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Editorial EPLJ

Special Issue “Property and Sustainability”

<https://doi.org/10.1515/eplj-2025-0001>

The contributions of this issue emerged from a Joint Workshop entitled “Property theory compared – a European perspective: Nachhaltigkeit verändert Eigentum. Sustainability transforms property. Duurzaamheid verandert eigendom” hosted by the Carl von Ossietzky University of Oldenburg and the University of Groningen in Oldenburg on 23 and 24 November 2023.

As the title indicates, the focus of this event was on transformations that property law encounters due to the “sustainability turn”. Against the background of global warming and other environmental crises, all societal actors are in search of more environmentally friendly transactions than the *status quo* and/or impose stricter environmental standards across all sectors. Many of these initiatives concern rules of property law or at least indirectly have an impact on property law. For instance, academic scholars in Belgium and the Netherlands examined whether deactivating the property-law doctrine of accession may facilitate small-scale energy projects and the circular economy.¹ Courts around the world adjudicate climate-liability cases, which limit the freedom of owners to do with their property as they please. The English and French legislatures have adopted new,² and German authorities have applied existing,³ private-law instruments to impose obligations to preserve the environment upon successors-in-title.

This special issue contains three exciting contributions presented at the workshop.

1 See, eg, Benjamin Verheye, ‘Toekomst van de circulaire vastgoedeconomie’ (2019) 1 TPR 107.

2 In England, the Environment Act 2021 introduced the conservation covenant. The French legislature adopted Article L. 132–3 of the Environmental Code (*Code de l’environnement*) to introduce the *obligation réelle environnementale*.

3 Christine Godt, ‘Grundstückslasten im Natur- und Umweltschutz – Naturschutzrechtliche Kompensations- und Ausgleichsflächen im Grundstücksverkehr’ (2024) Notar 39.

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Bonnie Holligan's contribution "Property and contract in a climate of disruption: just processes for change in private agreements made for public purposes that burden land" revisits the tensions on the interface of private and public governance as a justice problem with three facets: history, integrity, responsibility. She applies this conceptual framework to doctrinal questions that emerge in the context of conservation covenants, such as under which conditions these agreements can be terminated. Her approach broadens the classical canon of methods of interpretation and helps to come to grips with frictions that occur when traditional institutions undergo transformation.

Dan Wielsch applies in "Deep-tier regulation: on governance by and of private regulators" his conceptual framework of "transversality of autonomy" to the law challenged by climate change. Versed in system theory, his focus is on interoperabilities and complementarities that open the conception of horizontal markets to vertical linkages. Drawing lessons from the recently renewed legal framework for digitalization ("embeddedness of markets in technology"), he analyses the recent legal changes as "embeddedness of markets in nature". He thus rejects the classical perspective of law that perceives environmental protection as one public good among others. He advocates for a concept of law as "self-determining processes on which society in turn depends". His key argument is twofold: Anthropocentric institutions structurally disregard intertemporal concerns; absolute finiteness on the planetary scale is not reflected in the concept of 'scarcity' as yard-stick for resource allocation. Law has to embed the ecological system as an "autonomy in its own right" for the sake of the protection of human dignity.

A third conceptual frame is spelled out by Katja Zimmermann, catholic social teaching. Her focus is on a constitution of outer space for projects of colonization and mining. She argues that the Outer Space Treaty of 1967 should be revised and accept property rights in outer space, provided that this reform follows certain ethical conditions. Exploring the principles and practices of catholic ethics, she concludes that while all celestial bodies should continue to belong to humanity as a whole, mining enterprises and colonists may acquire entitlements limited in time and power and subject to peacekeeping and sustainability obligations.

These novel and cutting-edge contributions form part of 'Property Law and Sustainability', a new field that analyses legislative and doctrinal developments promoting sustainability in property law and conducts normative investigations into how property-law rules can better accommodate sustainability.⁴

⁴ Björn Hoops, 'Property Law and (More than One Notion of) Sustainability' in Marta Santos Silva and others (eds), *Routledge Handbook of Private Law and Sustainability* (Routledge 2024) 259.