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## Sustainability in Public Procurement, Corporate Law and Higher Education (Introduction)

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# Introduction to Sustainability in Public Procurement, Corporate Law and Higher Education

**Paolo Davide Farah\***

From December 2-9, 2019, the United Nations Climate Change Conference of the Parties (COP) 25<sup>1</sup> was hosted in Madrid under the Presidency of the Government of Chile. It was held with logistical support from the Government of Spain and included a pre-sessional period from November 25 - December 1, 2019.<sup>2</sup> Following public outcry and limited progress on climate action during COP25, the scientific community, businesses, and public authorities are answering the call for action on climate change. Additionally, they have focuses on issues connected with sustainability by tackling pollution, managing resource scarcity, and advancing social aspects of sustainability. In COP 26, the first conference held

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<sup>1</sup> For an overview of the multilateral system established to address climate change see: Jutta Brunnée and Charlotte Streck, 'The UNFCCC as a Negotiation Forum: Towards Common but More Differentiated Responsibilities' (2013) 13 *Climate Policy* 589; Imad Antoine Ibrahim, Thomas Deleuil and Paolo Davide Farah, 'The Principle of Common But Differentiated Responsibilities in the International Regime of Climate Change' in Paolo Davide Farah and Elena Cima (eds), *China's Influence on Non-Trade Concerns in International Economic Law* (Routledge 2016); E Lisa F Schipper, 'Conceptual History of Adaptation in the UNFCCC Process' (2006) 15 *Review of European Community & International Environmental Law* 82; COP 21 has been presented as a milestone for the multilateral environmental regime. Avinash Godbole, 'Paris Accord and China's Climate Change Strategy: Drivers and Outcomes' (2016) 72 *India Quarterly* 361; Lukas Hermwille and others, 'UNFCCC before and after Paris—What's Necessary for an Effective Climate Regime?' (2017) 17 *Climate policy* 150; WP Pauw and others, 'Conditional Nationally Determined Contributions in the Paris Agreement: Foothold for Equity or Achilles Heel?' (2020) 20 *Climate Policy* 468.

<sup>2</sup> Critical assessments of outcomes underline scant results and slow progressess on the fight against climate change. Charlotte Streck, Moritz von Unger and Sandra Greiner, 'Cop 25: Losing Sight of (Raising) Ambition' (2020) 17 *Journal for European Environmental & Planning Law* 136; Peter Newell and Olivia Taylor, 'Fiddling While the Planet Burns? COP25 in Perspective' (2020) 17 *Globalizations* 580.

during the COVID-19 pandemic, parties addressed the difficulty of fulfilling commitments in international community. Many of these commitments focused on reducing negative effects of climate change. COP 26's central theme was reorienting focus toward renewed commitments on climate change following the pandemic. National Determined Contributions (NDCs) and Long-Term Strategies (LTSs) were two of the primary mechanisms included within the Paris Agreement. This was submitted before the conference and represented countries responsible for 55% and 32% of global greenhouse gas emissions, respectively.<sup>3</sup>

Thus, the editor of this book, Dr. Lela Mélon, Professor of Corporate Law Pompeu Fabra, University (Spain) Faculty of Law decided to respond to calls for action. In doing this, Dr. Mélon sought to provide academic and scientific contributions. This was done through the organization of an international conference. Under the scope of this conference were both invitations for speakers and the release of a call for abstracts and papers to be submitted for presentation. Some chapters included in this book have been accepted and invited to contribute following careful peer-review processes. Earlier drafts of these chapters benefitted from scholarly exchange and discussion at the highest academic level. This discourse occurred primarily during the *First Annual "(In)Corporate Sustainability" Conference*. This was held in hybrid form on September 16-18, 2020 at the Faculty of Law of Pompeu Fabra University in Barcelona, Spain (Campus Ciutadella) and remotely. All book chapters included here have been processed through editorial and external peer-review. In addition to the series editor, three gLAWcal scientific committee members have reviewed the final manuscript of this book.

The edited collection, "*Sustainability in Public Procurement, Corporate Law and Higher Education*" is a viewed as a great addition to the gLAWcal book series on "Transnational Law and Governance" and "Global Law and Sustainable Development", published by Taylor & Francis, Routledge Publishing (New-

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<sup>3</sup> Arthur Wyns and Jessica Beagley, 'COP26 and beyond: Long-Term Climate Strategies Are Key to Safeguard Health and Equity' (2021) 5 *The Lancet Planetary Health* e752, 752; For an assesment of the contributions of COP 26 see: Pete Smith and others, 'Essential Outcomes for COP26' (2022) 28 *Global change biology* 1.

York/London). Through research, policy analysis, and advocacy, gLAWcal - Global Law Initiatives for Sustainable Development, an independent non-profit research organization and think tank) (<http://www.glawcal.org.uk/>), attempts to shed new light on NTC issues like good and global governance, human rights, rights to water, rights to food, social, economic and cultural rights, labor rights, access to knowledge, public health, social welfare, consumer interests, animal welfare, climate change, energy, environmental protection and sustainable development, product safety, food safety and security. Each of these values are directly affected by global expansion of world trade networks and should be considered in balancing excesses of globalization.

In the past decade, gLAWcal has promoted and organized several events around the world. Most of these have been held in Europe, the United States of America, and Asia. The organization has partnered with various professional associations. For example, the events organized in collaboration with the American Society of International Law (ASIL), the European Society of International Law (ESIL), and institutions like the Pompeu Fabra University in Barcelona, Spain have all contributed to gLAWcal's mission. Many of these conferences and workshops were carefully planned and developed with due consideration regarding a number of factors. Academic impact, advocacy, and reaching broader audiences through publication as peer-reviewed books and peer-reviewed journal special issues with various prestigious international publishers has been a key goal in this process. Additionally, gLAWcal has made these publications more accessible with the preparation of policy briefs based on the content of these journal articles, chapters, and books. All these contents are made available on the organization's website and social media and are also addressed or sent to policy makers and civil society representatives.

This *First Annual "(In)Corporate Sustainability" Conference* was organized to raise awareness on the need for action and limited time frame for implementing proposed changes. This accelerated developments in the field of sustainability from diverse market actors including businesses, public

administration, and academia. This conference aimed at focusing on the synergies created in combining insights on sustainability challenges and solutions from different disciplines. It sought to answer the need for an interdisciplinary and multidisciplinary approach to creating systemic change geared toward sustainability. The current sustainability challenge demands cross-sectoral knowledge and cooperation of the private and public actors. Here, the (In)Corporate Sustainability Conference sought to provide a yearly forum in Barcelona that allowed for this knowledge to be exchanged and aid in facilitating advancements in the joint goal of sustainability.

This conference was sponsored through the *Project on “Sustainable Company,”* which received funding from the European Union’s Horizon 2020 Research and Innovation Program under the Marie Skłodowska-Curie Grant Agreement No 789461.

The works presented at the *First Edition of the (In)Corporate Sustainability Conference* remained topical and seemed to represent a reliable guide as to what is to come in terms of EU regulations in the field of public procurement, corporate law, and strategies regarding higher education.

The first section, “*Sustainable Public Procurement: The Nudge for Sustainable Corporate Transition*” analyzes the role of sustainable public procurement<sup>4</sup> in promoting a gradual transition towards green economies. State actors can encourage particular behavior from private corporations by including an environmental component in their public procurements.<sup>5</sup> This helps to better align corporations with a

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<sup>4</sup> The EU has been at the forefront of the fight for including a sustainability dimension in public procurement. Dacian C Dragos and Bogdana Neamtu, ‘Sustainable Public Procurement in the EU: Experiences and Prospects’ [2014] *Novelties in the 2014 Directive on Public Procurement*, DJOF Publishing; Global South countries are rapidly catching up and leverage in particular on emerging technologies to facilitate the transition. Peter Adjei-Bamfo, Theophilus Maloreh-Nyamekye and Albert Ahenkan, ‘The Role of E-Government in Sustainable Public Procurement in Developing Countries: A Systematic Literature Review’ (2019) 142 *Resources, Conservation and Recycling* 189; For an overview on sustainable public procurement and its connection with the circular economy see: Sönnich Dahl Sönnichsen and Jesper Clement, ‘Review of Green and Sustainable Public Procurement: Towards Circular Public Procurement’ (2020) 245 *Journal of cleaner production* 118901.

<sup>5</sup> For an analysis of the concept of nudge see: Richard H Thaler and Cass R Sunstein, *Nudge: Improving Decisions about Health, Wealth, and Happiness* (Yale University Press 2008); A specific application of the nudge framework to environmental protection: Christian Schubert, ‘Green Nudges: Do They Work? Are They Ethical?’ (2017) 132 *Ecological Economics* 329.

wide array of social goals. It also classifies non-trade concerns as strategic decisions. In “*Public procurement for the SDGs*”, Roberto Caranta highlights how contracting authorities in the EU leverage on procurement to reach this aim. The chapter notes that in the past, public procurement has been leveraged to promote economic efficiency, boost and facilitate the privatization waves of the 1980s. This measure is further justified through its widespread use and acceptance in the field of public administration.<sup>6</sup>

Caranta emphasized how the inclusion of ‘green(er)’ public procurement holds trickle-down effects that go beyond environmental protection. Included in the analysis is an explanation of how these green objectives are not limited to environmental protection. Oftentimes, they are socially responsible approaches to vital world forum issues like the fight against child labor or the promotion of gender equality in the production of goods and provision of services. Public procurement could be used and leveraged as a major tool to advance the United Nations’ Agenda 2030 and to reach Sustainable Development Goals.<sup>7</sup> Caranta points out the importance of advancing societal goals and how sustainable procurement is not included as an SDG, though it is relevant for several of them. In particular, it is directly related to SDG 9, which concerns industry, innovation and infrastructure. Infrastructure development is a key focus of the international community. This is demonstrated by the consistent attention from China, the U.S., and Europe on the topic. Caranta details the history of public procurement and demonstrates how it is possible to align economic development and growth with the advancement of particular policy agendas. Only from the 1970s onward in the U.S., he argues, did public procurement become more focused on price components among public tender and adjudication. The inability of the international community to reach an agreement over public procurement lies in the tendency to prioritize economic growth and profit while

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<sup>6</sup> For a comparative analysis of the shifting nature of public procurement from efficiency to social concerns, *see*: Louise Knight (ed), *Public Procurement: International Cases and Commentary* (Routledge 2007).

<sup>7</sup> Nudges are increasingly used at the international level as a preferred tool to boost private actors’ compliance with regulations. Doron Teichman and Eyal Zamir, ‘Nudge Goes International’ (2019) 30 *European Journal of International Law* 1263.

dedicating little to no resources to sustainable efforts. A major change in actors involved in policymaking in public procurement is also needed to reach this aim. It is necessary to involve a broad range of non-state actors to craft sustainably oriented and democratic procurement policies.<sup>8</sup> This is intended to reflect public participation.

In “*Searching for the Right Balance between Sustainability and Competition*,” Dagne Sabockis assesses how the EU created a general framework for green public procurement (GPP). Even if implemented vaguely, the model developed in the EU common market could potentially influence the direction of global public procurement. To overcome current ambiguities in the implementation of the sustainable components of procurement, Sabockis suggests linking public procurement with competition policies of major economic block. One factor affecting the implementation of the directive is existing uncertainty over sustainability and lack of a clear relationship between sustainability and competition rules. Particularly lacking is a mechanism that would favor the EU’s advancement of environmental protection objectives in the market. According to the author, the core of the directive is to align economic actors with the environmental policies of the EU. This can be found in the principle of sustainability under Article 18(2). Sabockis specifies how the provision ought to function as a further reinforcement of Article 11 TFEU in public procurement context and may therefore be seen as an additional legal basis for including green policies within public procurement. Here, there would be a particular emphasis on the performance of contracts. Such a provision does not call for the establishment of an enforcement body, but its ambiguity could help with an extensive interpretation that includes environmental protection as well as consideration

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<sup>8</sup> Public Administration authorities are increasingly benefitting from the development of emerging technologies. Paolo Davide Farah and Marek Prityi, ‘Public Administration in the Age of Globalization and Emerging Technologies from Theories to Practice Symposium Issue: Blockchain Technology and the Law’ (2019) 88 UMKC Law Review 397.

for economic, cultural, and social rights. It is also noted how sustainability should be operationalized not as a duty on companies, but as a principle driving the international economy.<sup>9</sup>

In “*Sustainable Public Procurement in Portugal: Overview, Recent Developments and Expectations on the Near Future*,” Marco Caldeira shifts the analysis to the implementation stage of the 2014 EU Directive on public procurement at the member state level. A case study on Portugal complements analyses included in the previous chapter and highlights how traditional focuses on profit maximization and its ambiguity are implemented in practical terms. These are also noted and analyzed at length in the preceding chapters by Caranta and Sabockis, respectively. After reviewing Portugal’s changes to national legislation and its gradual inclusion of environmental protection in public procurement, the author examines how these measures act as a step toward the promotion of environmental protection and the circular economy. Caldeira emphasizes that low implementation of the directive is a result of a lack of training. Further, it is a result of contracting authorities that are rather unexperienced on the tools to drive transitions toward a green economy. Discourse on sustainability clashes with a lack of clear ‘political will’ in implementing the GPP. From a theoretical perspective, this is a key priority of the EU Commission and a shortfall of current implementations. Budgetary concerns and the diversion of public spending from environmental objectives to post COVID-19 recovery could further distance green components of public procurement.<sup>10</sup>

In “*EU Green Deal and the Portuguese Public Procurement*,” Raquel Carvalho addresses the relationship between public procurement and UN Agenda 2030. They analyze how the directive on public procurement is implemented at the national level by focusing on Portugal. Concepts of sustainability in public

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<sup>9</sup> In a similar fashion, Yang analyzes the changing role of environmental impact assessments. Tseming Yang, ‘The Emergence of the Environmental Impact Assessment Duty as a Global Legal Norm and General Principle of Law’ (2018) 70 *Hastings Law Journal* 525.

<sup>10</sup> An analysis on the construction of sectors points out the ability of the EU to source eco-friendly materials. Yet, political will in adopting more stringent regulations should take place to reach this aim. Olga Chiappinelli and others, ‘A Green COVID-19 Recovery of the EU Basic Materials Sector: Identifying Potentials, Barriers and Policy Solutions’ (2021) 21 *Climate Policy* 1328.



procurement could be found in three separate areas, according to the author. These areas include: GPP, Socially Responsible Public Procurement, and the current focus on circular economy. Circular Economy<sup>11</sup> and the need for altering the nature of relationships between humans and non-humans is a dynamic area of intervention within the EU. Similar to Caldeira, mainstream laws and policies in Portugal are reviewed to produce context for how these factors hinder the full implementation of the directive. Regarding the lack of clarity of the directive, Portugal released guidelines for the inclusion of GPP in tenders. Several case studies are analyzed following this note. They range from I.T. sectors via innovation, to lightning system. These are included to provide an understanding for what the contribution of GPP to environmental protection is. What is missing at the member state level, however, is a monitoring system able to track positive effects on the environment.

In “*Emerging Role of Green Public Procurement Policy in Achieving Sustainable Development: A Case Study of India*,” Mukesh Rawat moves the geographical scope of the analysis from the EU to India.<sup>12</sup> This is done in an effort to understand trends toward the inclusion of green policies in procurement. After pointing out that procurement accounts for between 20 and 30 percent of India’s total GDP, he reviews the importance of sustainability in the international community. A framework on GPP was introduced in India in 2014. This was done under the conditions establishing India’s plurilateral agreement on procurement under the WTO. This agreement enables India’s companies to enter the global procurement market and be a fully integrated partner in the global economy. While recognizing the importance of GPP in tackling climate change, Rawat points out the difficulties of implementing such a framework in India.

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<sup>11</sup> For an assessment of the circular economy package in the EU, see: Oscar Fitch-Roy, David Benson and David Monciardini, ‘Going around in Circles? Conceptual Recycling, Patching and Policy Layering in the EU Circular Economy Package’ (2020) 29 *Environmental Politics* 983.

<sup>12</sup> India focused on the development of the solar industry in the country with much success. For an analysis of accomplishments in the renewable sector: Malti Goel, ‘Solar Rooftop in India: Policies, Challenges and Outlook’ (2016) 1 *Green Energy & Environment* 129; Sanjay Kumar Kar, Atul Sharma and Biswajit Roy, ‘Solar Energy Market Developments in India’ (2016) 62 *Renewable and Sustainable Energy Reviews* 121.

Further, he notes that the main outcomes in India have been related to the promotion of green technologies, rather than to environmental protection. Studying the role of developed countries such as the EU and Japan, the author works on their capacities in crafting a normative framework on procurement with environmental protection at the center. These examples from developed countries tend to drive the implementation of stricter policies also in other countries. This trickle-down effect has a result and overall impact on the gradual inclusion of environmental objectives in developing countries' legislation. Rawat skillfully analyzes national procurement frameworks in India and assesses recent developments on the topic. The latter half of this research is focused on the analysis of e-Market platforms. In the case of India, digitization had enabled more transparent adjudication processes. If used correctly, this can also be a key aspect of environmentally sound procurement policies.<sup>13</sup> Coupled with analysis of the procurement framework, Rawat assesses the position of the federal government on green transitions. Specifically, there is a focus on the government's stance toward environmental protection. For Rawat, an implementation of GPP in the country requires a concerted effort of both state and non-state actors. This action must be taken at both the level of regulation and in the leveraging of technological innovations to simplify public procurement and promote environmental protection.

In "*Analysis of the Mandatory Sustainable Public Procurement Regulation in the Czech Republic*," Adam Gromnica studies the importance on technology and the role of mandatory sustainable public procurement (SPP) in the Czech Republic.<sup>14</sup> While sharing similar concerns as other authors, Gromnica underlines the need for the Czech Republic to move toward implementing mandatory approaches regarding the issue.

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<sup>13</sup> The importance of e-government is analyzed in details at a Global South level in the review of Adjei-Bamfo et al. Adjei-Bamfo, Maloreh-Nyamekye and Ahenkan (n 4) 198–199.

<sup>14</sup> Mandatory vis-a-vis voluntary approaches to climate change have been at the centre of an extensive debate. Non binding commitments in the environmental law are often perceived as more efficient to boost the objectives of the international community in this context. Assessments of the results of non-binding approaches have been questioned. See: Kathryn Harrison, 'Talking with the Donkey: Cooperative Approaches to Environmental Protection' (1998) 2 *Journal of Industrial Ecology* 51; Dinah Shelton, *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System* (Oxford University Press 2003).

The analysis of Czech public procurement frameworks and the use of GPP in some fields aids in critiquing the complexities of the process. Further, it notes the struggles one encounters in working to include environmental and social criteria within procurement choices. Interestingly, when such criteria have been addressed by national courts, the focus seems to be on the limit, rather than the legitimacy of their use. Gromnica highlights a recent amendment to Czech and Slovak procurement laws, which includes specific references to both socially and environmentally responsible public procurement. The mandate to include SPP is directed toward contracting authorities. Even if this needs further clarification from case law, it is a progressive step toward the creation of a framework that is more responsive to environmental and social concerns.<sup>15</sup> The language used here demonstrates a clear innovation on the direction that should be taken by contracting authorities in procurement decisions. Due to its vague nature and relative imprecision, it will not translate so easily in praxis. Thus, it will be difficult to drive real change in the way that public administrators deal with procurement decisions on a daily basis. Gromnica notes that changes in public procurement should be accompanied by increased attention on how sustainability principles inform all activities in public administration.

In “*Implications of Empirical Research on the Impact of e-Public Procurement on Institutional Quality*,” Thomas Emery, Rok Spruk, and Mélon shift the scale of analysis from a national perspective. Instead, they focus on the implementation of sustainable practices at sub-regional levels.<sup>16</sup> In particular, there is an analysis of the autonomous region of Catalonia in Spain. E-Public procurement is analyzed with

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<sup>15</sup> A trend in the increase of mandatory approaches to climate change could be found in the EU's recent public procurement policies: Kleoniki Pouikli, ‘Towards Mandatory Green Public Procurement (GPP) Requirements under the EU Green Deal: Reconsidering the Role of Public Procurement as an Environmental Policy Tool’, *ERA Forum* (Springer 2021); Farhod Asrolov, ‘Shifting from Voluntary to Mandatory Mechanisms to Scale up Sustainable Public Procurement—The Integration of Voluntary Sustainability Standards into Public Procurement and Trade Policies’; M Andhov and others, ‘Sustainability through Public Procurement: The Way Forward—’.

<sup>16</sup> Cities and regions are increasingly taking part in the implementation of environmental law. Michele M Betsill and Harriet Bulkeley, ‘Transnational Networks and Global Environmental Governance: The Cities for Climate Protection Program’ (2004) 48 *International Studies Quarterly* 471; Emilia Smeds and Michele Acuto, ‘Networking Cities after Paris: Weighing the Ambition of Urban Climate Change Experimentation’ (2018) 9 *Global Policy* 549.

particular attention given to the improvement of both transparency and efficiency of procurement practices. The analysis begins with EU attempts to make e-procurement binding by 2023 and the need to use the tool as a point of connection between businesses and public administrators. Catalonia has considered EU deadlines by adopting a more stringent requirement for contracting authorities within e-procurement. The implementation of e-procurement could serve as a means to advance environmental protection and improve the overall efficiency and quality of public authorities. In particular, it could even serve to advance the rule of law.

The second section of this book assesses the role of corporations in green transitions and how to align business conducts with current priorities of the EU and the international community at large.<sup>17</sup> Alignment should be facilitated and prioritized by institutional actors. This is demonstrated by the case on public procurement, which holds a relevant role in the market. Without strong cooperation between state actors, non-state actors, and the willingness of non-state actors and corporations to push sustainable agendas, these transitions would not be possible.

As noted by Mélon in “*(In)Corporate Sustainability: Policy Coherence for Sustainable Corporate Conduct*”, cooperation among state and non-state actors should begin with a clear and well-developed framework for enabling and facilitating sustainable corporate practices. The lack of connection and coherence in legal sub-fields is a circumstance that the EU should begin to address. It is important that they use legal apparatuses to facilitate alignment of priorities for EU member states. The radical changes

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<sup>17</sup> The role of transnational corporations and the attempt to better align their operations with socioeconomic and cultural concerns is a central theme of gLAWcal/Routledge Book Series on Transnational Law and Governance. See on human rights: Angelica Bonfanti (ed), *Business and Human Rights in Europe: International Law Challenges* (Routledge 2019); On the role of Corporate Social Responsibility and Accountability: Jernej Letnar Čerňič, *Corporate Accountability under Socio-Economic Rights* (Routledge 2018).

that we are seeing after COVID-19 and the financing mobilized for post-COVID reconstruction purposes are two factors that could facilitate this transition.<sup>18</sup>

In “*Corporate Sustainability through Private Regulation? The Question of Policy Coherence for Sustainability A Deluge of Standards: On the Influence of Abundance*,” Martine Bosman and Bart Jansen analyze a case study on ready-made garments to understand whether and how private corporations are raising the bar in the environmental protection field. Past studies have dissected the role of self-regulation and uniform code of conducts for operations outside state boundaries. These, it is argued, have a critical role in advancing socioeconomic and cultural rights in countries in the Global South.<sup>19</sup> Bosman and Jansen point out that lack of a central authority in charge of setting guidelines in the industry is not helping UN Agenda advancement. The authors focus their attention on the lack of consistency and uniformity within business practices. Private regulations have clear effects on the re/structuring of international supply chains but are less helpful in assessing and modifying internal corporate dynamics or interests through the lens of sustainability. One factor that plays a role in distancing private regulations from sustainability is the increasing importance of internationalization of corporations from Global South countries. These countries tend to have a more pragmatic approach to the green transition and see these attempts from western corporations as a new imposition and control tool on their sovereignty. As pointed out by Bosman and Jansen, soft law, while increasingly taking a leading role in this context, is not able to change the view on transitions. This requires strong and proactive collaboration between state and non-state actors and a

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<sup>18</sup> For a discussion on the inclusion of sustainability within economic recoveries strategies after the pandemic see: Pedro RR Rochedo and others, ‘Is Green Recovery Enough? Analysing the Impacts of Post-COVID-19 Economic Packages’ (2021) 14 *Energies* 5567; Wolfgang Obergassel, Lukas Hermwille and Sebastian Oberthür, ‘Harnessing International Climate Governance to Drive a Sustainable Recovery from the COVID-19 Pandemic’ (2021) 21 *Climate Policy* 1298, 19.

<sup>19</sup> In its context, the case of China is interesting. For an analysis of the role of corporate social responsibility in boosting private companies’ behaviours see: Kuo Lopin, Yeh Chin-Chen, and Yu Hui-Cheng, ‘Disclosure of Corporate Social Responsibility and Environmental Management: Evidence from China’ (2012) 19 *Corporate Social Responsibility and Environmental Management* 273; Haidong Zheng and Yue Zhang, ‘Do SOEs Outperform Private Enterprises in CSR? Evidence from China’ (2016) 10 *Chinese Management Studies* 435; Paolo Farah and Elena Cima (eds), *China’s Influence on Non-Trade Concerns in International Economic Law* (Routledge 2016).

solid, clear regulatory framework at the international level. Examples on corporate social responsibility highlight how private regulations and soft law tend to downplay the complexities of existing sustainability crises. When standards developed by private companies are implemented with the clear intent of promoting environmental protection, the result is not so straightforward since the issue is addressed in a sector-specific manner.<sup>20</sup> The state should not be perceived as directly or indirectly transferring its legislative power to corporations. It should continue to preserve its role in the protection of the environment as a common good of humanity that serves the public interest. Private standards could positively inform legislators involved in policymaking. Bosman and Jansen call for a complete restructuring on the role of private regulations in these transitions and how business-as-usual approaches are no longer a realistic option. Instead, we must push for policies that seek to protect and secure the environment. Hard laws and a solid regulatory framework for the transition are, for the authors, the only feasible option.

In “*Looking through a Glass Darkly – Transparency as a Misguided Regulatory Instrument in Corporate Governance*,” Wafa Khelif, Finn Janning and Coral Ingley skillfully apply theoretical frameworks established in the two previous chapters. These concern the role of transparency in corporate governance. Regulators in the E.U. and the U.S. have been directed toward increasing transparency and raising disclosure of financial information as key principles in corporate law. Little attention is dedicated here to the social and environmental impacts of corporations on society. The corporate governance framework is closely directed toward profit maximization for the shareholders.<sup>21</sup> The authors highlight how disclosure

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<sup>20</sup> Mittiga underlines how the voluntary approach to climate change is falling short. Ross Mittiga, ‘Political Legitimacy, Authoritarianism, and Climate Change’ [2021] *American Political Science Review* 1.

<sup>21</sup> Climate litigations are on the rise and positively driving development in international environmental law. Brian J Preston, ‘The Influence of the Paris Agreement on Climate Litigation: Causation, Corporate Governance and Catalyst (Part II)’ (2021) 33 *Journal of Environmental Law* 227; Carlo Vittorio Giabardo, ‘Climate Change Litigation & Corporate Responsibility. A Comment on ‘Milieudéfensie and Others vs. Shell’ (2021)’ [2021] *A Comment on ‘Milieudéfensie and Others vs. Shell*; KJ De Graaf and JH Jans, ‘The Urgenda Decision: Netherlands Liable for Role in Causing Dangerous Global Climate Change’ (2015) 27 *Journal of Environmental Law* 517; For an analysis of the importance of climate litigation for boosting environmental

and regulatory frameworks force corporations to be transparent and have integrated a moral dimension into the organization. This has a positive effect on influencing the decisions of CEOs and managers. This works because they practice awareness and are alert of potential criminal liability resulting from cases attached to the duty to disclose. Further, they know that their decisions are aimed at gaining trust of the shareholders and of society at large. The full internalization of moral constraints within the organization, as pointed out by the authors is “not necessarily the same as being an honest, virtuous, or just corporate citizen.” This is relevant especially when individuals are involved. Rather than disclosing for the sake of transparency and for building trust, in several cases disclosure has become paperwork. It is used to reduce the amount of information available to shareholders, while being implemented to formally comply with existing norms on corporate governance. According to the authors, the real turning point to avoid formal compliance is education.<sup>22</sup> This is consistent with the area of focus in the third section of the book.

In “*Sustainable Corporate Governance - The Analytical Study of its Social, Political and Economic dimensions*,” Nandini Garg and Vasu Manchanda complement analyses on inclusions of moral dimension in business-life by offering insights and recommendation on how to transform corporate governance to coincide with sustainable development. The three dimensions analyzed – social, political, and economic - underline how existing systems require a radical transformation to be able to face sustainability and governance crises and address them adequately. The roots of corporate governance could be found in the prioritization of short terms goals rather than long term. Once again, a recurring consideration in the book is the focus on economic profits. Several examples that we can call ‘radical,’ such as re-establishment of corporation’s leadership and governments and the creation of an environmental-sustainable-corporate-

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protection in China see: Rachel E Stern, *Environmental Litigation in China: A Study in Political Ambivalence* (Cambridge University Press 2013); Mary E Gallagher, ‘Mobilizing the Law in China: “Informed Disenchantment” and the Development of Legal Consciousness’ (2006) 40 *Law & Society Review* 783.

<sup>22</sup> Education is considered as the most important area to focus on to fight the negative effects of climate change: Orla Kelly, ‘The Silver Bullet? Assessing the Role of Education for Sustainability’ (2020) 99 *Social Forces* 178.

governance rating system, are offered. Garg and Manchanda also highlight that institutions share multilateral agendas to address global challenge. They argue that it would be possible to reach these transformative changes in corporate governance. To achieve cooperation, academics working on sustainability projects should lead these transitions and find innovative manners to address them.<sup>23</sup>

In “*(In)corporate Sustainability – What’s the Role to Be Played by Corporate Law Academics?*” Anne-Marie Weber focuses on latter points that note how corporate law scholars still follow traditional views on the purpose of a corporation. These are profit maximization and shareholder primacy norms. This dogma, which still informs most of the debate on the role of corporate law in the advance or the demotion of societal goals, is criticized by the author as an example of the reluctance of accepting transformative changes needed in society. While sustainability gradually entered the lexicon of the international community and global citizens, scholars specialized in corporate law are still too cautious to accept sustainability under their field of study. By failing to consider sustainability in debates on corporate purpose, the result is that the international economy is unable to find the tools needed to address global challenges. A radical change in this perspective should be sourced from the scholars working on this topic and should facilitate and advance a sustainability-oriented notion of corporate purpose. This need is framed by the author as a moral obligation on corporate legal scholars that will better align their position with research interests on addressing environmental crises. A call for new corporate governance mechanisms was similarly suggested also on two of the previous chapters of this section.

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<sup>23</sup> On the role of tertiary institutions for facilitating the green transition see: Gabriela Alonso-Yanez and others, ‘Mobilizing Transdisciplinary Collaborations: Collective Reflections on Decentering Academia in Knowledge Production’ (2019) 2 *Global Sustainability* <<https://www.cambridge.org/core/journals/global-sustainability/article/mobilizing-transdisciplinary-collaborations-collective-reflections-on-decentering-academia-in-knowledge-production/701F67344876F5B1E644ED048A221CB9>> accessed 8 July 2022; Julie Davis, ‘Creating Change for People and Planet: Education for Sustainability Approaches and Strategies’ in Courtney E Quinn (ed), *Encyclopedia of the World’s Biomes: Volume 5. Vol. 5.* (Elsevier 2020) <<https://eprints.qut.edu.au/136851/>> accessed 8 July 2022.



The third section “*Sustainability in Higher Education: Reassuming the Leadership*” covers a recurring theme in the book: the transition towards a more just and sustainable society urgently requires a change in the ways that education is framed and on its performative role on knowledge production. Whether for public procurement or for corporate governance, a change in the way that we approach environmental respect calls for a radical restructuring on how we frame environmental issues.

In “*Need to Incorporate Sustainable Development Goals in Higher Education Curricula*,” Nandini Garg and Parikshet Sirohi open discussion by analyzing the role of education and the urgency of aligning curricula with frameworks. Further, they touch upon the paradigm shifts created by UN SDGs.<sup>24</sup> The importance of including SDGs in global education is due to increasing interdependence created by economic approaches to globalization. These fail to include a social dimension under its terms of reference. SDGs and their ability to bring cooperation on social, cultural, and economic rights could be leveraged to include concepts of sustainability in education. Inclusiveness could also be reached if we address environmental crises in a holistic manner via a cooperative mindset. According to the author, it is this approach that may be able to, “achieve a multi-level action framework which could, if designed well, may even turn out to be universally relevant.” Education is framed as a dynamic process that overcomes boundaries of higher education is of particular relevance in the workplace and everyday life. Besides specific focuses of SDG 4 on quality education, Nandini Garg and Parikshet Sirohi demonstrate how it remains central among all the other goals and should be raised as a potential outlet for achieving UN Agenda 2030.

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<sup>24</sup> Both UNFCCC and UNESCO are actively cooperating for developing training programs and education curricula more attentive to climate change: Kristen Hargis, Marcia McKenzie and Isabelle LeVert-Chiasson, ‘A Whole Institution Approach to Climate Change Education: Preparing School Systems to Be Climate Proactive’, *Curriculum and Learning for Climate Action* (Brill 2021); Marcia McKenzie, ‘Climate Change Education and Communication in Global Review: Tracking Progress through National Submissions to the UNFCCC Secretariat’ (2021) 27 *Environmental Education Research* 631; Hugo Gomes and others, ‘The Estrela UNESCO Global Geopark Science and Education Network for Sustainable Development’, *EGU General Assembly Conference Abstracts* (2021).

In “*The Contribution of Higher Education To Sustainable Development: Global Trends and Issues*,” Francesco Pedro emphasizes the importance of higher education institutions to reach these transitions. Analysis of current situations and how precisely higher education institutions must act to play a key role in the transition are complemented by their link with local dimensions. Knowledge production is framed in the chapter as an enabler of social and economic growth and are viewed as essential vis-à-vis the existing system. Universities should include sustainability in their daily functioning, not only in the curricula. They should be raised as example of the importance of environmental protection for society and should be the first focus of attention of investment. Pedro points out that in order to reach this transition, institutions of higher education should adopt a multilevel and multiscale approach to be meaningful. This must focus on capacity-building of instructors, which is often downplayed in the investment of resources mobilized for sustainability.

In “*SDG in Higher Education as a Global Policy Framework*,” Maryna Lakhno assesses case studies on how higher education impacts the implementation of SDGs. Lakhno begins by explaining the importance and ambition of SDG framework. In particular, the two main drivers behind the UN Agenda 2030 are identified. One tends to inform actions, and the other is more idealistic and seeks to bring the international community toward the right track for sustainable goals. According to the author, the inclusion of UN SDG 4 is a clear commitment of the international community to promote quality education. This is not only framed in the traditional sense of expanding access to education, but also is emphasized for using education as a driver of development that is more sympathetic toward economic, social, and political dimensions. In implementing the SDG global framework, higher institutions move outside campus boundaries and offer interesting examples of how they can leverage financing to reach SDGs in Global South countries. As Lakhno points out, by involving university students, the UN 2030 Agenda,

transformative changes will not be limited to the university but, “they will be making an impact through their private and professional lives.”

In the closing chapter of the third section, “*Education for Sustainability: Full Speed Ahead!*,” Carina Hopper and Johanna Wagner compare their personal experiences as professional educators with their view on how sustainability could be integrated in education curricula.<sup>25</sup> Hopper and Wagner cover the *pars construens* of this latter section with their recommendations. They do this by bringing academia into the dialogue with a type of concrete implementation at the local level and without underestimating or discounting barriers. They also emphasize the importance of access to data and broadly scientific knowledge to best integrate the concept of sustainability within education.

The topic of sustainability is a central theme in the development of transnational law. It is now leading efforts of the international community to expand and implement regulatory frameworks that are more attentive and considerate to socio-economic and environmental concerns. Economic globalization is often portrayed as the main source of crisis in the relationship between humans and non-humans. The rapid pace of industrialization witnessed in the past fifty years has reshaped the ways that humans interact with the environment and made it clear that the very existence of the world that we live in is in danger.<sup>26</sup>

The urgency of changing, or at the very latest envisioning,<sup>27</sup> a new economic social development and cultural model is a common denominator of the gLAWcal book series on “Transnational Law and Governance” and “Global Law and Sustainable Development.” This is being published by Routledge

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<sup>25</sup> Verlie et al. focus on climate anxiety in education and how to address at the educators level such issue: Blanche Verlie and others, ‘Educators’ Experiences and Strategies for Responding to Ecological Distress’ (2021) 37 Australian Journal of Environmental Education 132.

<sup>26</sup> For a detailed analysis on how the relationship between humans and nonhumans changed in the Anthropocene see Pasi Heikkurinen (ed), *Sustainability and Peaceful Coexistence for the Anthropocene* (Routledge 2017).

<sup>27</sup> Stout and Love specifically address in their two books the question of how to envision a different system of global governance: Margaret Stout and Jeannine M Love, *A Radically Democratic Response to Global Governance: Dystopian Utopias* (Routledge, Taylor & Francis Group 2016); Margaret Stout and Jeannine M Love, *Integrative Governance: Generating Sustainable Responses to Global Crises* (Routledge 2018).

Publishing (New-York/London). Global challenges like climate change,<sup>28</sup> corruption,<sup>29</sup> and uneven development<sup>30</sup> show that human rights are not bounded within territorial aspects of sovereign state. They require a new joint shared effort<sup>31</sup> within the international community.

Mélon's edited collection brings a fresh perspective to the intricate relationship between corporations and sustainability. The book focuses on the role of state actors in boosting environmental protection and the increasing importance of state awareness on environmental crises. Whether it is procurement, or education or corporate governance, we are witnessing a proactive stance of the state that is balancing economic growth with ecological concerns. The difficulties faced in forcing a particular conduct in the private sphere is reviewed in detail in the book, along with national laws and regulations that, rather than promoting environmental protection, have had the opposite effects. Sustainability should be assessed and implemented based on scientific evidence and requires the cooperative effort of government officials, academics, and experts.<sup>32</sup>

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<sup>28</sup> On the need of bringing the perspective of Global South countries at the centre of the analysis see: Kirk W Junker and Paolo Farah (eds), *Globalisation, Environmental Law and Sustainable Development in the Global South: Challenges for Implementation* (Routledge 2022); Farah and Cima (n 19).

<sup>29</sup> Corruption is one of the best examples where we can see the need of working at a multilateral, rather than bilateral level to solve issues. Corruption escapes from national laws and regulations. In order to be meaningfully addressed, it requires a multilateral effort. On the topic see, Régis Bismuth, Jan Dunin-Wasowicz and Philip M Nichols, *The Transnationalization of Anti-Corruption Law* (Routledge 2021).

<sup>30</sup> Development paradigm, especially in Global South, sheds light on the importance of moving away from profit maximizing perspectives. The case of the Caribbean Community (CARICOM) underlines how global challenges are affecting even more the states due to their geographical location and colonial past/present. They were forced to abide and comply with neoliberal dogmas. See: Paolo Davide Farah, 'EU and CARICOM: Dilemmas versus Opportunities on Development, Law and Economics (Foreword)' in Alicia Roberts, Stephen Hardy and Winfried Huck (eds), *EU and CARICOM: Dilemmas Versus Opportunities on Development, Law and Economics* (Routledge Publishing (New-York/London) 2020).

<sup>31</sup> Multilateralism is still the most appropriate fora to address work on global challenges in crisis situations. For a critical review of the 'crisis of multilateralism' see: Lukasz Gruszczynski and others (eds), *The Crisis of Multilateral Legal Order: Causes, Dynamics and Consequences* (Routledge 2021).

<sup>32</sup> Justo Corti and Paolo Davide Farah (eds.), *Science, Technology, Policy and International Law* (Routledge, forthcoming)

This book is an important contribution for the gLAWcal's book Series on "Transnational Law and Governance".<sup>33</sup>

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<sup>33</sup> For other relevant contributions in the field included in the gLAWcal book series, see Angelica Bonfanti (n.29); Jernej Letnar Čerňič, *Corporate Accountability under Socio-Economic Rights* (Routledge 2019) and Régis Bismuth, Jan Dunin-Wasowicz, and Philip M. Nichols (eds), *The Transnationalization of Anti-Corruption Law* (Routledge 2021).