

2013

Book Review, David R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment*

Bradford Mank

University of Cincinnati College of Law, brad.mank@uc.edu

Suzanne Smith

University of Cincinnati College of Law

Follow this and additional works at: http://scholarship.law.uc.edu/fac_pubs

 Part of the [Environmental Law Commons](#), and the [Human Rights Law Commons](#)

Recommended Citation

35 Hum. Rts. Q. 1021 (2013)

This Article is brought to you for free and open access by the College of Law Faculty Scholarship at University of Cincinnati College of Law Scholarship and Publications. It has been accepted for inclusion in Faculty Articles and Other Publications by an authorized administrator of University of Cincinnati College of Law Scholarship and Publications. For more information, please contact ken.hirsh@uc.edu.

for instance, if the WTO's dispute resolution framework could be used to sanction states for egregious labor rights violations, but it does not work that way at present. The World Bank, like the WTO, should be concerned with assisting states in fulfilling their human rights responsibilities with respect to development, but it is also in need of reform in this regard.

In the last few chapters of this impressive and wide-ranging book, Risse mounts a defense of the current state system by arguing against John Lennon's lyric that asks us to "Imagine there's no countries. It isn't hard to do." Risse thinks it is hard to imagine a world system in which there are either no states or one in which there is a global super state. Despite all of the doubts and difficulties that arise with respect to a global order characterized by a plurality of sovereign but globally interconnected and interdependent nation states, he sees that there is no feasible alternative to developing our conception of global justice within this framework. The right-libertarians and anarcho-capitalists are wrong, he thinks, in arguing for the abolition of states, and the utopian cosmopolitans are wrong in believing that global solidarity is sufficiently developed to support any realistic attempt to create a global polity.

Some readers, particularly cosmopolitans, may find Risse's approach to be too conservative particularly with respect to wealth inequality, while others may find that it dramatically inflates the global responsibilities of states and institutions. Whether or not Risse has found the "Goldilocks" account of global justice will be a matter of debate. Nevertheless, this is a book of considerable breadth, ambition, and insight. Human rights scholars will find it particularly valuable for its pluralistic account of human rights

and for its novel account of the grounds of intergenerational justice. Risse's grasp of the extensive literature on a variety of important topics is impressive. There are little gems of insight sprinkled throughout the text, making it a book that can be profitably read by all serious scholars interested in global justice.

Morton Winston*

The College of New Jersey

** Morton Winston is Professor of Philosophy in the Department of Philosophy, Religion, and Classical Studies at the College of New Jersey. His areas of specialization include human rights theory, environmental ethics, and the philosophy of technology. Dr. Winston's most recent book is Society, Ethics, and Technology (Ed. 2013). Dr. Winston has had three Fulbright Scholarships, to South Africa in 1992, to Thailand in 1999, and to Denmark in 2007, where he held the Danish Distinguished Chair of Human Rights and International Relations at the Danish Institute of Human Rights.*

David R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (UBC Press, W. Wesley Pue general ed., 2012), 443 pages, ISBN 978-0-7748-2160-5.

I. INTRODUCTION

David R. Boyd's book entitled, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment*, provides a comprehensive overview of nations that have incorporated the right to a healthy environment in their constitutions. Throughout his research, Boyd analyzes the effectiveness of environmental protec-

tion provisions in national constitutions and seeks to determine whether constitutional provisions guaranteeing the right to a healthy environment have measurable, positive effects on the environment.¹ His wide-ranging compilation and analysis of environmental rights provisions in numerous countries is an important contribution to international human rights literature.

Although Boyd explains that treating the right to a healthy environment as a fundamental human right is not a new idea,² his broad research demonstrates that many national constitutions have, in fact, adopted enforceable environmental protection provisions, particularly the right to a healthy environment.³ Boyd's research provides concrete examples of how the constitutional right to a healthy environment, and national legislation guaranteeing that right, have had positive environmental consequences. He predicts that in the future these rights will continue to help combat the effects of global climate change and environmental degradation that permeate national borders to enable the world to achieve the goal of sustainable development.⁴

II. PART I: "THE EMERGENCE AND EVOLUTION OF A NEW HUMAN RIGHT"⁵

A. Environmental Provisions in National Constitutions

Boyd argues that environmental rights have the characteristics of human rights.⁶ Although a human right has various definitions,⁷ Boyd defines human rights using three elements:

First, human rights are universal, meaning that they are both widely agreed upon and held by everyone. Universal applicability is subject to the caveat that the precise interpretation or form of these rights can vary significantly according to local social, economic, cultural, political, and environmental conditions. Second, human rights have a moral basis, indicating that these rights exist whether or not a particular nation, government, or legal system recognizes them. Third, the basic intent of rights is to ensure the dignity of all human beings.⁸

Boyd concludes that the right to a healthy environment meets these characteristics of human rights.⁹

-
1. DAVID R. BOYD, *THE ENVIRONMENTAL RIGHTS REVOLUTION: A GLOBAL STUDY OF CONSTITUTIONS, HUMAN RIGHTS, AND THE ENVIRONMENT* 16 (W. Wesley Pue general ed., 2012).
 2. *Id.* at 12. "The first written suggestion that there should be a specific human right to a healthy environment came from Rachel Carson in 1962"; see also *id.* at 13. "In 1972, the first global eco-summit resulted in the pioneering *Stockholm Declaration*, which formally recognized the right to a healthy environment and the accompanying responsibility (although the agreement is not legally binding)."
 3. *Id.* at 278–91.
 4. *Id.* at 290–91.
 5. *Id.* at 1.
 6. *Id.* at 21.
 7. *Id.* at 20.
 8. *Id.* at 21.
 9. *Id.*

Boyd identifies how incorporating the right to a healthy environment in national constitutions has had various positive results. For example, he argues that these constitutional provisions have led to more environmental legislation, better enforcement of environmental laws, increased government accountability, and greater participation by concerned citizens, among various other positive outcomes.¹⁰ Although Boyd describes the benefits of constitutional provisions that guarantee the right to a healthy environment, he acknowledges the arguments of skeptics. He concedes,

[o]pponents argue that the right is vague, absolute, redundant, undemocratic, neither enforceable nor justiciable, going to open the floodgates to litigation, problematic in that it may divert attention from other more important rights, anthropocentric, a form of cultural imperialism, unduly focused on individuals, likely to be ineffective, capable of generating false hopes.¹¹

Boyd provides a comprehensive analysis of, and rebuttal to, each of the above-mentioned criticisms.

Although determining the exact number of nations that incorporate environmental protection provisions in their

constitutions is difficult, Boyd attempts to quantify the number of nations that have made efforts to do so. His research suggests that in 1972, no country's constitution had an environmental rights provision, and only a few imposed some environmental duties.¹² Between 1971 and 1976, Switzerland, Panama, Greece, Papua New Guinea, India, and Portugal became the first nations to incorporate constitutional provisions relating to environmental protection in their national constitutions.¹³ Since then, many other nations have followed course. Today, one hundred and forty-seven out of the one hundred and ninety-three United Nations member nations have constitutions that "include explicit references to environmental rights and/or environmental responsibilities."¹⁴ Boyd maintains that "[e]very year since the 1972 *Stockholm Declaration*, at least one nation has written or amended its constitution to include or strengthen provisions related to environmental protection."¹⁵ This is a staggering and remarkable movement towards recognition of environmental rights in national constitutions globally.

In addition to recognizing patterns relating to geography and language, Boyd notes that nations with common law,¹⁶ as

10. While the types of public participation would vary somewhat in different nations depending upon their governmental institutions, increased public participation would include greater access to environmental information, participation in decision making either through public meetings that include opportunities for citizen participation or electronic comments on proposed projects, and the weighing of environmental justice issues through consideration of possibly disparate impacts on identifiable minority groups. *Id.* at 28.

11. *Id.* at 33–44.

12. *Id.* at 47.

13. *Id.*

14. *Id.*

15. *Id.*

16. Beginning during the English Middle Ages and later adopted as part of the British colonial empire, Anglo-American common law courts gradually developed an adversarial tradition in which the individual parties played a central role in determining the facts and truth in civil litigation instead of the government appointed judges who control litigation in civil law legal systems. Adam A. Milani & Michael R. Smith, *Playing God: A Critical Look at Sua Sponte Decisions by Appellate Courts*, 69 TENN. L. REV. 245, 272–86 (2002). During the seventeenth and eighteenth centuries, England and then the American colonies

opposed to civil law, legal systems are less likely to incorporate environmental protection provisions in their constitutions.¹⁷

While the constitutions of most former British colonies contain bills of rights, these bills adopt the classical liberal approach to human rights—i.e. they focus on civil and political rights while economic, social, and cultural rights are not protected—except for property. In contrast, among the seventy-seven nations with exclusively civil law systems, seventy-two have environmental provisions in their constitutions.¹⁸

Boyd highlights how constitutional recognition of environmental rights is absent in most common law nations, namely the United States, Canada, the United Kingdom, and Australia, although he predicts that even the common law countries will eventually join the broad trend toward constitutional environmental rights.¹⁹ While these nations' constitutions do not contain provisions guaranteeing the right to a healthy environment, that is not to say they do not have laws, regulations, and systems in place to protect the environment.

Despite increasing recognition of the right to a healthy environment in national constitutions, Boyd notes that forty-six UN member nations' constitutions still lack environmental protection provisions.²⁰ In some nations, such as the United States, amending the constitution

is both very difficult and highly unlikely to happen.²¹ However, Boyd argues that since 1970, forty of the forty-six nations that do not currently have environmental protection provisions in their constitutions had opportunities to amend their constitutions to incorporate environmental provisions, but, for various reasons, opted not to do so.²²

Of those nations whose constitutions do contain provisions relating to the right to a healthy environment, Boyd analyzes various types of obligations present in each constitution. Of the one hundred and forty-seven nations whose constitutions include some environmental protection provisions, one hundred and forty national constitutions include "a government duty to protect the environment"; ninety-two include "an individual right to a healthy environment"; eighty-three include "an individual duty to protect the environment"; and thirty include "procedural environmental rights."²³

Boyd rightly suggests that the location of a provision guaranteeing the right to a healthy environment within a constitution can affect its interpretation.²⁴ For example,

[i]n fifty-six out of ninety-two constitutions, the right to a healthy environment is articulated in the same section or chapter as other fundamental human rights. Theoretically, this will result in similar treatment for

gradually adopted a classic liberal approach to constitutional rights based on individual civil and political rights rather than collective economic, social or cultural rights. BOYD, *supra* note 1, at 51; see generally GORDON S. WOOD, *THE CREATION OF THE AMERICAN REPUBLIC, 1767–87* (1969) (explaining how the American constitutional approach grew from classic liberal principles in the English constitutional tradition).

17. BOYD, *supra* note 1, at 51.

18. *Id.*

19. *Id.* at 51, 283–84.

20. *Id.* at 49.

21. *Id.* at 51.

22. *Id.* at 52.

23. *Id.* at 279.

24. *Id.* at 65.

all human rights identified as fundamental, although, in practice, legal developments may not always reflect words on paper or the intent of the constitution's framers.²⁵

Boyd's analysis reveals that nations locate environmental rights in varying sections of their national constitutions.²⁶ Seventeen nations locate environmental rights alongside economic, social, and cultural rights;²⁷ eleven nations classify them as general objectives;²⁸ three nations outline them in the constitution's preamble;²⁹ two nations describe them as "Collective Rights"; one nation describes them as "new Rights and Guarantees"; one nation describes them as "Public Rights"; and one nation includes them in the "Charter for the Environment."³⁰

Boyd explains various other environmental protection provisions found in national constitutions. For example, eighty-three constitutions require individuals to bear some responsibility for protecting the environment.³¹ Six national constitutions "establish an individual duty to protect the environment but neither establish an individual right to a healthy environment nor impose environmental obligations upon the state."³² Boyd highlights that this is somewhat counterintuitive, as constitutions, at

least in the classic liberal approach to human and civil rights, should constrain government power.³³ Other constitutions include restrictions on the use of private property; clauses relating to zoning, budget, hazardous waste, and clean water;³⁴ the "rights of Nature";³⁵ and the rights of future generations.³⁶

Boyd correctly acknowledges the importance of being able to enforce environmental protection provisions. If constitutional provisions are unenforceable, then their practical impact is arguably minimal. Boyd defines enforceability as "the ability of an individual, group, or other organization to access the legal system to resolve a constitutional complaint."³⁷ Some constitutions provide explicit enforceability. On the other hand, other constitutions explicitly prohibit the judicial enforcement of environmental rights.³⁸ Boyd emphasizes that without explicit provisions providing for enforcement, governments can avoid their responsibilities and commitments to protect the environment.³⁹ Boyd also explains how various internal and external factors influence the enforceability of environmental rights. Internal factors "refer to explicit guarantees or limits within the text of the constitution.

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* at 65–66.

29. *Id.* at 66.

30. *Id.*

31. *Id.* at 67.

32. *Id.*

33. *Id.* at 68.

34. *Id.* at 69–70.

35. *Id.* at 70 (For example, Ecuador and Bolivia explicitly acknowledge the "rights of Nature.")

36. *Id.* (Forty nations acknowledge the rights of future generations.)

37. *Id.* at 71; see also the Intergovernmental Working Group for the Elaboration of a Set of Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (2004).

38. Boyd, *supra* note 1, at 71–72.

39. *Id.* at 72.

External factors encompass a broad range of legal, social, political, economic, and cultural considerations."⁴⁰

Boyd highlights a wide range of enforcement provisions found in national constitutions. Sixty-seven of the ninety-two nations that contain constitutional provisions guaranteeing the right to a healthy environment provide clear enforcement mechanisms.⁴¹ In other nations, the right is not "self-executing."⁴² Nine nations' constitutions do not even address enforceability.⁴³ Specifically, the constitutions of eighty-two of the one hundred and forty nations that hold their governments responsible for environmental protection provide explicit enforcement provisions.⁴⁴ Twenty-two national constitutions do not explicitly state whether the government's obligation to protect the environment is enforceable.⁴⁵ Fifteen national constitutions prevent enforcement of the government's obligation to protect the environment.⁴⁶ Six national constitutions have "progressive implementation" provisions, which condition the enforcement of environmental provisions upon the availability of financial resources and, therefore, may prevent enforcement of government responsibilities to protect the environment.⁴⁷ Although Boyd highlights the varying degrees to which environmental protection provisions in national constitutions are enforceable, he concludes that, overall, most provisions are enforceable.

In the context of human rights, Boyd argues that "[n]o other human right has achieved such a broad level of constitutional recognition in such a short period of time."⁴⁸ He believes efforts to include the right to a healthy environment in national constitutions reflects "a rapid evolution of human values, with environmental protection gaining the requisite moral importance to merit inclusion in written documents that express a society's most cherished and deeply held values."⁴⁹ While critics might argue that Boyd's conclusions are overly optimistic, *The Environmental Rights Revolution* effectively outlines the positive environmental impacts that have stemmed from constitutional provisions guaranteeing the right to a healthy environment.

B. International Law

Although Boyd's book primarily focuses on the national right to a healthy environment, chapter four examines how international law has affected environmental rights at the national level. Prior to the 1972 *Stockholm Declaration on the Human Environment*, nations did not recognize the right to a healthy environment as an element of enjoying basic human rights.⁵⁰ While the *Stockholm Declaration* is not legally binding, its call to safeguard the environment has undoubtedly influenced the environmental rights movement globally.

40. *Id.*

41. *Id.*

42. *Id.* at 73.

43. *Id.*

44. *Id.* at 74.

45. *Id.*

46. *Id.* at 75.

47. *Id.*

48. *Id.* at 76.

49. *Id.* at 77.

50. *Id.* at 89.

In analyzing the influence of international law on national law, Boyd describes various sources of international law, such as the *Statute of the International Court of Justice*. He then discusses the important distinction between traditional sources of international law, such as treaties, which may establish legally binding "hard law," and the frequently vague "soft law" goals found in many multinational international environmental law conventions. Critics argue that "soft" law is ineffective because it is not legally binding.⁵¹ However, Boyd contends that "soft law" in international environmental law agreements remains a powerful tool in the environmental rights movement because it can influence legislation at the national level. For example, even though the *Stockholm Declaration* is non-binding, some of its principles have, and will continue to, evolve into customary international law.⁵² Boyd analyzes whether the right to live in a healthy environment constitutes a generally accepted principle of international law.⁵³ Ultimately, he suggests, "the right to a healthy environment is very close to becoming, if it is not already, a general principle of international law."⁵⁴ However, he notes that fifteen nations still do not recognize this right.⁵⁵

Boyd provides an overview of the three international human rights treaties that do mention environmental rights in the context of human rights. However,

they do not directly recognize the right to a healthy environment.⁵⁶ For example, the *Convention on the Rights of the Child* includes a provision guaranteeing "adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution" as part of a child's right to health.⁵⁷ Similarly, signatories to the *Convention on the Elimination of All Forms of Discrimination against Women* are required to ensure women "enjoy adequate living conditions, particularly in relation to . . . sanitation, electricity, and water supply."⁵⁸ Finally, the *Geneva Conventions* require signatories to provide prisoners of war potable drinking water.⁵⁹ Additionally, Boyd stresses how some nations, including Argentina, Costa Rica, El Salvador, Greece, Kenya, Nepal, Peru, and Romania, have interpreted the right to a healthy environment as a requirement to "the inherent right to life" as articulated in the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights*.⁶⁰

Boyd also addresses how the enjoyment of the right to health encompasses some environmental rights. For example, the UN Committee on Economic, Social, and Cultural Rights holds that "states violate their duty to protect the right to health if they fail to 'enact or enforce laws to prevent the pollution of water, air, and soil by extractive and manufacturing industries.'"⁶¹ The *International Covenant*

51. *Id.* at 80.

52. *Id.*

53. *Id.* at 91.

54. *Id.* at 92.

55. *Id.* (Afghanistan, Australia, Brunei Darussalam, Cambodia, Canada, China, Japan, Kuwait, Laos, Lebanon, Myanmar, New Zealand, North Korea, Oman, and the United States).

56. *Id.* at 81.

57. *Id.*

58. *Id.* at 82.

59. *Id.*

60. *Id.*

61. *Id.* at 83.

on *Economic, Social, and Cultural Rights (ICESCR)* requires governments to avoid policies that could be harmful to human health, take measures to promote health, and provide sanitation services, among various other obligations.⁶²

Furthermore, Boyd states that one hundred and fifteen United Nations member nations recognize the right to a healthy environment at a regional level.⁶³ Boyd's book provides an informative overview of various regional agreements that recognize some level of environmental rights. For example, Article 24 of the African (Banjul) Charter on Human and Peoples' Rights states "[a]ll peoples shall have the right to a general satisfactory environment favorable to their development."⁶⁴

Similarly, in the Americas, the American Convention on Human Rights, entered into force in 1978, and the Additional Protocol to the American Convention on Human Rights guarantee the right to live in a healthy environment. Article 11(1) states, "[e]veryone shall have the right to live in a healthy environment and to have access to basic public services."⁶⁵ Article 11(2) states, "[t]he States Parties shall promote the protection, preservation, and improvement of the environment."⁶⁶ Thus, Article 11(1) and Article

11(2) provide clear language guaranteeing the right to a healthy environment and a commitment to environmental protection.

Boyd explains that in the European Union, the Charter of Fundamental Rights states, "a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principles of sustainable development."⁶⁷ In addition, the preamble to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) recognizes that protecting the environment is vital to the right to life. Article 1 of the Aarhus Convention requires that "each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention."⁶⁸ Boyd notes that the United Kingdom made a reservation to Article 1.⁶⁹ Finally, Boyd highlights that in the Middle East, Article 38 of the Arab Charter on Human Rights acknowledges, "Every person has the right to an adequate standard of living, which ensures their well-being . . . and the right to a healthy environment."⁷⁰

62. *Id.*

63. *Id.* at 84.

64. *Id.* See African Charter on Human and Peoples' Rights, adopted 27 June 1981, art. 24, O.A.U. Doc. CAB/LEG/67/3 Rev. 5, 1520 U.N.T.S. 217 (entered into force 21 Oct. 1986).

65. Boyd, *supra* note 1, at 85; see Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, art. 11(1) (1988) [hereinafter Protocol of San Salvador].

66. Boyd, *supra* note 1, at 85; see Protocol of San Salvador, *supra* note 65, art. 11(2).

67. *Id.* at 86; see Charter of Fundamental Rights of the European Union, art. 37 (7 Dec. 2000), available at http://www.europarl.europa.eu/charter/default_en.htm.

68. Boyd, *supra* note 1, at 87.

69. *Id.*

70. *Id.* at 88; see Arab Charter on Human Rights, art. 38 (2004), available at http://www.acihl.org/res/Arab_Charter_on_Human_Rights_2004.pdf.

Overall, Boyd effectively describes how various nations around the world have already recognized some level of environmental rights through regional agreements. Boyd argues that the United States is the only country that does not acknowledge the right to a healthy environment in domestic or international law.⁷¹ He states that the United States has argued that if the right to a healthy environment were considered customary international law, then it would not apply to Americans because our government has consistently opposed the recognition of that right.⁷²

Although Boyd acknowledges that experts disagree as to whether the right to a healthy environment exists, he argues that the majority favor environmental rights. In addition, various reputable organizations, including the World Health Organization and the Institute of International Law, among various others, have recognized environmental rights.⁷³ Moreover, Boyd highlights that judges around the world have advocated for environmental protection.⁷⁴ In addition, reputable organizations and governments, such as the UN Environment Programme and the Environmental Law Institute, have taught and trained judges to learn environmental law.⁷⁵ Lawyers often collaborate with environmental NGOs to promote environmental rights through litigation and

efforts to amend constitutions to reflect those rights.⁷⁶

Similarly, Boyd provides a brief overview of the international tribunals that have heard environmental cases. Although the International Court of Justice's chamber tasked with hearing environmental issues has never decided on the right to a healthy environment, the United Nations Human Rights Committee has heard a few cases relating to environmental rights. However, Boyd explains that two notable cases were inadmissible because of technical and procedural issues.⁷⁷

Furthermore, Boyd provides overviews of cases heard in regional courts, such as the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the European Court of Human Rights, the European Committee of Social Rights, and the African Commission on Human Rights, relating environmental degradation to human rights. The approach in each regional court to environmental issues is somewhat different. For example, he demonstrates that many cases in the Americas have involved indigenous communities.⁷⁸ By contrast, he shows that the European Court of Human Rights has relied on various provisions in the European Convention on Human Rights to establish the right to a healthy environment,⁷⁹ including: the right to

71. Boyd, *supra* note 1, at 91.

72. *Id.*

73. *Id.* at 104–05.

74. *Id.* at 109–10.

75. *Id.*

76. *Id.* at 110–11.

77. *Id.* at 95; see United Nations Human Rights Committee, Com. No. 1331/2004: Sri Lanka. CCPR/C/87/D/1331/2004 (14. Sept. 2006) (where the UN Human Rights Committee found the citizens' claim inadmissible); see also United Nations Human Rights Committee, *E.H.P. v. Canada*, Comm. No. 67/1980, UN Doc. CCPR/C/OP 1, ¶ 8 (27 Oct. 1982) (where the UN Human Rights Committee held the residents bringing the claim did not exhaust domestic legal remedies).

78. See Boyd, *supra* note 1, at 96–104.

79. *Id.* at 99.

life (Article 2); the right to a fair hearing (Article 6), and the right to respect for private and family life and home (Article 8, the article most cited in support of environmental rights), among others.⁸⁰

Boyd argues that while developments in international law suggest that there is an emerging human right to a healthy environment which may not yet be binding, they have positively influenced governments to change their national laws and constitutions, and they have influenced judicial decisions.⁸¹ Overall, Boyd concludes that environmental degradation has a negative impact on an individual's ability to enjoy basic human rights such as life, health, family life, and the peaceful enjoyment of property.⁸² He acknowledges that whether the right to environmental protection is an international norm remains debatable. Until recently, Boyd argues that there has been a vigorous academic debate between progressives who generally support the establishment of a right to a healthy environment and traditionalists, who are more likely to deny the existence of a right to a clean environment.⁸³ Boyd argues that the emergence of many new regional treaties and national constitutions that support a right to a healthy environment should lead conservatives to rethink their opposition to such rights. He emphasizes that 153 nations are now legally bound to protect the environment.⁸⁴ Furthermore, numerous judges, experts, and lawyers have expressed support for environmental rights. While international law as a

whole has not come to a consensus on what a healthy environment involves or what environmental rights encompass, Boyd argues, "the threshold for becoming customary international law or a general principle of law is very close to being met, if it has not already been surpassed."⁸⁵ Boyd's prediction that the right to a healthy environment is, or is close to becoming, a general principle of international law remains debatable; however, his examination undoubtedly contributes valuable research supporting recognition of the right to a healthy environment as a general principle of international law.

III. "THE CONSTITUTIONAL RIGHT TO A HEALTHY ENVIRONMENT IN PRACTICE"⁸⁶

In Part II of *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment*, Boyd describes how environmental protection provisions in national constitutions have influenced environmental legislation and judicial decisions in nations whose constitutions provide the right to a healthy environment. First, he looks at whether national legislation has incorporated the constitutional right to a healthy environment, and to what extent.⁸⁷ Second, he reviews whether citizens and interest groups have successfully filed

80. See *id.* at 99–101.

81. *Id.* at 106.

82. *Id.* at 111.

83. *Id.*

84. *Id.* at 112.

85. *Id.* at 113.

86. *Id.* at 115.

87. *Id.* at 117.

lawsuits to protect their constitutional right to a healthy environment.⁸⁸

Through his analysis, Boyd looks at the right to a healthy environment through the work of two authors, Charles R. Epp, whose scholarship examines an emerging global judicial revolution in civil and political rights, and Siri Gloppen, who studies the role of courts in influencing social and economic rights in new democracies.

According to Epp and Gloppen, the following elements are key factors in determining the extent to which legally recognized rights will be effective in promoting social change: the strength of constitutional provisions; the rule of law; the pool of prospective litigants; access to justice; resources available for legal mobilization; the responsiveness of the judiciary; and social, economic, and political conditions.⁸⁹

Boyd highlights various benefits that can result from constitutionalizing the right to a healthy environment (e.g., it holds governments accountable and increases enforcement), but also outlines various criticisms made by skeptics (e.g., it is vague and ineffective).⁹⁰

Boyd provides an in-depth overview of legislation and judicial decisions by region, including Latin America and the Caribbean, Africa, Asia, Eastern Europe, and Western Europe. For each country that has constitutionalized the right to a healthy environment, Boyd outlines well-documented examples of legislation and case law relating to environmental

rights. For each region, Boyd analyzes seven factors influencing the impact of environmental rights in each country: (1) constitutional provisions; (2) prospective litigants; (3) access to justice; (4) resources for legal mobilization; (5) the rule of law; (6) a responsive judiciary; and (7) social, economic, and political conditions.⁹¹

A. Latin America and the Caribbean

Boyd begins his regional analysis with Latin America and the Caribbean. He notes that important political movements have influenced the prevalence of the right to a healthy environment in constitutions in the region, namely that many nations in Latin America democratized in the 1980s and 1990s.⁹² Boyd's research reveals that the right to a healthy environment is present in the national constitutions of sixteen of the eighteen nations in Latin America and the Caribbean.⁹³ Many nations, including Bolivia, Colombia, and Venezuela, have enacted laws and regulations guaranteeing environmental protection.⁹⁴ Some nations, such as Paraguay, however, do not have the infrastructure to enforce environmental laws, or like Uruguay, have failed to enact effective constitutional or statutory provisions guaranteeing environmental protection.⁹⁵

88. *Id.* at 118.

89. *Id.* at 119. See CHARLES R. EPP, *THE RIGHTS REVOLUTION: LAWYERS, ACTIVISTS, AND SUPREME COURTS IN COMPARATIVE PERSPECTIVE* (1998); see also Siri Gloppen, *Courts and Social Transformation: An Analytical Framework*, in *COURTS AND SOCIAL TRANSFORMATION IN NEW DEMOCRACIES: AN INSTITUTIONAL VOICE FOR THE POOR?* 35–60 (Roberto Gargarella, Pilar Domingo & Theunis Roux eds., 2006).

90. BOYD, *supra* note 1, at 122.

91. See, e.g., *id.* at 144 (tbl. 6.1).

92. *Id.* at 124.

93. *Id.*

94. *Id.* at 126.

95. *Id.* at 127.

In addition to many nations in Latin America and the Caribbean enacting environmental laws and regulations, thirteen of these eighteen nations have played host to environmental rights litigation.⁹⁶ Among the most active in hearing such cases are Argentina, Brazil, Colombia, and Costa Rica.⁹⁷ Boyd's research reveals that Latin American courts have made over six hundred decisions relating to the right to a healthy environment.⁹⁸

Boyd describes some unique legal procedures available to litigants in Latin America that have led to greater environmental litigation in many nations in the region. For example, "[t]he *amparo*, which has roots in Mexico dating back to the middle of the nineteenth century, allows citizens to apply directly to courts when their constitutional rights have been violated."⁹⁹ Boyd notes that various nations, including Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, and Peru, have comparable procedures allowing citizens to bring actions to defend collective interests; in addition, these procedures tend to be less expensive and more informal than traditional litigation.¹⁰⁰

Boyd outlines the impacts of the constitutional right to a healthy environment on legislation, court decisions, and judicial trends in Argentina, Brazil, Colombia, Costa Rica, Peru, Chile, Ecuador, Bolivia, El Salvador, Panama, Venezuela, the Dominican Republic, Jamaica, Paraguay,

Mexico, Guatemala, and Uruguay. For example, Boyd explains how in Argentina, the *General Law on the Environment* allows judges to take a preventative approach in their decision-making similar to the precautionary principle.¹⁰¹ In 2004, a group of citizens brought a case against the national, provincial, and city of Buenos Aires governments which decided on the constitutional right to a healthy environment.¹⁰² They alleged pollution of the Matanza-Riachuelo River.¹⁰³ The court relied on Articles 41 and 43 of the constitution, "which recognize the right to a healthy environment and citizens' power to defend their rights through recourse to the judicial system."¹⁰⁴ Boyd describes various positive outcomes resulting from the decision, including an environmental assessment of the river, an independent evaluation, increased disclosure requirements, improved drinking water for one million people, increased soil, water, and air sampling, and the closure of one hundred and sixty-seven polluting companies and one hundred and thirty-four garbage dumps, among various other outcomes.¹⁰⁵

Boyd also describes various environmental successes in Brazil. For example, following Brazil's constitutional amendment in 1988, various legal developments led to increased environmental litigation: (1) constitutional reforms allowed citizens to bring a popular action, free of charge, challenging the government on environmental issues;¹⁰⁶ (2) the *Ministério Público* assumed responsibility for enforcing environmental laws and

96. *Id.*

97. *Id.* at 128.

98. *Id.* at 127.

99. *Id.* at 128.

100. *Id.*

101. *Id.* at 129.

102. *Id.*

103. *Id.*

104. *Id.* at 131.

105. *Id.* at 130.

106. *Id.* at 131.

investigating violations;¹⁰⁷ (3) Brazil's environmental protection agency was consolidated;¹⁰⁸ and (4), in 1998, the government passed the Environmental Crimes Act.¹⁰⁹ In addition, defendants in Brazil sued for harm to the environment bear the burden of proof, making it much easier for plaintiffs to bring and win environmental cases.¹¹⁰ Boyd explains how all of these developments, among others, have resulted in increased environmental enforcement in Brazil.

Boyd describes a unique court in Costa Rica that has led to increasing numbers of environmental cases. In 1989, Costa Rica created a Constitutional Chamber of its Supreme Court, which hears over ten thousand cases per year.¹¹¹ In 1993, the Court decided a case confirming the right to a healthy environment.¹¹² That principle was reaffirmed by a 1994 decision where the court stated, "if the rights to health and to the environment were not recognized, the right to life would be severely limited."¹¹³ Cases in Costa Rica have addressed a number of environmental issues and areas, including solid waste, sewage treatment, offshore oil and gas exploration, and endangered species, among various others.¹¹⁴

Overall, despite exceptions such as Mexico¹¹⁵ and Paraguay, Boyd analyzes and describes how various constitutional amendments and legal developments have led to greater recognition and enforcement of environmental rights in Latin America.¹¹⁶

B. Africa

Boyd highlights how thirty-two nations in Africa have incorporated the right to a healthy environment in their constitutions.¹¹⁷ In addition, twenty-three nations have implemented legislation to protect the environment and promote environmental rights.¹¹⁸ South Africa, Benin, and Uganda are the leaders in environmental laws in Africa.¹¹⁹ However, despite the fact that twenty-three out of thirty-two nations in Africa have incorporated the right to a healthy environment into their national constitutions, Boyd notes that only five nations (South Africa, Uganda, Seychelles, Malawi, and Kenya) have clearly enforced a constitutional right to a healthy environment.¹²⁰

Boyd provides a thorough description of environmental legislation and

107. *Id.*

108. *Id.*

109. *Id.* at 132.

110. *Id.*

111. *Id.* at 135.

112. *Id.*

113. *Id.*

114. *Id.* at 136.

115. In 2011, Mexico adopted amendments to strengthen *amparo* provisions in the constitution to enable citizens to bring environmental enforcement actions, which Mexican courts had previously held were not allowed under its laws.

116. *Id.* at 146–47.

117. *Id.* at 149.

118. *Id.*

119. *Id.* at 149–50.

120. *Id.* at 150–56. Courts in Nigeria and Tanzania have stated that a right to a healthy environment is implied in the right of life even in the absence of an explicit constitutional provision, but serious questions remain about whether such rights will be consistently enforced in these two countries for somewhat different reasons in each country. *Id.* at 156–57.

litigation in South Africa, Uganda, Kenya, Seychelles, Malawi, Nigeria, and Tanzania. In conclusion, he notes that although many African nations' constitutions contain provisions guaranteeing the right to a healthy environment, "the other prerequisites for respecting and protecting the human right to a healthy environment—that is, the rule of law, an independent judiciary, a strong civil society, and litigation-support infrastructure—are largely not yet present in most African nations."¹²¹ Understandably, these limitations and impediments have affected application and enforcement of environmental laws in Africa.

C. Asia

Boyd states that fourteen nations in Asia have constitutions recognizing the right to a healthy environment.¹²² In addition, twelve of these nations have passed environmental legislation referring to the right to a healthy environment.¹²³ Boyd argues that the Philippines has enacted the most comprehensive environmental laws in Asia.¹²⁴ Six of the fourteen nations

in Asia have enforced environmental laws or cited them in judicial decisions.¹²⁵ Boyd explains that because court records are unavailable in some nations, more nations in Asia may have enforced environmental laws or cited them in judicial decisions than are reported in his book. Additionally, in some nations whose constitutions do not provide for the right to a healthy environment, such as India, case law has guaranteed the right to a healthy environment.¹²⁶ Boyd's research reveals that the courts in India have heard the greatest numbers of cases advocating the right to a healthy environment; courts in Bangladesh, Pakistan, and Sri Lanka have cited Indian cases as precedent.¹²⁷

Boyd also describes environmental legislation and litigation in the Philippines, Nepal, Turkey, South Korea, Indonesia, Thailand, India, Pakistan, Bangladesh, Sri Lanka, Israel, and Malaysia.¹²⁸ He emphasizes that nations in Asia vary politically, religiously, and culturally.¹²⁹ He suggests that, despite these differences, many Asian nations are facing similar changes, such as urbanization and pollution.¹³⁰ Furthermore, Boyd explains how various factors have stood in the way of environmental protection in Asia. For

121. *Id.* at 160.

122. *Id.* at 164.

123. *Id.*

124. *Id.* at 164–65. The Philippines has enacted various environmental laws, including the Clean Air Act of 1999, Clean Water Act, Ecological Solid Waste Management Act, National Environmental Awareness and Education Act of 2001, and the Climate Change Act of 2009. *See id.* at 167–70 for more about environmental rights progress in the Philippines.

125. *Id.* at 166.

126. *Id.* at 167. There is no explicit right to a healthy environment in India's constitution. *Id.* at 75. Furthermore, Article 48A makes explicitly unenforceable the government's ethical duty to protect the environment by treating that duty as among a number of unenforceable "Directive Principles of State Policy." Nevertheless, Indian courts have ignored the plain language of the constitution by treating the directive principle regarding environmental protection as legally mandated, although the record of Indian courts in enforcing that mandate is arguably mixed. *Id.* at 75–76, 175–83, 244.

127. *Id.*

128. *Id.* at 167–92.

129. *Id.* at 187–90.

130. *Id.* at 187.

example, economic development, political conflict, weak enforcement, corruption, and weak judiciaries, among other factors, have prevented environmental protection from becoming a priority.¹³¹ Boyd emphasizes that, overall, environmental laws are still developing in many Asian nations.¹³²

D. Eastern Europe

All nineteen nations in Eastern Europe that recognize the constitutional right to live in a healthy environment have enacted environmental protection legislation.¹³³ In addition, courts in twelve Eastern European nations have enforced the constitutional right to a healthy environment.¹³⁴ Boyd explains how various factors, including the fall of communism, constitutional amendments, the formation of the European Union, and the Chernobyl catastrophe, have influenced government efforts to protect the environment in Eastern Europe.¹³⁵ For example, the "Czech Republic, Hungary, Latvia, Poland, Slovakia, and Slovenia joined the EU in 2004. Bulgaria and Romania became members in 2007. Each of these nations was required to upgrade its environmental laws to EU standards as a prerequisite for membership."¹³⁶ The Council on Europe's model environmental provision for Eastern European nation states:

Everyone has the right to an ecologically stable and healthy environment. Such a right can be exercised not only in respect of any normative or administrative acts by the public authorities but also in respect of the actions of private persons which are likely to have a significant effect on the environment.¹³⁷

Boyd describes how the breakup of the Soviet Union in 1990 brought many political and social changes to Eastern European nations, many of which were focused on economic development.¹³⁸ Nations during this period drafted new constitutions and amended environmental laws.¹³⁹ Boyd explains that under communist regimes, constitutions and environmental laws were often merely symbolic and rarely enforced.¹⁴⁰ He notes that Soviet era regulations are still present in some Eastern European nations.¹⁴¹ "Many nations still lack detailed regulations, specific standards, permitting processes, and reporting requirements, and weak enforcement continues to be an Achilles' heel."¹⁴² Unlike nations in Latin America, where procedures exist for citizens to bring claims relatively easily if their constitutional rights are violated, citizens in Eastern European nations must endure time sensitive and expensive proceedings if they claim their constitutional right to a healthy environment has been violated.¹⁴³

131. *Id.*

132. *Id.* at 190.

133. *Id.* at 193.

134. *Id.* at 195.

135. *Id.* at 193–94.

136. *Id.* at 194.

137. *Id.*

138. *Id.* at 207.

139. *Id.* at 206.

140. *Id.*

141. *Id.* at 207.

142. *Id.*

143. *Id.* at 209.

Boyd argues that “[a]mong overarching problems facing Eastern Europe are widespread poverty, weakness of the state, low levels of democracy in some nations, and institutional instability. In some nations, corruption, concentrated wealth and power, and bureaucratic arbitrariness are deeply rooted in political culture.”¹⁴⁴ Despite these obstacles, Eastern European nations have made various positive developments in recent years, including increased public participation and access to information, involvement of nongovernmental and nonprofit organizations, and more open standing rules.¹⁴⁵ In particular, the Aarhus Convention has encouraged greater access to environmental information and public participation in Eastern Europe.¹⁴⁶ Overall, the shift since the 1990s toward recognizing the right to a healthy environment has been a positive development in Eastern Europe, but more political changes are needed in a number of these countries to give greater respect to environmental rights and human rights in general.

E. Western Europe

Boyd believes the environmental laws in Western Europe are strong. He states, “In Western Europe, democratic traditions, strong adherence to the rule of law, well-established public access to judicial systems, and relatively high levels

of economic development provide fertile ground for the development of constitutional environmental rights.”¹⁴⁷ Nine nations have constitutions that recognize the right to a healthy environment.¹⁴⁸ Eight of those nations have legislation reinforcing the right.¹⁴⁹ In addition, eight nations have litigated that right.¹⁵⁰

Boyd provides a comprehensive overview of environmental legislation and litigation in Portugal, Greece, France, Spain, Finland, The Netherlands, Belgium, Andorra, Norway, and Italy; all of these nations are members of the European Union except Andorra and Norway.¹⁵¹ His analysis reveals that the constitutional right to a healthy environment has had the greatest impact in Greece and Portugal.¹⁵² Boyd argues that, overall, Western European nations provide positive legal protections for the environment. Various factors, including membership in the European Union, culture, history, and policies, have played a role in this outcome. Boyd notes that while many nations in Western Europe have strong constitutional provisions guaranteeing the right to a healthy environment, others, such as the Netherlands, Spain, and Belgium, have vague constitutional guarantees.¹⁵³

Overall, Boyd concludes that

[t]he rule of law is more firmly entrenched in Western Europe than it is in any other region in this study. There is a consistently high degree of transparency regarding the law; the judicial branch of government is

144. *Id.* at 205.

145. *Id.* at 207–09.

146. *Id.* at 209.

147. *Id.* at 214.

148. *Id.*

149. *Id.*

150. *Id.* at 215.

151. *Id.* at 214.

152. *Id.* at 228.

153. *Id.* at 226.

well established and independent; and governments generally respect the law. As well, these nations generally enjoy a high standard of living; although per capita income is lower in the southern nations (Portugal, Spain, Italy, and Greece).¹⁵⁴

Furthermore, the wide adoption in Western Europe of the Aarhus Convention has promoted or reinforced significant public participation in environmental decisions and access to information that, in turn, have led to stronger environmental protections.¹⁵⁵ In contrast, access to the judicial system and judicial activism varies among nations in Western Europe.¹⁵⁶

Despite weaknesses in the wording of the right to a healthy environment in the constitutions of some Western European countries, Boyd believes that the right to a healthy environment in Western Europe is only likely to get stronger in the future.¹⁵⁷ Although the European Convention on Human Rights does not explicitly provide for the right to a healthy environment, the European Court of Human Rights has relied on the right to life, the right to a fair trial, and the right to peaceful assembly, among other Articles of the European Convention on Human Rights to provide environmental protections.¹⁵⁸ These decisions are likely to have a significant impact on encouraging Western European nations to adopt and to enforce legislation providing a right to a healthy environment; for example, Iceland has

proposed a new constitution guaranteeing environmental rights.¹⁵⁹ Furthermore, Boyd also explains, “[t]he proposed protocol to the *European Convention on Human Rights* on the right to a healthy environment would extend the right to the remaining nations of Western Europe, requiring changes to domestic legislation and possible constitutions.”¹⁶⁰

IV. “EVALUATING THE IMPACTS OF ENVIRONMENTAL PROVISIONS IN CONSTITUTIONS”¹⁶¹

In Part III of his book, Boyd analyzes the actual impacts of environmental protection provisions found in constitutions around the world. He outlines and explains various advantages to constitutionalizing the right to a healthy environment. For example, constitutionalizing the right to a healthy environment has led to passage of strong environmental laws in every region studied;¹⁶² stronger enforcement;¹⁶³ increased public involvement;¹⁶⁴ and increased access to justice, particularly in Latin America;¹⁶⁵ among various other positive outcomes.

Boyd also describes and discredits claims made by critics doubting the benefits of constitutionalizing the right to a healthy environment.¹⁶⁶ For example,

154. *Id.* at 226–27.

155. *Id.* at 228.

156. *Id.*

157. *Id.* at 228–29.

158. *Id.* at 99.

159. *Id.* at 229.

160. *Id.*

161. *Id.* at 231.

162. *Id.* at 233.

163. *Id.* at 237.

164. *Id.* at 239.

165. *Id.*

166. *Id.* at 245.

to refute arguments that constitutional environmental rights are either too vague or are redundant because they duplicate other laws, Boyd argues that it is unlikely that at least seventy-eight national legislatures and courts in fifty-six nations would have taken the time and effort to implement various constitutional rights to a healthy environment if such rights were worthless.¹⁶⁷ Furthermore, Boyd refutes arguments that constitutional rights to a healthy environment are unenforceable by highlighting that in over fifty nations courts have enforced such rights.¹⁶⁸ Despite their widespread enforcement, he argues that the constitutional right to a healthy environment has not led to unmanageable numbers of court cases; rather, environmental cases represent a small portion of all constitutional cases brought in Europe and Latin America.¹⁶⁹ Overall, Boyd effectively refutes criticisms voiced by those who are skeptical of the impacts of environmental protection provisions in constitutions and provides counter-examples where nations have implemented such rights with significant benefits to the environment.

Boyd extracts four major conclusions from his research. First, seventy-eight out of the ninety-two nations with a constitutional right to a healthy environment have actually incorporated that right into national legislation.¹⁷⁰ Second, constitutional provisions recognizing the right to a healthy environment have positively influenced environmental lawsuits.¹⁷¹

Third, "procedural environmental rights—to information, participation in decision making, and access to justice—are almost universally recognized as complements to the substantive right to a healthy environment."¹⁷² Fourth, Boyd finds that "constitutional environmental rights are delivering many of the anticipated benefits and few of the potential drawbacks forecast by legal experts."¹⁷³ Boyd reiterates that these outcomes, including laws, lawsuits, and greater public participation, "are merely means toward the ultimate objective of reducing environmental degradation and improving human well-being."¹⁷⁴

A critical portion of Boyd's analysis focuses on whether the constitutional provisions he studies have positive impacts on the environment. In Chapter 12, he analyzes the relationship between the constitutional right to a healthy environment and actual improvements in the environment.¹⁷⁵ He acknowledges that various other variables can affect whether constitutional provisions positively or negatively affect the environment.

To measure environmental performance, Boyd compares nations using several indices and indicators.¹⁷⁶ First, he assesses the ecological footprints of one hundred and fifty nations. "The ecological footprint measures how much of the regenerative capacity of the biosphere is used by human activities."¹⁷⁷ Boyd uses 2008 data from the Global Footprint Network.¹⁷⁸

167. *Id.*

168. *Id.* at 246–47.

169. *Id.* at 247–48.

170. *Id.* at 251.

171. *Id.*

172. *Id.*

173. *Id.* at 251.

174. *Id.* at 252.

175. *Id.* at 254.

176. *Id.* at 256.

177. *Id.* at 257.

178. *Id.* at 258.

Second, Boyd analyzes the Organisation for Economic Co-operation and Development (OECD) rankings developed by researchers at Simon Fraser University that rank thirty nations from best to worst for twenty-nine different indicators, including energy consumption, nuclear waste, and livestock, among others.¹⁷⁹ Based on the analysis of the OECD rankings, Boyd concludes that “[f]ourteen of the fifteen top-performing nations have constitutions that include protection for the environment. Denmark is the sole exception. Conversely, nine of the fifteen nations making up the bottom half of the OECD rankings lack constitutional environmental provisions.”¹⁸⁰

Third, Boyd analyzes the Conference Board of Canada’s comparison of the seventeen largest and wealthiest OECD nations across six domains, including environment, economics, education, health, innovation, and society.¹⁸¹ The Conference Board of Canada bases its comparison on fifteen indicators including waste, climate change and energy efficiency, biodiversity and conservation, and others.¹⁸² Based on this research, Boyd concludes that the highest ranked nations have environmental protection provisions in their constitutions and/or have governments that are obligated to protect the environment.¹⁸³

Fourth, Boyd examines whether nations have ratified five major environmental treaties and protocols: 1) the Kyoto Protocol to the United Nations Frame-

work Convention on Climate Change; 2) the Stockholm Convention on Persistent Organic Pollutants; 3) the Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade; 4) the Cartagena Protocol on Biosafety to the United Nations Convention on Biological Diversity; and 5) the Ban Amendment to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.¹⁸⁴ Boyd concedes that nations that ratify international environmental treaties do not necessarily commit more resources to the environment. He observes that the United States is the only nation that has not ratified any of the treaties or protocols.¹⁸⁵ However, even though the United States has not ratified the abovementioned international environmental treaties or protocols, it is important to note the United States has enacted comprehensive domestic environmental laws, including the Clean Air Act, the Clean Water Act, and the National Environmental Policy Act, among various others.¹⁸⁶ Similar to Boyd’s analysis of the Global Footprint Network, OECD, and Conference Board of Canada data, Boyd concludes that a pattern exists between nations whose constitutions incorporate specific environmental protection provisions and those that have ratified international treaties and/or protocols.¹⁸⁷

Fifth, Boyd analyzes nitrogen oxide emissions (NOx), sulphur dioxide emis-

179. *Id.* at 261; see Simon Fraser University Sustainable Planning Research Group (2005).

180. *Id.* at 260.

181. *Id.* at 263.

182. *Id.*

183. *Id.* at 263–65.

184. *Id.* at 266.

185. *Id.* at 267.

186. See generally Laws and Executive Orders, United States Environmental Protection Agency, available at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

187. Boyd, *supra* note 1, at 267.

sions (SO₂), and greenhouse gas emissions. In his analysis of national efforts to reduce NO_x emissions, Boyd finds that:

Among the eight nations with no environmental provisions in their constitutions, total NO_x emissions fell an average of 3.1 percent over the twenty-five-year period from 1980 to 2005. The average annual decrease in NO_x emissions among these nations was 0.1 percent. During the same period, total NO_x emissions declined by an average of 32.3 percent among the nine nations that have environmental protection provisions in their constitutions. The average annual decrease among these nations was 1.5 percent.¹⁸⁸

Quite similarly, Boyd concludes that nations with environmental provisions in their constitutions have experienced greater decreases in SO₂ emissions.¹⁸⁹ Finally, Boyd looks at the relationship between constitutional provisions protecting the environment and greenhouse gas emissions. Although "total GHG emissions in nations without constitutional environmental provisions grew eight times faster than emissions in nations with constitutional environmental provisions," Boyd explains why this is not necessarily a causal relationship because of several complicating factors relating to economic trends, population growth, the types of fuels used in various countries, policies aimed at energy conservation and security rather than GHG reductions, and the Kyoto Protocol's structure, requiring binding GHG reductions only near the end of the agreement period.¹⁹⁰

Overall, Boyd's quantitative analysis shows that:

Nations with environmental provisions in their constitutions have smaller ecological footprints, rank higher on comprehensive indices of environmental indicators, are more likely to ratify international agreements, and made faster progress in reducing sulphur dioxides, nitrogen oxides, and greenhouse gases than nations without such provisions. Although correlation does not imply causation, the consistency of the association suggests that such a relationship exists and warrants further investigation, using advanced quantitative techniques.¹⁹¹

Through his analysis, Boyd acknowledges two outliers: Belgium and Denmark.¹⁹² Denmark's constitution does not have an environmental protection provision, but it is highly ranked for its protection of the environment.¹⁹³ In contrast, Belgium's constitution does recognize the right to a healthy environment, but it does not have a strong environmental record.¹⁹⁴

In conclusion, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* provides evidence that many nations around the world actively recognize the right to a healthy environment, over half of the nations in the world recognize the constitutional right to a healthy environment,¹⁹⁵ and one hundred and forty-seven nations include some form of environmental protection provision in their constitution.¹⁹⁶ In seventy-eight of the ninety-two nations

188. *Id.* at 268–69.

189. *Id.* at 270.

190. *Id.* at 272.

191. *Id.* at 273.

192. *Id.* at 274.

193. *Id.*

194. *Id.*

195. *Id.* at 279.

196. *Id.*

that Boyd studied, national environmental laws have been strengthened both substantively and procedurally.¹⁹⁷ In over fifty nations, courts have interpreted and enforced the constitutional right to a healthy environment.¹⁹⁸ Thus, Boyd's research demonstrates that many national constitutions guarantee the right to a healthy environment and that these guarantees are increasingly enforceable in many countries.¹⁹⁹ Perhaps even more importantly, Boyd demonstrates the relationship between environmental provisions in constitutions and positive environmental outcomes.²⁰⁰

Furthermore, Boyd carefully analyzes the availability and enforcement of environmental constitutional provisions in the major regions of the world. First, Latin America is the perhaps surprising world leader in constitutional environmentalism; second, the advanced legal systems of Western European have invoked constitutional human rights principles and statutory law to assiduously protect the environment, and their evolving cousins in Eastern Europe are increasingly following their lead, especially those countries that have the opportunity to join the European Union; third, Asian countries have tended to lag behind European and Latin American courts in enforcing environmental constitutional provisions, but the Philippines have provided leadership in legislation and litigation, and the Indian Supreme Court has influenced

other Asian courts to protect the environment; and, fourth, African nations have often, in theory, recognized a right to a healthy environment, but the enforcement of those rights is limited to a few countries because of the general weakness of judicial and political institutions in that continent.²⁰¹

The North American countries of Canada and the United States have refused to enact constitutional rights to a healthy environment, although Canada's Supreme Court has occasionally referred positively to the ideal of doing so.²⁰² Boyd convincingly shows that the 25 common law countries born from the British Empire and its legal traditions are less likely to adopt constitutional environmental provisions because their liberal constitutional traditions favor leaving such issues to democratically elected legislatures.²⁰³ He predicts that even these common law countries will join the movement to constitutionalize environmental rights because of their successful enforcement in so many nations.²⁰⁴ Even if his prediction regarding common law countries were generally right, however, his proposal would face the greatest opposition in the United States because it is extremely difficult to amend its Constitution.²⁰⁵ In the United States, there are significant political movements opposed to a strong national government and/or changing the traditional, liberal rights-based approach to the Constitution.²⁰⁶

197. *Id.* at 279–80.

198. *Id.*

199. *Id.* at 278–81.

200. *Id.* at 281.

201. *Id.* at 282–83.

202. *Id.* at 283.

203. *Id.* at 283–84.

204. *Id.* at 284.

205. *Id.* at 51.

206. For example, the Tea Party movement favors an "inherently conservative" interpretation of the US Constitution. See About Us, available at <http://www.teaparty.org/about-us/>.

Ultimately, Boyd argues that the environmental rights debate should not focus on whether national constitutions should guarantee the right to a healthy environment.²⁰⁷ Rather, the focus should be on understanding “the most effective, efficient, and equitable means of ensuring that everyone’s right to a healthy environment is respected, protected, and fulfilled.”²⁰⁸ Boyd’s book effectively evaluates how the constitutional right to a healthy environment has positively influenced legislation, court decisions, and environmental conditions around the world. His quantitative review of the various types of environmental constitutional rights and his qualitative analysis of their impact on various nations are both important contributions to the study of environmental rights as human rights.

**Bradford C. Mank* &
Suzanne Smith****
**University of Cincinnati
College of Law**

* *Bradford C. Mank is James Helmer, Jr. Professor of Law, University of Cincinnati College of Law. He received his B.A., Harvard University, and J.D., Yale University. After law school, Mank served as law clerk for Justice David M. Shea of the Connecticut Supreme Court. He later became associated with the Hartford, Conn. law firm of Murtha, Cullina, Righter and Pinney, where his emphasis was environmental law. In 1989, Mank became an Assistant Attorney General for the State of Connecticut and held that position for two years before joining the College of Law faculty in 1991. He has authored many articles and book chapters on environmental justice, regulatory reform, standing, and statutory interpretation. He has also worked with the City of Cincinnati on a number of environmental ordinances and implementation matters, including climate change, environmental justice, recycling, and air pollution issues. E-mail: brad.mank@uc.edu.*

207. BOYD, *supra* note 1, at 287.

208. *Id.*

** *Suzanne Smith received a J.D. from the University of Cincinnati College of Law in 2013.*

Emilie M. Hafner-Burton, *Making Human Rights a Reality* (Princeton University Press 2013), 276 pages, ISBN 978-0-6911-5535-7.

I. INTRODUCTION

The author, a Professor of International Relations at the University of California-San Diego, has written an engaging book providing an overview of the nature and effectiveness of internationally recognized human rights. Like many others, she notes the gap between the law on the books and the law in action. In short, she believes the current state of affairs is woefully deficient in effectiveness. Unlike many others, she does not stop there but addresses the thorny question of what to do to make the international human rights system more effective. What she proposes—namely to link human rights action most fundamentally with the national interests of certain states, which she calls steward states—will certainly provoke much debate. Such a debate is the sign of a serious and creative argument.

II. THE ARGUMENT

Professor Hafner-Burton starts with the solid point that “[m]ost governments . . . make legally binding promises, which they break when convenient.”¹ She then presents statistical indicators on a variety of rights (including disappearances, kill-

1. EMILIE M. HAFNER-BURTON, *MAKING HUMAN RIGHTS A REALITY* 1 (2013).