditions in that it globalizes functions of guarantee rather than functions of government; guarantism, understood as a theory of the effectiveness of rights, provides the tool for turning proclaimed principles into working institutions; protecting nature requires, alongside the recognition of rights,

[10] This idea gives its title to the final chapter of the book: "The possibility, necessity, and urgency of a Constitution of the Earth. The true utopia, the true realism": FERRAJOLI, Luigi, *Por una Constitución de la Tierra*, op. cit., ch. 12.

objective guarantees that remove vital goods from the market; and the gap between law and reality, far from invalidating the project, defines the task of the region's universities and legal culture in building new forms of global governance aimed at protecting human dignity and the survival of humanity.

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Constitutionalism, Guarantees, and Global Challenges in the Twenty-First Century

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Mexico

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I. Introduction: The Crisis of Scale in Constitutionalism. II. The Legacy of Modern Constitutionalism. III. The Changing Map of Power. IV. Rights Without Guarantees: A Precarious Promise. V. The Scope of the Proposal for a Constitution of the Earth. VI. Global Commons and Intergenerational Responsibility. VII. The Technological Revolution, Digital Platforms, and Artificial Intelligence. VIII. Four Levels of Action for Global Constitutionalism. IX. Concluding Remarks. Bibliography.

ABSTRACT

This paper argues that contemporary constitutionalism is undergoing a crisis of scale. Designed to order, limit, and rationalize power within the state, it now faces powers and risks that transcend national borders, while its guarantee institutions remain predominantly domestic. On this basis, the paper examines the legacy of modern constitutionalism; the emergence of new centers of power (global financial markets, transnational corporations, digital platforms, algorithmic systems, cross-border organized crime, and the ecological crisis); and the guarantist thesis that a right is effective only when backed by adequate guarantees. It then analyzes Luigi Ferrajoli's proposal for a Constitution of the Earth, understood not as a project for a world state but as the recognition of goods, risks, and rights that call for common normative frameworks and multilevel systems of guarantees. Finally, it proposes four levels of action and concludes that the Constitution of the Earth offers a serious regulative horizon for the gradual construction of institutions capable of meeting the challenges of the twenty-first century.

Keywords: global constitutionalism; guarantism; Constitution of the Earth; global commons; future generations; technological governance; artificial intelligence.

I. Introduction: The Crisis of Scale in Constitutionalism

The future of constitutionalism in a world marked by global risks, persistent inequality, rapid technological change, and mounting pressure on democracy is among the most important, complex, and urgent questions of our time. In this context, the proposal for a Constitution of the Earth[11] carries extraordinary intellectual and moral force: it challenges contemporary legal thought and compels it to ask whether the categories through which it has understood power, rights, sovereignty, democracy, and guarantees are still adequate to understand and address the realities of the twenty-first century.

The thesis advanced in these pages is that contemporary constitutionalism is undergoing, among other things, a crisis of scale. Modern constitutionalism was designed, fundamentally, to order, limit, and rationalize power within the state. Yet a decisive share of the risks that threaten individuals,

[11] FERRAJOLI, Luigi, *Por una Constitución de la Tierra. La humanidad en la encrucijada* [Towards a Constitution of the Earth: Humanity at the Crossroads], trans. Perfecto Andrés Ibáñez, Madrid, Trotta, 2022. Original title: *Per una Costituzione della Terra. L'umanità al bivio*, Milan, Feltrinelli, 2022.

communities, and the very habitability of the planet no longer originate within state borders, nor can they be contained there.

In short, global problems confront guarantee institutions that remain predominantly national. This mismatch is one of the great challenges of our time and the central theme of the reflections that follow.

II. The Legacy of Modern Constitutionalism

Modern constitutionalism arose from a specific historical experience: the need to place limits on absolute power. Its founding promise was to subject political power to law, to distribute functions, to recognize rights, and to establish mechanisms to guarantee their protection. Its history since then can largely be read as a civilizing effort to impose rules against arbitrariness.

The significance of this process should not be underestimated. When constitutions established the separation of powers, proclaimed equality before the law, recognized fundamental freedoms, organized judicial guarantees, and progressively incorporated social rights, they radically transformed the relationship between the individual and power.[12]

Norberto Bobbio described this phenomenon with a particularly apt expression: the Copernican revolution of modernity, which shifted the legitimacy of the state from the standpoint of power (*ex parte principis*) to a legitimacy grounded in the rights of individuals (*ex parte populi*).[13]

That legacy remains indispensable, and nothing said here is meant to diminish it. On the contrary, precisely because constitutionalism is one of the greatest normative achievements of modernity, we must ask how to preserve it, update it, and extend its guarantee logic to new contexts.

III. The Changing Map of Power

The map of power has changed. For a long time, the principal problem of public law was the excess of state power. That problem persists, especially in Latin America, where authoritarianism, police abuse, political persecution, unlawful restrictions on freedom of expression, corruption, impunity, and systematic human rights violations remain.

Alongside these traditional problems, however, new centers of power have emerged that do not fit neatly into the classic categories of constitutionalism: global financial markets, capable of shaping entire public policies; transnational corporations, whose economic power sometimes exceeds that of many states; digital platforms that mediate and shape much of public discourse; algorithmic systems that influence decisions affecting millions of people; organized crime networks operating across borders; contemporary migration processes; and, of course, the global ecological crisis.

All these phenomena share an essential feature: they transcend the state level. It follows that if the sources of power and risk have become global, so too must the legal categories capable of understanding and regulating them. It is not enough to repeat the traditional language of rights without establishing adequate guarantees to protect them in this new historical context.

[12] Declaration of the Rights of Man and of the Citizen, August 26, 1789, art. 16: "Any society in which no provision is made for guaranteeing rights or for the separation of powers, has no Constitution." (Ed. note)
[13] BOBBIO, Norberto, *El tiempo de los derechos* [The Age of Rights], trans. Rafael de Asís Roig, Madrid, Sistema, 1991, especially the Introduction. Original title: *L'età dei diritti*, Turin, Einaudi, 1990.

IV. Rights Without Guarantees: A Precarious Promise

One of the most important lessons of guarantist constitutionalism is that rights cannot be understood as mere rhetorical proclamations. A right has real value when there is an institutional structure that protects it and makes it enforceable, that allows its violation to be reported, that attaches consequences to noncompliance, and that ensures effective mechanisms of redress.[14]

Where adequate guarantees are lacking, what remains is, at best, a precarious promise. This observation, valid in the domestic sphere, becomes especially serious when threats to rights originate beyond the reach of the national institutions charged with protecting them.

V. The Scope of the Proposal for a Constitution of the Earth

For the reasons set out above, Luigi Ferrajoli's proposal for a Constitution of the Earth deserves to be taken with the utmost seriousness. Its scope must, however, be made clear. The proposal does not necessarily entail the immediate establishment of a world state or the disappearance of national constitutions, nor does it require a single universal legal text.[15]

What it does entail is something deeper and probably more feasible: the recognition that there are goods, risks, threats, and rights whose protection requires common normative frameworks, shared institutions, and multilevel systems of guarantees capable of operating beyond national borders.

VI. Global Commons and Intergenerational Responsibility

Environmental protection offers one of the clearest examples. For far too long, the law treated natural resources as mere objects available for exploitation, a view that now proves legally limited and morally unsustainable.

Water, air, climate stability, biodiversity, and ecosystems are indispensable conditions for a dignified human life. Without them, other rights lose their material foundation: there can be no freedom, equality, health, food, housing, or human development on an ecologically devastated planet.

This reality requires constitutionalism to broaden its scope considerably. The task is no longer only to limit state action against the individual but also to protect global commons whose preservation is indispensable to collective survival.

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[14] On the distinction between rights and guarantees, and on the gaps (*lagunas*) that arise when the proclamation of a right is not accompanied by the guarantees needed to make it effective, see FERRAJOLI, Luigi, *Derechos y garantías. La ley del más débil* [Rights and Guarantees: The Law of the Weakest], trans. Perfecto Andrés Ibáñez and Andrea Greppi, Madrid, Trotta, 1999; and idem, *Principia iuris. Teoría del derecho y de la democracia*, 3 vols., trans. Perfecto Andrés Ibáñez et al., Madrid, Trotta, 2011. In his global proposal, the author calls for "the introduction of suitable primary guarantees," consisting of "prohibitions of harm and obligations of performance corresponding to fundamental rights," as well as equally suitable secondary guarantees: idem, *Por una Constitución de la Tierra*, op. cit., ch. 8.

[15] Ferrajoli himself notes that what is required at the global level "is not so much the establishment of an improbable, and not even desirable, replication of the state on a supranational scale" as, above all, "the introduction of appropriate functions and institutions of guarantee of peace and of constitutionally established human rights": FERRAJOLI, Luigi, *Por una Constitución de la Tierra*, op. cit., ch. 8. On the federal form of this legal order, redefined as "multilevel constitutionalism," see ibid., ch. 7.

It also requires an intergenerational perspective. For some years there was significant debate on the rights of future generations;[16] that line of work, however, lost momentum, perhaps because such subjects were thought not yet to exist in law. We must revive it. To envision a Constitution of the Earth is to ask what kind of planet those not yet born will inherit, what their living conditions will be, and what responsibilities the present generation owes them.

VII. The Technological Revolution, Digital Platforms, and Artificial Intelligence

Alongside the environmental challenge stands another equally significant phenomenon: the technological revolution. Digital technologies have expanded communication, access to information, scientific innovation, and the generation of knowledge, and it would be absurd to deny those benefits. But they have also produced new forms of concentrated power and new modes of surveillance.

Digital platforms are no longer simply neutral spaces for interaction: they shape the flow of information, the visibility of opinions, the formation of collective emotions, and the course of public debate. Algorithms, for their part, are not entirely neutral tools; they embed criteria, priorities, biases, and opacities that can affect fundamental rights such as equality, privacy, personal autonomy, and even democratic participation.

To this must be added a new actor: artificial intelligence. The growing scholarly literature on its relationship with law already addresses human rights, the administration of justice, criminal proceedings, and the practice of law, among many other areas. These technologies affect rights, operate globally, and rely on infrastructure, data sets, and business decisions spanning multiple jurisdictions; yet legal responses remain predominantly national.[17]

For this reason, the project for a Constitution of the Earth must be complemented by serious reflection on global technological governance.

VIII. Four Levels of Action for Global Constitutionalism

The response to the crisis of scale described above requires simultaneous action at four levels:

1. *The level of principles and rights.* A more robust understanding is needed of the core of fundamental rights shared by all of humanity.
2. *The level of guarantees.* There is still a lack of sufficiently effective mechanisms to protect global commons. What is needed are stronger national courts, greater international cooperation,

[16] See UNESCO, Declaration on the Responsibilities of the Present Generations Towards Future Generations, adopted by the General Conference at its 29th session, Paris, November 12, 1997. Ferrajoli's proposal expressly incorporates this dimension: under article 1 of the Draft Constitution of the Earth, the Earth "also belongs to future generations, whose coming into the world and survival in it our generation has the duty to ensure, in the continuity of history": FERRAJOLI, Luigi, *Por una Constitución de la Tierra*, op. cit., Draft, art. 1. (Ed. note)

[17] Ferrajoli refers to the threats posed by the digital revolution, the Internet, and "technological developments in artificial intelligence and so-called algorithmic capitalism," and sets out as a general principle "the prohibition of any application of artificial intelligence or robotics that may violate the dignity, privacy, integrity, and freedom of persons": FERRAJOLI, Luigi, *Por una Constitución de la Tierra*, op. cit., ch. 11. At the regulatory level, Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence is a partial exception of regional scope. (Ed. note)

strengthened oversight bodies, clearer legal obligations for private actors, and effective institutional capacity to investigate, sanction, and remedy rights violations.

3. *The level of multilevel coordination.* The future lies not in replacing national constitutions, which remain indispensable and must be defended and strengthened, but in developing, in addition, forms of constitutionalism capable of reaching across borders in defense of the rights of all people.

4. *The level of legal and political culture.* No constitution, legal text, or institution will suffice without genuine civic education in constitutionalism. We must explain anew why limits on power a precondition of democracy is; why rights are not gracious concessions but inalienable legal entitlements; why judicial independence protects everyone; and why international human rights law strengthens democracies rather than weakening them.

IX. Concluding Remarks

The merit of the proposal for a Constitution of the Earth is that it forces us to abandon conceptual complacency and to recognize that, if we share common risks, we also need common frameworks of protection. Human dignity cannot be fragmented by borders when the threats to it no longer respect any. Constitutionalism, if it is to remain true to itself, must continue to be a theory of limits on power and a practice of guarantees, now projected onto an increasingly interdependent world.

Accordingly, the Constitution of the Earth should be understood not as an unattainable fantasy but as a serious regulative horizon capable of guiding the gradual construction of institutions, principles, and guarantees adequate to the problems of our time.

Constitutionalism is one of the highest expressions of humanity's moral intelligence: it springs from a reasonable distrust of power, understands that all authority requires limits, gives special protection to the vulnerable, raises human dignity to a legal (and not merely philosophical) standard, and keeps alive the aspiration that social life be governed by rational, public, and guaranteed norms. Precisely for that reason, it cannot stand still. It must evolve, broaden its outlook, take account of new risks, recognize new subjects of protection, develop new forms of guarantee, and learn to operate within a wider, more complex, and more interdependent legal landscape.

If the twenty-first century confronts humanity with broader, more diffuse, and technologically more sophisticated powers, a more ambitious constitutionalism is also needed. The task is not one of rhetoric but of institution-building; not merely a celebration of rights but the effective strengthening of their guarantees; not nostalgia but the creative renewal of the best of constitutionalism. Undertaking it demands clarity, courage, and a sense of history.

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Toward a Global Constitutionalism for the Universal Protection of Human Rights

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CONTENTS

I. Introduction: The Territorial Limits of Constitutional Adjudication. II. Cross-Border Problems and the Protection of Nature: The Case of the Amazon. III. From an Unconstitutional State of Affairs to a Convention-Incompatible State of Affairs. IV. Dialogue Among Courts and Its Limits. V. The Inadequacy of the Universal Protection System. VI. A Constitution of the Earth and a Universal Constitutional Court. VII. Climate Change, Emergencies, and Climate Migration. VIII. Financing Global Public Goods. IX. Concluding Remarks: An Intergenerational Responsibility. Bibliography.

ABSTRACT

Drawing on the experience of the Constitutional Court of Colombia, this paper examines the limits that the territorial scope of jurisdiction imposes on constitutional courts when the problems before them transcend national borders. It analyzes two paradigmatic areas: the protection of the Amazon ecosystem, shared by several states, and the Latin American prison crisis, in relation to which it proposes the category of a Convention-incompatible situation (*estado de cosas convencional*). It argues that dialogue between national courts and regional human rights courts, together with the instruments of the universal system, though indispensable, is insufficient to address climate change, migration, new technologies, and global inequality. It therefore calls for a Constitution of the Earth, a Universal Constitutional Court, coordinated mechanisms to respond to climate emergencies, and international instruments to finance global public goods.

Keywords: global constitutionalism; constitutional adjudication; rights of nature; unconstitutional state of affairs; conventionality control; Universal Constitutional Court; climate migration; global public goods.

I. Introduction: The Territorial Limits of Constitutional Adjudication

The discussion of global constitutionalism at this conference, based on the work of Luigi Ferrajoli, compels us to examine the great challenges facing humanity and the need to move toward new forms of protection for fundamental rights. This paper approaches the question from the standpoint of constitutional case law.

Although constitutional judges strive to provide effective responses that guarantee fundamental rights and human rights, they frequently run up against limits imposed by national constitutions themselves. The jurisdiction of constitutional courts defined by the legal order of each state, and their decisions are consequently confined within national borders.

Their work is thus grounded in domestic constitutionalism, even though many of the problems they must resolve clearly transcend the territorial boundaries of each country.

II. Cross-Border Problems and the Protection of Nature: The Case of the Amazon

The Amazon ecosystem is a clear example. It spans Colombia, Brazil, Peru, Ecuador, and Venezuela, among other states, which share a territory that is one of the planet's most important environmental assets. It is home to Indigenous communities whose history stretches back millennia and whose cultural identity does not recognize modern political borders.

Yet when it comes to protecting the rights of these communities or preserving the ecosystem as a whole, national courts can act only within the limits of their respective jurisdictions. This raises a fundamental question: how can an ecosystem whose existence depends on decisions made simultaneously by several states be effectively protected?

Colombia has made progress in recognizing new legal subjects. Certain rivers, *páramos* (high Andean wetland ecosystems), and strategic ecosystems have been recognized as subjects entitled to special constitutional protection.[18,19] This development reflects the understanding that certain elements of nature can no longer be regarded as mere objects of law but as genuine subjects deserving protection.

Even these advances, however, fall short when environmental problems take on a transnational or global dimension. That is why we must envision a constitutionalism that transcends state borders and makes it possible to develop common responses to shared challenges.

III. From an Unconstitutional State of Affairs to a Convention-Incompatible State of Affairs

A similar situation exists in the prison systems of many Latin American countries. Overcrowding, affronts to human dignity, and serious deficiencies in conditions of detention are common problems across the continent.

More than two decades ago, the Constitutional Court of Colombia declared an unconstitutional state of affairs (*estado de cosas inconstitucional*) in the prison system because of the massive and

[18] Among other decisions, see Constitutional Court of Colombia, Judgment T-622 of 2016, November 10, 2016, reporting Justice Jorge Iván Palacio Palacio, which "recognizes the Atrato River, its basin, and its tributaries as an entity subject of rights to protection, conservation, maintenance, and restoration by the State and the ethnic communities"; and Supreme Court of Justice of Colombia, Civil Cassation Chamber, Judgment STC4360-2018, April 5, 2018, reporting Justice Luis Armando Tolosa Villabona, which recognized the Colombian Amazon as a subject of rights.

[19] In Colombian practice, the *magistrado ponente* is the justice who drafts and presents the opinion to the court, not the justice who presides over the bench. "Reporting Justice" is used throughout this volume to render that role. (Trans. note)

systematic violation of the fundamental rights of persons deprived of liberty.[20] Other countries have since adopted similar decisions or begun to acknowledge the scale of the problem.[21]

Deprivation of liberty does not entail the loss of other fundamental rights. Human dignity, health, food, personal integrity, and other essential guarantees must be respected even when a person is deprived of liberty.[22]

When these situations recur across countries and affect rights recognized in international instruments such as the American Convention on Human Rights, the phenomenon goes beyond the purely constitutional sphere and acquires a conventional dimension, that is, a dimension governed by human rights treaties. It may even be said that certain situations amount not only to unconstitutional states of affairs but to genuine Convention-incompatible states of affairs (*estados de cosas convencionales*), insofar as they systematically breach the human rights obligations undertaken by states.

IV. Dialogue Among Courts and Its Limits

This reality calls for strengthening the dialogue between national constitutional courts and international human rights courts, particularly the Inter-American Court of Human Rights, the European Court of Human Rights, and the African Court on Human and Peoples' Rights.[23]

Even these important mechanisms have limits: their decisions bind only the states that have ratified the relevant international instruments.[24] There remains, therefore, a need to move toward broader forms of legal protection.

V. The Inadequacy of the Universal Protection System

The twentieth century saw significant progress with the creation of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights

[20] Constitutional Court of Colombia, Judgment T-153 of 1998, April 28, 1998, reporting Justice Eduardo Cifuentes Muñoz. The declaration was reaffirmed, on new grounds, in Judgments T-388 of 2013, June 28, 2013, reporting Justice María Victoria Calle Correa, and T-762 of 2015, December 16, 2015, reporting Justice Gloria Stella Ortiz Delgado.

[21] Thus, among others, Federal Supreme Court of Brazil (STF), ADPF 347, interim relief granted September 9, 2015, and judgment on the merits of October 4, 2023, on the unconstitutional state of affairs in the Brazilian prison system; and Constitutional Court of Peru, Case No. 05436-2014-PHC/TC, judgment of May 26, 2020, which declared "an unconstitutional state of affairs with respect to overcrowding in prison facilities and the serious deficiencies in the quality of their infrastructure and basic services nationwide" (legal ground 107). (Ed. note)

[22] American Convention on Human Rights, San José, Costa Rica, November 22, 1969, art. 5(2): "All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person." (Ed. note)

[23] The three regional courts rest, respectively, on the American Convention on Human Rights (1969), arts. 52 et seq.; the Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, November 4, 1950; and the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, Ouagadougou, June 9, 1998. (Ed. note)

[24] In the inter-American system, for example, the Inter-American Court's contentious jurisdiction depends on the State Party's having accepted it by the declaration provided for in article 62 of the American Convention on Human Rights. (Ed. note)

and on Economic, Social and Cultural Rights, and numerous specialized conventions protecting historically vulnerable groups.[25]

The contemporary world has shown, however, that these instruments, while indispensable, are insufficient to meet humanity's new challenges. Climate change, environmental degradation, mass migration, new technologies, global inequality, and the risks associated with scientific development call for legal responses that go beyond the traditional structures of international law.

VI. A Constitution of the Earth and a Universal Constitutional Court

It is therefore necessary to move toward a true Constitution of the Earth,[26] understood as a universal normative framework capable of guaranteeing the effective protection of the fundamental rights of all persons, wherever they live.

Such a framework also requires institutions capable of enforcing those rights. From this perspective, it is appropriate to propose the creation of a Universal Constitutional Court that would complement the work of existing international courts and have sufficient jurisdiction to ensure the effective enforcement of fundamental rights on a global scale.[27]

This is not simply a matter of multiplying international organizations, but of building effective mechanisms that turn principles into concrete realities and ensure that states actually honor their commitments.

VII. Climate Change, Emergencies, and Climate Migration

Another fundamental issue concerns climate change and its associated phenomena. For decades, natural disasters were discussed as isolated events; today we know that many are closely linked to processes of environmental change affecting all of humanity. Floods, droughts, wildfires, hurricanes, cyclones, and other extreme events have increasingly serious consequences for the lives, health, food security, and safety of millions of people.

States have constitutional mechanisms for responding to extraordinary situations through states of emergency and other exceptional measures.[28] The scale of current challenges, however, demands

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[25] Charter of the United Nations, San Francisco, June 26, 1945; Universal Declaration of Human Rights, G.A. Res. 217 A (III), December 10, 1948; International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 A (XXI), December 16, 1966.

[26] FERRAJOLI, Luigi, *Por una Constitución de la Tierra. La humanidad en la encrucijada* [Towards a Constitution of the Earth: Humanity at the Crossroads], trans. Perfecto Andrés Ibáñez, Madrid, Trotta, 2022.

[27] The proposal is in line with Ferrajoli's, for whom, to ensure the binding force of a Constitution of the Earth, "the establishment of a global Constitutional Court, empowered to declare invalid the norms that conflict with it, will above all be decisive," since "only a supranational court could ensure that the principles and rights established in so many international charters, which to date exist, literally, only on paper, are taken seriously": FERRAJOLI, Luigi, *Por una Constitución de la Tierra*, op. cit., ch. 8. Article 88 of the Draft provides for an International Constitutional Court with jurisdiction to rule on the unlawfulness of, and to annul, norms issued by global institutions, international treaties, or national sources that conflict with the Constitution of the Earth. (Ed. note)

[28] In Colombia, article 215 of the 1991 Constitution authorizes the declaration of a state of economic, social, and ecological emergency when events occur that seriously and imminently disturb or threaten to disturb the country's economic, social, and ecological order, or that constitute a grave public calamity. (Ed. note)

coordinated responses at the regional and international levels.[29] Systems for prevention, response, and reconstruction in the face of climate change must be strengthened, and we must prepare to address new forms of human displacement caused by environmental phenomena.

Migration driven by political, economic, or religious conflict will increasingly be joined by climate-induced migration, which will pose unprecedented challenges for legal systems and the international community.[30]

VIII. Financing Global Public Goods

All of this requires adequate financial resources. Serious consideration should therefore be given to creating international economic mechanisms to finance global programs of prevention, response, and recovery from the consequences of climate change and other phenomena of global scope.

Although tax systems have traditionally been conceived in national terms, it is possible to envision international contribution mechanisms designed to finance global public goods and to ensure the effective protection of fundamental rights threatened by common risks.[31]

IX. Concluding Remarks: An Intergenerational Responsibility

The problems facing humanity in the twenty-first century are not those faced by earlier generations; the legal responses cannot be the same either.

The great constitutional thinkers of the eighteenth and nineteenth centuries understood that they had to build institutions capable of responding not only to the problems of their own time but also to the challenges of future generations. Thanks to that vision, many of the constitutional structures we know today have endured for more than two centuries.

The present generation bears a similar responsibility: it must consider not only today's problems but also those that will affect future generations throughout the twenty-first, twenty-second, and twenty-third centuries. Contemporary challenges ultimately demand a new stage in the evolution of constitutionalism, marked by global cooperation, the universal protection of human rights, the defense of the environment, and the creation of institutions capable of responding effectively to the challenges of an increasingly interdependent humanity.

[29] In the inter-American context, see Inter-American Court of Human Rights, *Climate Emergency and Human Rights*, Advisory Opinion OC-32/25 of May 29, 2025, requested by the Republic of Chile and the Republic of Colombia. (Ed. note)

[30] Article 14 of the Draft Constitution of the Earth recognizes the right of every person "to emigrate from any country, including his or her own, and to return to it," guaranteed by the obligation of the Federation of the Earth to "authorize and regulate the resulting immigration": FERRAJOLI, Luigi, *Por una Constitución de la Tierra*, op. cit., Draft, art. 14. (Ed. note)

[31] Along the same lines, article 94 of the Draft Constitution of the Earth provides that, "as a necessary condition for the effective guarantee of the fundamental rights and vital goods of all, a global tax system is established," consisting of charges for the use of the commons or for other activities of a global character and of a tax on large fortunes and the highest incomes: FERRAJOLI, Luigi, *Por una Constitución de la Tierra*, op. cit., Draft, art. 94. The author cites as a step in this direction the 2021 agreement of the G7 and G20 on a global minimum tax rate of at least 15% on the profits of large multinational corporations: ibid., ch. 8. (Ed. note)

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The Effectiveness of Fundamental Rights and the Perspective of Global Constitutionalism

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I. Introduction: The Effectiveness of Rights and International Guarantee Institutions. II. Labor Rights as a Case Study. III. Constitutional Non-Implementation as a Legal Problem. IV. The Critical and Constructive Task of Legal Scholarship: The Italian Experience. V. Economic Globalization and the Crisis of Labor Guarantees. VI. Toward an International Labor Constitutionalism. VII. Conclusions: The Constitution of the Earth and the International Dimension of Labor Guarantees. Bibliography.

ABSTRACT

This paper argues that, from the standpoint of the national constitutional state, the development of international guarantee institutions is no longer a desirable complement but a necessary condition for the effectiveness of many fundamental rights. The thesis is illustrated through the labor rights recognized in the Italian Constitution and in the International Covenant on Economic, Social and Cultural Rights, which are undergoing a profound crisis linked to economic globalization. The paper first addresses the legal problem of the non-implementation of constitutional norms and, drawing on the experience of Italian legal scholarship after 1948, calls for a critical and constructive legal science focused on the law that is prescribed but not yet realized. It concludes that protecting labor rights requires a labor constitutionalism of international scope, with common norms and global guarantee institutions, along the lines of the proposal for a Constitution of the Earth.

Keywords: effectiveness of rights; constitutional non-implementation; labor rights; economic globalization; international guarantees; global constitutionalism; Constitution of the Earth.

I. Introduction: The Effectiveness of Rights and International Guarantee Institutions

The thesis presented in these pages concerns the relationship between the problem of the effectiveness of the fundamental rights and freedoms recognized in constitutions and the prospect of global constitutionalism, which has been central to this conference's reflections on contemporary global issues.

From the standpoint of the national constitutional state, the development of international institutions guaranteeing fundamental rights and freedoms is not merely desirable as a complement to existing protection mechanisms; it has become indispensable to ensuring the effectiveness of many of the rights solemnly recognized in constitutional charters. In short, the creation and strengthening of such institutions are a necessary condition for giving effect to numerous fundamental rights that, although formally recognized, face growing obstacles to their practical realization.

II. Labor Rights as a Case Study

To support this thesis, the paper draws primarily on examples relating to workers' rights. These rights are recognized in numerous national constitutions, beginning with the Italian Constitution,[32] and in various international human rights instruments, foremost among them the 1966 International Covenant on Economic, Social and Cultural Rights.[33]

The labor rights recognized in that instrument are going through one of the deepest crises since their incorporation into democratic constitutionalism after the Second World War. They include the right to work, the right to fair wages, the right to remuneration sufficient to ensure a decent living for workers and their families, the right to safe and equitable working conditions, the right to rest and leisure, the right to social security, and the right to strike. All of them now face significant obstacles to their effective realization.

The reasons for this crisis are largely linked to the globalization of the world economy. The crisis therefore poses a serious challenge not only to the political and legal legitimacy of national constitutional democracies but also to any initiative aimed at strengthening the international protection of fundamental rights.

III. Constitutional Non-Implementation as a Legal Problem

Before developing the example further, a preliminary issue must be addressed: the legal problem of the non-implementation of constitutional norms, that is, situations in which constitutional provisions go unapplied because of omissions, noncompliance, or institutional shortcomings.

There is a persistent gap between the ideal proclaimed by constitutions and the actual state of the law as reflected in statutes, administrative decisions, and everyday social reality.[34] This gap imposes a fundamental task on legal scholarship: to identify the persistent forms of non-implementation and non-application of constitutional norms.

The work of constitutional scholars, therefore, cannot be limited to describing how constitutional norms are interpreted or applied, nor can it rest on merely reproducing prevailing interpretations when this end up adapting the Constitution to a reality that contradicts its fundamental principles. On the contrary, legal scholarship must devote part of its effort to studying the law prescribed by constitutions but not yet realized: analyzing the gap between the constitutional design and current legal reality and identifying unfulfilled promises and fundamental rights still awaiting effective fulfillment.

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[32] See, among others, articles 1, 4, 35, 36, 38, and 40 of the Constitution of the Italian Republic of December 27, 1947, in force since January 1, 1948. Under article 36, "Workers have the right to a remuneration commensurate to the quantity and quality of their work and in all cases to an adequate remuneration ensuring them and their families a free and dignified existence."

[33] International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly in Resolution 2200 A (XXI) of December 16, 1966, arts. 6 (right to work), 7 (just and favourable conditions of work, including remuneration, safe and healthy working conditions, and rest), 8 (trade union rights and, in paragraph 1(d), the right to strike), and 9 (social security).

[34] On the divergence between norm and fact as a structural feature of the constitutional state, and on the obligation to provide the guarantees of rights, "which may very well remain unfulfilled," see FERRAJOLI, Luigi, *Por una Constitución de la Tierra. La humanidad en la encrucijada* [Towards a Constitution of the Earth: Humanity at the Crossroads], trans. Perfecto Andrés Ibáñez, Madrid, Trotta, 2022, ch. 7. (Ed. note)

IV. The Critical and Constructive Task of Legal Scholarship: The Italian Experience

This task involves examining the historical, economic, political, and social reasons that explain noncompliance with certain constitutional provisions. It also requires analyzing cases in which the protection originally envisaged has proved insufficient because of changing social conditions or a lack of resources allocated to the institutions charged with guaranteeing fundamental rights, especially social rights.

The task is both critical and constructive. Legal scholars must identify the obstacles that prevent the fulfillment of constitutional mandates and, at the same time, propose legislative, institutional, administrative, and contractual solutions that make progress toward their effective realization possible.

The Italian experience is particularly illustrative. One need only recall the work of Piero Calamandrei and his well-known reflection on the "unimplemented Constitution."[35] During the 1960s and 1970s, Italian legal scholarship played a decisive role in denouncing violations of the 1948 Republican Constitution and contributed significantly to its progressive implementation.

V. Economic Globalization and the Crisis of Labor Guarantees

Many of the violations affecting social rights today have causes closely linked to economic globalization. These factors originate outside the constitutional state but profoundly affect its functioning and erode its political legitimacy in the eyes of the public. For that reason, the problems that hinder the effective realization of fundamental rights also require international responses, and national constitutional scholars should be the first to promote the search for them.

Of all fundamental rights, labor rights are probably the most exposed to the effects of globalization. The labor protections recognized by twentieth-century constitutions have become particularly vulnerable to the growing power of large transnational corporations, which can relocate their investments and production anywhere in the world. The effectiveness of constitutional provisions protecting labor now depends on the ability to set limits on and controls over these global economic powers, limits that can no longer be defined by nation-states alone and that require international agreements and institutions capable of guaranteeing common minimum standards.

In other words, it is no longer possible to conceive of a constitutionalism confined within the borders of the nation-state or insulated from the global processes that shape economic and social life. It is precisely the growing influence of global private powers, together with the inequalities generated by the international economy, which calls into question the effectiveness of the rights and guarantees recognized in national constitutions.

As a result, fundamental rights recognized in article 7 of the International Covenant on Economic, Social and Cultural Rights, such as the right to fair wages, to equal remuneration for work

[35] CALAMANDREI, Piero, "La Costituzione e le leggi per attuarla" [The Constitution and the Laws to Implement It], in idem, *Scritti e discorsi politici*, ed. Norberto Bobbio, vol. II, Florence, La Nuova Italia, 1966, pp. 467–577. The essay, written in 1955, first appeared in BATTAGLIA, A. et al., *Dieci anni dopo 1945–1955. Saggi sulla vita democratica italiana*, Bari, Laterza, 1955, and also circulated as a pamphlet under the title *Costituzione inattuata*.

of equal value, and to a decent living for workers and their families,[36] have become some of the most betrayed promises of contemporary constitutionalism. Labor, long regarded as a fundamental value of legal systems, has been progressively reduced to a commodity subject to market rules,[37] and many governments have abandoned the effective protection of workers in the belief that any regulation is an obstacle to economic competitiveness.

VI. Toward an International Labor Constitutionalism

Economic globalization has placed workers in different countries in constant competition with one another. It is therefore essential to move toward a labor constitutionalism of international scope that harmonizes fundamental legal guarantees and keeps the protection of labor rights from depending solely on the regulatory capacity of each state.[38]

Only through international guarantee institutions, effective oversight mechanisms, and common standards applicable worldwide will it be possible to ensure the genuine protection of workers' rights.[39] The effectiveness of these rights is an indispensable condition for the credibility and legitimacy of contemporary constitutional democracies. Equality in workers' rights must therefore once again become one of the central objectives of an international labor policy guided by principles of justice, rationality, and the guarantee of rights.

VII. Conclusions: The Constitution of the Earth and the International Dimension of Labor Guarantees

Economic globalization has exposed the inadequacy of purely national responses to problems whose causes and consequences are transnational. The protection of labor rights and fundamental freedoms therefore requires a global perspective.

The proposal for a Constitution of the Earth moves precisely in that direction: its purpose is to establish international legal mechanisms that effectively guarantee rights whose protection now depends almost entirely on national legal systems.

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[36] International Covenant on Economic, Social and Cultural Rights, op. cit., art. 7(a): "Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind [...]; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant."

[37] The opposite premise, that "labour is not a commodity," is among the fundamental principles of the International Labour Organization proclaimed in the Declaration concerning the Aims and Purposes of the International Labour Organisation (Declaration of Philadelphia) of May 10, 1944, Part I(a), and is set out in article 42 of the Draft Constitution of the Earth: FERRAJOLI, Luigi, *Por una Constitución de la Tierra*, op. cit., Draft, art. 42. (Ed. note)

[38] The idea is already present in the Preamble to the Constitution of the International Labour Organization (1919): "the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries." Along the same lines, Luigi Ferrajoli argues that "only a Constitution of the Earth that also imposes limits and constraints on corporate powers can restore dignity to labor and put an end to the race to the bottom between protected workers in the West [...] and unprotected workers in poor countries, on the basis of a unified, global model of labor rights and guarantees": *Por una Constitución de la Tierra*, op. cit., ch. 10. (Ed. note)

[39] The Draft Constitution of the Earth includes the International Labour Organization among the global institutions of primary guarantee (art. 74) and assigns to it, among other functions, that of "promoting the greatest possible equality among all the workers of the Earth in the guarantee of their fundamental rights, including the right to a legally established minimum wage" (art. 83(b)). Workers' rights, the right to strike, and freedom of association are recognized in articles 42 to 46: FERRAJOLI, Luigi, *Por una Constitución de la Tierra*, op. cit., Draft. (Ed. note)

Strengthening the international dimension of constitutional guarantees is, ultimately, a necessary condition for preserving human dignity, equality, and social justice in the twenty-first century. Only in this way will the promises contained in constitutions cease to be mere formal aspirations and become effective realities for all people.

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Global Constitutionalism and Climate Change

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I. Introduction: Global Emergencies and Constitutionalism. II. The Structural Limits of International Law: The Lesson of COVID-19. III. Global Warming as a Present Reality. IV. Climate Change and Health: Primary and Secondary Effects. V. Mental Health, Violence, and Gender Inequality. VI. Climate Change and Migration. VII. Climate-Related and Concurrent Drivers of Human Mobility. VIII. Conclusions: Enhanced Protection and the Constitution of the Earth. Bibliography.

ABSTRACT

This paper begins with the observation that international law has structural limits when confronted with cross-border, systemic, and permanent risks, as the COVID-19 pandemic made evident, and argues that responding to global emergencies requires global constitutionalism. It examines two complementary dimensions of global warming: its impact on health, with particular attention to secondary effects, mental health, and gender-based violence, which disproportionately affects women and children; and its impact on migration, where uprooting is the central harm regardless of whether displacement is internal or cross-border. It concludes that both phenomena increase people's vulnerability and calls for enhanced protection of human rights, consistent with the principle of progressive realization, along the lines proposed by the Constitution of the Earth.

Keywords: global constitutionalism; climate change; right to health; mental health; gender-based violence; climate migration; displacement; enhanced protection; Constitution of the Earth.

I. Introduction: Global Emergencies and Constitutionalism

Luigi Ferrajoli opens his proposal for a Constitution of the Earth with an observation: humanity faces global emergencies.[40] The question that follows is what the solution might be, and the answer offered here is global constitutionalism, that is, a global perspective on law. In the face of emergencies of this kind, partial or unilateral perspectives cannot produce solutions.

Ferrajoli himself has said, in a lecture delivered in Peru, that humanity's greatest enemy is its own stupidity. The claim is hard to refute in light of the accumulation of catastrophes: a world at war, the proliferation of conventional and nuclear weapons, and global warming.

[40] FERRAJOLI, Luigi, *Por una Constitución de la Tierra. La humanidad en la encrucijada* [Towards a Constitution of the Earth: Humanity at the Crossroads], trans. Perfecto Andrés Ibáñez, Madrid, Trotta, 2022, ch. 1: "Humanity faces global emergencies that threaten its very survival."

II. The Structural Limits of International Law: The Lesson of COVID-19

The central issue, which is the first thematic focus of the traveling chairs of the Constitution of the Earth, is the recognition that international law today faces structural limits when confronted with risks that are cross-border, systemic, and permanent.

The COVID-19 pandemic showed this clearly. The disease knew no demographic, geographic, or other boundaries, and all human beings were exposed to it alike. The difference lay in each country's economic capacity to adopt preventive measures or obtain vaccines according to the quotas allocated, because there were no global solutions to an unforeseen situation.[41]

III. Global Warming as a Present Reality

We must become aware of what global warming means. It has been discussed for many years, but as though it belonged to the future.

Added to this is the risk posed by the paradox of denialism among some leaders, when what is needed are committed governments and intergovernmental cooperation aimed at global solutions.[42] Recent reports indicate that the rate of global warming has nearly doubled over the past decade,[43] and yet some officials still deny that it exists.

Two interrelated issues underlie this problem: the impact of global warming on health and its impact on migration. Both reveal the erratic and fragmented treatment of human rights, even though the international treaties signed by states call for enhanced protection. Unless we understand that the impact of global warming on health and migration increases people's vulnerability, we will not truly grasp the principle of progressive realization of human rights.

IV. Climate Change and Health: Primary and Secondary Effects

The impact of climate change, whether gradual, as with rising sea levels, or caused by catastrophic events such as hurricanes, landslides, and other extreme phenomena, directly contributes to increased mortality. That is its primary effect on health.

It also produces secondary effects, on whose prevention greater efforts should be focused, without in any way minimizing the gravity of the deaths: problems related to water and the lack of

[41] On the management of the pandemic, Ferrajoli observes that access to vaccines revealed "the enormous and shameful disparity between rich and poor countries," since "vaccine production in 2021 was almost entirely monopolized by rich countries": FERRAJOLI, Luigi, *Por una Constitución de la Tierra*, op. cit., ch. 2. (Ed. note)

[42] See FERRAJOLI, Luigi, *Por una Constitución de la Tierra*, op. cit., ch. 1, where it is noted that those responsible for the global emergencies, "the leaders of the major powers and the major players in the global economy," are "fully aware" of their causes, and yet "we continue to behave as if we were the last generations to live on Earth." (Ed. note)

[43] The author refers to press coverage of a study indicating that the rate of global warming, approximately 0.2 °C per decade since the 1970s, has accelerated to nearly 0.35 °C per decade since around 2015: FOSTER, Grant, and RAHMSTORF, Stefan, "Global Warming Has Accelerated Significantly," *Geophysical Research Letters*, 2026, DOI: 10.1029/2025GL118804. (Ed. note)

safe drinking water, the proliferation of insects and microorganisms, disaster-related diseases, and, above all, an issue that receives too little attention: the impact on mental health.[44]

V. Mental Health, Violence, and Gender Inequality

After a flood, a person may be left without a home, without belongings, and without family, and may also be forced to migrate to an unfamiliar place, where he or she may face discrimination or mistreatment as a migrant. Mental health must therefore be taken very seriously.

The COVID-19 experience is instructive: crisis-response agencies did not adequately include mental health specialists, nor have they effectively addressed the effects of that health crisis on mental health in the post-pandemic period.

Health concerns also include climate-related violence and the rise in domestic violence. On the front lines of the response to climate disasters, caregiving responsibilities fall primarily on women. It has also been shown that there is a significant gap between female and male mortality rates in disasters, owing to physical and social inequalities that affect the chances of survival.[45] This gap must be taken into account, along with child mortality, in the design of public responses.

Through migration and the care burdens placed on women, climate change also brings an increase in gender-based violence and child marriage, and even situations in which girls and boys are forced into marriage or traded for food. These discriminatory and degrading consequences affect health, if not always directly, then indirectly.

VI. Climate Change and Migration

The International Organization for Migration distinguishes between internal displacement and displacement that forces people to flee to another country because of a disaster.[46] The distinction has given rise to a scholarly debate that should not exist: whether displacement is internal or external, the problem is uprooting, that is, leaving the place where a person has built a life, a home, and a family, whether nuclear or extended, and being forced to relocate.

Displacement gives rise to discrimination, especially among the most vulnerable. The situation of a poor migrant is not that of a migrant with resources, nor is that of an LGBTIQ+ migrant the same as that of someone who does not face discrimination on grounds of sexual orientation or gender

[44] On the direct and indirect effects of climate change on physical and mental health, see Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge, Cambridge University Press, 2022, ch. 7, "Health, Wellbeing and the Changing Structure of Communities." (Ed. note)

[45] See NEUMAYER, Eric, and PLÜMPER, Thomas, "The Gendered Nature of Natural Disasters: The Impact of Catastrophic Events on the Gender Gap in Life Expectancy, 1981–2002," *Annals of the Association of American Geographers*, vol. 97, no. 3, 2007, pp. 551–566. (Ed. note)

[46] See International Organization for Migration, *Glossary on Migration*, International Migration Law No. 34, Geneva, IOM, 2019; and, on displacement within state borders, including displacement caused by natural or human-made disasters, the Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2, February 11, 1998. (Ed. note)

identity. It is therefore essential to work toward equality in human rights and effective protection through enhanced legal guarantees.[47]

VII. Climate-Related and Concurrent Drivers of Human Mobility

Climate-related drivers of migration include the increased intensity and frequency of tropical cyclones, extreme rainfall, and flooding; their counterpart, drought and desertification; and rising sea levels.

These factors compound migration caused by armed conflict and other causes, as shown by migratory flows to Europe from Africa and other impoverished regions, or by movements from Cuba and Venezuela to the United States and other Latin American countries. In short, climate change is not the sole cause of migration, but it has become a factor that aggravates the others.

VIII. Conclusions: Enhanced Protection and the Constitution of the Earth

The issues examined here, which may also be approached from the perspectives of climate justice or international adjudication,[48] reinforce the idea championed by the traveling chairs: the need to create and consolidate chairs of the Constitution of the Earth in every country of the world.

Grasping the scope of global catastrophes requires recognizing that a global constitution, the Constitution of the Earth, can help resolve these conflicts through enhanced protection of the rights of those most vulnerable to climate change.

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[47] Article 14 of the Draft Constitution of the Earth recognizes the right of every person "to emigrate from any country, including his or her own, and to return to it," guaranteed by the obligation of the Federation of the Earth to "authorize and regulate the resulting immigration": FERRAJOLI, Luigi, *Por una Constitución de la Tierra*, op. cit., Draft, art. 14. (Ed. note)

[48] See, in this volume, IBÁÑEZ NAJAR, Jorge Enrique, "Toward a Global Constitutionalism for the Universal Protection of Human Rights."

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The Missing Subject: The Constitution of the Earth and the Regeneration of the Citizen

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I. Introduction: The Blueprint and the Materials. II. The Diagnosis: Systemic Crimes and Fully Aware Rulers. III. A Problem of Formation. IV. Transactional and Transformational Leadership. V. The Intergenerational Dimension of Leadership. VI. The University and the Promise of Teaching How to Think. VII. Law as a School of Responsible Leadership. VIII. Conclusions: The Constituent Subject and the Formation of the Leader. Bibliography.

ABSTRACT

If Luigi Ferrajoli's proposal is the most ambitious blueprint in contemporary constitutional theory for confronting global emergencies, this paper addresses what it takes to build it: a leader capable of bringing it to life. Starting from Ferrajoli's observation that those responsible for global emergencies are fully aware of them, it argues that the problem is not one of information but of formation and character. Drawing on the leadership theories of James MacGregor Burns and Warren Bennis, it proposes the intergenerational dimension as the test of genuine leadership, a category recognized in the German and Norwegian constitutions and implicit in the planetary public domain of the Draft Constitution of the Earth. It argues that the university, and in particular legal education, understood in the light of Lon Fuller and Ronald Dworkin, is the appropriate setting for fostering such leadership. It concludes that global constitutionalism and well-formed leaders are mutually dependent.

Keywords: Constitution of the Earth; transformational leadership; intergenerational responsibility; future generations; university education; legal education; constituent subject.

I. Introduction: The Blueprint and the Materials

When an architect designs a building, two distinct but interdependent elements are needed: the blueprint and the materials. A blueprint without materials is a promise; materials without a blueprint are a collection of disconnected resources. Neither makes sense without the other.

In *Por una Constitución de la Tierra*, Luigi Ferrajoli has offered the most ambitious and rigorous blueprint that contemporary constitutional theory has produced to address the global emergencies of our time. The purpose of these pages is to focus not on that blueprint but on the materials: the leader capable of building with it.

II. The Diagnosis: Systemic Crimes and Fully Aware Rulers

The starting point of the work is an observation unsettling in its precision. Ferrajoli describes ecological catastrophes, the nuclear threat, extreme poverty, and the migration crisis not as natural

tragedies but as systemic crimes: massive violations of fundamental rights caused by global anarcho-capitalism and organized political irresponsibility.[49]

To this he adds what is probably the most disturbing core of the diagnosis:

> "Even those responsible for these emergencies and threats, the leaders of the major powers and the major players in the global economy, are fully aware that climate change, rising sea levels, the destruction of biodiversity, pollution, and the processes of deforestation and desertification are disrupting humanity and are due to their own conduct."[50]

This statement deserves closer attention. These are not ignorant rulers who act badly for lack of knowledge, but fully aware rulers who act badly because they have subordinated their public responsibility to short-term calculation. The problem is not one of information but of formation; it is one of character and, ultimately, of leadership.

The book confirms this when it describes today's democracy as afflicted by localism and presentism, unable to remember the past or take charge of the future beyond the rhythm of elections.[51] This short-termism is not merely a flaw in the system; it is the portrait of a type of leader who has learned to manage the short term with technical efficiency but has not learned to orient himself toward goals that transcend it.

III. A Problem of Formation

This diagnosis raises a direct question: how is the leader that Ferrajoli's vision requires to be formed, and which institution today has the commitment and the tools to form such a leader?

To answer it, we must first define leadership, since the term is used so often and so loosely that it risks meaning everything and nothing at once.

IV. Transactional and Transformational Leadership

In *Leadership*, James MacGregor Burns introduced a distinction that transformed the field: between the transactional leader, who operates through exchanges of the "I give you this in return for your support" kind, and the transformational leader, who raises followers to higher levels of motivation and morality.[52] For Burns, genuine leadership is not a management technique but a moral relationship between leaders and followers that transforms both.

This distinction bears directly on Ferrajoli's analysis. The rulers he describes, aware of the disaster yet unable to act, embody the transactional leader in its most extreme form: one who has made electoral calculation or personal wealth his sole criterion of decision. They do not lead; they

[49] FERRAJOLI, Luigi, *Por una Constitución de la Tierra. La humanidad en la encrucijada* [Towards a Constitution of the Earth: Humanity at the Crossroads], trans. Perfecto Andrés Ibáñez, Madrid, Trotta, 2022, ch. 4, where these atrocities are described as "neither natural nor inevitable but caused by the current global anarcho-capitalism."

[50] FERRAJOLI, Luigi, *Por una Constitución de la Tierra*, op. cit., ch. 1. In the original, the phrase "the leaders of the major powers and the major players in the global economy" is set off by dashes, which have been replaced here with commas in accordance with the volume's editorial guidelines.

[51] Ibid., ch. 6: "Today's democracy suffers from localism and presentism: it does not remember or take account of the past, and it does not take responsibility for the future, that is, for what will happen beyond electoral cycles and beyond national borders."

[52] BURNS, James MacGregor, *Leadership*, New York, Harper & Row, 1978.

manage popularity or wealth. And a mere administrator cannot spearhead the constitutional leap the work proposes.

Warren Bennis, for his part, insisted that leaders are made, not born, and that their defining trait is not technical skill but authenticity: the capacity to act on deep convictions rather than on calculations of expediency. In *On Becoming a Leader*, he described the true leader as one who can hold course when external pressures push the other way.[53] That is precisely the profile demanded by the global crisis Ferrajoli describes: not the politician who follows the polls, but the leader who can sustain unpopular decisions because his judgment reaches beyond his electoral cycle.

V. The Intergenerational Dimension of Leadership

There is, however, one dimension of leadership that neither Burns nor Bennis explored in sufficient depth and that lies at the heart of this paper: the intergenerational dimension. The true leader is oriented not only toward ends that transcend his or her own interests but also toward ends that transcend his or her own life.

Intergenerational responsibility is the obligation of the present generation not to compromise the living conditions of generations yet unborn. It is not a philosophical aspiration but a legal category with specific constitutional recognition. The German Basic Law requires the state to protect the natural foundations of life mindful also of its responsibility toward future generations;[54] the Norwegian Constitution contains an equivalent provision.[55] And Ferrajoli's own project requires it at its core: when the planetary public domain removes water, glaciers, and forests from the logic of the market, it asserts, in technical and rigorous terms, that no generation has the right to mortgage the heritage of those yet to come.[56]

That category is the litmus test of genuine leadership. A leader who cannot project himself toward generations not yet born or recognize obligations toward those who have no voice in present decisions, has not yet reached the moral level that Burns calls transformational. He manages; he does not lead.

Herein lies the deepest connection between Ferrajoli's analysis and the question of leadership. The systemic crimes the work describes are not solely the product of wicked leaders but of leaders who have not learned to orient themselves toward ends that transcend them, trained to be efficient in the short term and to win their next election. The problem lies in formation, and that leads inevitably to the university.

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[53] BENNIS, Warren, *On Becoming a Leader*, Reading (Mass.), Addison-Wesley, 1989.

[54] Basic Law for the Federal Republic of Germany (*Grundgesetz*), art. 20a: "Mindful also of its responsibility toward future generations, the state shall protect the natural foundations of life and animals [...]." On its scope in climate matters, see Federal Constitutional Court of Germany (*Bundesverfassungsgericht*), Order of the First Senate of March 24, 2021, 1 BvR 2656/18 et al. (*Neubauer*). (Ed. note)

[55] Constitution of the Kingdom of Norway (*Kongeriket Norges Grunnlov*), art. 112, under which natural resources shall be managed on the basis of comprehensive long-term considerations that safeguard the right to a healthy environment for future generations as well.

[56] FERRAJOLI, Luigi, *Por una Constitución de la Tierra*, op. cit., ch. 3, where he proposes removing vital goods from the market, "such as drinking water, air, the climate, glaciers, and forest resources," through "the establishment of a planetary public domain capable of ensuring their inviolability"; and Draft, art. 49, under which the commons "form part of the planetary public domain" and are therefore "excluded from private appropriation, from commercialization, and from any activity that may irreversibly damage them."

VI. The University and the Promise of Teaching How to Think

If the leadership the world needs is a capacity that can be developed rather than an innate talent, the next question is where and how it is developed. The university was founded on a promise worth recalling not to transmit information but to teach how to think; not to tell students what to conclude but to give them the tools to reach their own conclusions with rigor, intellectual honesty, and a sense of public responsibility.

That promise makes the university the institution best suited to developing leadership in the sense described by Burns and Bennis. Not because it automatically produces good leaders, which it does not, but because, when it keeps its founding promise, it develops precisely the capacities genuine leadership requires critical thinking, principled reasoning, a long-term perspective, and the willingness to stand by one's positions under pressure.

Critical thinking is the precondition of transformational leadership. A leader who cannot subject his own certainties to the same scrutiny he applies to those of others does not deliberate; he negotiates. And the difference between deliberating and negotiating is precisely what separates the leader oriented toward the common good from the politician who manages his popularity.

To this capacity must be added what contemporary language calls "transversal competencies," which are in reality the civic virtues Aristotle already identified as conditions of good government: prudence, to foresee consequences beyond the immediate horizon; justice, to recognize rights before demanding them; fortitude, to sustain right decisions under pressure; and temperance, to avoid mistaking the intensity of a conviction for its truth.[57] None of these virtues is acquired by reading a manual; they are acquired through the practice of rigorous reasoning, honest debate, and sustained exposure to real conflicts between principles.

VII. Law as a School of Responsible Leadership

Among university disciplines, law holds a unique place in the formation of responsible leadership. Not because it is the only one that reasons from principles, but because it turns such reasoning into a daily practical requirement. Those who study law do not merely learn rules: they learn to argue from first principles, to resolve conflicts between values, to distinguish between what is valid and what is just, and to recognize the long-term consequences of short-term decisions. Taught well, this education produces precisely the kind of leader that intergenerational responsibility demands.

Lon Fuller showed in *The Morality of Law* that law is not merely a system of rules but a practice that imposes internal moral obligations on those who practice it.[58] A lawyer who applies rules without understanding their moral foundation is not a jurist but a technician who can serve justice and its denial with equal ease. This distinction is not merely a legal one: it accurately describes the failure of leadership that Ferrajoli denounces, that of technically capable leaders who act without moral foundations.

[57] ARISTOTLE, *Ética nicomáquea* [Nicomachean Ethics], trans. Julio Pallí Bonet, Madrid, Gredos, 1985, Books III (courage and temperance), V (justice), and VI (prudence). The enumeration of these four virtues, which the tradition would call the cardinal virtues, already appears in PLATO, *Republic*, IV, 427e. (Ed. note)
[58] FULLER, Lon L., *The Morality of Law*, New Haven, Yale University Press, 1964 (rev. ed., 1969).

Ronald Dworkin developed the idea further through the figure of Judge Hercules: the jurist who is not content to find the applicable rule but seeks the principle that gives coherence to the whole system.[59] Hercules reasons not from the textbook but from values; he recognizes that law has a moral dimension inseparable from its technical one and understands that his task is not merely to resolve the case at hand but to do so consistently with the legal order he inherited and the one he will hand on. Applied to leadership in any field, the figure describes the leader who takes rights seriously, who acknowledges obligations he did not choose, who anticipates consequences he will not witness, and who governs on behalf of those who have no voice.

Legal education faithful to Fuller and Dworkin forms leaders with a trait no other discipline cultivates as precisely: the ability to argue why a decision is right, and not merely why it is valid. It is the ability the rulers Ferrajoli describes have lost or never acquired, and the one the global constituent process will demand of those who lead it.

It is no coincidence that the great moments of modern constitutionalism, from the eighteenth-century declarations to the postwar constitutions and the development of international human rights law, were led by jurists. All of them required leaders able to think in terms of principles, to argue from foundations, and to look ahead to future generations. The global constituent process Ferrajoli proposes will be no different: it needs jurists trained not only in the technical side of law but also in its moral dimension; it needs, in Dworkin's terms, leaders who take rights seriously.

A university that brings together legal scholars from several countries to debate global constitutionalism, as ISAE University did at this conference, is not merely fulfilling an academic formality. It performs precisely the function responsible leadership requires thinking beyond the immediate horizon, deliberating on the common good of humanity, and committing to generations that do not yet have a voice.

VIII. Conclusions: The Constituent Subject and the Formation of the Leader

In the final chapter of his work, Ferrajoli sums up both the spirit of the project and the hope that sustains it:

> "It will then be humanity as a whole, unified by the common interest in survival, which will assert itself as the constituent subject of a cosmopolitan democracy."[60]

It is a hope one can share, as one can share the conviction that the project is possible, necessary, and urgent. But humanity unified as a constituent subject does not arise spontaneously from emergencies. Emergencies can produce fear, withdrawal, and reactive nationalism, or solidarity and collective action. What determines which of these occurs is precisely the kind of leadership that confronts them.

[59] DWORKIN, Ronald, *Taking Rights Seriously*, Cambridge (Mass.), Harvard University Press, 1977, ch. 4, "Hard Cases" (Spanish trans.: *Los derechos en serio*, trans. Marta Guastavino, Barcelona, Ariel, 1984); and idem, *Law's Empire*, Cambridge (Mass.), Belknap Press of Harvard University Press, 1986, ch. 7 (Spanish trans.: *El imperio de la justicia*, trans. Claudia Ferrari, Barcelona, Gedisa, 1988).
[60] FERRAJOLI, Luigi, *Por una Constitución de la Tierra*, op. cit., ch. 12.

Ferrajoli works from the top down: he starts from the supranational norm, designs the institutions that guarantee it, and establishes the rights and goods to be protected. This is the method of grand constitutionalism, whose strength lies in technical rigor and systematic coherence. The analysis offered here travels the same road from the other end: it starts from the concrete leader, the human being trained in principled reasoning, who recognizes intergenerational responsibility as a binding category, who has learned to orient himself toward ends beyond his own temporal horizon, and who can sustain right decisions when the pressures around him push the other way. That leader is the material from which Ferrajoli's blueprint is built.

Neither road alone reaches the destination. Global constitutionalism without the trained leader is a blueprint without materials; the trained leader without global constitutionalism is energy without a cause. Each needs the other.

The true revolution that will make the Constitution of the Earth possible will not be merely procedural or technological. It will take place in the classroom: in teaching methods that expose students to real conflicts between principles, and in a legal culture that restores the distinction between a valid norm and a just one. It will occur when leaders discover that taking rights seriously is not a philosophical option but an obligation for anyone who exercises any form of power. The best tribute to this work is, ultimately, to commit to building on the blueprint Ferrajoli has already provided, while equipping leaders with the virtue and judgment needed to make it a reality.

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Part II

ADMINISTRATIVE LAW

State Liability for Administrative Silence

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CONTENTS

I. Introduction: Relevance of the Topic and the Need for Legislative Reform. II. The Administration in the Service of the Common Good: The Duty to Decide. III. Administrative Inaction and Its Forms. IV. The Disciplinary Regime of Law 38 of 2000. V. Administrative Silence: Concept, Nature, and Effects. VI. Situations Giving Rise to State Liability for Administrative Silence. VII. Case Law of the Third Chamber. VIII. Constitutional Basis and Actions for Damages. IX. Conclusions: Toward an Administrative Culture of Timely Response. Bibliography.

ABSTRACT

This paper examines administrative silence as a source of State liability in damages under Panamanian law. After noting that Law 38 of 2000 and Laws 135 of 1943 and 33 of 1946 are outdated, it begins with the Administration's duty to decide citizens' petitions promptly. It analyzes administrative inaction and its forms, the disciplinary regime applicable to public officials, and administrative silence, both negative (deemed refusal) and positive (deemed approval), as a legal fiction that opens access to the administrative courts. It identifies the situations in which failure to respond gives rise to State liability, reviews the case law of the Third Chamber of the Supreme Court of Justice, and outlines the constitutional basis and the available actions for damages. It concludes that overcoming administrative silence requires training public officials, publicizing complaint mechanisms, and strengthening institutions, particularly in environmental matters.

Keywords: administrative silence; administrative inaction; State liability; right of petition; administrative jurisdiction; Third Chamber; Panama.

I. Introduction: Relevance of the Topic and the Need for Legislative Reform

It might seem that everything has already been said about the liability of the State and of public officials. Administrative acts and procedures, however, are constantly evolving, chiefly because of the social and economic changes the State must address as regulator of the relationship between citizens and the public administration.

In Panama, Law 38 of July 31, 2000, which governs general administrative procedure, is clearly outdated.[61] The reform bill submitted to the National Assembly by the Office of the Attorney General for Administrative Affairs has passed first reading and must now complete the remaining stages required by the Constitution and the law.

[61] Law No. 38 of July 31, 2000, approving the Organic Statute of the Office of the Attorney General for Administrative Affairs (*Procuraduría de la Administración*), regulating General Administrative Procedure, and enacting special provisions (Official Gazette No. 24109, August 2, 2000).

Meanwhile, the administrative-court jurisdiction (*jurisdicción contencioso-administrativa*) continues to be governed by Laws 135 of 1943 and 33 of 1946,[62] which contain deficiencies and gaps only partially filled by the case law of the Third Chamber of the Supreme Court of Justice. Its overhaul is now urgent, particularly in light of the new Code of Civil Procedure,[63] in order to strengthen the protection of citizens' interests and help reduce the case backlog.

This situation calls for a review of the scope of administrative acts, since present circumstances demand timely responses to matters affecting citizens, and for strengthening the effective defense of individual rights against the Administration through the proper use of legal procedures and instruments.

II. The Administration in the Service of the Common Good: The Duty to Decide

The completion of administrative procedures must guarantee both the rights of citizens and the effectiveness of public action. Users, citizens, and consumers require accessible, continuous, and high-quality services consistent with respect for human dignity.

Administrative law is therefore not an end in itself but a tool for achieving public interest objectives and promoting the common good, as embodied in infrastructure and services such as roads, bridges, drinking water, medical care, medicines, telecommunications, and programs providing access to housing and land. All of this must be done in accordance with administrative procedure and by ensuring that interested parties and third parties have the opportunity to assert their rights, express their views, and request and submit evidence, in keeping with the guarantees established by the Constitution and the law.

Administrative authorities are bound to decide the requests submitted to them and to conclude proceedings by decisions issued orally, in writing, electronically, or by any other means permitted by law, provided there is adequate analysis and a balanced assessment of the matters at issue.[64] Public entities must respond promptly to citizens' requests and petitions in order to ensure trust and transparency, in keeping with the principle of efficient administration: a responsible administration prevents violations of rights and reduces the negative impact on society.

III. Administrative Inaction and Its Forms

What happens when administrative inaction occurs, as it frequently does? What happens when no reasoned act is issued to create, modify, transfer, or extinguish a legal relationship governed by administrative law, or when a citizen's complaint, request, or petition goes undecided? The failure to respond creates legal problems, affects rights, and may give rise to State liability, which underscores the importance of an active administration.

[62] Law No. 135 of 1943, Organic Law of the Contentious-Administrative Jurisdiction, and Law No. 33 of September 11, 1946, amending it.
[63] Law No. 402 of October 9, 2023, adopting the Code of Civil Procedure of the Republic of Panama.
[64] Political Constitution of the Republic of Panama, art. 41, which recognizes the right of every person to submit respectful petitions and complaints to public officials and to obtain a prompt decision and sets a thirty-day time limit for deciding them. (Ed. note)

Legal scholarship distinguishes two types of administrative inaction.[65] Formal inaction occurs when the Administration, though constitutionally or statutorily bound to decide a request or petition filed by a private party, fails to issue the corresponding act or unduly delays its decision, thereby producing administrative silence. Material inaction, by contrast, occurs when the Administration fails to take the actions the law requires in the exercise of its ordinary powers.

IV. The Disciplinary Regime of Law 38 of 2000

Law 38 of 2000 sets criteria for holding public officials accountable when they fail to decide a request from an interested party, and provides for sanctions, imposed on the authority's own motion or at the request of a party, in cases of administrative inaction.[66]

These provisions were a significant step forward. Experience shows, however, that citizens' needs and requests still go unanswered, which underscores the importance of ongoing training for the staff who handle administrative matters: not only directors and legal advisers but also those in oversight, management, human resources, and other areas.

V. Administrative Silence: Concept, Nature, and Effects

In the ordinary course of an administrative proceeding, once a request has been submitted, whether in writing, orally, or electronically, administrative silence arises when the authority simply fails to respond. It may also happen that the Administration processes the request, notifies the interested parties, and even holds hearings, yet ultimately fails to issue the corresponding decision; scholarship and legislation likewise recognize administrative silence in such cases.

In full-jurisdiction administrative actions (*demandas contencioso-administrativas de plena jurisdicción*), exhaustion of administrative remedies (*agotamiento de la vía gubernativa*) is an indispensable requirement: the claimant must obtain a final administrative decision no longer subject to review within the Administration.[67] Exhaustion may also be established through administrative silence, which occurs when the competent official fails to respond within two months of the filing of the request.[68]

As Jaime Orlando Santofimio Gamboa points out, this phenomenon arises simply through the lapse of the period the legislature has set as the maximum time for adopting a decision. It is a legal fiction that presumes, as a sanction against the Administration, the existence of an administrative act

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[65] The distinction is taken from NIETO, Alejandro, "La inactividad de la Administración y el recurso contencioso-administrativo" [Administrative Inaction and Judicial Review of Administrative Action], *Revista de Administración Pública*, no. 37, 1962, pp. 75–126. In this formulation, formal inaction refers to the Administration's passivity within a proceeding, that is, the mere failure to respond to a request by private parties; material inaction refers to the Administration's failure to act within the scope of its ordinary powers. (Ed. note)

[66] Law 38 of 2000, op. cit., arts. 42–44. Article 43 sanctions public officials who violate the right of petition: a written reprimand for a first offense, suspension from duty for ten days without pay for a repeat offense within the same year, and dismissal for further violations.

[67] A full-jurisdiction action seeks not only the annulment of an unlawful administrative act but also the restoration of the specific right infringed and, where appropriate, compensation. It is distinguished from the action for annulment (*acción de nulidad*), which seeks only to set aside the act in the general interest of legality. (Trans. note)

[68] Law 33 of 1946, op. cit., art. 22: "Administrative remedies shall be deemed exhausted [...] when a period of two months has elapsed without any decision having been rendered on any request." Similarly, Law 38 of 2000, op. cit., art. 200(1) and art. 201(104), defines administrative silence as the "means of exhausting administrative remedies [...] consisting of the administration's failure to respond, within two months," to the petition or appeal filed.

deciding the proceeding in a particular way.[69] This omission constitutes a rebuttable presumption whose purpose is to guarantee the interested party due process, particularly the right to obtain a decision in dealings with the public authorities.

Administrative silence is thus an omissive form of administrative action, which may be defined as the public administration's failure to respond to requests or complaints, whether through oversight, indifference, or negligence on the part of the authority. Its principal consequence is the presumption that the request has been denied, that is, a deemed refusal.

From a guarantist perspective, it may be argued that negative administrative silence infringes fundamental rights by failing to satisfy the right of petition. This legal fiction forces citizens to bear additional costs and efforts to seek judicial remedies in defense of their rights, and it reveals institutional inefficiency and an insufficient guarantee of protection.[70]

There is also positive administrative silence (deemed approval), which is exceptional under Panamanian law[71] but widely applied in other countries, whereby the expiry of the time limit without a response gives rise to a presumption in favor of the petitioner's claim. Legal scholarship holds, however, that negative silence should always apply in environmental matters, since issues such as environmental authorizations require express, reasoned, and technically supported decisions.

VI. Situations Giving Rise to State Liability for Administrative Silence

Administrative silence may give rise to liability chiefly in three situations: when it causes specific harm to a citizen; when the Administration's omission prevents the exercise of rights or results in a loss of opportunity; and when there is a legal duty to respond and the failure to do so violates fundamental rights.

In these cases, the injured party may sue for compensation for the damage suffered, proving both the omission and the resulting harm. A clear example would be a land-titling application filed with the National Land Administration Authority (ANATI)[72] that an official fails to decide within the statutory time limit, thereby causing harm to the applicant.

VII. Case Law of the Third Chamber

The Third Chamber of the Supreme Court of Justice addressed administrative inaction in a judgment of November 11, 2010, rendered in a full-jurisdiction administrative action concerning a hydroelectric concession on the Chiriquí Viejo River.[73] The claim was based on the Administration's lack of diligence, and the Chamber found that the National Public Services Authority had failed in its

[69] SANTOFIMIO GAMBOA, Jaime Orlando, *Tratado de derecho administrativo* [Treatise on Administrative Law], vol. II, *Acto administrativo* [The Administrative Act], Bogotá, Universidad Externado de Colombia, 2003.
[70] Cf. FERRAJOLI, Luigi, *Derechos y garantías. La ley del más débil* [Rights and Guarantees: The Law of the Weakest], trans. Perfecto Andrés Ibáñez and Andrea Greppi, Madrid, Trotta, 1999, on the distinction between rights and their guarantees and on the gaps that arise when the latter are lacking or ineffective. (Ed. note)
[71] Law 38 of 2000, op. cit., art. 157, under which silence shall be deemed affirmative, without the need for a declaration of default, where an express provision so establishes.
[72] Authority created by Law No. 59 of October 8, 2010. (Ed. note)
[73] Supreme Court of Justice of Panama, Third Chamber (Administrative and Labor Disputes), judgment of November 11, 2010, full-jurisdiction administrative action.

duties by not responding to seven requests the company had filed in due time for the compulsory imposition of easements.

It should be noted that the judgment did not rest expressly on the concept of administrative inaction but characterized the conduct as a breach of the principle of good faith. On that basis, the Chamber recognized the existence of an omission attributable to the State.

VIII. Constitutional Basis and Actions for Damages

State liability is a fundamental principle of public law under which the State must answer for damage caused to citizens, whether by act or omission. Any person who considers that his or her rights have been violated by unlawful, arbitrary, or abusive conduct of the Administration is entitled to use the available legal mechanisms to obtain protection.

In Panama, it falls to the Third Chamber (Administrative and Labor Disputes) to review the legality of administrative action and, consequently, to determine any State liability. This jurisdiction rests on article 206(2) of the Constitution, which empowers the Supreme Court of Justice to annul unlawful acts, restore infringed individual rights, and hear claims brought by natural or legal persons affected by administrative acts, resolutions, orders, or provisions.[74]

The actions for damages that may be brought before the administrative courts include:[75] actions for compensation for which public officials are personally liable for damage caused by acts previously annulled or amended by the Third Chamber; actions for compensation arising from the liability of the State and other public entities for damage caused by wrongful acts of officials in the performance of their duties or in connection with them; and actions for compensation based on the direct liability of the State for the defective operation of public services.

IX. Conclusions: Toward an Administrative Culture of Timely Response

One of Panama's main challenges is the absence of an administrative culture geared to timely response, together with citizens' lack of awareness of the mechanisms for protection against administrative silence. It is essential to strengthen the training of public servants, publicize existing complaint mechanisms, and reinforce the institutions responsible for ensuring compliance with administrative time limits and the effective protection of citizens' rights.

Administrative silence can ultimately give rise to State liability. It is therefore necessary to promote a public administration that acts proactively and decides matters promptly, especially in environmental and public interest matters, avoiding inaction and administrative silence, with a view

[74] Political Constitution of the Republic of Panama, art. 206(2), which vests in the Supreme Court of Justice "administrative-court jurisdiction over acts, omissions, defective or deficient provision of public services," as well as over resolutions, orders, or provisions issued by public officials and authorities, and empowers it, after hearing the Attorney General for Administrative Affairs, to annul acts alleged to be unlawful and to restore the specific right infringed.

[75] Judicial Code of the Republic of Panama, art. 97, items 8 ("Compensation for which State officials are personally liable [...]"), 9 ("Compensation arising from the liability of the State and other public entities [...]"), and 10 ("Compensation for which the State and other public entities are directly liable [...]"), the last referring to the defective operation of public services. (Ed. note)

to protecting resources that do not belong solely to those who hold them but form part of the heritage of all humanity.

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Part III

CRIMINAL PROCEDURE

SUMMARY OF THE EXPERT PANEL

Judges: Interpreters or Legislators in Criminal Proceedings?

PANEL OVERVIEW

Format: Expert panel. Day Two of the conference, March 26, 2026.

Panelists: Jorge Chang [Affiliation pending] and Dionisio Rodríguez [Affiliation pending].

Moderator: Edwin Teira, Coordinator of the School of Law and Political Science, ISAE University.

Special guest: Luigi Ferrajoli, Professor Emeritus of Philosophy of Law, Roma Tre University.

I. Introductory Note

The panel addressed one of the central debates of contemporary constitutionalism: the limits of judicial interpretation and its impact on criminal proceedings. The question posed in the title, whether courts act as interpreters or as legislators, was examined in light of the theory of legal argumentation, criminal procedural guarantees, and the Panamanian experience, both in the organization of the judiciary and in the operation of the adversarial (accusatory) criminal justice system. The presence of Luigi Ferrajoli as special guest steered much of the discussion toward the relationship between legality, adjudication, and procedural guarantees.

II. The Participants' Positions

1. Interpretation, Argumentation, and the Limits of the Judicial Function

Jorge Chang began from the premise that any reflection on interpretation requires examining the reasoning processes that accompany judicial decision-making. Drawing on Robert Alexy, he noted that judges must constantly resolve tensions between principles and rules using argumentative tools and rational criteria of justification,[76] and warned that these zones of interpretation carry risks when judges exceed their constitutional powers.

To define these limits, he invoked Kelsen's concept of the "negative legislator": whereas the "positive legislator" creates norms in accordance with constitutional procedures, the constitutional court confines itself to removing from the legal order provisions incompatible with the Constitution.[77] The zones of indeterminacy studied by Neil MacCormick, through the distinction between "easy" cases, which can be resolved by deduction, and "hard" cases, which require linguistic, systematic, and teleological analysis,[78] are precisely those that may tempt a judge to assume the functions of the legislature.

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[76] ALEXY, Robert, *Teoría de la argumentación jurídica. La teoría del discurso racional como teoría de la fundamentación jurídica* [A Theory of Legal Argumentation: The Theory of Rational Discourse as Theory of Legal Justification], trans. Manuel Atienza and Isabel Espejo, Madrid, Centro de Estudios Constitucionales, 1989; and idem, *Teoría de los derechos fundamentales* [A Theory of Constitutional Rights], trans. Ernesto Garzón Valdés, Madrid, Centro de Estudios Constitucionales, 1993.

[77] KELSEN, Hans, *La garantía jurisdiccional de la Constitución (la justicia constitucional)* [The Judicial Guarantee of the Constitution (Constitutional Adjudication)] [1928], trans. Rolando Tamayo y Salmorán, Mexico City, National Autonomous University of Mexico, 2001. The Kelsenian model was embodied in the Austrian Constitution of 1920; the German Federal Constitutional Court, provided for in the 1949 Basic Law, began operating in 1951. (Ed. note)

[78] MACCORMICK, Neil, *Legal Reasoning and Legal Theory*, Oxford, Clarendon Press, 1978.

Chang further stressed that a judgment is nothing other than a reasoned statement of the grounds for the decision, so that its legitimacy depends on the quality of its reasoning. Following Jordi Ferrer Beltrán, he emphasized that the reasoning must explain why certain evidence is found credible and why other evidence is discounted, in order to rule out arbitrariness.[79]

2. Specialized Courts for Organized Crime

As a concrete example of possible overreach, Chang examined the creation in Panama of a specialized jurisdiction for organized crime by resolutions of the full Supreme Court of Justice (*Pleno*).[80] In his view, the measure raises significant constitutional questions: the Code of Criminal Procedure organizes jurisdiction into pretrial judges (*jueces de garantías*), trial courts, and sentence-enforcement judges, without providing for a specialized jurisdiction in this area;[81] its creation by resolution, without prior legislative reform, could therefore infringe the principle of legality and the guarantee of the "natural judge" (*juez natural*), that is, the right to be tried by a court established by law before the facts, one of the pillars of due process whose importance was reinforced by the experience of ad hoc tribunals.[82] In his view, the case illustrates the fine line between interpretation, argumentation, and lawmaking, and the risk to legal certainty when judicial activity takes the place of legislative activity.

3. Judges as Interpreters, Not Legislators: Constitutionalization and Conventionality Control

Dionisio Rodríguez argued that courts cannot act as legislators: their role is to interpret and apply the law, not to create norms. He made clear, however, that this does not imply a narrow view of the judicial role, since judges have a duty to interpret the Constitution, international human rights treaties, and domestic legislation, a duty derived from the Panamanian Constitution, the Code of Criminal Procedure, and the State's international obligations. Constitutional adjudication and conventionality control (*control de convencionalidad*) make it possible to develop the content of rights and to correct interpretations incompatible with them,[83] but this work is legitimate only when it expands or restores guarantees, not when it supplants the legal order through discretionary decisions.

Within this framework, he criticized Alexy's theory of balancing, whose excessive prominence, in his view, unduly expands judicial discretion and weakens the normative force of rules. Against it, he defended a conception grounded in the constitutionalization of law and the effective application of the guarantees provided for in the Constitution, the treaties, and criminal procedure legislation.

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[79] FERRER BELTRÁN, Jordi, *La valoración racional de la prueba* [The Rational Assessment of Evidence], Madrid, Marcial Pons, 2007.

[80] Resolution No. 174 of March 14, 2025, of the full Supreme Court of Justice, which established pretrial courts, trial courts, sentence-enforcement courts, and a court of appeals specialized in organized crime for the First Judicial District, relying, among other provisions, on article 87 of the Judicial Code and Law 121 of 2013. The courts began operating on May 19, 2025. (Ed. note)

[81] Law No. 63 of August 28, 2008, adopting the Code of Criminal Procedure of the Republic of Panama.

[82] Political Constitution of the Republic of Panama, art. 32: "No one shall be tried except by a competent authority and in accordance with legal procedures [...]"; and American Convention on Human Rights, art. 8(1), which guarantees the right to a hearing by "a competent, independent, and impartial tribunal, previously established by law." (Ed. note)

[83] Conventionality control is the duty of domestic judges and authorities, developed in the case law of the Inter-American Court of Human Rights, to review domestic norms and practices for conformity with the American Convention on Human Rights and with the Court's interpretation of it. (Trans. note)

4. The Pillars of Guarantism

Drawing on *Derecho y razón*, *Principia iuris*, and *Por una Constitución de la Tierra*,[84] Rodríguez identified the pillars of Ferrajoli's guarantism: strict legality as a limit on punitive power; adjudication conceived as a guarantee rather than a mere exercise of authority; the centrality of due process; and effective correspondence between recognized rights and applied guarantees. Constitutional democracy, he noted, enters into crisis when rights exist only at the normative level and lack effective mechanisms of protection.

5. The Gap Between the Design of Guarantees and the Practice of the Adversarial System

On this basis, Rodríguez examined the difficulties of Panama's adversarial criminal justice system after nearly fifteen years in operation. First, national case law has not clearly settled whether the charging hearing (*audiencia de formulación de imputación*), at which the prosecution formally informs the suspect that he or she is under investigation for specified conduct, is a mere act of notice or the first formal attribution of criminal liability, even though the Inter-American Court has held that the right of defense must be fully guaranteed from the moment a person is identified as a possible perpetrator of or participant in a criminal act.[85,86] Second, the intermediate stage (*fase intermedia*), which should serve as a genuine pretrial screening of the prosecution's charging document and evidence, does not always proceed with the rigor international standards require. Third, the system of appellate remedies retains overly technical features inherited from earlier models: annulment appeals (*recursos de anulación*) and cassation appeals (*recursos de casación*) impose formal requirements that restrict access to the comprehensive review of convictions mandated by Inter-American case law.[87,88]

In his view, these difficulties reveal a gap between the guarantist design of the Code of Criminal Procedure and its day-to-day application.[89] The true tribute to Ferrajoli's thought, he concluded, lies not in proclaiming guarantees but in securing their effective enforcement, for the legitimacy of criminal proceedings depends on it.

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[84] FERRAJOLI, Luigi, *Derecho y razón. Teoría del garantismo penal* [Law and Reason: A Theory of Criminal Guarantism], trans. Perfecto Andrés Ibáñez et al., Madrid, Trotta, 1995; idem, *Principia iuris. Teoría del derecho y de la democracia* [Principia iuris: A Theory of Law and Democracy], 3 vols., trans. Perfecto Andrés Ibáñez et al., Madrid, Trotta, 2011; and idem, *Por una Constitución de la Tierra. La humanidad en la encrucijada* [Towards a Constitution of the Earth: Humanity at the Crossroads], trans. Perfecto Andrés Ibáñez, Madrid, Trotta, 2022.

[85] Inter-American Court of Human Rights, *Barreto Leiva v. Venezuela*, Merits, Reparations and Costs, Judgment of November 17, 2009, Series C No. 206, para. 29, according to which the right of defense must be available from the moment a person is identified as the possible perpetrator of or participant in a punishable act and ends only when the proceedings conclude.

[86] The charging hearing should not be equated with an arraignment in common-law procedure. It takes place at the outset of the investigation, before any formal accusation, and its function is to inform the suspect of the facts attributed to him or her so that the right of defense may be exercised. (Trans. note)

[87] American Convention on Human Rights, art. 8(2)(h); and Inter-American Court of Human Rights, *Herrera Ulloa v. Costa Rica*, Preliminary Objections, Merits, Reparations and Costs, Judgment of July 2, 2004, Series C No. 107, on the requirement of an ordinary, accessible, and effective remedy permitting comprehensive review of the decision challenged. (Ed. note)

[88] The annulment appeal is the ordinary means of challenging a trial judgment before the court of appeals, on the grounds exhaustively listed in the Code of Criminal Procedure. The cassation appeal is an extraordinary remedy before the Criminal Chamber of the Supreme Court of Justice, limited to violations of constitutional or due process guarantees and errors of law. Neither should be confused with a motion addressed to the trial court itself. (Trans. note)

[89] This issue was the specific subject of the expert panel on the third day, a summary of which appears in this volume.

III. Points of Agreement and Disagreement

Both panelists agreed on the thesis that answers the question in the title: judges are interpreters, not legislators. They also agreed that legality, due process, the natural judge, the right of defense, and legal certainty are conditions of the legitimacy of punitive power, and that the reasoning of judicial decisions and the effectiveness of these guarantees are the ground on which that legitimacy is won or lost.

A difference in theoretical approach was nonetheless apparent. Chang drew on Alexy's theory of argumentation as a tool for understanding and rationalizing judicial decisions, whereas Rodríguez criticized Alexy's balancing approach for expanding discretion and weakening the force of rules, adopting a position closer to guarantism and strict legality. The presentations were also complementary: Chang emphasized the risk of excess, that is, the Court's assumption of functions belonging to the legislature, while Rodríguez emphasized the risk of deficiency, that is, the judiciary's insufficient application of guarantees already established by the legislature.

IV. Conclusions of the Panel

The panel highlighted the ongoing debate over the limits of judicial interpretation in a constitutional state. The judicial function requires interpreting the Constitution, international treaties, and statutes, but without usurping the powers of the legislature, and that requirement applies both to judicial decisions and to acts of court administration. Likewise, Panama's experience with the adversarial system shows that the remaining challenge is less normative than practical: ensuring that constitutional and Convention principles reflected in everyday judicial practice. The speakers' reflections reaffirmed the relevance of Luigi Ferrajoli's thought and the need for a legal culture committed to guarantees that are substantive rather than merely declaratory.

SUMMARY OF THE EXPERT PANEL

The Effectiveness of Annulment and Cassation Appeals in the Panamanian Criminal Justice System: Challenges for Effective Judicial Protection

PANEL OVERVIEW

Format: Expert panel. Day Three of the conference, March 27, 2026.

Panelists: Jorge Chang: President of Grupo Guía, Collaborator with ISAE Universidad; Dionisio Rodríguez: Pan-American Institute of Procedural Law; Joy Torres: Attorney, Morgan & Morgan; and Juan Antonio Kuan Guerrero: University Lecturer and Litigation Attorney, Kuan Guerrero y Asociados.

Moderator: Edwin Teira, Coordinator of the School of Law and Political Science, ISAE University.

I. Introductory Note

The panel examined annulment appeals and cassation appeals in Panama's adversarial criminal justice system as guarantees of due process and of the right to appellate review of judicial decisions. The discussion turned on a question posed at the outset: is the mere existence of these remedies in the statute book enough to ensure genuine review, or must their actual effectiveness as mechanisms for protecting fundamental rights be assessed? From different scholarly and case-law perspectives, the panelists analyzed the evolution of the system of appellate remedies, the challenges of its practical application, and the need to strengthen procedural guarantees.

II. The Participants' Positions

1. From Formal Existence to Actual Effectiveness: Proportionality in Procedural Consequences

Jorge Chang argued that the effectiveness of appellate remedies is measured not by their recognition in legislation but by their real capacity to review judicial decisions and correct errors committed at trial. All adjudication is exposed to errors of law or in the assessment of evidence, and appellate remedies are therefore an essential tool for preserving the legitimacy of decisions and public confidence in the justice system.

He noted that, with respect to trial judgments, the adversarial model replaced the former appeal (*recurso de apelación*) with an annulment appeal on specified grounds,[90] to strengthen immediacy, concentration, and speed. He cautioned, however, that this design does not always yield responses proportionate to the nature of the error: he questioned whether a full retrial is the appropriate remedy when the irregularity affects only specific aspects of the judgment, such as the reasoning on sentence, jurisdiction, or certain evidentiary deficiencies, and proposed proportionality criteria that would

[90] Law No. 63 of August 28, 2008, adopting the Code of Criminal Procedure of the Republic of Panama, arts. 171 and 172. The grounds for annulment include failure to meet the formal requirements of a judgment, lack of jurisdiction or improper composition of the court, misapplication of the law that substantially affected the outcome, error of fact as to the existence of evidence, and error of law in its assessment.

match procedural consequences to the magnitude of the error.[91] The right to appellate review (*doble instancia*), he concluded, must be understood as a substantive guarantee of review and not merely as a formal opportunity to appeal.[92]

2. Immediacy and Comprehensive Review: Balancing the System of Appellate Remedies

Dionisio Rodríguez approached appellate remedies from a guarantist perspective. Their effectiveness depends, in his view, on several factors: the legal framework, case-law criteria, the skill of counsel, and the courts' capacity to exercise real control over the decisions challenged.

The core of his presentation was the tension between the principle of immediacy (*inmediación*), under which the evidence is assessed by the court that directly receives it at trial, and the right to comprehensive review of a conviction. Excessively broad review can distort the role of the trial court, while an excessively restrictive system limits the right of defense and the right to appellate review. He joined Chang in questioning whether certain errors necessarily warrant a full retrial or whether there are less onerous solutions that preserve effective judicial protection, procedural efficiency, and trial within a reasonable time.

With respect to cassation,[93] he noted that although the number of criminal cases has increased, the number of cassation appeals admitted shows a downward trend, which raises questions about the accessibility and effectiveness of this extraordinary means of review.[94] The challenge, he concluded, lies in balancing the finality of judicial decisions with effective remedies capable of correcting errors without sacrificing the principles of the adversarial system.

3. Annulment as a Means of Restoring Guarantees: Reasoning and Holistic Assessment of the Evidence

Joy Torres focused on the annulment appeal as a tool for correcting decisions rendered in violation of due process or on an assessment of the evidence incompatible with the principles of the adversarial system. Annulment must be interpreted in light of the principles, guarantees, and rules of the Code of Criminal Procedure and the constitutional framework, and its function is not only to set aside a decision but also to restore the guarantees affected.

To illustrate, she presented a case decided by the Court of Appeals of the First Judicial District in a trial for aggravated rape, in which the trial court had acquitted the defendant by emphasizing the absence of physical injuries, without assessing the psychological reports and the testimony as a whole. The appellate court held that assessment incompatible with the rules of *sana crítica* (reasoned evaluation of evidence according to logic, science, and experience) and ordered a new trial, holding

[91] Under article 179 of the Code of Criminal Procedure, if the appeal is allowed, "a new trial shall be ordered," except where the annulment rests on misapplication of the law, in which case the court renders a substitute judgment. (Ed. note)

[92] American Convention on Human Rights, art. 8(2)(h); International Covenant on Civil and Political Rights, art. 14(5); and Inter-American Court of Human Rights, *Herrera Ulloa v. Costa Rica*, Preliminary Objections, Merits, Reparations and Costs, Judgment of July 2, 2004, Series C No. 107. (Ed. note)

[93] Code of Criminal Procedure, op. cit., arts. 180 and 181. Under article 180, the purpose of cassation is to remedy injustice, ensure compliance with the law, and unify case law; article 181 lists as grounds the violation of constitutional rights or guarantees, the violation of due process guarantees, and misapplication of the law.

[94] The same panelist had anticipated this criticism in the panel on the second day, a summary of which appears in this volume.

that the evidence must be assessed as a whole and coherently.[95] She drew two conclusions from the case: that reasoning is a pillar of due process, since every decision must explain why some evidence is persuasive and other evidence is not; and that the annulment appeal is a safeguard for all parties, as it protects the rights of the victim, the defendant, and society alike.

4. A Critical Study of Case Law

Juan Antonio Kuan Guerrero stressed the importance of continuously analyzing the evolution of the adversarial criminal justice system and the way in which case law contributes to refining the mechanisms of judicial review. He emphasized that the critical study of extraordinary remedies is an indispensable tool for strengthening legal culture and consolidating an administration of justice that respects the constitutional, Convention-based, and procedural principles of the rule of law.

III. Points of Agreement and Disagreement

The panelists agreed that protecting due process requires remedies that not only exist on paper but also ensure effective and timely review consistent with constitutional and international standards. Chang and Rodríguez also agreed in criticizing the automatic retrial as a uniform response to errors of varying gravity, and on the need for proportionate solutions that reconcile effective judicial protection with procedural efficiency and trial within a reasonable time.

The presentations also revealed a significant difference in emphasis regarding the function of appellate remedies. Chang and Rodríguez viewed them primarily as a safeguard for the convicted person, linked to the right to appellate review; Torres, by contrast, emphasized their function as a safeguard for all parties, including the victim, citing a case in which the setting aside of an acquittal led to a new trial. This difference reflects a tension inherent in the adversarial system between the convicted person's right to have the conviction reviewed and the victim's protection against deficient assessment of the evidence.

IV. Conclusions of the Panel

The panel noted that the effectiveness of annulment and cassation appeals is one of the main challenges facing Panama's adversarial criminal justice system. Its contributions may be summarized in three points: the right to appellate review must be understood as a substantive guarantee of review and not merely as a formal opportunity to appeal; the balance between immediacy, procedural economy, trial within a reasonable time, legal certainty, and effective judicial protection must be refined, with procedural responses proportionate to the nature of the error; and the reasoning of decisions, particularly the holistic assessment of evidence, is the cornerstone of judicial review. In short, the consolidation of the adversarial system requires not only legislative reform, but also judicial interpretation guided by the principles of the constitutional rule of law and the effective protection of procedural guarantees.

[95] In Panama, as in many civil-law systems, the prosecution and the victim may appeal an acquittal. In common-law jurisdictions such appeals are generally barred, or narrowly limited, by the protection against double jeopardy. (Trans. note)

Appendix

Documentary Appendix and List of Speakers

I. List of Speakers

The following list includes the speakers, panelists, and moderator who took part in the V Congreso Internacional de Actualización Jurídica, "Towards a Constitution for the Earth," held in Panama City from March 25 to 27, 2026. It is arranged alphabetically by surname and gives, for each participant, the institutional affiliation, the country of the institution, and the contribution included in this volume.

IIParticipants, Institutional Affiliations, Countries, and Contributions Included in the Volume

Participant	Institutional Affiliation	Country	Contribution Included in the Volume
Carbonell, Miguel	Researcher at the Institute of Legal Research, National Autonomous University of Mexico (UNAM). Recipient of an honorary doctorate (Doctor honoris causa) from ISAE Universidad (2026).	México	Lecture: "Constitutionalism, Guarantees, and Global Challenges in the 21st Century." Distinguished Roundtable Discussion on Day One.
Chang, Jorge	President of Grupo Guía; collaborator with ISAE Universidad.	Panamá	Expert Panels on Days Two and Three.
Ferrajoli, Carlo	Associate Professor of Constitutional Law, Sapienza University of Rome.	Italy	Lecture: "The Effectiveness of Fundamental Rights and the Perspective of Global Constitutionalism."
Ferrajoli, Luigi	Professor Emeritus of Philosophy of Law, Roma Tre University. Recipient of an honorary doctorate (Doctor honoris causa) from ISAE Universidad (2026).	Italy	Distinguished Roundtable Discussion on Day One. Special Guest at the Expert Panel on Day Two.
Godoy, Rodolfo	Professor and Researcher, ISAE Universidad.	United States	Lecture: "The Missing Subject: The Constitution of the Earth and the Regeneration of the Citizen."
Ibáñez Najar, Jorge Enrique	Justice and President (2025–2026) of the Constitutional Court of Colombia.	Colombia	Lecture: "Towards Global Constitutionalism for the Universal Protection of Human Rights."
Ibarra, Cristian	Universidad Santo Tomás, Tunja Campus; Complutense University of Madrid.	Colombia	Distinguished Roundtable Discussion on Day One.

Kuan Guerrero, Juan Antonio	University Lecturer and Litigation Attorney, Kuan Guerrero y Asociados.	Panamá	Expert Panel on Day Three.
Rodríguez, Dionisio	Attorney and Lecturer, Pan-American Institute of Procedural Law.	Panamá	Expert Panels on Days Two and Three.
Teira, Edwin	Coordinator of the Faculty of Law and Political Science, ISAE Universidad.	Panamá	Moderator of the Distinguished Roundtable Discussion and Expert Panels.
Torres, Joy	Attorney, Morgan & Morgan.	Panamá	Expert Panel on Day Three.
Villalaz de Allen, Grettel	Attorney General for Administrative Affairs of Panama.	Panamá	Lecture: "State Liability for Administrative Silence."
Zalazar, Claudia E.	Doctor of Law. Former Judge of the Fifth Civil and Commercial Court of Appeals of Córdoba. Blas Pascal University.	Argentina	Lecture: "Global Constitutionalism and Climate Change."

1. Conference Profile

Title: V Congreso Internacional de Actualización Jurídica, "Towards a Constitution for the Earth."

Dates: March 25, 26, and 27, 2026.

Venue: Panama City, Republic of Panama.

Organizers: ISAE University and Center for International Studies.

Thematic focus: The proposal for a Constitution of the Earth advanced by Luigi Ferrajoli and the challenges of global constitutionalism, with sessions also devoted to administrative law and the Panamanian criminal justice system.

2. Conference Program

Day One (March 25, 2026). Academic ceremony conferring honorary doctorates and keynote discussion, "The Constitution of the Earth and the Challenges of Global Constitutionalism."

Day Two (March 26, 2026). Lectures by Miguel Carbonell, "Constitutionalism, Guarantees, and Global Challenges in the Twenty-First Century"; Jorge Enrique Ibáñez Najar, "Toward a Global Constitutionalism for the Universal Protection of Human Rights"; and Grettel Villalaz de Allen, "State Liability for Administrative Silence." Expert panel, "Judges: Interpreters or Legislators in Criminal Proceedings?"

Day Three (March 27, 2026). Lectures by Carlo Ferrajoli, "The Effectiveness of Fundamental Rights and the Perspective of Global Constitutionalism"; Claudia E. Zalazar, "Global Constitutionalism and Climate Change"; and Rodolfo Godoy Peña, "The Missing Subject: The Constitution of the Earth and the Regeneration of the Citizen." Expert panel, "The Effectiveness of Annulment and Cassation Appeals in the Panamanian Criminal Justice System: Challenges for Effective Judicial Protection."

3. Institutional Events and Agreements

a) Conferral of honorary doctorates. On the first day of the conference, March 25, 2026, ISAE University conferred honorary doctorates on Luigi Ferrajoli and Miguel Carbonell in recognition of

their contributions to the development of law in the universal and Ibero-American spheres. The occasion coincided with both jurists' first visit to Panama.

b) Creation of the Traveling Chair. At the close of the first day, the moderator announced the recent creation of the Traveling Chair, conceived as a first step toward promoting the study, dissemination, and analysis of the proposed Constitution of the Earth in the region's academic community. The initiative forms part of the network of traveling chairs referred to by Claudia E. Zalazar in her lecture, which calls for creating and consolidating chairs of the Constitution of the Earth in every country. [Confirm the official name of the Chair, the date, and the instrument by which it was created.]

c) Memorial tribute. During the conference, several speakers paid tribute to the memory of Plutarco Hernán Arrocha Rodríguez, founder of ISAE University and chairman of its Board of Directors, to whom this volume is dedicated.