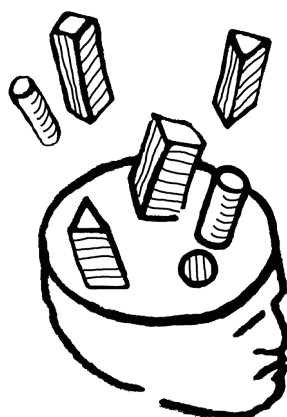


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Environmental Sustainability in the European Union: Socio-Legal Perspectives

Edited by
Serena Baldin and Sara De Vido

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Introduction

SERENA BALDIN, SARA DE VIDO

This book concludes the project entitled “Environmental Sustainability in Europe: A Socio-Legal Perspective” (2017/2020) coordinated by prof. Serena Baldin of the University of Trieste (Italy) and co-funded by the European Union through the Actions Jean Monnet Modules. The aim is to collect contributions on the topics that have been tackled during the three-year project and to offer a reflection on new paradigms in law, sociology and economics related to the protection of the environment, with specific regard to sustainable development.

Sustainability is a concept that finds its way these days in the majority of legal instruments, both binding and non-binding, at the international, regional, and national levels. Owing to its vagueness and its abusive use, the idea of sustainability is too often taken for granted and not appropriately analysed. To the contrary, sustainability must be object of continuous studies and research from an interdisciplinary point of view, in order to grasp the complexities and the current challenges in the so-called Environmental Governance. Environmental Governance, according to the definition of the United Nations Development Programme, comprises the rules, practices, policies and institutions that shape how humans interact with the environment. The European Commission has developed an assessment framework for environmental governance covering the

following dimensions: transparency, participation, access to justice, compliance assurance/accountability and effectiveness/efficiency.

The volume specifically focuses on two aspects. Firstly, it searches for a theoretical basis to promote a paradigm shift capable of responding to the severe loss of biodiversity and the incumbent climate breakdown, finding inspiration in the concept of common goods and in ecocentrism as well as in the ecosystemic approach. Secondly, it concentrates on recent trends in highly sensitive environmental issues, namely environmental democracy, flood risk prevention, payments for ecosystem services, social eco-compatibility in tourism sector. The aim of the book is not to provide all the answers to the multiple concerns and issues that have emerged over the years regarding the protection of the environment, but surely to enrich the debate.

The book opens with the chapter written by Barbara Pozzo. After a brief illustration of the origins of the sustainable development principle, the Author investigates the current evolution of the concept, discussing which concrete legal tools can implement sustainable development goals in an effective way, and hence highlighting the role of the EU as trend setter in environmental matters.

The first part of the volume is then devoted to “Nature, Climate and Water as common goods and the search for new paradigms in face of biodiversity loss and climate crisis”. Luigi Pellizzoni introduces three different approaches to the commons – as socio-material assemblages, as “commoning” and as rights – discussing their critical import in this regard. Subsequently, the notion of inoperative praxis, or inoperosity, as especially developed by Agamben is discussed. Inoperosity does not mean contemplation or resignation, but a non-instrumental modality of living and acting, capable for this reason of suspending the apparatuses of domination and exploitation. This perspective, it is argued, may effectively help to assess “new materialist” mobilisations, as well as the promises and perils of the Green New Deal.

The chapter authored by Serena Baldin deals with biodiversity and its protection in the Natura 2000 network, an aspect from which the commons emerge as traditional practices carried out in forestry and agriculture. She recognises some analogies between the approaches related to the management of collective pool resources and those related to the ecocentric vision, giving a few examples of the application of the nature-based approach in the Natura 2000 sites. Finally, she concludes with some reflections on the possible explicit recognition of the nature-based approach at EU level.

Silvia Bagni analyses an innovative approach which is useful to grasp the challenges of environmental issues of these days: the United Nations Harmony with Nature programme and the global movement for the recognition of na-

ture's rights. Stressing how climate change is a fact, not a theory, the author suggests that an ecological shift in the legal paradigm could consist in recognising new subjects of rights, as the global movement for Nature's Rights demands. She also explains the recent title introduced in the Italian Civil Procedural Code on collective actions, contending that this provision would be quite useful in environmental class actions, with the purpose of eliminating all the negative effects of contamination and of restoring the damaged ecosystem.

Talking about new paradigms, Sara De Vido focuses on the right to a healthy environment, suggesting that we should get rid of a strict anthropocentric approach and embrace ecocentric considerations in order to protect the environment per se and for the existence of humanity itself. She relies on the Advisory Opinion rendered by the Inter-American Court of Human Rights in 2017 and builds a strong argument in favour of the consolidation of a right to a healthy environment combined with the rights of the nature.

Roberto Louvin reflects on climate stability as a common good, or better as a "common question", being of common interest for the whole humanity, as evidenced by the intergenerational perspective adopted in the international agreements that explicitly identify a responsibility towards future generations. His reflection paves the way for a European Strategy that is based on this understanding of climate. The author concludes by pointing out the risk of an overconfidence in new technologies to address the problem of global warming and the limits of the European eco-modernist approach.

Juan José Ruiz Ruiz has worked on the Right2Water initiative, the first European Citizens' Initiative that has reached 1,000,000 signatures, and on the response given by the European Commission to the concern expressed by civil society. His analysis also provides some considerations on the development of the human right to water, whose recognition at the international level has been quite complex and not entirely achieved, and on water as common good. According to the author, the Court of Justice of the European Union case law on the Water Framework Directive, along with European Economic and Social Committee opinions, should be welcomed as a major contribution to specify what is meant by the right to water.

The second part of the volume is entitled "Recent trends in environmental issues". Francesco Deana focuses on environmental democracy that, to a large extent, is realised through the right of the general public to access documents and information held by EU bodies in environmental matters. Even though the matter is ruled by the "widest possible access" principle, the Author observes a recent increase in presumptions of confidentiality and still existing difficulties in establishing when there is an overriding public interest in disclosure rather than seem to favour some secrecy than disclosure and openness. Therefore, his chap-

ter aims to answer the question whether the EU regime on access to documents and information in environmental matters is genuinely democratic or not.

Yumiko Nakanishi develops the concept of environmental democracy in the specific context of the Economic Partnership Agreement between the EU and Japan, which has recently entered into force. She investigates the treaty with a focus on civil society and how the latter influenced the adoption of the agreement. Her chapter also deals with the question of how the agreement can influence non-governmental organisations and the civil society of Japan in the future.

Emilia Pellegrini reflects on the European strategy to address the growing concerns regarding water resources protection and flood risk management is centred on the so-called Integrated River Basin Management. The European Water Framework Directive, first, and then the Flood Directive recognise the river basin as the appropriate spatial scale to improve the quality of water resources and to enhance the capacity of flood risk management. Moreover, both directives promote the active involvement of civil society in the elaboration of river basin plans. In so doing, both directives represent an outstanding attempt to institutionalise the Integrated River Basin Management approach throughout European countries.

The chapter authored by Stefania Troiano regards payments for ecosystem services. They are considered as a tool to avoid risks owing to unsustainable use of water resources. Since abuse of natural capital persists because the full value of the benefits it produces is reflected neither in private nor in public decision-making processes, the role of citizens is fundamental. In this perspective, to encourage and support more sustainable behaviours, the promotion of Market-Based Instruments and, in particular, the Payments for Ecosystem Services schemes seems to be useful.

Moreno Zago investigates how the European Union have tried to reconcile sustainability with the growth of tourism and the management of overtourism in urban contexts and fragile areas. He deals with the problem of elaborating the meaning of landscape and how it should be experienced and proposed by communities, pointing out the importance of the concept of *social eco-compatibility* that enhances both residents and the expressions of their local culture as well as the natural resources.