A Legal Governance Perspective on Putting SDGs into Reality

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YOUR ITINERARY …

... A Legal Governance Perspective on Putting SDGs into Reality …

Transdisciplinarity and Human Well Being

How so a ‘Legal Governance Perspective’?

Transdisciplinarity beyond interdisciplinarity

Looking from a normative perspective

- Interdisciplinarity of ‘Legal Governance’ (LG)
- LG Challenge of Sustainability
  - Legal principle(s)
  - Institutional shifts
- High Tech – Human Touch
THE ADDED VALUE OF LEGAL GOVERNANCE TO SDGs

Aim of Law
Make People Flourish
- no coming to blows
- self realisation of individuals & collectives
- 4 components…

Legal Governance
Law concerning Collective Action & Interests
- Legal Space of constraints & opportunities as Action Arena (structuring policy-making - e.g. on SDG-challenge)
CORE LEGAL PRINCIPLE OF SUSTAINABILITY

Legal core of SDG-governance challenge

Principle 3 of the 1992 Rio Declaration:
“The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.”

Two elements
- development/needs
- intergenerational equity
CORE LEGAL PRINCIPLE OF SUSTAINABILITY

Two elements
- development/needs
- intergenerational equity

Balance needs of 3 or 4 kinds and 3-5 Ps?

Trade-offs ⇋ limits? (in)commensurable?
CORE LEGAL PRINCIPLE OF SUSTAINABILITY

Two elements
- development/needs
- intergenerational equity

But how to legally encompass flourishing of next generations or of nature? Antropo- ➔ Eco-centric..

Uncertain & Voiceless Interests…..
LEGALLY ENCOMPASS UNCERTAIN & VOICELESS INTERESTS

First: consider supporting legal principles!

- ALARA
- Integration
- Precaution
- Concern of State

Principle
A fundamental truth or proposition that serves as the foundation for a system of belief or behavior or for a chain of reasoning.
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ALARA
‘As Low As Reasonably Achievable’

Operate only if at ALARA levels of pollution – exhaustion – nuisance

Burden of proof: BAT
BATNEEC
BPM
B(P)EO
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INTEGRATION
‘SiaP’: Sustainability in any Policy

Rio-principle 4; Article 11 TFEU

- if a policy impacts sustainability: assess
- when equal alternative with less impact: apply
- no requirement of trade-off…??
“In order to protect the environment, the precautionary approach **shall** be widely applied by States according to their capabilities. Where there are **threats** of serious or irreversible damage, lack of full scientific **certainty** shall not be used as a reason for postponing cost-effective **measures** to prevent environmental degradation.”
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PRECAUTION

(Shall) uncertainty – threats – measures

Debate 1: legal principle* ↔ policy approach
  * subdebate (‘shall’): obligation ↔ legitimation

Debate 2: precaution* ↔ sound science**
  * avoid false negatives/underregulation
  ** avoid false positives/overregulation
**LEGALLY ENCOMPASS UNCERTAIN & VOICELESS INTERESTS**

**PRECAUTION**

Different types of issues/uncertainty permutations

<table>
<thead>
<tr>
<th>Effects ➔ Chance</th>
<th>Known</th>
<th>Unknown</th>
</tr>
</thead>
</table>
| Known             | **RISK**  
Probabilities  
*Riskman’t* | **AMBIGUITY**  
No probabilities  
*Sensitivities?* |
| Unknown           | **UNCERTAINTY**  
No probabilities  
*Scenarios?* | **IGNORANCE**  
No probabilities  
*Resilience* |

Broader perspective
- look beyond prohibition….

Monitoring & Engage Stakeholders
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CONCERN OF GOVERNMENT

2nd Generation Social Human Rights:

E.G. Article 21 NL Constitution:

“It shall be the concern of the authorities to keep the country habitable and to protect and improve the environment.”

Also for next generations and pro-natura?

No specific action/right of claim…. (yet)

Collective – Programmatic – Courts’ Reluctance…
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Second: consider institutional setting!

- A. Shift between Government Powers

- B. Shift from Government to Governance
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A. Shift between Government Powers
‘Judicial Activism’

Legislator

Conflicts on Sustainability

Executive

Judiciary ‘courts’
A. Shift between Government Powers

‘Judicial Activism’

**EG1. ECHR**: Right to life (Art. 2)*
& to private and family life (Art. 8)**

.. also for protection against environmental threats
.. & positive obligation of governments to act

Cases (e.g.): Oneryildiz v. Turkey*
Lopez Ostra v. Spain**
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A. Shift between Government Powers ‘Judicial Activism’

EG2. Urgenda Climate case 2015
NGO v Dutch state
Insufficient 17% NL-action on Climate Change

- government **shall** protect citizens! Policy & Experts

- court vs state-discretion:
  only demand 25% (inst. of 40%)
  (Appeal case pending)
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A. Shift between Government Powers ‘Judicial Activism’

Examples show…

Shift in balance of Public Powers
Similar to liberal democracies’ courts
- minority ↔ majority
- environmental interest ↔ political interest
taking sustainability seriously
also through NGOs
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B. Shift from Government to Governance

Governance in 3 modes of coordinating collective action:

- Government commands (e.g. environmental permit)
- Firms compete for contracts (e.g. eco-labelled products)
- Communities/NGOs members cooperate (e.g. Energy cooperatives/labels)
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The Governance Triangle: environments with dominant actors; following basic rules

(Ph) Public hierarchy
  Government (v Citizen)
(Cm) Competitive markets
  Seller (v Buyers)
(Cn) Civil networks
  Members (v non-M)

(Ignore hybrids: 1-4)
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The Governance Triangle: **Shift 1**

Social dialogue (4)
- no one dominates
- no unmoved movers

Seek collaboration
- International
- epistemic communities
- national
- strategic covenants
- local
- ‘kitchen table talks’

Legitimacy & Effectiveness?
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The Governance Triangle: **Shift 1**

Seek collaboration
International
- epistemic communities

Orchestration?

(Abbott&Snidal 2009)
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The Governance Triangle: Shift 2

Engage communities
‘big society’
‘stakeholder say’
‘prosumerism’

Sustainability projects
- waste management
- smart energy grids
- food sovereignty

Legitimacy & Effectiveness?

Hybrids: Co-creation ⇔ Reduce NIMBYISM
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The Governance Triangle: **Shift 2**

- Engage communities
- Sustainability projects
- Institutionalize?
  - e.g. shared/co-ownership
- Experimental regimes?
WHAT’s THE TRANSDISCIPLINARY SUSTAINABILITY NARRATIVE?

Legal Governance (Interdisciplinary)
- normative context of legal principles
- governance of institutional settings & shifts
‘ILT-IAD’

SDG 16: Peace & Justice – Strong Institutions

Transdisciplinary? ‘High Tech – Human Touch’
- regimes for Experimentation
- stakeholder involvement
- co-evolution of Law – Governance & Technology
WHAT’s THE TRANSDISCIPLINARY SUSTAINABILITY NARRATIVE?

SDG no. 4: “Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all”

Target 4.7: “By 2030, ensure that all learners acquire the knowledge and skills needed to promote sustainable development, including, among others, through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture’s contribution to sustainable development.”
YOUR KEYNOTE …

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