

# Law, Degrowth, Sustainability and the Economy

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# Problematising the Law



When someone says 'law' - what do you think of?

Criminal law?

Constitutions?

Do you think of the law as an industry? Or as a corporate commodity?

# How We Understand Law



- The understanding of law most of us have in the modern day is that of 'state law'.
  - This is the law enacted by legislatures, enforced by the police or by contracts, and upheld by courts.
  - Some scholars argue that this is the only form of law, that law is tied to governance and needs the state to exist- both Roberts and Walker argue that law is tied to the centralised state.
- However, this is not the only conception of the law in existence.
  - Legal pluralists like Moore and Sally Engle-Merry advocate for the recognition of law outside of formalised processes of the state.
- Law today has become part and parcel of capitalism.
  - The UK's legal industry was worth £34 billion in 2022- NQs at some firms make £200k per year.
  - The law is a Veblen good now; the more demand there is for legal justification of corporate action, the more it costs.

## **‘We’ve had our best year ever in the UK and US’ – Linklaters breaks £2bn revenue barrier with double-digit growth**

## **Freshfields breaks £2bn revenue barrier as US investment pays off**

UK ‘magic circle’ firm boosted by pick-up in dealmaking in Europe and push to compete with Wall Street’s elite

Friday 12 July 2024 8:28 am

## **Allen & Overy profit soared past £1bn before merger with Shearman**

## **Clifford Chance posts record global revenue and profit growth amid ongoing US push**

July, 24 2024

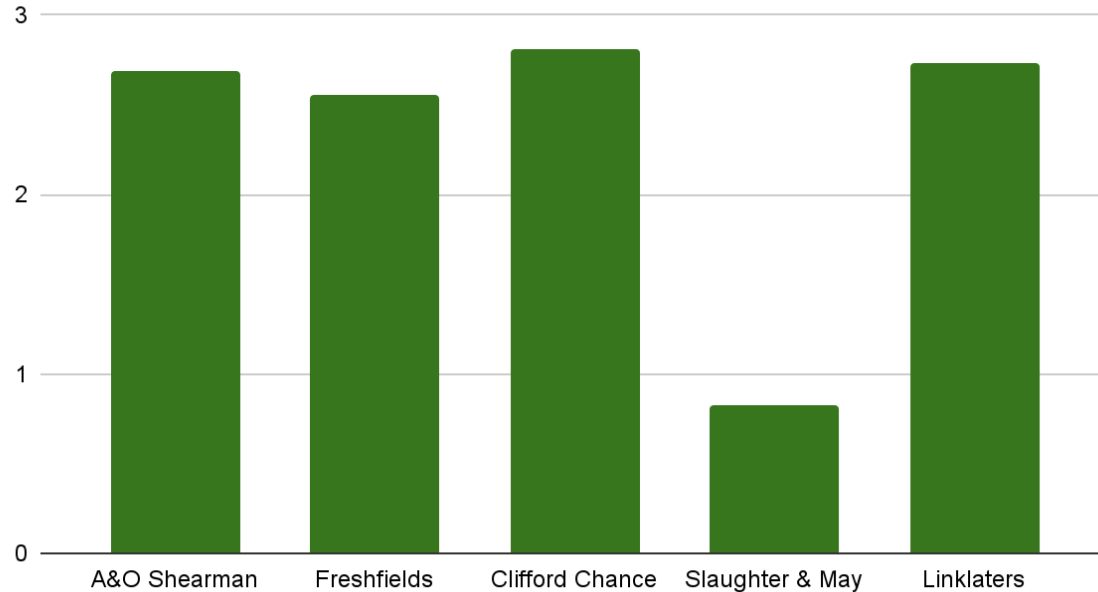
Revenue rose 9% to £2.3bn, spurred by soaring turnover in US

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**Slaughter and May’s 2023/34 revenue was estimated to be £625 million making it the 15th biggest law firm in the UK by revenue.**

# The 23/24 Revenue of the UK's Top 5 Law Firms:

Revenue in Billions for 23/24



Evidently, a large sector of the legal industry is fully in favour of the market economy, and relies on constant capitalist development and growth to amass revenue and profit.

Then, we need to look to other ways where the law could still be a useful ally to the mission of degrowth and sustainability.

Here, the role of the regime of international environmental law - the law that all states need to obey or risk sanctions- is a useful tool.

# Law and the Private and Public Good

# A Hypothetical Scenario

- Imagine a trial happening at an international court dealing with the issue of climate change and how nation states are expected to deal with it.
  - Some of the world's most powerful states (Countries A, B and C) submit briefs agreeing that decisive action is needed to stop fossil fuel production;
- But...
  - Country X disagrees.
  - Country X is a small, developing (but wealthy) nation reliant on the export of fossil fuels for its economy.
  - Country X says this is a fact of its national circumstances and its economy would fall apart without fossil fuels- and that it simply isn't fair that countries A, B, C etc. all got to benefit from unsustainable activity and have now placed the burden on developing countries to act sustainably- to the detriment of their own development.

# Try it yourselves!

Pair up - one of you is Country A, the other is  
Country B, argue it out!

# Case Study - Kuwait at the ICJ

This actually happened at the International Court of Justice's Climate Change Advisory Opinion's proceedings. Kuwait argued that developing, oil producing nations shouldn't be expected to shoulder the weight of climate change to the same degree that historical polluters should.

Kuwait's argument was that:

- Kuwait as a nation had a singular source of income- oil. The entire economy was built around oil and would collapse if they were to be told to cease or heavily cut down on oil production, in a way that would not be the case for other nations.
- Kuwait was a developing state in the eyes of international law, due to its heavy reliance on a single source of income that needed fossil fuel production.
- Because of this, it would be unfair to ask Kuwait (and other developing, oil producing states) to cease these activities at the cost of their own development.
- The current extent of the climate crisis has been caused by historical pollution that can be traced back to the first industrial revolution- it can't be blamed on states that have only recently begun unsustainable activities.

# What Can be Done in this Scenario?



On one hand...

Climate change is a global issue. It can easily be argued that Kuwait's development does not matter if the world is going to end due to the climate crisis.

This is a matter of the **public good**. The public here is the **global community**.

On the other hand...

Is it justifiable to allow the EU, UK, USA and others to force their share of the burden on countries that have contributed far less to this crisis, and have yet to develop to the level any of these have?

This is an issue of the **private good**; what is good for the nation-state.

# Has Sustainability Become a Social and Political Weapon?

- It could be argued that the need for sustainability is socially and politically neutral, it is needed for continued survival.
  - However- nothing really is. The economy itself is susceptible to social and political influence, and the laws that enable it are too.
  - Law making processes are influenced by politics, and politics is increasingly concerned with the environment.
- ESG and its adjacent practices have become a political issue, when they should be a tool (Byrne).
- The governmental idea of what is sustainable development can lead to political clashes with those it affects the most, and has potential to be destructive (Bruun).
  - This also plays out at the global level; sustainable development policies are deployed in a bullish way, then receive backlash and destroy political relationships.
  - This in turn further politicises environmental sustainability and makes it harder to implement necessary laws to reach a more sustainable society.

# Law and Degrowth



# What is Degrowth?



- Degrowth is defined by Hinkel as the ‘planned downscaling of energy and resource use to bring the economy back into balance with the living world in a safe, just and equitable way.’.
- Rist refers to degrowth as a concept that brings together various individual and collective practices aligned against consumption and consumerism.
  - In either definition, degrowth primarily refers to a paradigm shift away from constant economic growth and towards using the resources we do have sustainably.
  - In the same way that Sahlins’ theorised the ‘original affluent society’ as one in which people want less, a new affluent society must move away from growth and towards ecological sustainability for the ‘public good’.
- The law is one way to help aid this paradigm shift.

# Law's Relationship with Degrowth



- As seen earlier, a large section of the law today relies on endless capitalist growth- the legal industry is unlikely to respond well to degrowth.
  - This does not mean that the law itself and the processes by which it is made cannot change to respond to a societal shift towards degrowth.
- Other sectors of law have attempted to integrate the UN Sustainable Development Goals as a means to shift towards sustainable development - notably international environmental law.
  - However, some authors like Fyock argue that we are past the point of sustainable development; and it is necessary to shift the law towards the direction of degrowth instead.
- What would a version of law in symbiosis with degrowth look like?

# The Westminster Model and Degrowth



- Expanding public participation in the UK requires an analysis of public participation in the Westminster model.
- The process of introducing a 'Private Member's Bill' is one of the few times a backbench MP may introduce a bill to respond to public concerns- some notable examples include:
  - The Abortion Act 1967 - MP David Steel.
  - Murder (Abolition of Death Penalty) Act 1965 - MP Sydney Silverman
  - Terminally Ill Adults (End of Life) Bill 2025 - MP Kim Leadbeater
- This process is still remote, and takes lawmaking out of the hands of the population and places it within the scope of a narrow group of people with ties to the elite.



# Possible Solutions



- On the international level:
  - A shift is needed from ‘international environmental law’ to an ‘international ecological law’. (Garver).
    - A form of ecological law that treats humans as part of a greater ecological system but not the centre of it- unlike current anthropocentric environmental law, more in line with the population’s concerns surrounding the climate crisis.
- On the national level:
  - Nuna Zekić proposes an alteration of labour law that shifts away from ecologically damaging capitalist growth, towards the wellbeing of the worker.
    - A movement away from growth and towards the wellbeing and satisfaction of the labourer
- On the local level:
  - Utilising local government powers (and possibly devolving greater powers to these local governments) to employ bylaws, strategies and regulations that respond to the ethics and demands of the population who have mainstreamed degrowth and sustainability ideology and engage in Alexander’s grassroots decision making.
    - Group organisation can have a more tangible impact at the local level in this way.

# David v Goliath - *Luciano Lliuya v. RWE AG*



- Another tool for grassroots law making is to enable citizens to use the legal system to challenge capitalist growth.
- *Luciano Lliuya v. RWE AG* was a landmark case in the Higher Regional Court of Hamm (Germany) in which a Peruvian farmer brought a claim against German energy producer RWE for damage emissions that it had caused, which in turn caused glaciers to melt and risked damaging villages
- The lawsuit spanned 8 years, eventually being dismissed in 2025.
  - However, this dismissal was due to legal technicalities and issues within the claim itself; the Court still affirmed that it was possible to hold private entities liable for emissions and climate change- the *Luciano* case just did not satisfy these requirements.
- The *Luciano* case represents a space in which common people, supported by like-minded organisations, can force the hand of degrowth.
  - If major emitters and polluters are forced to pay fines and subjected to sanctions, this halts their constant growth. As this approach becomes mainstream (which may be the case, dependent on the ICJ's upcoming Advisory Opinion), scaling back will become necessary.
    - The courts themselves could become tools of degrowth strategy implementation.

# Degrowth and the SDGs



# SDGs and the International Order



- In the same way that the SDGs replaced the Millenium Development Goals in an attempt to deconstruct the North-South relationship, the SDGs may need to be replaced by a suitable set of goals related to degrowth initiatives instead.
  - Degrowth cannot exist in a structural framework that seeks to integrate sustainability into a squarely capitalist system. While degrowth does not need quasi-communism or socialism to exist, it also cannot be reconciled. with late-stage capitalist growth either.
- A set of 'Degrowth Goals' may be introduced instead at the end of the 2030 agenda.
  - These goals may be able to retain things like SDGs #6 (clean water), #7 (affordable and clean energy), #12 (responsible consumption and production and #13 (climate action) , whilst doing away with the economic growth initiatives that require capitalist production to continue to exist at its current scale.
    - Gershon and Cefkin have criticised SDG #8 as merely using jobs and the economy as a means of social organisation- it may be possible to simply introduce goals related to greater social cooperation and community instead to fix this.

# Conclusions- Law, Economics and Degrowth



- The law has been a massive aid in the spread of capitalism and the pursuit of unending growth- but it can also be a tool to undo this.
  - Looking outside the sphere of corporate and commercial law, a shift towards other framings of environmental law and increased grassroots participation in law making may help to mainstream the implementation of degrowth policies.
- However, the political element of sustainability and the market incentives that the Global North may have to suppress developing economies through wielding sustainability as a tool must be considered.
  - Smaller economies that rely on 'unsustainable' means of economic activity may suffer severely from international degrowth policies, despite not having historically contributed to the climate crisis.
    - The public and private good must be reconciled; we are all neighbours and the climate crisis is everyone's burden to bear - but not everyone is able to bear it equally, nor should they.
- The SDGs are no longer a tool fit for purpose to frame law making or policy decisions as they only reinforce ultimately liberal, capitalist ideas - moving towards a more radical set of goals may be necessary.

Law is not  
neutral, and  
we should  
not treat it  
as such.

# Thank you!

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