

## SUSTAINABILITY, LAW AND CRIMINOLOGY



# SUSTAINABILITY, LAW AND CRIMINOLOGY

*Edited by*  
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# PREFACE

Two years ago, on 10 January 2023, during my inaugural lecture at the KU Leuven Faculty of Law and Criminology, I launched the idea for a faculty-wide project on law, criminology and sustainability. My appointment as Professor of Law and Sustainability as such already indicated that our faculty recognises the growing importance of the interaction between our legal discipline and sustainable development. Research on law, criminology and sustainability is essential to address the major challenges of our time, such as the ongoing climate, biodiversity and environmental crises, as well as mitigating poverty and addressing social disparities.

An additional reason for compiling this book was that our university celebrates its 600th anniversary in 2025, and it aspires not only to reflect on the past but also to look forward to the future. Reflections on the future of law and criminology must engage with the pervasive concept of sustainability.

The importance of research in this area is also evident in the fact that many of my colleagues, each from their own expertise, already focus on sustainability in their research. As Professor of Law and Sustainability, I aim to build bridges between these various legal disciplines. The ambition for this book was to go beyond a juxtaposition and mere exploration of sustainability in different fields of law. Instead, we sought to detect overlaps and the possibility of cross-pollination. This collaborative process has led to the emergence of a sustainability community within our faculty, uniting all researchers working on sustainability. All draft contributions were discussed during workshops where colleagues from different fields gathered and gave feedback to each other. As a result, this book goes further than what has already been published in the field of law, criminology and sustainability. The fact that lawyers and criminologists collaborated on this theme is, in itself, already unique.

I would like to expressly thank all the authors, both young and more senior researchers, from so many different departments within our faculty. You made this possible. Thank you for the high-quality and inspiring discussions during the workshops. A special word of thanks goes to the colleagues who participated in the core team at the start of the project to brainstorm about the approach: prof.dr. Bert Keirsbilck, prof.dr. Evelyne Terry, prof.dr. Vincent Sagaert, prof.dr. Veerle Colaert, dr. Elias Van Gool, Laura Neven, Flore Vavourakis, and dr. Christopher Borucki. Many thanks also to mrs. Anne-Marie Cuypers for the practical support in organising the workshops and to em.prof.dr. Paul Lemmens

for the valuable advice and suggestions along the way and especially in the final phase of the project when the book took its final shape.

The hope is that this faculty book project will not mark the end but merely the beginning of the sustainability community at our faculty. We were also encouraged to do so by the late Professor Eric Dirix, who in 2023 endorsed and strengthened my initiative for this faculty project during our kick-off meeting. I am very grateful to him for that. It is emblematic of how we will remember Professor Dirix at our faculty: as a mentor to many young colleagues and a pillar of our faculty.

This book, therefore, may not mark the end of our faculty-wide collaboration, but it sure is a great start and I am incredibly proud of the result. My heartfelt thanks to all the contributors.

Dorothy Gruyaert  
Leuven, 25 February 2025

# INTRODUCTION

## Mapping the Context, Structure and Key Findings

Dorothy GRUYAERT<sup>1</sup>

### 1. RATIONALE FOR THE BOOK

1. This book is the result of a collaboration between more than fifty researchers from the Faculty of Law and Criminology at KU Leuven. It addresses sustainability, law and criminology in a multi-faceted manner. With this book, the authors aspire to contribute to the sustainability debate and the search for legal pathways to provide solutions for the sustainability challenges of our times.

The call for sustainable development rises as the global problems of climate change, environmental crises, biodiversity loss, economic instability and social disparities become more urgent. However, it seems to us that research on sustainability, law and criminology is all the more important now, as there is much uncertainty and unrest in the world, and it is rather unclear how high sustainability still ranks on the international agenda.

2. The term “sustainable development” as such is hard to grasp. A fair starting point is the definition put forward by the UN World Commission on Development and Environment in the famous Brundtland Report (1987), which preceded the 1992 Rio Conference:

“Sustainable development is the development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.<sup>2</sup>

Certainly, this definition remains rather vague, but it makes clear that there is an intergenerational, long-term aspect to sustainable development. In some respects, this forward-facing character makes law and sustainable development

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<sup>1</sup> Assistant Professor KU Leuven, member of the Leuven Centre for Public Law and the Institute of Property Law.

<sup>2</sup> World Commission on Environment and Development, *Report of the World Commission on Environment and Development: Our Common Future*, Oxford University Press, 1987, 43.

a challenging combination, since the discipline of law, with attention fixed preponderantly on the present and past, is arguably somewhat retrogressive, designed to be rooted in maintaining the status quo.<sup>3</sup>

This book offers a fresh perspective by re-evaluating our own discipline and positioning it in relation to other fields. While the law is typically backward-looking, serving as a remedy for specific societal phenomena, we must consider how the law can evolve and how certain values, such as sustainability, can be integrated into our legal system to create a more future-oriented legal framework.

## 2. STRUCTURE OF THE BOOK

### 2.1. SUSTAINABILITY AND INTERDISCIPLINARITY

3. This book on sustainability, law and criminology yields valuable insights into our own discipline. **PART 1** of the book sets the scene and starts off with interdisciplinary reflections on law, criminology and sustainability, in order to avoid a too-narrow and discipline-specific view. Interdisciplinary research counterbalances the limitations of silo thinking among lawyers. The chapters of Part 1 focus on the inspiration that can be drawn from other fields of research, such as sustainability science (Chapter 1, Van Gool), the critical race theory (Chapter 2, El-Kaddouri) or green criminology (Chapter 3, Ibáñez Alonso). In Chapter 4, it is explored how environmental harms can be assessed empirically and systematically in terms of sustainability. Greenfield and Paoli show that the anthropocentric lens that is inherent to the legal system has an impact on how we assess harms. In Chapter 5, Albers argues that European human rights law and environmental law are also inevitably descriptively anthropocentric, and she looks into the question how this can be reconciled with the Rights of Nature doctrine.

### 2.2. LEGAL RESPONSES TO SUSTAINABILITY CHALLENGES

#### 2.2.1. *Navigating Multi-Level Legal Relationships*

4. Sustainable development has implications that transcend geographical, sectoral and jurisdictional boundaries. However, these borders constitute an

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<sup>3</sup> See e.g. also STALLWORTHY M., *Sustainability, land use and environment: a legal analysis*, Routledge, 2002, xxxi.



important factor in how law and criminology can foster sustainability. **PART 2** of this book responds to challenges related to the sustainability transition in a globalised context. In Chapter 6, Hiessl analyses whether international commitments can legally be enforced between states by including sustainability clauses in trade agreements. Chapter 7 on civil aviation emissions (Loengarov) shows how legal actions in different jurisdictions – including large ones as the EU – may strengthen each other and help develop regulations that are most adapted to the planet's current needs.

It is often stated that to achieve sustainable policy goals, decisive and enforceable regulation are needed (see also below, section 4). Indeed, the lack of adequate regulation can have major consequences, e.g. in the case of environmental damage related to an armed conflict, as is shown in Chapter 8 (Janssens). However, as shown by Guerreiro Teixeira in Chapter 9, also soft law initiatives can be an important catalyst for sustainable development.

5. Subsequently, **PART 3** considers different legal means of environmental protection in the citizen-government relationship. Lemmens and Albers set out how the environment arguably can be protected through the European human rights system, analysing the case law of the ECtHR, a.o. *Verein KlimaSeniorinnen and Others v. Switzerland* (Chapter 10). In Chapter 11, De Becker, Schoukens and Vangeneugden examine the impact of climate change on social security systems. They develop the concept of system sustainability and set out the principles arising out of fundamental social rights that the legislator should take into account when reforming social security schemes in the light of climate change. Debelva and van Limpt then explore the challenges faced by EU Member States in implementing effective environmental tax policies within the constraints of European law (Chapter 12).

6. **PART 4** of this book covers the topic of sustainability in horizontal legal relationships. In Chapter 13, Vavourakis and Degroote analyse the advantages and the disadvantages of the use of conventional servitudes to foster sustainability. Property law can indeed be used to enforce sustainability in horizontal legal relationships. The colleagues from the KU Leuven Institute of the law of obligations subsequently discuss the possibilities or “sustainable toolbox” offered by tort law (Chapter 14) and contract law (Chapter 15). In Chapter 16, Voet and Van Eekert explore the legal status of environmental associations in civil procedures.

## 2.2.2. *Studying Sustainability from Both a Sector-Specific and Transversal Perspective*

7. **PART 5** of this book particularly focusses on different European regulatory initiatives to enhance and enforce sustainability in business processes and products, such as the Corporate Sustainability Due Diligence Directive

(discussed by Irambona in Chapter 17) and the Ecodesign for Sustainable Products Regulation (discussed by Keirsbilck and Neacsu in Chapter 18). The right to repair in the EU is considered from an IP perspective by Vanderhaeghe and Vanherpe (Chapter 19). In Chapter 20, Cools and Bueken explore the use of hybrid group structures as a tool for fostering social entrepreneurship.

At this point, a general observation is in place. In implementing the Green Deal, the European Commission has launched regulatory initiatives across virtually all sectors. However, it is not always clear how the various regulatory instruments relate to one another. A transversal approach to sustainable development is often lacking. In this regard, there are clear gains to be made in aligning law and sustainability.

8. The aim of this faculty book project was also to transcend the boundaries of each of our own legal domains and explore transversal themes. From our meetings and small group workshops, the phenomenon of greenwashing emerged as such a transversal theme. In **PART 6**, Colaert and De Houwer start off with a chapter on the search for a uniform definition of “greenwashing” in European financial regulation (Chapter 21). Neven builds further on this in Chapter 22 on greenwashing and the Corporate Sustainability Reporting Directive. In her chapter, it becomes again particularly evident that it is often unclear how regulatory instruments relate to one another (see above). In Chapter 23, Terryn critically assesses whether the Green Claims Directive would truly lead to more sustainable products. Subsequently, Incalza and Vos add a criminal law perspective on greenwashing in Chapter 24. It is noteworthy that the theme of greenwashing also recurs in Chapter 25 on directors’ and officers’ insurance (see below).

9. Finally, **PART 7** of this book is dedicated to some sectoral responses to foster sustainable development. In Chapter 25, VanAcker, Hof and Van Schoubroeck deal with greenwashing from the perspective of insurance law, but also discuss environmental, social and governance (ESG) risks and the insurability (directors’ and officers’ policy) more broadly. Subsequently, sustainability constraints in terms of social justice are tackled from within different sectors, in particular the energy sector (Chapter 26, De Brucker) and pharmaceutical sector (Chapter 27, Van Delm). In Chapter 28, Heynen and De Smet zoom in on a specific part of the substantive and institutional framework that should make the financial system more sustainable, being financial regulators. Van Acker then discusses how sustainability objectives can be reconciled with EU competition law (Chapter 29). Lastly, Sagaert and De Schepper investigate how property law can be more friends than foes to the sustainability transition, in particular the circular economy (Chapter 30). Here again, the discussions led to knowledge gains and cross-pollination from the various disciplines.

### 3. GENERAL CONSIDERATIONS

10. Appropriate solutions to the urgent challenges of our time are not to be found without looking across and beyond traditional compartments. Sustainable development demands cross-disciplinary cooperation. This is also true for law and criminology, both in their interaction with other disciplines as well as in our own internal dialogues. This book project demonstrates that cross-disciplinary collaboration yields significant benefits for sustainable development. During the making of this book, we held internal workshops to discuss the draft chapters amongst us and through these discussions, interesting connections between our areas of expertise emerged. For example, greenwashing was quickly identified as a theme that appears in many branches of law (see above). The core idea which pervades this book is therefore that sustainability is an overarching topic that calls for a cross-cutting approach.

11. Another point of attention when seeking answers to sustainability issues from a legal and criminological perspective is the question of how sustainability is understood. During the several workshops the discussions were often determined by how sustainability as a concept is or should be defined. This methodological question came up e.g. with respect to Chapter 4 on the harm assessment framework and Chapter 27 on sustainability pluralism in the pharmaceutical strategy for Europe. The discussions highlighted how the social aspect of sustainability remains underexposed compared to ecological sustainability. Also, in the regulatory initiatives taken to implement the European Green Deal, the focus is often on environmental measures (see, for example, Chapter 12 and Chapter 26). Sustainability as a normative objective in law often remains limited to combating climate change. However e.g., the concept of system sustainability as developed in Chapter 11 (see above), shows that a sustainable social security system also needs to take into account principles such as availability, adequacy, solidarity, proportionality and equivalence.

12. With regard to the European regulatory action, it was also observed during our internal discussions that European regulatory action is often too complex, resulting in high information costs. For instance, with regard to Chapter 18 on sustainable products concerns were raised that regulatory compliance costs could have a price-inflating effect, potentially creating a need for social corrections.

It seems that the pendulum of imposing legally enforceable sustainability obligations threatens to swing towards overregulation, where the means risk no longer achieving the intended goal. This is e.g. a point of concern with the new Green Claims Directive (see Chapter 23).

That being said, a regulatory framework with enforceable sustainability obligations remains essential if we want to elevate the transition towards a sustainable society from mere general objectives to concrete behavioural

changes, thereby strongly addressing unavoidable challenges such as climate change (see also Chapters 7 and 8). To achieve sustainable policy goals, we need decisive and enforceable regulations. By integrating sustainability principles into laws and policies, governments can create an enabling environment for long-term development that benefits both people and the planet. Legal approaches in the search for sustainable solutions, however, require both legislative scrutiny and a broad cross-disciplinary outlook. This book hopes to contribute to that.

13. The law plays a crucial role in fostering sustainable development by establishing clear legal frameworks that balance economic growth, social equity, and environmental protection. Sometimes, new top-down command-and-control regulation is introduced to promote sustainable development. The time has passed when sustainability was merely a policy objective for public entities, or in other words a key organising principle<sup>4</sup> for policy decisions and regulations. Private individuals and businesses are now also expected to pay attention to sustainability in all kinds of legal relationships. Also, now more than ever, citizens and environmental organisations are seeking to enforce sustainability themselves through legal proceedings, not only in the vertical relationship with the State (see Chapter 10), but also in horizontal relationships, relying on (the renewed interpretation of) existing fundamental principles of law. In this regard, the basic principle of party autonomy creates important opportunities (see Chapters 13 and 15), which is also true in inter-state initiatives between trade partners (see Chapter 6). However, this book has demonstrated that soft law (see Chapter 9) and extra-legal initiatives (see Chapter 28), also have a valuable role to play in promoting sustainable development.

## 4. A LOOK INTO THE FUTURE

14. The authors of this book aim to build on this work not only as academics but also as educators, preparing future lawyers and criminologists for the challenges ahead. Throughout this project, the seeds for further intradisciplinary research have been sown, but we must also continue reflecting on how legal academia can enhance teaching about and for sustainability. In fact, teaching to our law and criminology students reminds us that the future generation is now. University education that strives for high societal relevance has a duty to teach students to think openly and critically about the complexity of sustainability challenges, as

<sup>4</sup> ROBBIE J. and VAN DER SIJDE E., 'Assembling a sustainable system: exploring the systemic constitutional approach to property in the context of sustainability', *Loyola Law Review* 2020, vol. 66, (553) 555.

well as the interconnectedness of the degradation of natural systems, unequal wealth distribution and economic instability.

We hope that this book may contribute to in-depth knowledge on sustainability, law and criminology, as well as to an understanding of the intricacy of sustainability questions across different legal domains. We also hope that it may provide insights to foster a sustainability reflex among current and future legal professionals and criminologists.



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