

**DAVID R. BOYD: THE ENVIRONMENTAL RIGHTS REVOLUTION: A GLOBAL  
STUDY OF CONSTITUTIONS, HUMAN RIGHTS, AND THE ENVIRONMENT**

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In my first year of law school, a professor asked: does law systematically advance social and environmental ends, or does it merely confirm them? He suggested that the most important steps towards gender and racial equality were taken not by innovative legal cases, but in the messy interactions of civil society, corporate actors and politics. The law comes limping along, belatedly concretizing societal developments. My class of 70 fresh-faced constitutional law students was stymied. Full of ambition and no small measure of self-importance, we were confronted with the notion that perhaps law (and by implication our budding careers as lawyers and legal academics) would not matter much after all.

David Boyd's book, *The Environmental Rights Revolution*, is a refreshingly hopeful tonic for those activist lawyers disheartened by their discipline. Boyd is a practicing environmental lawyer and a pragmatic academic; he is clearly interested in the role and possibilities of law to improve our environment. His conviction is that law, and legal form, does matter. His subject is the constitutional right to live in a healthy environment, and the book is a study of the potentially transformative impacts of such constitutional protections. While acknowledging the effects of a particular constitution will depend on the complex interaction of legal, social, cultural and economic factors, Boyd seeks to demonstrate that the constitutionalization of environmental protections will generally lead to benefits such as stronger domestic laws, increased public participation, and improved environmental outcomes.

This is an ambitious project. As Boyd notes, there is a limited empirical data on whether constitutional protections of the environment matter.<sup>1</sup> Seeking to address this gap in the

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literature, Boyd conducts a survey of the nearly 150 nations that have constitutional protections of the environment and, more significantly, attempts to assess their impacts on domestic environmental outcomes.

The book is organized into three parts: Part One provides background and context to the emergent right to a healthy environment. Part Two explains Boyd's empirical approach, and provides an assessment of the effects of the constitutional right to a healthy environment on environmental laws and jurisprudence. Part Three presents his lessons learned on the advantages and disadvantages of constitutionalizing the right to a healthy environment. Boyd's important conclusion is that these constitutional provisions are having significant positive effects, and that constitutionalization of a healthy environment consistently correlates with superior environmental performance.

The book begins by exploring three developments that have converged to spark the "environmental rights revolution". The first is the shift towards constitutional democracies in regions such as Eastern Europe, Asia and Africa as well as in countries that have a history of parliamentary democracy. As Boyd notes, more than half of the world's national constitutions have been written since the mid-1970s, and many others have been significantly amended. This shift coincides with the "rights revolution" - the proliferation of international human rights instruments and the prevalence of rights-based language and approaches in so many areas of contemporary social and intellectual life. These two developments coupled with an ever-increasing awareness of our global environmental crisis have resulted in the emergence of a right to live in a healthy environment.

Having thus set the stage, Boyd develops these themes with chapters on the broad theoretical and philosophical debates about rights, and the right to a healthy environment in international law. These two chapters are summaries of the existing scholarship in these areas. Readers with significant background in human rights law will not find anything new, but the chapters are clearly written and provide some useful context. Part One is completed by a presentation of the results of Boyd's survey of environmental protection provisions in national constitutions. The compilation of recent data is a useful resource, as it covers the 147 national constitutions that incorporate some form of environmental protection provisions, with explicit recognition in 92 constitutions. Interestingly, no other human right has gained such rapid widespread recognition.

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<sup>1</sup> David R. Boyd, *The Environmental Rights Revolution* (Vancouver, UBC Press, 2012) at 45-46.

The heart of the book is contained in Part Two. Here Boyd sets out his framework and methodology for assessing effects. This is a challenging undertaking, as Boyd acknowledges, causality is difficult to trace and isolate from the larger domestic context. The book uses two approaches: first, national environmental legislation is reviewed to determine if the constitutional protection has been incorporated. The assumption is that this demonstrates at least a *prima facie* indication of a discernible impact. The second approach is an analysis of lawsuits and judicial decisions related to the constitutional protection of a healthy environment. These two lenses are applied to 92 countries grouped by region. The next few chapters present this country-by-country analysis, and make for interesting reading for both environmentalists and constitutional law scholars. In addition to providing a brief overview of each region, there are little snapshots of successes and challenges in various countries. Part Three presents a global survey of lessons learned, reviewing the advantages and "theoretical disadvantages" of constitutionalizing the right to a healthy environment.

As a human rights lawyer, I was initially sceptical of Boyd's enthusiasm for the particular legal form of constitutionally entrenched rights. The mechanisms that drive social change are complex, and one can find equivalent human rights protections in countries that employ diverse legal forms. (Compare, for example, Canada with its constitutionally entrenched *Charter of Rights and Freedoms*, and Australia, where there is no national Bill of Rights). Boyd does acknowledge the difficulties inherent in tracing the causal links between law and environmental outcomes. However, his analysis of the data suggests that most countries with explicit constitutional protection of the right to live in a healthy environment do have stronger environmental laws, increased public participation, and a growing body of progressive court decisions. Interestingly, his research also suggests a correlation between constitutional protections of the environment and superior environmental records, such as smaller per capita ecological footprints and slower growth in greenhouse gas emissions. Overall, the book is an excellent resource and Boyd has done an admirable job of convincing at least this (initially sceptical) reader of the potential of constitutionally entrenched environmental rights.