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Global Environmental Constitutionalism, by James R. May & Erin Daly
Cambridge University Press, 2014, 414 pp, £65 hb, ISBN 9781107022256

By dint of humanity's interference with Earth's environment, we are now leaving the Holocene and entering a new geological epoch, the Anthropocene.⁴ There is now compelling evidence that human activities are placing unprecedented stresses on the global environment and pushing the planet's environmental systems beyond several of the 'planetary boundaries' that define the safe operating space for human civilization.⁵ Given the global scale of environmental decline, speculation and examination of possible global regulatory responses is inevitable. In this respect, there is a growing literature on 'earth systems governance', which considers how the norms and institutions of international environmental law can live up to the global environmental governance challenges of the Anthropocene.⁶

With this in mind, when asked to review *Global Environmental Constitutionalism* I wondered whether the authors, James May and Erin Daly, were bringing their noted expertise in environmental law (and in May's case also engineering) to bear on this global environmental challenge. The answer is yes, although not directly. *Global Environmental Constitutionalism* does not seek to enter into debates about global governance head on. May and Daly are concerned instead with the extent to which environmental matters are addressed at a national level through the institutions and mechanisms of constitutional law. The authors' work demonstrates that the label 'global' is fully appropriate for a treatise on 'environmental constitutionalism', as environmental matters are the subject of attention within a majority of national constitutions around the world today (they note that around three-quarters of these constitutions make some provision for environmental issues).

May and Daly describe environmental constitutionalism as being at the intersection of constitutional law, international law, human rights and environmental law. The authors take a comparative approach and provide a comprehensive mapping of patterns of constitutional recognition of the environment across an array of jurisdictions. While not exhaustive (for instance, few mentions are made of the significant engagement of Australian constitutional law with environmental issues⁷), one of the greatest strengths of this book is the detailed and up-to-date information it

⁴ C. Hamilton & J. Grinevald, 'Was the Anthropocene Anticipated' (2015) 2(1) *The Anthropocene Review*, pp. 59–72.

⁵ W. Steffen et al., 'Planetary Boundaries: Guiding Human Development on a Changing Planet' (2015) 347(6223) *Science*, pp. 737–45.

⁶ See, e.g., F. Biermann, *Earth System Governance: World Politics in the Anthropocene* (The MIT Press, 2014).

⁷ The leading Australian piece, not cited by the authors, is J. Crawford, 'The Constitution and the Environment' (1991) 13(1) *Sydney Law Review*, pp. 11–30. New Zealand and Canada, by contrast, attract greater attention.

provides on the national constitutions and constitutional law systems that have grappled with environmental issues.

This is not a didactic work that seeks to convince the reader of the merits of environmental constitutionalism. May and Daly do not advance a strongly normative argument that the placement of environmental concerns within a constitutional framework is necessarily superior to other legal mechanisms of environmental regulation. However, they do suggest that constitutional environmental protection norms and environmental human rights can assist in the advancement of these aims. The entrenchment of these concerns as *grundnormen* has symbolic importance, signifying the primacy of environmental values in the national legal order. It also has ready practical significance by placing environmental norms at the top of the legal hierarchy and providing opportunities for constitutional courts to develop an environmental jurisprudence of evolutionary significance.

May and Daly contend that 'environmental constitutionalism suggests a *new way of thinking* about the relationship among individuals, sovereign governments, and the environment' with the goal of safeguarding the environment 'for the benefit of humans, present and future, and ... the environment itself' (p. 5). They also note that '[t]he mere fact that top national courts are focusing on the constitutional dimensions of environmental issues makes it more likely that environmental awareness will seep into the cultural consciousness here and now for the living, and there and then for generations to come' (p. 12). Yet they are also alive to the paradoxes of constitutionalism, including the fact that, much like constitutionally embedded human rights in undemocratic states, constitutionalized environmental norms may be platitudinous.

At its core, this is a work of comparative constitutionalism. Like other comparative research, it seeks to understand the reasons for convergence and divergence in approaches to regulatory challenges that many jurisdictions share.⁸ As May and Daly note, '[c]omparing the constitutional environmental jurisprudence of countries around the world yields insights into the ways different legal cultures have responded to similar problems' (p. 10). However, they also acknowledge limitations in comparativism generally, and their study in particular. They note the epistemic challenge of truly understanding the particular reasons why a country has adopted a specific constitutional provision on the environment, or the broader cultural, social and political significance of a constitutional court's environmental decision. Despite this caveat, the authors maintain that comparative constitutionalism is 'important in and of itself', especially where it addresses a new field of inquiry such as environmental constitutionalism.

Global Environmental Constitutionalism is divided into three parts, and comprises ten chapters. In Part I, May and Daly explore the character of environmental constitutionalism and some of the benefits of a constitutionalist approach to environmental issues. These include not only direct benefits in protecting environmental values, but also associated benefits (or proxies, as the authors put it)

⁸ A recent compendium of comparative constitutional materials is S. Ross, H. Irving & H. Klug, *Comparative Constitutional Law: A Contextual Approach* (LexisNexis, 2014).

in upholding human dignity and well-being by protecting the quality of the lived environment. The analysis begins by identifying what May and Daly see as fundamental limitations in international environmental law, including that it is ‘especially soft’ (p. 21). This may be true of some areas of international environmental law, but the critique is hard to sustain across a range of contemporary regulatory issues, from ozone depleting substances to vessel source pollution, in which legal standards have become more detailed, stricter and ‘harder’. In any event, the argument that there must be a choice between international law and national law as a vehicle for environmental protection is a false one. They are best utilized in tandem rather than in isolation, and May and Daly do come to endorse the view that ‘environmental constitutionalism is integral, not substitutive: it supports and scaffolds existing international and national legal systems’ (p. 54). The authors then survey the global landscape of environmental constitutionalism. They categorize states according to the level and type of constitutional environmental protection they have entrenched, and identify the factors that influence the choices made by states when instantiating environmental rights. The discussion draws on a wealth of material on constitutional practice in many jurisdictions. It may be noted that while there are no tables of legislation or case law in the preliminary pages of the volume (as one might reasonably expect there would be in a book on this topic), the nine appendices reproduce environmental provisions in many national (and some sub-national) constitutions. Moreover, the bibliography provides a valuable list of constitutional cases on the environment.

In Part II the authors consider the significance of constitutional jurisprudence on environmental matters. Just as there are several ways in which constitutions tackle environmental issues, so the authors find diversity in environmental constitutional jurisprudence. They detect ‘noticeable and steady progress toward recognition of environmental rights as independent, dependent, derivative, or dormant rights in courts throughout the world’ (p. 89). Independent environmental rights are directly justiciable and can be enforced in their own right. Dependent constitutional rights are those stemming from a state’s constitutional duty to advance environmental protection objectives.⁹ Derivative rights are those that originate from other constitutional rights (such as the right to life). Finally, dormant environmental provisions in constitutions are those that have not been addressed at all by constitutional courts, or that have been read down or confined from conferring individually enforceable constitutional guarantees. The authors consider the practicalities of enforcing environmental constitutional rights (including by addressing the vexed issue of standing) and the types of remedy that are appropriate in constitutional litigation of environmental disputes.

The third and final Part of *Global Environmental Constitutionalism* is prospective. It looks to emerging and future challenges, which include constitutional rights to water, constitutional environmentalism at a subnational level in federal states, and

⁹ E.g., Constitution of the Philippines, Art. II, s. 16: ‘The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature’.

the value of procedural environmental rights. It also addresses four arenas of environmental law that have (or could have) a constitutional dimension: a stand-alone right of nature; sustainable development as an organizing legal or constitutional principle; the public trust doctrine (the idea that governments hold nature and natural resources on trust for the community); and, finally, climate change. May and Daly point out that very few countries have expressly recognized climate change in their constitutions. Given the seriousness of climate change as the overriding environmental challenge of this century, analysis of what role, if any, global environmental constitutionalism could play in maintaining a living space for humanity is a vitally important research agenda.

This is an exceptional book on the under-examined topic of constitutional engagement with environmental issues. The authors' major achievements in *Global Environmental Constitutionalism* are in providing a balanced and detailed evaluation of the advantages and disadvantages of environmental constitutionalism, and their extensive research on constitutional practice across dozens of jurisdictions. This book will not be the last word on environmental constitutionalism, as it raises as many important questions as it answers; but it is an authoritative guide to a fascinating and important area of environmental law that has, to date, escaped the kind of comprehensive and penetrating analysis that May and Daly provide.

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Environmental Protection and Sustainable Development from Rio to Rio+20
(*Protection de l'environnement et développement durable de Rio à Rio+20*),
edited by Malgosia Fitzmaurice, Sandrine Maljean-Dubois & Stefania Negri
Brill Nijhoff, 2014, 425 pp, €153 hb, ISBN 9789004282902

Malgosia Fitzmaurice, Sandrine Maljean-Dubois and Stefania Negri have pulled together a good edited collection that makes an original contribution to our understanding of how far the concept of sustainable development (and its three 'pillars' of environmental protection; human, social, and cultural dimensions; and economic aspects) has travelled since it was popularized in the Brundtland Commission's 1987 report, *Our Common Future*.¹⁰ The concept of sustainable development underpinned the basis of the Rio Declaration and Agenda 21 adopted by the 1992 United Nations Conference on Environment and Development

¹⁰ World Commission on Environment and Development, *Our Common Future*, UN Doc. A/42/427 (4 Aug. 1987), Annex, p. 54, defining sustainable development as 'development which meets the needs of current generations without compromising the ability of future generations to meet their own needs'.