

# American Constitution and Environmental Policies

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## ABSTRACT

The need to protect the environment from degradation and hazards has become one of the major issues on the front burner of global politics. The national legislatures of various nations and policy experts are all brainstorming on how to safeguard the planet from further depreciation to preserve human lives. The U.S. Congress, in an attempt to protect the environment, has enacted several statutory laws to protect the national environment, while cooperating with international organizations like the U.N. in enhancing global environmental safety using the deployment of international law. These statutory laws are derived from the American constitutions and common laws that were written by the framers of the U.S. Constitution. The American environmental laws and policies are meant to safeguard the country's national environment.

**Keywords:** Constitutionalism, States, Federal, Environment, Policies, Common Laws, Statutory Laws, Climate change, international law.

## INTRODUCTION

The need to protect the environment from degradation and other environmental pollution has become a problem that has drawn the attention of national legislatures of various countries of the world and various policymakers all over the world. Eyeland (2023) asserts that recent years have witnessed myriads of scholars and policymakers asserting and paying increasing attention to the climate-security nexus and its implications on the environment.

This global issue has caught the attention of the U.S. Congress and has necessitated Congress to enact statutory laws that are derived from the United States Constitution to protect the environment from further degradation to enhance the quality of human life. It must be pointed out that the environmental laws in operation in the U.S. are derived from the constitution and common laws of the country.

In this paper, we shall be looking at the American Constitution and Environmental policies. For analytical convenience, this paper is divided into two parts. Part, one deals with the theoretical frame. Part two deals with the body of the work, followed by the conclusion.

### Theoretical Framework

In discussing the above essay topic, we shall be deploying the use of qualitative research methods. This will consist of a qualitative analysis of published books and researched articles in peer-reviewed journals of publication in the field of American constitutionalism, international law, and public policy on the environment.

The importance of the environment in sustaining human life is a truth that cannot be disputed. The global cry about the depreciation of the global environment has not only been a global challenge, but it has also facilitated national governments of various nations to enact laws and policies to protect the environment. Birkland (2019) defines policy as a statement by the government at whatever level of what it intends to do. It is therefore pertinent to note that when the U.S. Congress enacts statutory laws on the environment, these statutory laws are meant to protect the national environment.

Tadadjeu et al (2023) posit that because environmental degradation is seen as a major factor that threatens

inclusive and sustainable development, this requires a political will to face the problem headlong because the issue requires a political response. On the global stage, Davies et al (2020) argue that the risk posed by global warming to the environment, communities, and international peace and security has drawn the attention of the international community.

The failure of policy on climate has caused significant concern to be raised globally, sounding the alarm that the world may enter a warming war, which threatens life's ecosystem.

In safeguarding the U.S. national environment, Ozymy and Ozymy (2023) asserted that the US Congress empowered the U.S. Department of Environmental Protection Agency and the Department of Justice to investigate and prosecute environmental crimes that occur under the U.S. Clean Air Act (CAA). The criminal sanctions are meant to deter specific individuals and corporate bodies from violating the general provisions of that particular environmental law.

It is pertinent to observe that owing to the importance of environmental protection, Bleau (2022) asserts that multiple lawsuits against the federal government emanating from states over the last decade are on the increase because states are seeking for more effective ways to participate in environmental policies at the national level.

The lawsuits emanating from environmental law violations become more and more on the increase that Henderson, Stroman, and Eisert (2021) posit that environmental justice plaintiffs, who were inspired by civil rights movements framed environmental racism cases as equal protection or due process violations of the U.S. Constitution. The problems emanating from the environment are so severe that Herzog et al (2020) assert that environmental problems require a strong collaboration that cuts across different sectors and levels.

### **Historical Foundation of U.S. Environmental Law**

Clawson (2022) asserts that the environmental laws history of the U.S. has its foundation in constitutionalism and common laws inherited from Britain with the tort law. Loughlin (2022) argues that constitutionalism originated from the idea of a constitution, which defines the power of government. In other words, constitutionalism embodies the idea that government authority should be exercised within the framework of established rules and principles. These rules and principles are designed to safeguard individual liberties and prevent arbitrary governance.

It must be pointed out here that since the U.S. environmental laws are derived from the U.S. Constitution. McClellan (2000) defines a constitution as a set of written laws "designed for a permanent political order...and a system of fundamental principles". He further argues that the framers of the U.S. Constitution, to avoid the corruption of the government as was experienced in Great Britain included the people's rights (McClellan, 2000). The U.S. Constitution developed out of trial and error as well as the experiences that the colonists experienced in their native countries. The U.S. Constitution was greatly influenced by the English Constitution and the founding fathers also incorporated into the Constitution, the Greco-Roman political ideas (McClellan, 2000).

Though the U.S. Constitution allowed for religious liberty because the colonists and the founding fathers were fleeing religious and political persecution, Fischer (1989) argued that religion was like the secret sauce that held everything together. It played an integral role in binding the groups and allowed for the beginning of democratic citizenship (Tocqueville, 2012).

Clawson (2022) asserts that the U.S. environmental laws consist of Common and Statutory laws. He maintains that Common laws are derived from judicial decisions instead of statutes. The American Common Law in the early days originated from British common laws as practiced in the colonies. Many American common laws can trace their roots to the decisions of English courts dating to before the founding of the United States.

McClellan (2000) argued that the laws that are deployed in administering local colonies are a combination of the Common Laws of England, the Charters, the Mayflower Compact, the Fundamentals, and the State

constitutions. Frohnen (2002) argued that despite the varying reasons for which English settlers came to America, the written document played a major role in the founding of the English colonies.

Clawson (2022) maintains that the Federal system created by the U.S. Constitution shares authority between the federal and the states in such a way that federal authority does not subdue the independent authority of the states. Before the framing and adoption of the modern U.S. Constitution by the founding fathers, McClellan (2000), argued that the Articles of Confederation failed because it was not able to bring cohesion. The State Constitutions were so powerful, that they rendered the Articles of Confederation ineffective. This was the very reason Madison (1787) decried the failure of the Articles of Confederation due to the failure of a national government. Madison believed that the greatest failure of the government under the Articles of Confederation was its inability to effectively govern and maintain stability and the lack of central authority.

Supporting the view of Madison, Tocqueville (2012) asserts that when the insufficiency of the first federal constitution made itself felt, the excitement of the political passion that had given birth to the revolution was partially calmed, and all the great men that it had created still lived.

He further argued that the small assembly, which was charged with drafting the second constitution, included the best minds and most noble characters that had ever appeared in the New World. George Washington presided over this assembly.

The founding fathers and framers of the modern U.S. Constitution in a convention drafted and adopted the Modern U.S. Constitution. The Constitution Framers were able to address the problems inherent in the Articles of Confederation through compromise and negotiations. (McClellan, 2000). They recommended that issues not dealt with by the national government should be left to the states.

Clawson (2022) further maintains that the Constitution empowers each state in the Union with the ability to create and maintain its system of courts, independent from the federal judiciary. The Federal system of government created by the U.S. Constitution carefully ensured that the powers of the Federal government did not usurp the independent power held by the States in its territory.

### **Statutory Laws**

While environmental laws originated from the common law and the judicial system, it must be noted that due to the upheavals of Common Law in the U.S. Congress began to legislate on the environment in the 1970s with the creation of the Environmental Protection Agency (EPA) by President Nixon (Clawson, 2022). The first major legislation was the National Environmental Protection Act (NEPA).

Throughout the rest of the 1970s and into the 1980s, Congress continued to make environmental legislation, passing the Endangered Species Act in 1973, the Toxic Act in 1976, and the Comprehensive Environmental Response, Compensation and Liability Act in 1980 (Clawson, 2022). These laws combined are the backbone of environmental protection in the U.S. (Clawson, 2022).

### **Applicability of American Constitution and Environmental Policy**

The need to enforce environmental laws and statutes which are largely based on the U.S. Constitution has seriously contributed to the adequate monitoring of the environment by environmentalist movements, Agnone (2007) argues that while the environmental movement has undoubtedly contributed to cultural and lifestyle changes, many social movement researchers emphasize the importance of protest in influencing public policy. In other words, public protests orchestrated by social movements were one of the cardinal features that orchestrated the decisions of Congress to enact policies to protect the environment based largely within the framework of the U.S. Constitution. Agnone (2007) concludes that a combination of protest and public policy led to a shift in public policies on the environment, which is largely based on an amplification model of policy impact. The need to safeguard the environment through social movements and public opinion, which contributed to a shift in the U.S. environmental policies largely brings to the fore, the damaging impact of the

environment on public health, Payne-Sturges et al (2021) argue that multiple environmental toxicants and social stressor exposures are widely recognized as an important public health problem contributing to health inequities, for which the U.S. Congress has consistently failed to make policies addressing these anomalies.

It must, therefore, be pointed out that in safeguarding the environment, Scott, Ulibarri, and Perez-Figueroa (2020), argue that environmental impact assessment is a must tool that must be deployed in determining infrastructure siting. They argued that the environmental impact assessment tools can aggregate scientific information, garner stakeholder input, and weigh alternatives for infrastructure siting and operations decisions. This is firmly entrenched in the U.S. Environmental Protection Act.

The world has become a global village, and various nations of the world are calling for the protection of the environment to sustain human life on planet Earth. The political will to enforce environmental laws and policies must be brought to bear if the environment is to be protected. The U.S. as a nation has enacted various statutory laws to protect the environment and empowered agencies by the act of Congress to not only enforce these policies but also grant the agencies prosecutorial powers to enable enforcement while enforcing sanctions to deter violators of the laws and statutes regulating the environment.

## CONCLUSION

We have attempted in this essay to discuss the American Constitution and Environmental Law. We did establish that the environmental laws that are operational in the U.S. are derived from the U.S. Constitution. We also argued

that these environmental laws are derived from the Common Laws that had their roots in Great Britain and which were operated in the English colonies and were subsequently adopted by the founding fathers in the drafting of the American Constitution. We also stated that due to the upheavals of the Common Laws in the U.S., Congress began legislating on the environment, thereby creating Statutory Laws, that are combined with Common Laws for the protection of the national environment. We also did state that the environment has a major impact on public health, making us understand that social movements largely championed a change in environmental policies of the United States while making it abundantly clear, the importance of the environmental impact assessment tools in aggregating scientific data on the siting of infrastructure, pointing out that this is entrenched in the environmental policies of the U.S

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