

‘Weak’ Sustainability vs. ‘Strong’ Sustainability – A Discussion Concerning How the European Union can Progress From ‘Weak’ to ‘Strong’ Sustainability

[***The following passages, which highlight the international debate concerning the differences between the ‘weak’ and ‘strong’ versions of the concept of sustainable development, were excerpted from Frances Aldson, *EU Law and Sustainability in Focus: Will the Lisbon Treaty Lead to ‘The Sustainable Development of Europe’?*, (2011) 23 Environmental Law & Management 5 284 (published by Law Text Publishing), available at: <http://www.lawtext.com/lawtextweb/default.jsp?PageID=2&PublicationID=6&pubSection=4#16> ; http://www.academia.edu/525231/EU_Law_and_Sustainability_in_Focus_Will_the_Lisbon_Treaty_Lead_to_The_Sustainable_Development_of_Europe]

“Sustainable development was conceived to reconcile [the] profound tension between environmental and developmental concerns at the heart of global policy-making. Its aim is to marry two antagonistic objectives – an end to poverty and underdevelopment, and ecological sustainability – so that the planet, its resources and services are preserved for future generations.”
(p. 284)

“So-called ‘weak’ sustainability, premised as it is on a wholly untested faith in the ability of ‘technology’ to override natural constraints on ecological capacity, is quite divorced from the essence of what sustainability really is. This article uses the term ‘sustainability’ to denote the ecological form referred to here, the position being that this is the ONLY sustainability certain to uphold the integrity of our planet for years to come. It follows that [‘strong’] sustainable development means a type of social and economic progress that respects the limits of the natural environment...This necessarily means the environmental dimension to sustainable development is of fundamental importance...” (emphasis added).
(p. 285)

Two definitions [of sustainable development] have...permeated the international arena to a greater extent than any others. **The first emerged from the World Commission on Environment and Development (WCED) Report *Our Common Future* in 1987**, which made sustainable development synonymous with that which: ‘...meets the needs of the present without compromising the ability of future generations to meet their own needs’...While this ‘Brundtland’ definition of sustainable development...reflecting the principle of intergenerational equity...has been endorsed in countless national and international policy

documents, it does not feature in any international legal texts, international law showing a consistent reluctance to define precisely what sustainable development means.

The second definition emerged from the 2002 World Summit on Sustainable Development in Johannesburg (WSSD). This ‘three pillar’ view of environmental, economic and social issues which need to be integrated and addressed together is reflected in the WSSD Declaration, and has come to be widely reflected in international law. From the perspective of this article, **development can only be sustainable if it reflects the concept of ecological limits and intergenerational equity**, making a Brundtland-style definition essential.”

(p. 285)

“...3.4 Ecological modernization *not* sustainable development

‘While the literature often confuses ecological modernization with sustainable development, ecological modernization is a more limiting concept. It does not address the underlying contradiction in capitalism: a logic of ever increasing consumption in a world characterized by material resource limitations.’ [fn 93]

[fn 93] Susan Baker, ‘Sustainable Development as Symbolic Commitment: Declaratory Politics and the Seductive Appeal of Ecological Modernisation in the European Union’ (2007) 16/2 Environmental Politics 297 (313).”

“...[T]he EU’s practice is not in accordance with the concept as defined by the Brundtland Commission, or even the ‘three pillar’ approach. Instead it reflects the economic growth approach embodied in the ecological modernization discourse and is focused on efficiency and environmental impact reduction rather than sustainability.”

(p. 293)

“4.2 The Lisbon Treaty changes

4.2.1. *Sustainable development*

...The most important change [brought about by the Lisbon Treaty of Europe negotiations]... was to the sustainable development objective in Article 2 TEU. Instead of the ‘sustainable development of economic activities’, the new Article 3(3) drops the economic bias and commits to sustainable development as a concept in its own right:

‘The Union shall establish an internal market. It shall work *for the sustainable development of Europe* based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.’

While ‘sustainable development’ remains undefined, the fact that it is no longer an adjective modifying ‘economic activities’ equates it with the term used in international law and

policy...An equally significant change can be found in Article 3(5) of the TEU which commits the EU to contributing to, inter alia: ‘the sustainable development of the Earth’ in its ‘relations with the wider world’. This is of huge potential significance in reorientating the EU’s external policies.”
(p. 294)

“...The weakness of sustainable development in law arguably results from its reduction to a procedural integration of environmental, economic and social dimensions, devoid of normative content, which means it cannot function as a legal principle. According to Dworkin, a legal principle is distinguished by its provision of normative standards to be observed as a requirement of justice, fairness or another dimension of morality. By contrast, policies function as standards that define goals to be achieved in relation to improvements in an economic, social or political situation considered desirable by the community as a whole. As presently conceived in EU law: ‘the sustainable development concept fits...Dworkin’s definition of “policies” perfectly’. While not without legal meaning, a policy objective will never play a primary role in law-making or jurisprudence, rendering it inadequate for sustainable development.”
(pp. 296-297)

Further, **the reduction of sustainable development to a procedural integration of environment, economy and society explains why legal scholarship seems trapped into an interminable debate over the meaning of sustainable development, and its role and status in law.** The spectrum of views ranges from Sands’ certainty there ‘can be little doubt that the concept of “sustainable development” has entered into the corpus of international customary law’, to Lower’s ascertain that sustainable development may be considered a ‘meta-principle’ which functions by ‘pushing and pulling the boundaries of true primary norms’, but that it is inescapable of providing the legal guidance necessary for norms and principles. Others such as Schrijver consider sustainable development to cover dimensions such as human rights which, although relevant to sustainable development, are not a core part of its meaning. **Herein lies the problem: by trying to reconcile all facets and dimensions that can be related sustainable development, and thus finding consensus in ambiguity, sustainable development has been left normatively meaningless.** Trace instead its original intentions, and a legal principle with strong normative qualities emerges; a principle rather than a policy, according to Dworkin’s classification, and a principle with the potential to steer the EU firmly towards ‘the sustainable development of Europe’.”
(p. 297)

“...[S]ustainability has been used for centuries to refer to preservation of the natural resource base. Consequently ‘[t]his core of sustainability cannot be any different from ‘sustainable’ in the context of ‘development’. It follows that the inclusion of social and economic dimensions in ‘sustainable development’ does not require any deviation from the ecological core. Indeed, only with this core do the social and economic dimensions, and ‘development’ itself, have any kind of reference point. Conceived in this way, **the normative character of a sustainable development principle becomes clear: ‘[d]evelopment is sustainable if it tends**

to preserve the integrity and continued existence of ecological systems; it is unsustainable if it tends to otherwise’.

Sustainable development thus becomes an operable legal principle once it reflects its central principle of sustainability, the norm being an ‘obligation to promote long-term economic prosperity and social justice within the limits of ecological sustainability’. Such a conception meets the tests of a legal principle: it reflects a fundamental morality (respect for ecological integrity and intergenerational equity); requires action (protect and restore ecosystems and natural resources); and has legal effect...It follows that sustainable development as defined above should be recognized as as core principle of international law.”

(pp. 297-298)

“...[T]his article suggests four steps the EU needs to take in order to fulfill its legal objective to ‘work for the sustainable development of Europe’.

- *A clear definition of sustainable development in the treaties...*
- *Incorporation into the treaty provisions...*
- *A fundamental right to a clean environment...*
- *Full access to justice on environmental matters...*

...These four steps would need to be preceded by a conscious decision on the part of the EU **to replace its ‘ecological modernisation’ approach with a sustainable development paradigm as evoked by the Brundtland Commission, and more recently in the very cogent [UK Sustainable Development Commission’s] ‘Prosperity Without Growth’ report.** [http://www.sd-commission.org.uk/data/files/publications/prosperity_without_growth_report.pdf] This necessitates a switch from quantitative to qualitative growth with economic development based upon ‘the realities of the stock of capital that sustains it’.”

(p 298)

“...Conclusion

“Humans are living beyond what the planet, its resources and ecosystem services can sustain. While we aspire to address global poverty and to achieve prosperity and development for all, the truth is that without a fundamental change of development path in both the developed and developing world, we will need two and [a] half planets to achieve this.

...Proponents of ‘weak sustainability’ may argue that it is total capital that matters, natural and manmade. Such arguments ignore the critical, irreplaceable character of many ecological services, and the intrinsic value of nature that extends far beyond the services it provides. Technology will save

society, other claim. Yet there is no technology available to help the industrialised world meet the 80 percent emissions reductions by 2050 necessary to avoid catastrophic four to six degrees of warming...

...This article has...shown that sustainable development, conceived as an ecological fundament and two pillars, has all the requisites and normative character of a legal principle. Furthermore, with sustainability arguably a requirement of justice, it is imperative that this principle be accorded a central role within all legal systems. The task of the EU is thus to recognize this principle in law through a clear definition of sustainable development in terms of ecological limits and intergenerational equity and to reflect it consistently in treaty law, as well as in secondary legislation, and to accord NGOs and environmental organisations full access to justice on environmental matters in the European courts.

‘Sustainable’ economic growth is not a precondition for human survival. ‘Sustainable’ societal progress and financial prosperity are not essential for our existence. GDP has nothing to do with the continuation of humanity on planet earth. The inconvenient truth is that our survival hinges exclusively on ecological sustainability.’

(p. 299)