

BOOK REVIEWS

Global Environmental Constitutionalism in the Anthropocene, by Louis J. Kotzé
Hart Publishing, 2016, 304 pp, £60, ISBN 9781509907588

In *Global Environmental Constitutionalism in the Anthropocene*, Louis Kotzé makes a novel and sustained contribution to debates about the Anthropocene epoch, its ethical and normative implications, and its value for rethinking environmental law. Indeed, Kotzé goes much further and draws on constitutional approaches to environmental law to deliver a sound and nuanced critique of international environmental law. In so doing, he also makes the case for global environmental constitutionalism. Much attention has been paid in the past decade to the relation between environmental protection and constitutionalization at the national level.¹ In this book, Kotzé builds on these debates and constructs a new narrative, which raises the possibility – even the probability – that we will have to adopt a global viewpoint in our thinking about constitutional approaches to governance and their potential contribution to environmental stewardship.² The book makes its arguments cogently by bringing together a vast array of research materials from different fields of scholarship that may not traditionally have spoken to one another – namely environmental constitutionalism, international environmental law, humanities, the scientific idea of the Anthropocene epoch, and now through Kotzé’s work global environmental constitutionalism.

The book has six substantive chapters with an introduction and a conclusion to help to signpost its arguments and approach. If the reader is picking up this book for its discipline, he or she may as well jump to Chapters 2 and 6, which engage with the idea of the Anthropocene epoch from a humanities perspective. In Chapter 2, Kotzé argues that the Anthropocene is more than a scientific proposition about the stratigraphical signals left behind by human beings. The idea of the Anthropocene, he contends, is a statement about how and why human beings have come to have such significance in terms of the functioning of the Earth System, and the need to think about solutions to the ‘socio-ecological crisis’ we have created. Kotzé argues that the value of the idea of the Anthropocene lies in its ability to mobilize and concentrate a range of views about the impact that human beings are having on planet Earth. Chapter 6 draws on this discussion of the Anthropocene to advocate a

¹ E.g., D.R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights and the Environment* (UBC Press, 2012); and J. May & E. Daly, *Global Environmental Constitutionalism* (Cambridge University Press, 2015); see also R. O’Gorman, ‘Environmental Constitutionalism: A Comparative Study’ (2017) 6(3) *Transnational Environmental Law*, pp. 435–62; L.J. Kotzé, ‘Somewhere between Rhetoric and Reality: Environmental Constitutionalism and the Rights of Nature in Ecuador’ (2017) 6(3) *Transnational Environmental Law*, pp. 401–33; and J.C. Gellers, ‘Environmental Constitutionalism in South Asia: Analyzing the Experiences of Nepal and Sri Lanka’ (2015) 4(2) *Transnational Environmental Law*, pp. 395–423.

² See also L.J. Kotzé, ‘Arguing Global Environmental Constitutionalism’ (2012) 1(1) *Transnational Environmental Law*, pp. 199–233.

global and a juridical response, which the global environmental constitutionalism discussion in the book will help to address. Hence, Kotzé suggests that the ethical implications of the Anthropocene can be met by responses using global environmental constitutionalism. This is important because the work's treatment of the Anthropocene as a normative concept becomes a basis upon which to legitimize the idea of environmental constitutionalism. Kotzé, however, does recognize the limits of this singular solution to alleviate the impact that human beings are having on planet Earth.

In Chapters 3, 4 and 5, the book develops the ideas and framework for environmental constitutionalism and argues for its adoption at the global level. Chapter 3 is a defence of the notion of constitutionalism and its value as compared with other modes of legal governance. As expected, this material covers well-trodden terrain, but Kotzé is thorough and draws upon a range of jurisdictions to make his arguments. He strategically and unapologetically relies heavily on the South African case, with which he has more familiarity and which reflects the standard Western democratic ideals that his book endorses. Chapter 4 raises the prospect of creating global constitutionalism by leveraging international and domestic institutions to achieve a global norm. Typically, constitutionalism assumes that power is most effective when it is centralized, but Kotzé argues that international governance arrangements can wield similar force by exposing states to the same nature and type of power as if the system were centralized. The chapter also argues for a different approach to constitutional norm development through global law, suggesting that synchronized domestic constitutional norm developments are likely to achieve more than efforts aimed at creating new treaties through endless negotiations at international meetings. The chapter impressively brings together a wealth of governance scholarship to make the argument that the global constitutional moment has arrived. Chapter 5, in turn, defends the notion of environmental constitutionalism, which requires holistic adoption and implementation of forms of environmental protection, rather than merely embedding one or two rules or principles related to environmental protection in national constitutions. Kotzé convincingly asserts that an integrated and holistic approach to environmental constitutionalization, rather than the piecemeal recognition of, for instance, a constitutional right of access to justice for selective groups of litigants, would more effectively respond to the needs of the Anthropocene.

Kotzé's work culminates, in Chapter 7, in a detailed listing of important features and normative goals of global environmental constitutionalism. This includes a review of the current state of global environmental constitutionalism and an analysis of its existing pillars, including the rule of law, the idea of the separation of powers, the judiciary as a key player in developing the law, and environmental democracy. Although it pushes for ambitious changes, such as the establishment of an international environmental organization with a mission to advance environmental constitutionalization, the chapter remains realistic. It asserts that the process of change towards more constitutionalism is already under way, but acknowledges that more must be done to support the dramatic political institutional changes necessitated by the Anthropocene.

Although admittedly expansive in scope, there are some broader issues that the book fails to address. One is that, despite its deep commitment to environmental

issues and concerns, it takes for granted the meaning of key concepts such as ‘nature’ or ‘environmental’ in the context of environmental constitutionalism. Additionally, the book does not fully deliver the ecological argument for global constitutionalism. Political institutions and the machinery of law, whether in constitutional form or not, are themselves responsible for the Anthropocene. There is no indication as to why arriving at a certain globally significant constitutional imperative would elicit a meaningful response and lead us to change our consumption patterns. However, a greater challenge for the book is that, despite its very impressive and detailed discussion of the idea of the Anthropocene, it is difficult to see how this idea will have talismanic effects that can transform corporate and commercial interests and motivations. Arguably, capitalism always encourages and supports innovation that ensures capitalism’s own survival, whatever the next challenge may be. The Anthropocene does not confront capitalism directly. Instead, the Anthropocene’s ‘technique’ seems to suggest that we must change the context or scale for how we do things, rather than directing attention to a totally new way of thinking about nature and how we relate and use it as a species. The book as such does not add to our understanding of the agency or vitality of the world of nature around us; its suggestions about the value of environmental constitutionalism have limits in how we think about the world of matter and the natural environment.

Secondly, the global environmental constitution concept has great potential as a framework to prevent transnational corporations from avoiding state regulation and bypassing challenging jurisdictions. Arguably, its critical contribution resides in its ability to regulate peoples and legal entities across the world. However, the book could do more to explore this dimension, particularly in the face of recognized failures of the international system to influence transnational corporations. Although Chapter 7 discusses private power and authority, the discussion treats transnational corporations primarily as contributors to developments in global environmental constitutions rather than as actors that need to be disciplined and influenced through instruments at the international level. The discussion focuses more on civil society contributions to developments in global environmental constitutionalism than on those who should be regulated.

Notwithstanding these comments, the book’s contribution to scholarship is immense. It is uncompromising in its rigour, depth of analysis, and focus. Kotzé helps us to think about an important topic and pushes us to rethink many of the assumptions we have come to take for granted about the ‘global’ – as compared with the international – environmental system and order. The Anthropocene lens is deployed effectively, particularly in the way in which it combines a variety of disciplinary approaches and concerns. This book will no doubt find its value even more as humanity tries to write and develop its global environmental constitution.

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