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**JAMES R. MAY AND ERIN DALY, EDS., *HUMAN RIGHTS AND THE ENVIRONMENT: LEGALITY, INDIVISIBILITY, DIGNITY AND GEOGRAPHY* (EDWARD ELGAR 2019)**

*Reviewed by* : David Takacs, University of California Hastings College of the Law & IELRC

**BOOK REVIEW**



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James R. May and Erin Daly, eds., *Human Rights and the Environment: Legality, Indivisibility, Dignity and Geography* (Edward Elgar 2019)

May and Daly, professors at Widener University Delaware Law School in the United States, have long been at the forefront of chronicling and promoting constitutional environmental rights. Of their current 'Dignity Rights Project' they have written that dignity 'is not an attribute or an interest to be protected or advanced, like liberty or equality (...) Rather, human dignity is the essence of our being, without which we would not be human.'<sup>1</sup> In this volume of 44 essays by legal scholars and practitioners from six continents, May and Daly present a state-of-the-art compendium of the ways we now think of environmental sustainability as a human rights issue essential for our individual and communal dignity.

Any collected volume that attempts to corral a disparate field such as this will face organizational challenges. The editors have admirably framed their essential collection of essays around four central concepts: Legality (what *is* the law?), Indivisibility (the essential synergistic bond between environmental protection and human rights), Dignity (the essential underlying goal for human rights), and Geography (how place shapes realization of these rights and the relationship between environment and human dignity). Of course, each essay can't necessarily be shoehorned into one of the four categories, but I give the editors and authors credit for trying.

The essays in the volume admirably chronicle both what the status of what the law *is*, as well as where the symbiosis between human rights and the environment *ought* to be heading. Some contributions – like the 'Geography' presentations on the European<sup>2</sup> and Inter-American<sup>3</sup> legal systems or the editors' essay on global environmental constitutionalism<sup>4</sup> – present empirical summaries of the state of the law. Some – like essays

on the proposed International Covenant on the right of human beings to the environment<sup>5</sup> or human rights and the gender dynamics of climate change<sup>6</sup> — pose normative frameworks advocating for how the synergies between human rights and the environment ought to be. And many of the essays are both empirical and normative. For example, in his contribution, Adelman covers the history of the legal norm of Permanent Sovereignty over Natural Resources, albeit with a normative goal of circumscribing sovereignty. Our system of international law applies human rights responsibilities to sovereign states, but is less adept at applying responsibilities to manage vital ecological chronicles. Adelman opines: 'We can bequeath a habitable planet to future generations or we can choose to perpetuate national interests through sovereignty, but we cannot have both so long as sovereign prerogative trumps common good'.<sup>7</sup>

The essays cover what we might have human rights *to*: e.g. water,<sup>8</sup> landscape,<sup>9</sup> sustainable urban ecologies,<sup>10</sup> environmental information,<sup>11</sup> and what we have human rights to be protected *from*: e.g. climate change<sup>12</sup> (with a focus on Bangladesh in Ch. 40).<sup>13</sup> Several chapters confront particular groups' special rights and challenges with degrading environments: e.g. women,<sup>14</sup> children,<sup>15</sup> and indigenous peoples.<sup>16</sup>

1 <https://delawarelaw.widener.edu/prospective-students/jd-program/jd-academics/signature-programs/dignity-rights-project/>.

2 Ole. W. Pederson, European Court of Human Rights and Environmental Rights, ch. 35.

3 Juan Manuel Rivero Godoy, *Vida Digna* and Environmental Human Rights in the Inter-American System, ch. 36.

4 James R. May & Erin Daly, Human rights developments in global environmental constitutionalism, ch. 6.

5 Michael Prieur, Mohamed Ali Mekouar, & Erin Daly, An International Covenant on the Right of Human Beings to the Environment, ch. 3.

6 Ryan Jeremiah Donato Quan, Human Rights and the Gender Dynamics of Climate Change, ch. 17.

7 Sam Adelman, Sovereignty and environmental human rights, ch. 8 p.123.

8 Daphina Misiedjan & Scott O. McKenzie, The Human Right to Water, ch. 25.

9 Michel Prieur, The Human Right to Landscape, ch. 26.

10 Natalie Osborne, Anna Carlson, & Chris Butler, Human Rights to the City: Urban Ecologies and Indigenous Justice, ch. 33.

11 Rebecca Bratspies & Sarah Lamdan, The Human Right to Environmental Information, ch. 9.

12 Michael Burger & Jessica Wentz, Climate Change and Human Rights, ch. 15; Christel Cournil & Emnet Gebre, Climate Change, Mobility, Law and Human Rights, ch. 16.

13 Md. Abdul Awal Khan, Human Rights and Climate Change Displaced People: Bangladesh Perspective, ch. 40.

14 Ryan Jeremiah Donato Quan, Human Rights and the Gender Dynamics of Climate Change, ch. 17.

15 Karen E. Makuch, Environmental Rights of Children, ch. 29.

16 Alexander Solntsev, Indigenous Peoples and Environmental Rights, ch. 30; Ritu Dhingra, Indigenous Peoples and Conservation of Biodiversity, ch. 31.

Some of the most interesting and contentious essays fall under the heading of ‘Indivisibility.’ It is impossible to fully enjoy ‘traditional’ human rights in a degraded environment: thus environmental rights are indivisible from other human rights. But the Editors note that tension underlies ‘Indivisibility’ as ‘environmental rights are intrinsically supportive of some human rights and detrimental to others, depending on the circumstances of each case.’<sup>17</sup> Petersmann chronicles ‘Conflicts between environmental protection and human rights,’ claiming that ‘in most circumstances, environmental protection concerns are granted precedence over human rights’,<sup>18</sup> as when DDT is banned despite its potential curbs on malaria transmission or when anti-wildlife poaching sacrifices the right to life of human poachers in favour of protecting biodiversity. These authors may overstate tensions that do not, or at least need not, exist. For example, in their concluding remarks on the South African Constitutional Court’s *Mazibuko v. City of Johannesburg*,<sup>19</sup> the first case of a high court of any nation to adjudicate the human right to water, Daly & May write, ‘this victory for human rights may be a defeat for environmental rights: to secure a certain amount of water may very well require irrigation towards the population center that will have adverse environmental consequences on the surrounding watershed area.’<sup>20</sup> But as I’ve written, and as South African water law envisions, fulfilling the human right to water for a burgeoning population means managing critical ecosystems with ecological techniques to create more water so that human and non-human needs are both met, and are genuinely indivisible.<sup>21</sup> That is to say, I would have liked more focus on successful legal and practical synergies that demonstrate and implement the indivisibility.

There are clarifying gems sprinkled throughout. For example, Rajan, Davies & Magallanes provide a helpful

primer on five different ways environmental protection has been situated in a human rights legal framework.<sup>22</sup> First, existing human rights – such as environmental democracy rights – may be used as tools for citizens wishing to prevent environmental degradation. Second, we can ‘green’ existing human rights protections – e.g. to life, food, health, and culture – to curb environmental degradation that also degrades enjoyment of these rights. Third, as many nations have done, we can declare new rights to a healthy environment, or to subcomponents (air, water, a stable climate system). Fourth is the current movement to grant rights to nonhuman entities. Fifth and finally, we can elaborate on responsibilities – who must do what when – to uphold any existing rights.

Several of the pieces take up Rajan et al’s fourth and fifth categories, at the cutting edge of honouring and furthering the symbiosis between cultural and environmental rights. This is how Magallanes, in ‘Human rights, responsibility and legal personality for the environment in Aotearoa New Zealand,’ situates devolution of responsibility for the Whanganui River and the former Te Urewera National Park to appointed Māori guardians.<sup>23</sup> It is part of a systematic attempt of the New Zealand government to make reparations for past wrongs by honouring Māori notions of their people’s place in nature through legal constructs that reflect those notions: Form mirrors content. Each colonial power’s depredations on the colonized are situated in specific histories; the New Zealand example is unique to that nation’s history, but the spirit animating the new legal forms serves, *mutatis mutandis*, as an example for how to honour a symbiosis between cultural and environmental rights that repairs past wrongs and builds sustainable ecological futures.

Similarly, Maldonado describes new Constitutions in Ecuador and Bolivia where ‘Pachamama,’ or Mother Earth, has been granted status as a subject of rights that the government and citizens must uphold.<sup>24</sup> Ideally this blends plurinationality – the recognition

17 Erin Daly & James R. May, *Indivisibility of Human and Environmental Rights*, Ch. 12, p.171.

18 Marie-Catherine Petersmann, *Conflicts Between Environmental Protection and Human Rights*, ch. 21, p. 293.

19 *Mazibuko v. City of Johannesburg* 2010 (4) SA 1 (CC) (S. Afr.).

20 Erin Daly & James R. May, *Indivisibility of Human and Environmental Rights*, Ch. 12, p.181.

21 David Takacs, *South Africa and the Human Right to Water: Equity, Ecology, and the Public Trust Doctrine*. 34 *Berkeley J. Int’l L.* 56 (2016).

22 S. Ravi Rajan, Kirsten Davies, & Catherine Iorns Magallanes, *Conflicts Between Environmental Protection and Human Rights*, ch. 21.

23 Catherine Iorns Magallanes, *Human rights, responsibility and legal personality for the environment in Aotearoa New Zealand*, ch. 44

24 Daniel Bonilla Maldonado, *The Rights of Nature and a New Constitutional Environmental Law*, ch. 23.

of multiple (including indigenous) legal systems — with a notion of ‘buen vivir’ that cherishes indigenous traditions of living in harmony with the nonhuman world. Nature thus defined as a subject of legal rights is imbued with indigenous cultural understandings, but situated in a matrix of modern legal norms. Maldonado also points out that despite these emancipatory legal forms, the rights to development that simultaneously exist in these Constitutions means that a ‘battlefield’ exists between the human right to development and the rights of a nonhuman nature.

So, for example, I recently travelled in Ecuador through the most ravaged, oil-flared hellscape imaginable to the Yasuni National Park, one of the most lovely, biodiverse ecosystems in the world. Ecuadorian law enables these to exist side by side, for now; but the habitat destruction, water and air pollution, and climate change abetted by fossil fuel exploitation means biodiversity, and the humans that depend upon it, will eventually lose. Rights for Mother Earth remain only so many empty words on a page without law giving those rights reality. The ‘implementation gap’ (to cite the title of Paul Martin’s piece),<sup>25</sup> or *how* to synergize environmental protection and human rights for the dignity of all of us — remains. That is the ongoing challenge if we are all to live dignified lives on an ecologically healthy planet.

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<sup>25</sup> Paul Martin, *Human Rights and Human Benefits: The Implementation Gap*, ch. 7.

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