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Environmental Rights: Recognition, Implementation, Outcomes, and Alternatives

by James R. May

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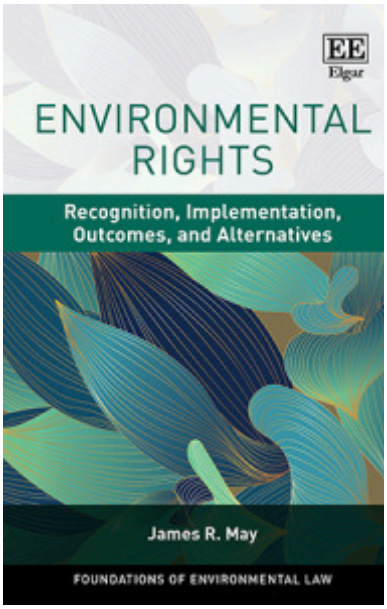
Reviewed by Marta Simonetti



James R. May's new monograph *Environmental Rights: Recognition, Implementation, Outcomes, and Alternatives* is an important addition to scholarship on environmental rights. This volume synthesises the rapidly evolving global landscape of environmental constitutionalism, environmental human rights, and rights of nature jurisprudence. It is comprehensive, authoritative, rich in references, but also accessible, making it a great introd-uction to environmental rights for students and general practitioners. May, who is Richard S. Righter Distinguished Professor of Law at the Washburn School of Law in Kansas and a leading global authority on environmental rights, offers a thorough overview of how legal systems worldwide have increasingly turned to rights-based frameworks to address the polycentric crises of climate change, biodiversity loss, and worsening environmental degradation.

His entry point is environmental constitutionalism, an area where he has dedicated decades of work, including the publication of several books and articles. The initial chapters chart the evolution of these rights from early international declarations, such as the 1972 Stockholm Declaration and the 1992 Rio Declaration, to more recent examples of legally binding domestic constitutional provisions, and frame environmental rights not merely as policy objectives, but as fundamental, inalienable human entitlements necessary for the enjoyment of life, health, and dignity.

Chapter 2 more specifically addresses the evolution of the substantive dimensions of constitutional environmental rights. Here, May examines how over one hundred nations have explicit-

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ly included references to the right to a 'healthy', 'clean', 'safe', or 'ecologically balanced' environment within their constitutions. While some of the material in this first chapter isn't new, particularly the references to events underpinning the evolution of a right to a healthy environment, May offers new thinking by addressing debates over the successes, but also the limitations, of pursuing environmental and climate stability through constitutional recognition. This is epitomised by the gap between recognition on paper and the right's justiciability in practice.

The implementation gap is a theme that May unpacks thoroughly in the third chapter, returning to available data to study the spreading of environmental constitutionalism but also to see the forces around it, for example, in the extent of judicial engagement of courts taking recourse to environmental rights, and the eventual enforcement of courts' decisions. A core point of this chapter is the analysis of the specific enabling characteristics to realise substantive environmental rights, such as clarity in the language and description of these rights, and their attribution as first legal orders rather than merely as pledges or aspirational. Further, this chapter also debates important additions to constitutional provisions to support the environment, framed through the narrative on sustainability, climate change, and biocentric rights, analysed in more depth in chapters 11, 7, and 8, respectively.

A truly novel chapter is chapter 4, which tests the theoretical conceptualisations of environmental rights against a small, and hopefully growing, number of empirical studies assessing whether the claim that environmental rights foster environmental quality is valid or not. The chapter centres on demonstrating specific environmental and climate-related outcomes by reviewing empirical research that used quantitative statistical methods. Overall, May concludes that these studies show some improvements in environmental outcomes (such as emission reduction or a smaller ecological footprint) or in institutional outcomes (such as stronger participation in treaties) in countries where constitutional environmental rights are present. Still, the limited number of reliable quantitative publications calls for cautious interpretation: these studies are important, but they do not unpack the complexities of implementing and realising environmental rights, including successes and failures.

Given these complexities, May explores how environmental rights can be realised through the 'greening' of fundamental rights, such as civic and economic rights (chapter 5), and how far these can be extended to guarantee dignity (chapter 6). Human dignity also intersects with the realisation of specific sustainable development goals, broadening the debate over environmental rights to include the right to water and sanitation, and to food security. Together, these two chapters closely capture the intersection between human rights and the realisation of environmental rights.

In chapter 7, May debates extending the narrative of environmental rights to include climate rights, which may be based on similar outcomes related to enjoying a clean and healthy climate/environment. Despite the wealth of scientific evidence on climate change, rising emissions and temperatures, and the relevance and global influence of climate treaties such as the Paris Agreement, the climate emergency has continued apace. Acknowledging the linkages between climate and en-

vironment, the ICJ Advisory Opinion on the Obligations of States in respect of Climate Change introduces the 'right to a healthy climate' as a right closely tied to the broader right to a healthy environment. Still, challenges remain: in the majority of cases, there are no constitutional provisions that are specific to climate-related rights, and instead countries tackle this issue from the perspective of ensuring emission reduction, decreasing deforestation, or improving investment in renewables. May highlights important victories here, such as the *Held v Montana* litigation, which was based on a claim to the 'right to a clean and healthy environment', now in jeopardy because of climate change, exacerbated by the state of Montana's inaction on greenhouse gas emissions.

In chapter 8, May engages with the growing debate over the rights of nature (RoN) and the constitutional recognition of these rights in some countries. This marks a shift in perspective, moving from an anthropocentric exposition of environmental rights, in which rights are framed as claims and benefits for individuals, to ecocentric and relational perspectives. In the ecocentric debate, natural entities enjoy the substantive right to existence intrinsically and independently of other attributes or uses. At the same time, recognising the symbiotic relationships between humankind and nature has also introduced additional perspectives, which May describes through the Harmony with Nature initiative. This is particularly relevant for traditional communities and indigenous groups, whose livelihoods depend closely on their interaction with nature and the preservation of ecosystem quality. In this chapter, May develops a much deeper engagement with Earth Jurisprudence, the RoN framework and relational perspectives than in his previous work: what were considered fringe conversations are now integral debates in the environmental rights framework. His comparative analysis of Ecuador, New Zealand, and India is detailed and offers realistic solutions to the practical challenges of appointing human guardians for nature.

Shifting from substantive to operational mechanisms, chapter 9 focuses on procedural environmental rights, anchored in the tripartite rights framework of the Aarhus Convention and the Escazú Agreement, also replicated regionally or nationally in many countries globally: 1) the right of access to information, through which, for instance, citizens can demand environmental data from state agencies; 2) the right to public participation, mandating that affected communities be included in environmental decision-making and environmental and social impact assessments; and 3) the right of access to justice in environmental governance, allowing citizens, communities and groups to take legal recourse in case of environmental harm. The analysis begins with the constitutional recognition of procedural rights, which remain underrepresented globally, although many national sectoral laws recognise them even outside the jurisdictions covered by Aarhus and Escazú. In practice, these fundamental rights have guided environmental stewardship in many countries while also supporting the implementation of substantive rights.

Chapter 10 presents the development of environmental rights through sub-national constitutions in the United States, Brazil, and Iraq. For May, these cases represent valuable examples of subnational recognition of environmental rights, although in this chapter he offers a thorough analysis only in respect of the United States. Here, existing litigation has been considered

to assess the role and extent of judicial interventions to support the quality and realisation of environmental rights. Because subnational provisions bypass federal standing doctrines and operate closer to local environmental crises, they have proven effective at blocking local fossil fuel infrastructure and industrial pollution, outperforming their federal counterparts. The critical importance of judicial recognition and justiciability also explains the relative failures in other contexts, for example, for the Kurdistan Regional Government (and one could extend the same analysis to the Iraqi Federal Government), where the constitutional narrative on environmental rights is not accompanied by similar depth in enforcement.

In chapter 11, May expands on the sustainability rights he introduced in earlier chapters. The debate on sustainability, and its focus on ensuring sustainable development for present and future generations, is examined through the lens of constitutional provisions that explicitly recognise this right. On the one hand, this is an important step and one that is consistent with the overall framing of the book, with its overt focus on environmental constitutionalism. At the same time, the catch-all perspective on sustainable development seems to force the connection between sustainability and environmental rights. There are multiple references to the right to sustainable development, rights recognised in the context of the Sustainable Development Goals, and sustainability in general, but it is not clear that the constitutional references to promoting sustainable development necessarily translate into a recognised, justiciable 'sustainability right'.

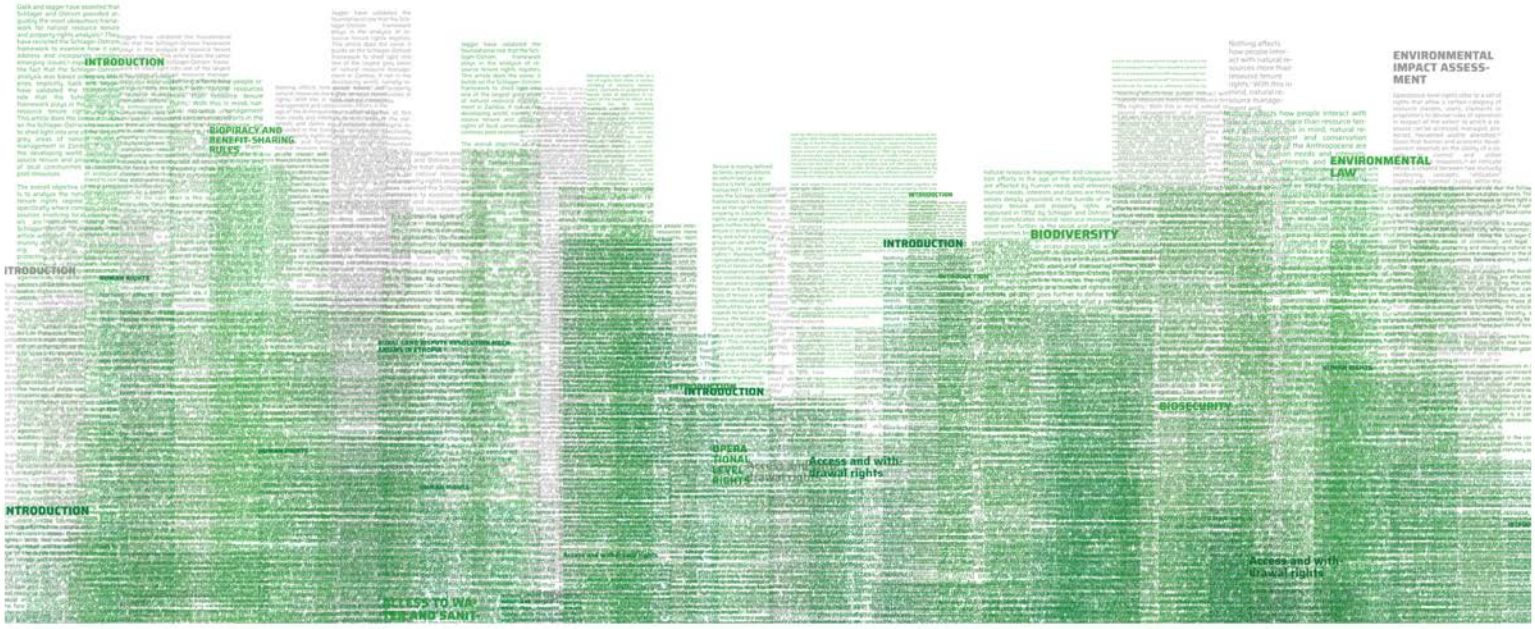
This is an important book for students and practitioners interested in environmental rights, the evolution of the debate to include nature, its rights, and relational perspectives. May seeks to reconcile different interpretations and claims, arguing that recognising these rights will support rather than hinder economic and social advancement. Across all chapters, May recognises that a fundamental weakness of the environmental rights framework remains implementation. Critics often argue that environmental rights are vague, polycentric, and socio-economic in nature, making them ill-suited for judicial determination through litigation. Yet, for May, environmental constitutionalism and judicial recognition are vital to the framework, and he has seen important advances in this area over his career, particularly as courts fill gaps to achieve positive environmental outcomes that political or economic interests might block.

Furthermore, broadening the analysis to include nature, climate, dignity, and sustainability rights seems to reflect a need to overcome previous dichotomous framings: global versus local, anthropocentric versus ecocentric, individual versus collective rights, or the interest of the environment versus the interest of the economy. In this respect, May offers strong integrative solutions to multiple climate and environmental crises.

There are, however, some weaknesses. Despite one chapter on addressing non-anthropocentric perspectives, the book remains grounded in Western legal theory. The focus on constitutionalism seems to introduce a bias throughout, in which efforts to secure constitutional recognition of environmental rights, climate rights, and sustainability rights appear to assume these provisions will produce positive outcomes. Many countries with progressive constitutional environmental rights (primarily in the Global South) suffer from weak

state capacity, systemic corruption, and severe economic pressures that profoundly undermine these legal protections. The book would benefit from a more critical look at why environmental degradation often accelerates in countries despite excellent legal narratives.

Further, the narrative focuses on state and formal institutions, failing to recognise processes that may draw on a rights-duties and relational dialectic in traditional or indigenous contexts. This includes the issue of conflict among multiple perspectives in approaching nature and its resources: for example, what happens when indigenous communities, national and local governments, and international NGOs disagree on what the 'interests' of an ecosystem or of people depending on such an ecosystem actually are? While May wants to bring attention to ways to reshape the legal landscape through environmental rights, his argumentation and cases remain deeply anthropocentric and focus on judicial representation and enforcement. This perpetuates the idea that environmental rights can only succeed when they measure harm through a human lens, such as lost economic value, threats to human health, or impacts on human recreation. To move beyond this narrow view, the debate's moral imperative must be foregrounded, in full recognition of the interactions between people and nature.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