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**Karen MacDonald on Constitutional Environmental Rights by Tim Hayward. Oxford: Oxford University Press, 2005. 236pp.**

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Recent debates have asked whether there is or should be a human right "to environment," examining, *inter alia* : the content and scope of such a right; its beneficiaries and "providers;" its utility; its need or redundancy; and, its enforceability. Hayward advances this debate by posing and exploring the central thesis of his book, namely that "a right of every individual to an environment adequate for their health and well-being should receive express provision in the constitution of any modern democratic state" (1).

Hayward opens by succinctly outlining the current scope of discussion on whether there is or should be an individual (as opposed to group) environmental human right, and explores various rationales for environmental protection as a human rights issue. He situates his claim within the context of a *sui generis* human right to an "adequate" environment, though he does not attempt to define "adequate" (this would be a book in itself). Rather, he refers us to criteria proposed by UN Special Rapporteur for the Environment, Fatma Zohra Ksentini, in her 1994 report (29-31) ([click here for the full report](#)). When contrasted with the choice of other commentators who have presented arguments for a human right to a "clean" environment, to an environment "free from toxic pollution", to a "healthy" environment, and other constructs, his choice serves to illustrate how varied and vacillating the debate on the structure and content of an environmental human right actually is.

Hayward also examines the "genuineness" of such a right from a deontological perspective, and the robustness of such a right in current international law. He anticipates counter arguments, including challenges that environmental rights might weaken the broader normative force of more mainstream human rights, or that a human rights approach to environmental protection might dilute environmental considerations, as the focus of such a claim would not be completely eco-centric.

Chapter 2 comprises the core of the book and is dedicated to exploring why a human right to an adequate environment ought to be constitutionalized, and in what form. Hayward outlines the merits of this argument, and again anticipates counter arguments. He concedes for example, that there are existing fundamental rights (such as the right to life) that might be applied to attain environmental objectives. However, he argues that elevating environmental rights to constitutional status and thus giving them "constitutionalized force" would emphasize the importance that society attaches to environmental issues. It would ensure the prominence of environmental issues, and would assist in mainstreaming environmental issues, as opposed to addressing them as a political cause.

Hayward comments, however, that a substantive positive or negative environmental right might be vulnerable to social fluctuations and indefinable standards that make it more persuasive to constitutionalize the right in procedural form. While other theorists raise this issue, Hayward gives the argument the detailed attention that it deserves.

The challenge of effective implementation and enforcement is logically the subject of Chapter 3. Hayward explores the complications that might arise when attempting to uphold such a constitutional right in the courts, on account of the volatility of environmental problems and also

administrative hurdles. He demonstrates how these might be overcome, and recommends, for example, the development of specialized environmental courts.

Chapter 4 asks whether we want constitutional environmental rights as a form of democracy. Hayward raises several compelling questions: Are we undemocratically binding the future? How can we agree on the level of environmental risk that might be quantified in a constitutionalized right? What offers more legitimacy: procedural, positive or negative environmental rights?

Chapter 5 examines the necessity of a constitutional environmental right in the European Union, and ponders the scope of extant human rights and environmental commitments at E.U. level. Chapter 6 closes with analysis of how constitutional environmental rights can provide a means of attaining environmental (distributive) justice, globally. Hayward by no means adopts a simplistic view, but encouragingly observes that over 100 states have constitutionalized some form of environmental protection to date.

The strength of Hayward's work, in what is becoming a vogue area of rights discourse, is its focus on the constitutional question. Melding legal, philosophical, political, moral, institutional and policy analysis, Hayward ably avoids masking his views in jargon, and clearly leads us through his arguments and logic. In making a convincing case for constitutional environmental rights, the book and the debate will engage anyone interested in the genre, ranging from students, lawyers, academics, NGOs, political decision-makers and the rights-conscious layperson.

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