Law and Sustainability

Sustainability has become one of the great ordering principles of contemporary law, running through constitutions and treaties, regulatory impact assessments and corporate due-diligence obligations alike. Yet the very ubiquity of the concept conceals a persistent tension: sustainability is, at once, a foundational aspiration proclaimed with near-unanimous rhetorical force, and an operative constraint that must be translated, sector by sector, into workable legal instruments — such as water-management regimes, the governance of maritime straits, tax incentives, investment arbitration, or maritime autonomy. To declare the constitutional value of sustainability is one thing; to build the institutional architecture through which that value survives its encounter with administrative practice, market pressure and geopolitical interest is quite another. It is precisely this task of translation — the gap, and occasionally the bridge, between normative ambition and institutional capacity — that the present dossier, *Law and Sustainability*, sets out to address.

This reflection has its origins in the XVIII Conference of Public Law Professors, held in September 2025 at Universidade Portucalense (UPT). Although this thematic dossier constitutes an independent publication, subject to the journal's customary double-blind peer-review process, it owes its existence to that Conference, and accordingly opens with a selection of papers originally presented there, before broadening out to a wider set of independent submissions that considerably enrich the discussion.

The fourteen articles gathered in the Scientific Research section approach the question of sustainability from complementary legal perspectives — constitutional theory, administrative law, the law of the sea, EU regulatory law, climate governance and international dispute resolution, energy security and tax law.

The dossier opens with four contributions drawn from the XVIII Conference. **Eduardo António da Silva FIGUEIREDO**, in *'New Administrative Law' and Social Sustainability: From an Egalitarian to an Inclusive Public Administration*, asks how administrative activity can and should respond to the demands of social sustainability, setting out the normative foundations that bind Public Administration to the imperative of equality and non-discrimination, and questioning what it means, for administrative law, to move from the mere rejection of exclusion to the positive affirmation of inclusion. **Inês NEVES**, in *From Sustainable Development as a Constitutional Principle to the European Union as a Responsible Subject in its Own Right*, examines sustainable development as a legal principle and constitutional value of the European Union legal order, arguing — drawing on the stabilising influence of international law in shaping the concept's multidimensionality, its integrated logic and its intergenerational horizon — for its qualification as a constitutional principle of the Union which, while unable on its own to found an autonomous competence, grounds a responsibility proper to the Union, both legitimising and limiting its action in its internal and external dimensions. **Vera EIRÓ**, in *Administrative Law in the Service of Sustainability: Managing Water Scarcity in Portugal — the Case of the Algarve*, revisits her conference paper to examine the instruments of Portuguese administrative law — regulation, administrative act, administrative contract and soft law — in light of water governance, taking the Algarve as a case study in the sound management of a resource whose scarcity has ceased to be a hypothesis and become a recurring fact. **Graça ENES** closes this opening cluster with *The Dissonance between Participation Objectives and the Regulatory Framework of EU Climate Governance*, arguing that, notwithstanding the Aarhus Convention's requirement that the EU and its Member States guarantee public participation in environmental decision-making and access to review, the Aarhus and Climate Governance Regulations reveal shortcomings — confirmed by the Convention's own Compliance Committee — that perpetuate a dissonance between the participatory ambitions proclaimed and the regulatory architecture actually in force.

It is fitting that this institutional opening should be followed by a theoretical grounding. **Lídia Maria RIBAS**, in *Sachs's Theory of Eco-Development: The Dimensions of Sustainability as a Legal Parameter for the Realisation of Fundamental Rights*, argues that reducing sustainable development to the conventional environmental, social and economic triad produces a hermeneutic insufficiency liable to generate socially regressive effects and to weaken the democratic legitimacy of public choices. Recovering Ignacy Sachs's theory of the eight dimensions of eco-development and articulating it with the constitutional normativity of fundamental rights, the article proposes a broader legal parameter for assessing the rationality of public policies — attentive to the distributive costs that strictly environmental formulations tend to externalise.

A second cluster turns to the law of the sea, terrain on which sustainability has long tested the limits of a governance architecture built upon state sovereignty and freedom of navigation. **Cuong Viet DO**, in *Sustainable Autonomy in the Law of the Sea: Reconfiguring Maritime Governance in the Age of Autonomous Ships*, treats Maritime Autonomous Surface Ships (MASS) as a stress test of the constitutional legitimacy of maritime governance, arguing that the convergence of technological autonomy and ecological transition challenges frameworks still anchored in anthropocentric assumptions of command and control; drawing on UNCLOS, Annex VI of MARPOL and the evolving practice of the International Maritime Organization, he proposes a Sustainable Governance Model for MASS in which environmental protection operates as a criterion of legitimacy rather than a discretionary objective. **Shams Al Din AL HAJJAJI**, in *Where the Oceans Converge: The Governance of the Suez Canal in the Age of Sustainability*, traces a structural transformation in the canal's governance — from classical navigational neutrality to a model of 'sustainable neutrality', in which free transit is preserved even as environmental compliance becomes an integral condition of access to the canal — situating this shift within the broader decarbonisation of global maritime law. **Carmen MONTERO FERRER**, in *Regulation (EU) 2024/3015 on Forced Labour: A New Step towards the Social Sustainability of the Fisheries and Aquaculture Sector?*, shifts the focus from the environmental to the social dimension, asking whether the new prohibition on

marketing goods produced using forced labour represents a genuine correction to a Common Fisheries Policy that has historically privileged environmental and economic ends over the labour and community dimensions of sustainability.

A third cluster examines the performance of the Union's own regulatory instruments against the standard of sustainability they proclaim. **Yevhen NOVIKOV, Valeriia POLYCH, Olesia TRAGNIUK, Ihor ZHUKOV and Viktoriia SHULHA**, in *The European Green Deal as an Instrument for Improving Food Security in the Face of Environmental Challenges*, combine regression analysis, case studies and precedent analysis to assess the economic, social and legal impact of the Green Deal on the Union's food security, identifying food inflation and pesticide sales as aggravating factors, set against energy efficiency and organic farming as mitigating ones, and concluding that the Green Deal's success ultimately depends on the quality of its legal implementation rather than on its strategic ambition alone. **Anja BOTHE**, in *An Analysis of the Principle of Proportionality in the Corporate Sustainability Due Diligence Directive*, subjects the CSDDD to a proportionality test and reaches a striking diagnosis: the dilution of the Directive's subjective and objective scope over the course of the legislative process produced not an excessive restriction, but rather an insufficient one, on freedom of enterprise — a default prohibition that fails the proportionality test not through excess but through *Untermassverbot*, the under-protection of the human rights and ecosystems the Directive set out to secure.

A fourth cluster rises to the global plane, where sustainability commitments confront the distributive politics of climate governance and dispute resolution. **Carlos Hernán GONZÁLEZ-PARIAS, Juan Camilo MESA BEDOYA, Pedro PIEDRAHITA-BUSTAMANTE and Javier JUÁREZ RODRÍGUEZ**, in *Climate Leadership without Hegemony: Normative Power and Latin American Middle Powers in Global Climate Governance (2010–2024)*, challenge the assumption that hegemonic material capacity is a necessary condition for climate leadership, reconstructing, through process tracing, how Colombia, Chile and Costa Rica built cognitive architectures via coalitions such as AILAC, engaged in normative entrepreneurship and exercised institutional

mediation — in a logic the authors term ‘selective credibility’, effective in agenda-setting but confronted with a ‘material glass ceiling’ at the distributive stage of climate governance, as the Loss and Damage Fund and the Escazú Agreement well illustrate. **Duc Tam NGUYEN THE, The Phong VU and Gia Khanh DOAN MAI**, in *Try Before You Trust: Is Investment Arbitration an Adequate Forum for Resolving Climate-Related Investor-State Disputes (ISDS)?*, map the growth of investment arbitration in climate matters and conclude that it is an imperfect but improvable forum, structurally misaligned with disputes shaped by public-interest regulation and scientific uncertainty; the procedural reform proposal they put forward — grounded in default transparency, structured stakeholder participation and access-to-justice measures — lends the dossier its title.

Sustainability is, finally, a matter of security and of the state’s fiscal architecture. **Viktor TYSHCHUK, Viacheslav BILETSKYI and Serhii KHALYMON**, in *Solar Energy, National Security and Sustainable Development: Technological Transformations, Regulatory Frameworks and Challenges to Energy Sovereignty*, systematise the technological determinants of the contemporary photovoltaic industry — from structural design to AI-assisted grid forecasting — and argue, through a geo-economic and hybrid-threat lens, that energy sovereignty demands a synthesis of technological autonomy and legal certainty: grid-connection regimes, foreign direct investment screening and cybersecurity requirements are, on this reading, as much a part of the sustainability project as emissions targets. **Ana Paula ROCHA, Sara Luís DIAS and Ana ARROMBA DINIS**, in *Portuguese Green Taxation: From Normative Foundations to Public-Policy Challenges*, subject Portugal’s green tax benefits to comparative doctrinal scrutiny in light of the polluter-pays principle, identifying structural weaknesses — an imbalance between the tax advantage and ecological performance, the risk of regressive effects — that call for clearer eligibility criteria and more demanding conservation conditions, so that fiscal instruments produce measurable, rather than merely nominal, environmental results. The dossier’s Scientific Research section closes with the contribution of **Daniela Margarida Fernandes BRANCO DE LIMA and José de CAMPOS**

AMORIM, in *The Tourist Tax as an Instrument of Environmental Sustainability in Various European Union Countries*, who extend this fiscal inquiry through a comparative survey of tourist taxation across major European destinations, drawing five conclusions on how such taxes might be better designed to tie tax revenue to genuine environmental investment.

Read together, these contributions suggest a common thread: in contemporary law, sustainability operates less as a settled rule than as a standard whose content is only fixed at the point of institutional application — in the drafting of a directive, the design of a tax benefit, the governance of a canal, the procedural architecture of an arbitral forum. Whenever that application proves careless or diluted, the result is not neutral: it is under-protection dressed up as regulation, participation promised but never made effective, transition pursued at an unequally shared cost. The measure of a sustainable legal order lies, these articles suggest together, not in the force of its proclamations, but in the rigour of its institutional architecture.

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