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What Might Degrowth Mean for International Economic Law? A Necessary Alternative to the (un)Sustainable Development Paradigm

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Abstract

This article examines the implications for a change in framework from sustainable development to degrowth in the environmental and social discourse of International Economic Law (I.Econ.L.). It argues that the framework of sustainable development accommodates the Global North's inaction in assuaging environmental degradation and alleviating global inequality by remaining embedded in a capitalist, growth-oriented political economy. Degrowth would provide a strategy to move past such an impasse by encouraging actors to grapple with the role growth plays in the rationale behind I.Econ.L. Degrowth advocates a planned economic contraction to reconcile human's relationship with the environment. This project serves as the first effort to link ideas of degrowth with I.Econ.L. and seeks to identify some of the areas in I.Econ.L.'s scholarship where degrowth would serve as an alternative to sustainable development and what such an alternative would mean for the norms in the different areas of I.Econ.L.

Keywords: International Economic Law; Law of Development; Environmental Law

As the global environmental crisis steadily intensifies, several fields of international law have become more reflective about their role in its development. International Economic Law's (I.Econ.L.) evolving engagement with the sustainable development framework has been one response to this exigency.¹ Since the adoption of the Millennium Development Goals followed by the more recent Sustainable Development Goals, this sustainability paradigm, which is guided by the objective of meeting the needs of the current generation without compromising the ability of future generations to meet their own needs,² has arguably gone mainstream not only in international development but also in international law. Yet, sustainable development's overarching approach of balancing its three economic, social, and environmental pillars has generated significant concern

¹ Jonathan VERSCHUUREN, "The Growing Significance of the Principle of Sustainable Development as a Legal Norm" in Douglas FISHER, ed., *Research Handbook on Fundamental Concepts of Environmental Law* (Cheltenham: Edward Elgar, 2016), 276 at 283–4.

² Brundtland Commission, *Our Common Future* (Oxford: Oxford University Press, 1987), online: United Nations <<http://www.un-documents.net/our-common-future.pdf>>.

about their interactions and compatibility. Notably, with the rate at which the global social and environmental elements are worsening, outpacing efforts to attenuate these harms of the global economy, sustainable development is argued to be an oxymoron. In this article, I question how I.Econ.L actors' (practitioners, scholars, organizations) perception of the interaction between the economic, social, and environmental should be different. I argue that to truly meet the aims of sustainable development, the paradigm through which actors in I.Econ.L. should perceive this interaction, is one of degrowth.

Degrowth has developed into a burgeoning area of thought in the last decade that draws from economics,³ ecology,⁴ sociology,⁵ anthropology,⁶ and other fields.⁷ It directs its critique at the singular focus of the world's states and institutions towards endless economic growth. Degrowth contends that this focus creates unsustainable material flows that destroy the earth's natural habitats while also grossly exacerbating material inequalities between people. Its fundamental thesis is that growth, as indicated by the metrics of a state's GDP or GNP, is intrinsically tied to the expenditure of natural materials and resource extraction and consumption (throughput), and therefore, if societies are to pursue environmentally safe lifestyles, these growth indicators must necessarily decrease.⁸ Moreover, these same systems that have brought with them exceeding levels of environmental degradation, the growth-centric models of contemporary state policies and lifestyles, have also not precipitated in alleviating poverty; rather, inequality has increased as many of the world's states' GDPs continue to grow.⁹ Accordingly, in order to significantly affect the global environmental crisis and alleviate wealth inequality, both aims of sustainable development, we must reduce worldwide economic activity. While green technology is a necessary feature moving forward, it, and particularly the more general framework of green growth it often corresponds with, are inadequate to address the severity of the current environmental and social circumstances. In other words, a more radical reduction of economic production and consumption is necessary if these problems are to be significantly engaged by the international community. This necessarily brings degrowth within the purview of I.Econ.L.

My approach in comparing sustainable development and degrowth's implications on I.Econ.L. is to consider them as a domain of common assumptions.¹⁰ These domain assumptions comprise of formulated assumptions, assumptions that exist as explicit postulations, and background assumptions, assumptions that are not explicitly formulated but reside embedded within the domain.¹¹ An example of a formulated assumption of sustainable development is that the framework takes into consideration the intergenerational equity of

³ Serge LATOUCHE, "Degrowth" (2010) 18 *Journal of Cleaner Production* 519.

⁴ Giorgos KALLIS, Christian KERSCHNER, and Joan MARTINEZ-ALIER, "The Economics of Degrowth" (2012) 84 *Ecological Economics* 172.

⁵ Diana STUART, Ryan GUNDERSON, and Brian PETERSEN, *Climate Change Solutions: Beyond the Capital-Climate Contradiction* (Michigan: University of Michigan Press, 2020).

⁶ Jason HICKEL, Paul BROCKWAY, Giorgos KALLIS, Lorenz KEYßER, Manfred LENZEN, Aljoša SLAMERŠAK, Julia STEINBERGER, and Diana ÜRGE-VORSATZ, "Urgent Need for Post-Growth Climate Mitigation Scenarios" (2021) 6 *Nature Energy* 766.

⁷ Juliet B. SCHOR and Andrew K. JORGENSON, "Is It Too Late for Growth?" (2019) 51 *Review of Radical Political Economics* 320.

⁸ Research & Degrowth, "Degrowth Declaration of the Paris 2008 Conference" (2010) 18 *Journal of Cleaner Production* 523.

⁹ *Ibid.*

¹⁰ Alvin W. GOULDNER, *The Coming Crisis of Western Sociology* (Portsmouth: Heinemann, 1970) at 29.

¹¹ *Ibid.*

the use of resources.¹² An example of a background assumption of sustainable development is that it assumes a capitalist mode of production which is dependent on constant growth as the political economic context for its operation. I argue that sustainable development is untenable as a paradigm because its formulated and background assumptions are in contradiction with one another. In other words, sustainable development is impossible with economic growth that is environmentally and socially unsustainable. As long as sustainable development retains capitalist political economic background assumptions it will remain untenable. Degrowth differs in that it makes contracting economic expansion its explicit postulation, making it a more theoretically cohesive paradigm shift away from the current assumptions existing in contemporary I.Econ.L.

There is yet to be much engagement between international law and the degrowth movement despite its increasing emergence in the humanities.¹³ One of this piece's main goals is to start the conversation about the objectives of degrowth and their ramification for I.Econ.L. Accordingly, it is out of the scope of this article to offer an exhaustive analysis of the implications of degrowth for all I.Econ.L: the treatment of I.Econ.L. is necessarily selective. It is hoped that the analysis will be further picked up upon by future scholarship which will add further weight to the necessity of different perspectives in I.Econ.L. Therefore, I focus instead on making the theoretical argument in Section I about degrowth representing a more coherent paradigm shift in I.Econ.L. than sustainable development because sustainable development maintains capitalism's growth imperative as a background assumption – something inimical to both environmental and social well-being. In Section II, I apply this analysis to two areas of I.Econ.L.: in international investment law (IIL) and international corporate governance, where a shift in approach to degrowth would better result in re-orienting these regimes away from environmental and social harm than the sustainable development paradigm because it does not have this capitalist growth imperative as its background assumption.

I. A Paradigm of Sustainable Development or a Paradigm of Degrowth?

If the current warnings of scientists and ecologists are to be taken seriously, the political, legal, economic, and social status quo is no longer tenable. As stated recently by an Intergovernmental Panel on Climate Change (IPCC) panellist, holding the earth's rise in temperature below 2°C is physically possible, but it would require unprecedented changes to our current global order.¹⁴ With each passing year, it is impressed more adamantly upon the global community that what is needed is a shift or change in paradigm concerning how we treat and think about the relationship between the economic, social, and environmental. Coined by Thomas Kuhn,¹⁵ paradigm shifts occur when there is such an overall break from previous thought and action within a scientific framework that the new and the old ways are no longer commensurable. He used as a metaphor the political revolutions of late 18th century France or early 20th century Russia to illustrate that certain occurrences in a system of thought are so severe that they alter everything in a given

¹² Brundtland Commission, *supra* note 2.

¹³ A few exceptions can be found in Noémie CANDIAGO, "The Virtuous Circle of Degrowth and Ecological Debt: A New Paradigm for Public International Law?" in Laura WESTRA, Prue TAYLOR, and Agnès MICHELOT, eds., *Confronting Ecological and Economic Collapse: Ecological Integrity for Law, Policy and Human Rights* (London: Routledge, 2013); Anna ASEVA, "(Un)Sustainable Development(s) in International Economic Law: A Quest for Sustainability" (2018) 10 Sustainability 4022.

¹⁴ Stated by Jim SKEA, Co-Chair of IPCC Working Group III. See IPCC, "Summary for Policymakers of IPCC Special Report on Global Warming of 1.5°C Approved by Governments" (8 October 2018), online: IPCC <<https://www.ipcc.ch/2018/10/08/summary-for-policymakers-of-ippcc-special-report-on-global-warming-of-1-5c-approved-by-governments/>>.

¹⁵ Thomas S. KUHN, *The Structure of Scientific Revolutions*, 4th ed. (Chicago: University of Chicago Press, 2012).

field henceforth. While Kuhn was speaking to the progress of science, this notion of a paradigm shift has been extrapolated to legal scholarship.¹⁶ By invoking a paradigm shift, I argue that degrowth would entail a serious break from the systems of thought and action within the institution of I.Econ.L., systems that are largely founded in capitalist social relations. For the unprecedented changes necessary for staving off climate catastrophe and the potential extinction of our species, I.Econ.L.'s very geopolitical and economic basis needs reframing so that its current rationales are incommensurable with a future paradigm that is genuinely sustainable; a future that this article argues must be based upon degrowth.

The notion behind “paradigm shift” does not go without contestation. Physical and social scientists alike have found issues with the idea.¹⁷ Primarily, these criticisms revolve around the notion that there is no true break within the evolution of a field of thought but, rather, there is a continuum with varying degrees of disruption in the evolution of thought and action. Relating to the topic at hand, degrowth and sustainable development most certainly are commensurate in many of their purported aims. Both concepts insist on the removal of the primacy of economic aims in each institution. For instance, the *Dasgupta Review* resoundingly insists on the embeddedness of the world economy within the biosphere as opposed to being external to it.¹⁸ Both concepts also recognize that the different levels of economic development necessarily entail different approaches between countries in the Global North and the Global South. The UN Environment Programme's *Making Peace with Nature* acknowledges the need to realign economic structures to provide a more just and equitable global social system while also being one that accounts for the importance environmental factors play in these same systems.¹⁹ However, the difference between sustainable development and degrowth is their identification of capitalist social relations in both the root of the issues of environmental degradation and global wealth inequality, and in the two's respective solutions.

By capitalist social relations, I am referring to the Marxist formulation in which each epoch of history is comprised of a unique form of social organization. Under capitalism, this consists of, *inter alia*, the division of labour between owner and producer, private property, and wage labour.²⁰ Pistor has demonstrated how law acts as “coding” in instilling these social relations in capitalist societies.²¹ Her formulation is directly applicable to how I.Econ.L.'s different regimes code property and ownership relations across state, private, and corporate boundaries, providing a legal basis for a global capitalist political economy. However, at the heart of Marx's theory is that these social relationships are inherently unequal because, in capitalism, the private ownership over production means that the extra value that is created in production, beyond the cost of reproducing

¹⁶ Jurgen HABERMAS, “Paradigms of Law” (1995) 17 *Cardozo Law Review* 771; Sam ADELMAN, “A Legal Paradigm Shift Towards Climate Justice in the Anthropocene” (2021) 11 *Oñati Socio-Legal Series* 44; Mark VAN HOECKE and Mark WARRINGTON, “Legal Cultures, Legal Paradigms and Legal Doctrine: Towards a New Model for Comparative Law” (1998) 47 *International & Comparative Law Quarterly* 495.

¹⁷ For an in depth overview of the discourse surrounding Kuhn's notion of paradigm shift, see K. BRAD WRAY, *Kuhn's Evolutionary Social Epistemology* (Cambridge: Cambridge University Press, 2011) at 15–77.

¹⁸ Partha DASGUPTA, *The Economics of Biodiversity: The Dasgupta Review Abridged Version* (London: HM Treasury, 2021) at 49, online: HM Treasury <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/957292/Dasgupta_Review_-_Abridged_Version.pdf>.

¹⁹ UN Environment Programme, *Making Peace with Nature: A Scientific Blueprint to Tackle the Climate, Biodiversity and Pollution Emergencies* (Nairobi: UNEP, 2021) at 119, online: UNEP <<https://wedocs.unep.org/xmlui/bitstream/handle/20.500.11822/34948/MPN.pdf>>.

²⁰ Jonathan FRIEDMAN, “Marxism, Structuralism and Vulgar Materialism” (1974) 9 *Man* 444 at 445–6.

²¹ Katharina PISTOR, *The Code of Capital: How the Law Creates Wealth and Inequality* (Princeton: Princeton University Press, 2019).

itself, goes to the owner.²² Moreover, capitalism's intrinsic imperative to expand production²³ creates a process which is ultimately untenable for the earth's resources because this process's reproduction requires the perpetual expansion of industrial activities that create more material throughput and harm the world's resources.²⁴ In line with this perspective, critical legal scholars have demonstrated how, in exporting Western international legal norms around the world, Western states have also exported the legal coding for a universal form of capitalism that both reproduces inequality at a global level²⁵ while degrading our natural environment.²⁶

Of course, economic growth is not limited only to capitalism. There remains a debate within eco-socialism about the question of growth and its relation to political economic alternatives to capitalism, with some scholars arguing that the problem is not growth *per se* but people's relationship to production and how resources are distributed.²⁷ Political questions concerning the specific implications of socialism, both as real-existing socialism and untested future forms, are largely outside of the scope of this article. Nonetheless, Kallis maintains that the issue is growth and material throughput, regardless of its political economic form.²⁸ I agree that, ultimately, the issue is one of material throughput but, as Foster points out, it is the contemporary historical context of capitalism's endless imperative to grow and expand, creating this material throughput, that must end if sustainability is ever to be a real possibility.²⁹ Degrowth largely agrees with this perspective; however, with Kallis shifting the focus to how life processes can proceed outside of capitalist relations, stating, "[s]tandards of living can improve without growth by a change of desires and expectations, or a shift from valuing material goods to valuing relations", an argument inherent in many socialist alternatives.³⁰ This article explores how more social, communitarian strategies are a major part of degrowth below.³¹

Accordingly, I aim to demonstrate that sustainable development is based upon an incoherent set of formulated and background assumptions that make it inadequate as a paradigm for balancing human's social and economic needs with the environment. This is due to its reliance on the economic growth imperative which is driven by the global capitalist political economy.³² In other words, sustainable development remains entrenched within the logic of capitalist social relations. Alternatively, degrowth's strength is its coherence within its domain assumptions: that sustainability is not compatible with an economic system that is intrinsically reliant on endless economic expansion. It locates capitalist social relations as the crux of the problem. A paradigm shift to degrowth would therefore

²² Ben FOWKES trans., Karl MARX, *Capital Volume I* (London: Penguin Books, 1976).

²³ David HARVEY, *The Limits to Capital* (Oxford: Basil Blackwell, 1982).

²⁴ Allan SCHNAIBERG, *The Environment: From Surplus to Scarcity* (New York: Oxford University Press, 1980).

²⁵ Sundhya PAHUJA, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge: Cambridge University Press, 2011); Ntina TZOUVALA, *Capitalism As Civilisation: A History of International Law* (Cambridge: Cambridge University Press, 2020).

²⁶ Kate MILES, *The Origins of International Investment Law: Empire, Environment and the Safeguarding of Capital* (Cambridge: Cambridge University Press, 2013).

²⁷ Leandro VERGARA-CAMUS, "Capitalism, Democracy, and the Degrowth Horizon" (2019) 30 *Capitalism Nature Socialism* 217.

²⁸ Giorgos KALLIS, "Socialism Without Growth" (2019) 30 *Capitalism Nature Socialism* 189.

²⁹ John Bellamy FOSTER, "Capitalism and Degrowth: An Impossibility Theorem" *Monthly Review Volume 62* (1 January 2011), online: [Monthly Review <https://monthlyreview.org/2011/01/01/capitalism-and-degrowth-an-impossibility-theorem>](https://monthlyreview.org/2011/01/01/capitalism-and-degrowth-an-impossibility-theorem).

³⁰ Kallis, *supra* note 28 at 190.

³¹ See Section I.B.

³² Kerschner makes a similar argument to this in his comparison between degrowth and the Steady-State Economy: Christian KERSCHNER, "Economic De-Growth vs. Steady-State Economy" (2010) 18 *Journal of Cleaner Production* 544.

mean a significant, incommensurate break with the growth-oriented domain assumptions of I.Econ.L. which sustainable development ultimately accommodates. I posit that this is only possible through a sustained, focused critique on how capitalism's endless need for growth fundamentally shapes the relationship between humans and the environment. It is only once humans remove capitalism's requirement for growth and expansion that we can reconcile the social and environmental. For sustainability to be obtainable, there will necessarily need to be a paradigm shift to degrowth in which the capitalist relations, which I.Econ.L. is currently based upon, no longer take precedence over the social and ecological needs in the relationship between humans and the environment. More immediately, this shift would inevitably entail a radical change with the role and structure of I.Econ.L. in our current system. In the following sections, I examine the arguments put forward by degrowth concerning how sustainable development remains embedded in capitalism's social relations and how degrowth would represent an alternative.

A. The Difference between Sustainable Development and Degrowth's Domain Assumptions

The following section illustrates how degrowth's domain assumptions place it as a more theoretically coherent paradigm shift away from the drivers that cause environmental and social harm than sustainable development, because degrowth's assumptions tackle the root cause of these harms: constant economic growth necessitated by the current world order. Sustainable development's postulation is to limit economic output to levels compatible with social and environmental needs. It is unable to fully accomplish this within I.Econ.L. because sustainable development and I.Econ.L. share the same background assumptions of an entrenched globalized capitalism that is fully dependent on economic growth. Alternatively, degrowth has, as its postulation, the explicit contraction of economic growth. Sustainable development and degrowth share many similarities, but they are not congruous frameworks. Where sustainable development works within the domain assumptions of I.Econ.L., degrowth represents a complete break with the internal rationales of I.Econ.L. as a legal system, explicitly giving precedence to norms that favour the social or environmental over the economic.

The breadth of legal academic literature expanding upon and extoling the virtues of sustainable development³³ has largely been one of exploring the potential synergies between the economy, ecology, and development.³⁴ Economist Herman Daly provides a compelling argument for a "Steady-State Economy" that looks beyond growth and aims to square the economy with social and environmental needs so that the throughput of the global economic system equals the environment's ability to reproduce itself.³⁵ Legal scholars have picked up on this more inclusive framework and have developed legal principles, such as socially responsible trade and investment,³⁶ or corporate social

³³ Verschuuren, *supra* note 1; Klaus BOSSELMANN, "A Normative Approach to Environmental Governance: Sustainability at the Apex of Environmental Law" in Douglas FISHER, ed., *Research Handbook on Fundamental Concepts of Environmental Law* (Cheltenham: Edward Elgar Publishing, 2016), 22; Marie-Claire CORDONIER SEGGER, Markus W. GEHRING, and Andrew NEWCOMBE, eds., *Sustainable Development in World Investment Law* (Alphen aan den Rijn: Kluwer Law International, 2011); Benjamin J. RICHARDSON, *Socially Responsible Investment Law: Regulating the Unseen Polluters* (Oxford: Oxford University Press, 2008).

³⁴ Joyeeta GUPTA and Courtney VEGELIN, "Sustainable Development Goals and Inclusive Development" (2016) 16 *International Environmental Agreements: Politics, Law and Economics* 433.

³⁵ Herman E. DALY, *Beyond Growth: The Economics of Sustainable Development* (Boston: Beacon, 1996) at 31.

³⁶ Paul J.I.M. DE WAART, "Sustainable Development Through a Socially Responsible Trade and Investment Regime" in Nico J. SCHRIJVER and Friedl WEISS, eds., *International Law and Sustainable Development: Principles and Practice* (Leiden: Brill, 2004), 273.

responsibility,³⁷ that align with the tenets of sustainable development and the convergence of social and environmental factors with the economic. Sustainable development strategies, like green stimulus packages, more efficient market policies, and green technological innovation are commonly asserted in today's policy circles,³⁸ and the concept has been included in many various forms of both soft and hard international law.³⁹ In I.Econ.L., despite the different regimes having their own normative systems and unique procedures, each could be said to have integrated aspects of sustainable development into their framework in some fashion; from exception clauses found in recent international investment agreements to the self-regulatory efforts found in corporate social responsibility.⁴⁰

Degrowth's starting point is the incompatibility of the contemporary global order and the sustainability of earth's ecosystems. In nearly every area, whether it be pollution, crop yields, biodiversity, climate change, or countless other factors,⁴¹ economic impact is felt. There is a firm consensus amongst the scientific and ecological community that economic activity, or the production and consumption of commodities and natural resources, is responsible for environmental degradation.⁴² Environmental degradation is the cost of a global political economy based exclusively on the expansion of GDP, or growth.⁴³ The problem with measuring a state's well-being with GDP, degrowthers argue, is that it is a compound measurement.⁴⁴ Compound growth is not a linear curve. Instead, when economists assert that the global economy must maintain a certain annual growth rate of, say, 3 per cent, in order for capitalists to realize returns on their investments, this means that economic output will double every 23 years; by 2043 the earth will have double the resource extraction and the subsequent waste.⁴⁵ Our ecosystems are woefully incapable

³⁷ Ilias BANTEKAS, "Corporate Social Responsibility in International Law" (2004) 22 Boston University International Law Journal 309.

³⁸ World Bank Group, *Inclusive Green Growth: The Pathway to Sustainable Development* (Washington: The World Bank, 2012), online: The World Bank <<https://sustainabledevelopment.un.org/index.php?page=view&type=400&nr=690&menu=1515>>; Cameron Allen, "A Guidebook to the Green Economy: Issue 3: Exploring Green Economy Policies and International Experience with National Strategies" (November 2012), online: UN Department of Economic and Social Affairs (UNDESA) <https://sustainabledevelopment.un.org/content/documents/738GE_Publication.pdf>.

³⁹ Sustainable development can be seen in multiple international treaties such as the *Convention on Biological Diversity*, 5 June 1992, 1760 U.N.T.S. 79, 31 I.L.M. 818 (entered into force 29 December 1993), Preamble, online: UN <<https://www.cbd.int/doc/legal/cbd-en.pdf>>; *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, 11 December 1997, 2303 U.N.T.S. 148, 37 I.L.M. 22 (entered into force 16 February 2005), Art. 2, online: UN <<https://unfccc.int/resource/docs/convkp/kpeng.pdf>>; *Paris Agreement*, 12 December 2015, UN Doc. FCCC/CP/2015/10/Add.1 Decision 1/CP.21 (entered into force 4 November 2016), Preamble, online: <https://unfccc.int/sites/default/files/english_paris_agreement.pdf>; or in soft law instruments such as the 2030 Sustainable Development Goals: UNDESA, "The 17 Goals", online: UNDESA <<https://sdgs.un.org/goals>>.

⁴⁰ Jeremy MOON, "The Contribution of Corporate Social Responsibility to Sustainable Development" (2007) 15 Sustainable Development 296; Dongyong ZHANG, Stephen MORSE, and Uma KAMBHAMPATI, *Sustainable Development and Corporate Social Responsibility* (London: Routledge, 2017).

⁴¹ Jason HICKEL, *Less Is More: How Degrowth Will Save the World* (Manhattan: Penguin Random House, 2021) at 6–16.

⁴² John Bellamy FOSTER, Brett CLARK, and Richard YORK, *The Ecological Rift: Capitalism's War on the Earth* (New York: Monthly Review Press, 2011); Fridolin KRAUSMANN, Simone GINGRICH, Nina EISENMENGER, Karl-Heinz ERB, Helmut HABERL, and Marina FISCHER-KOWALSKI, "Growth in Global Materials Use, GDP and Population during the 20th Century" (2009) 68 *Ecological Economics* 2696; Naomi ORESKES, "The Scientific Consensus on Climate Change" (2004) 306 *Science* 1686; Thomas O. WIEDMANN, Heinz SCHANDL, Manfred LENZEN, Daniel MORAN, Sangwon SUH, James WEST, and Keiichiro KANEMOTO, "The Material Footprint of Nations" (2015) 112 *Proceedings of the National Academy of Sciences of the United States of America* 6271.

⁴³ Giorgos KALLIS, Susan PAULSON, Giacomo D'ALISA, and Federico DEMARIA, *The Case for Degrowth* (Hoboken: Wiley, 2020) at 24.

⁴⁴ *Ibid.*, at 24–8; Hickel, *supra* note 41 at 88.

⁴⁵ Hickel, *supra* note 41 at 89.

of maintaining this kind of economic demand. Scientists recommend a global net material footprint of between 25–50 billion tons of resources.⁴⁶ We are currently almost doubling that number⁴⁷ and communities are already experiencing the consequences from this rate of economic activity in the form of record-breaking temperatures and extreme weather.⁴⁸

Furthermore, the environmental harm caused by a global focus on GDP is only one problem with the current global order identified by degrowth. The other is this global order's impact on issues of inequality. Degrowth is one of several post-developmental approaches that re-examines the human-nature relationship, and how this relationship also affects humans' relations with each other. Degrowth, however, has largely developed from a Global North context, whereas movements such as *Buen Vivir* in Latin America or Ecological *Swaraj* in India emerged from circumstances where wealth inequality and environmental degradation are intrinsically connected due to these regions' relationship to colonialism and imperialism.⁴⁹ Consequently, degrowth was criticized early on for ignoring its implications for Global South states.⁵⁰ However, it has recently expanded upon the consequences a North-dominated global economy has for global inequality, and how the brunt of environmental strain is felt by the states least guilty of climate harm. Not only have Northern neoliberal policies resulted in increased inequality, they have had a measurable negative impact on communities' physical well-being.⁵¹ A fixation on growth has led many states to implement policies of economic deregulation while simultaneously imposing measures of austerity in state and welfare spending.⁵² Global South states are coerced into the growth imperative through debt and international loans⁵³ while, at the same time, 2.5 times the amount of aid they receive flows back to the Global North in the form of debt repayment.⁵⁴ Meanwhile, their material footprint is only a fraction of that of their Northern contemporaries,⁵⁵ thus the degrowth approach posits that the burden of any kind of climate transition cannot and should not be borne by Global South states.

Degrowth is distinct from sustainable development by its identification of capitalism itself as the engine behind the different environmental crises and wealth inequality.⁵⁶ Stuart, Gunderson and Petersen write, “[g]rowth is not only an ideology, it is an ideology built upon the structural imperative of capitalism”.⁵⁷ Sustainable development may account for social and environmental aspects of development,⁵⁸ but its ontological basis is one

⁴⁶ Stefan BRINGEZU, “Possible Target Corridor for Sustainable Use of Global Material Resources” (2015) 4 Resources 25.

⁴⁷ Hickel, *supra* note 41 at 100.

⁴⁸ IPCC, “Special Report on Global Warming of 1.5° C: Summary for Policy Makers” (2018), online: IPCC <https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_SPM_version_report_LR.pdf>.

⁴⁹ Ashish KOTHARI, Federico DEMARIA, and Alberto ACOSTA, “Buen Vivir, Degrowth and Ecological Swaraj: Alternatives to Sustainable Development and the Green Economy” (2014) 57 Development 362 at 365-9.

⁵⁰ Foster, *supra* note 29.

⁵¹ Ronald LABONTÉ and David STUCKLER, “The Rise of Neoliberalism: How Bad Economics Imperils Health and What to Do about It” (2016) 70 Journal of Epidemiology and Community Health 312.

⁵² Kallis, Paulson, D’Alisa, and Demaria, *supra* note 43 at 28–29.

⁵³ *Ibid.*, at 30.

⁵⁴ Jason HICKEL, “Aid in Reverse: How Poor Countries Develop Rich Countries” *The Guardian* (14 January 2017), online: The Guardian <<https://www.theguardian.com/global-development-professionals-network/2017/jan/14/aid-in-reverse-how-poor-countries-develop-rich-countries>>.

⁵⁵ Hickel, *supra* note 41 at 107.

⁵⁶ *Ibid.*, at 39–123.

⁵⁷ Stuart, Gunderson, and Petersen, *supra* note 5 at 77.

⁵⁸ Jeff WAAGE, Christopher YAP, Sarah BELL, Caren LEVY, Georgina MACE, Tom PEGRAM, Elaine UNTERHALTER, Niheer DASANDI, David HUDSON, Richard KOCK, Susannah H. MAYHEW, Colin MARX, and Nigel POOLE, “Governing Sustainable Development Goals: Interactions, Infrastructures, and Institutions” in Jeff

created by hegemonic Global North states rooted in liberal, capitalist economics.⁵⁹ While advocates of sustainable development recognize the necessity of extensive political, economic, and legal reform if sustainability is to be taken seriously,⁶⁰ they fail to identify the expansionist imperative in capitalist social relations. The structural imperative of capitalism is the expansion of profits being its bottom line.⁶¹ The system cannot stop or stagnate without the accumulation of capital ceasing and the economy entering crisis.⁶² This form of economy must, therefore, constantly seek out new areas or regions to commodify, compete in and expand.⁶³ As a corollary, the imperative to expand creates a one-dimensional fixation on profits and growth. If other social concerns such as wealth distribution or the environment do not meet the needs of this bottom line, they will be forfeit in the last instance.⁶⁴

B. Differing Strategies between Sustainable Development and Degrowth

A prominent example demonstrating the contradistinction between sustainable development and degrowth's starting assumptions is their outlooks on the concept of decoupling, or the ecological modernization theory, an oft corresponding theme to sustainable development literature.⁶⁵ In equating the needs of environmental and economic development into a single package,⁶⁶ sustainable development strategies such as decoupling advantage more powerful states by providing a way to formally ascribe to sustainable rhetoric, while weaker states must still navigate their desire to develop their economies while contending with transboundary environmental problems. Decoupling argues that as a state's economy develops it becomes more technologically proficient and services oriented, while less reliant on heavy industry.⁶⁷ As a state's economy develops it should "decouple" from its material footprint. It is most readily apparent in its propagation by international organizations like the World Bank and UN bodies.⁶⁸ Unfortunately, decoupling has been consistently debunked.⁶⁹ There are two primary issues with decoupling. First, it does not account

WAAGE and Christopher YAP, eds., *Thinking Beyond Sectors for Sustainable Development* (London: Ubiquity Press, 2015), 79.

⁵⁹ Aseeva, *supra* note 13 at 3–5; Heloise WEBER, "Politics of "Leaving No One Behind": Contesting the 2030 Sustainable Development Goals Agenda" (2017) 14 *Globalizations* 399 at 400–2.

⁶⁰ Bosselmann, *supra* note 33 at 23–4; Richardson, *supra* note 33 at 509–70.

⁶¹ Brett CLARK, Daniel AUERBACH, and Stefano B. LONGO, "The Bottom Line: Capital's Production of Social Inequalities and Environmental Degradation" (2018) 8 *Journal of Environmental Studies and Sciences* 562.

⁶² Schnaiberg, *supra* note 24.

⁶³ David HARVEY, *The New Imperialism* (Oxford: Oxford University Press, 2003) at 108–15.

⁶⁴ Clark, Auerbach, and Longo, *supra* note 61.

⁶⁵ Shawkat ALAM and Jona RAZZAQUE, "Sustainable Development Versus Green Economy: The Way Forward?" in Shawkat ALAM, Sumudu ATAPATTU, Carmen G. GONZALEZ, and Jona RAZZAQUE, eds., *International Environmental Law and the Global South* (Cambridge: Cambridge University Press, 2015), 609.

⁶⁶ Ruth GORDON, "Unsustainable Development" in Shawkat ALAM, Sumudu ATAPATTU, Carmen G. GONZALEZ, and Jona RAZZAQUE, eds., *International Environmental Law and the Global South* (Cambridge: Cambridge University Press, 2015), 50 at 63.

⁶⁷ Arthur P.J. MOL, "Ecological Modernization and the Global Economy" (2002) 2 *Global Environmental Politics* 92; Arthur P.J. MOL, "Ecological Modernization as a Social Theory of Environmental Reform" in Michael R. REDCLIFT and Graham WOODGATE, eds., *The International Handbook of Environmental Sociology*, 2nd ed. (Cheltenham: Edward Elgar Publishing, 2010), 63.

⁶⁸ World Bank Group, *supra* note 38; UNDESA, *supra* note 38; the concept can be seen on a more practical level in its inclusion in guidance reports such as, UNEP, "Guidance to assist Parties in developing efficient strategies for achieving the prevention and minimization of the generation of hazardous and other wastes and their disposal", 11 August 2017, UN Doc. UNEP/CHW.13/INF/11/Rev.1 (2017), at para. 12.

⁶⁹ Timothée PARRIQUE, Jonathan BARTH, François BRIENS, Christian KERSCHNER, Alejo KRAUS-POLK, Anna KUOKKANEN, and Joachim H. SPANGENBERG, "Decoupling Debunked - Evidence and Argument Against Green

for Jevon's Paradox:⁷⁰ economies paradoxically use more resources the more technologically proficient and productive they become.⁷¹ Second, as one state's economy becomes more service oriented, their resource intensive industries merely shift geographic locations.⁷² By embracing the framework of sustainable development, I.Econ.L. has been able to mask its structural precepts in supporting the liberalization of the global economy while keeping the façade of social and environmental concern. International organizations are still largely rooted in a market economy that expounds the merits of liberal trade policies⁷³ while presuming the ability of a state's economic material throughput to decouple from its environmental impact as its economy develops.⁷⁴

Alternatively, degrowth offers several different proposals to fight environmental degradation and inequality that do not rely on the traditional capitalist means of market-oriented strategies or technological innovation. Generally, the degrowth movement insists on a planned economic contraction that reduces material throughput in production and consumption while refocusing energy into the public/social sphere, what Kallis and Hickel refer to as the commons,⁷⁵ largely through grassroots initiatives.⁷⁶ Kallis advocates for people to transform their lifestyles and prioritize less consumption while promoting more community-oriented initiatives like biking, community gardens, and food banks.⁷⁷ While degrowth currently relies too heavily on grassroots efforts for transformation, they do outline a number of general institutional proposals including: "a Green New Deal without growth; universal incomes and services; policies to reclaim the commons; reduction of working hours; and public finance that supports the first four".⁷⁸ Hickel provides further, more specific, proposals in reducing material throughputs including: ending planned obsolescence (when manufactures produce goods not meant to last or are prohibitively expensive to repair), regulating marketing to reduce consumption, creating more sharing services, ending food waste, and reducing ecologically destructive industries.⁷⁹ Essentially, these proposals would require significant work reduction concomitant with extensive fiscal and monetary reform, particularly in the shape of tax reform,⁸⁰ in order to provide a basis for rehabilitating a more public-oriented lifestyle for the global community.

Additionally, degrowth is not a theory about reducing the quality of life for people around the world, particularly those in the Global South. Rather, the movement insists on the material abundance that already exists.⁸¹ It argues that the current global economy already provides more than enough material resources to meet the world's material needs

Growth as a Sole Strategy for Sustainability" (July 2019), online: European Environmental Bureau <<https://eeb.org/wp-content/uploads/2019/07/Decoupling-Debunked-FULL-for-ONLINE.pdf>>.

⁷⁰ Blake ALCOTT, "Jevons' Paradox" (2005) 54 *Ecological Economics* 9.

⁷¹ John Bellamy FOSTER, Brett CLARK, and Richard YORK, "Capitalism and the Curse of Energy Efficiency" *Monthly Review* Volume 62 (1 November 2010), online: *Monthly Review* <<https://monthlyreview.org/2010/11/01/capitalism-and-the-curse-of-energy-efficiency/>>.

⁷² Stuart, Gunderson, and Petersen, *supra* note 5 at 68.

⁷³ Gary P. SAMPSON, *The WTO and Sustainable Development* (New York: UN University Press, 2005) at 54; Peter POSCHEN, *Decent Work, Green Jobs and the Sustainable Economy: Solutions for Climate Change and Sustainable Development* (London: Routledge, 2015).

⁷⁴ Ludivine TAMIOTTI, Robert TEH, Vesile KULAÇOĞLU, Anne OHLHOFF, Benjamin SIMMONS, and Hussein ABAZA, *Trade and Climate Change: WTO-UNEP Report* (Geneva: World Trade Organization, 2009) at 52.

⁷⁵ Hickel, *supra* note 41 at 174.

⁷⁶ Stuart, Gunderson and Petersen, *supra* note 5 at 73.

⁷⁷ Kallis, Paulson, D'Alisa, and Demaria, *supra* note 43 at 44–64.

⁷⁸ *Ibid.*, at 65.

⁷⁹ Hickel, *supra* note 41 at 206–20.

⁸⁰ Stuart, Gunderson and Petersen, *supra* note 5 at 74–5.

⁸¹ Jason HICKEL, "Degrowth: A Theory of Radical Abundance" (2019) 87 *Real-World Economics Review* 54.

and reasonable levels of consumption. Kallis and Hickel both maintain that degrowth proposals would see the economic well-being in the Global South improve, especially as they are the ones that receive the worst of the consequences of climate change,⁸² while major environmental offenders like the United States and European Union would carry most of the change necessary to bring the global material footprint down.⁸³

The positive prescriptions offered by degrowth are found in its re-localizing, or community-based approach to well-being. It represents a potential pluralization of the meaning of growth. In line with some of the South American “cosmovisions”, or *buen vivir*, values of sufficiency and simplicity – which champion more communitarian ethos that stress the “co-dependence of humans and nature”,⁸⁴ degrowth “[calls] us to shift value and desire away from productivist achievements and consumption-based identities toward visions of good life variously characterized by health, harmony, pleasure and vitality among humans and ecosystems”.⁸⁵ In this way, degrowth is a rejection of the developmentalist framework in which developing countries must strive to meet the same benchmarks of economic and technological advancement that both subject populations to further removal from pluralistic forms of community-based living, while increasing global levels of material throughput. Urban planning has been one area in which the alternatives offered by degrowth take on tangible proposals with ideas such as “cohousing, slow mobility, farmer’s markets, self-sufficient housing, non-commercial sharing, and urban gardening”.⁸⁶ While these proposals do not address the larger, more geopolitical/economic questions raised in this article, they do indicate tangible alternatives to growth-centric models that also do not rely on an exploitative global economy that extracts surplus value and natural resources while leaving little in way of return. Degrowth shows that there is an alternative for developing and high-income states alike.

In summation, sustainable development has never been able to overcome the dilemma it was designed to solve; namely, the conundrum between satisfying the developmentalist drive for the Global South to match the economic levels of the Global North without exceeding global environmental limits.⁸⁷ Viñuales writes, “...it did not crack the environment-development equation. Rather, it drew a veil over it to enable consensus.”⁸⁸ Richardson points out that investors’ embrace of responsible investment is likely the result of their belief that in doing so they can become more prosperous without having to meaningfully grapple with the overarching economic structures that harm the environment.⁸⁹ His point can be extended to sustainable development as a whole. The framework of sustainable development is innately bound to subsume its social and ecological features under the economic.⁹⁰ “Economic logic will always win over ecological and social

⁸² Hickel, *supra* note 41 at 114–5.

⁸³ Kallis, Paulson, D’Alisa, and Demaria, *supra* note 43 at 82–6.

⁸⁴ Adelman, *supra* note 16 at 54–5.

⁸⁵ Susan PAULSON, “Degrowth: Culture, Power and Change” (2017) 24 *Journal of Political Ecology* 425 at 426.

⁸⁶ Federico SAVINI, “Towards an Urban Degrowth: Habitability, Finitude and Polycentric Autonomism” (2021) 53 *Environment and Planning A: Economy and Space* 1076 at 1077; XUE Jin, “Is Eco-Village/Urban Village the Future of a Degrowth Society? An Urban Planner’s Perspective” (2014) 105 *Ecological Economics* 130; Duncan CROWLEY, Teresa MARAT-MENDES, Roberto FALANGA, Thomas HENFREY, and Gil PENHA-LOPES, “Towards a Necessary Regenerative Urban Planning: Insights from Community-Led Initiatives for Ecocity Transformation” [2021] *Cidades* 83.

⁸⁷ Gordon, *supra* note 66 at 63–4.

⁸⁸ Jorge E. VIÑUALES, “The Rise and Fall of Sustainable Development” (2013) 22 *Review of European, Comparative and International Environmental Law* 3 at 4.

⁸⁹ Benjamin J. RICHARDSON, “Keeping Ethical Investment Ethical: Regulatory Issues for Investing for Sustainability” (2009) 87 *Journal of Business Ethics* 555.

⁹⁰ Subhabrata Bobby BANERJEE, “Who Sustains Whose Development? Sustainable Development and the Reinvention of Nature” (2003) 24 *Organization Studies* 143 at 144.

logics as long as free markets dominate.”⁹¹ Nonetheless, it goes without saying that the global economy is not going to disappear immediately under degrowth. For example, with increasing climate crises, some form of trade between countries is going to be essential to account for things like regional crop failure or natural disasters.⁹² However, how production, circulation, and consumption of consumer goods and income and services is orchestrated by the current global economic system must change if we are to keep within our world’s natural limits while not exacerbating wealth inequalities. This is precisely why attention must be paid to the actual mechanics of I.Econ.L. and how degrowth would represent a paradigm shift in its domain assumptions.

II. Considering Degrowth’s Implications for Certain Areas of I.Econ.L.

Critical legal scholars from Marxist, Third World Approaches to International Law and feminist traditions have long pointed to the role international law has played in perpetuating the negative impact of globalized capitalism. These authors have demonstrated how Global South states’ admittance as sovereign actors into the system of international law has been conditional upon their acceptance of its universalist prescriptions towards global governance,⁹³ despite these prescriptions mainly benefitting a transnational capitalist class largely located in the Global North.⁹⁴ Pahuja has shown how these universal prescriptions include notions of development that circumscribe states’ conceptions of development to the narrow confines of “economic” or capitalist development.⁹⁵ This project has attempted to demonstrate above how sustainable development in many ways has been a continuation of this universalizing mission of international law through its accommodation of capitalist social relations.

Consequently, it may seem counterintuitive to even consider degrowth’s potential implications for I.Econ.L. as, intuitively, the most obvious implication might be an outright rejection of contemporary I.Econ.L. as it is an intrinsically capitalist institution. Nonetheless, however much the authors above, like Anghie, Chimni, and Pahuja, may be critical of international law, they still do not give up on its emancipatory potential. Similarly, it is my aim to demonstrate that, although I.Econ.L. may not likely be on the vanguard of a global social and environmental transformation, it does not have to be incompatible with new social norms inspired by degrowth. Rather, if a concerted global shift towards a contraction in material throughput is to ever be practically obtainable, I argue that it would certainly have to involve a transformation, or at least a transition, of the international legal regimes that are currently ubiquitous with the global economy.⁹⁶ Degrowth is valuable, not because it would demand the abandonment of I.Econ.L. altogether, but because it can serve as a strategy to “re-order values and resources to support the development of diverse life-making processes operating with different logics”.⁹⁷ Knox puts forward the idea of “principled opportunism” in which he argues that, at the risk of “legitimizing the structures of global capitalism”, there are still opportunities to

⁹¹ Kenneth A. GOULD and Tammy L. LEWIS, “Paradoxes of Sustainable Development: Focus on Ecotourism” in Kenneth A. GOULD and Tammy L. LEWIS, eds., *Twenty Lessons in Environmental Sociology*, 3rd ed. (Oxford: Oxford University Press, 2020), 330 at 336.

⁹² Tamiotti, Teh, Kulaçoğlu, Olhoff, Simmons, and Abaza, *supra* note 74 at 62.

⁹³ Antony ANGHIE, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2005).

⁹⁴ B.S. CHIMNI, “International Institutions Today: An Imperial Global State in the Making” (2004) 15 *European Journal of International Law* 1.

⁹⁵ Pahuja, *supra* note 25.

⁹⁶ Andreas F. LOWENFELD, *International Economic Law*, 2nd ed. (Oxford: Oxford University Press, 2008) at 3.

⁹⁷ Kallis, Paulson, D’Alisa, and Demaria, *supra* note 43 at 58.

pursue progressive features in the content of law.⁹⁸ He continues that “[i]nternational law, then, must never be pursued because it ‘is law’, but only insofar as its content can advance the aims of progressive constituencies”.⁹⁹ In this way, degrowth serves to locate the progressive potentialities in the various areas of I.Econ.L. while avoiding the capitalist-legitimizing, or developmentalist, element in sustainable development – the background assumption of growth.

Recall that my argument is not that there should be a paradigm shift *from* sustainable development to degrowth. The two both share the aim of reconciling environmental and social exigencies with a global capitalist economy. Rather, I attempt to demonstrate how degrowth would provide a more coherent paradigm shift than sustainable development in overhauling I.Econ.L. because it refutes the economic growth imperative that exists in tension with environmental and social goals. Sustainable development does not contain the coherent set of formulated and background assumptions necessary to transform the global political economic relations between the economic, social, and environmental spheres, because it does not break with its presupposed capitalist political economy. In contrast, degrowth explicitly locates growth and capitalist expansion as the object of transformation. The following sections act as two examples of how the approach of degrowth would serve as an alternative to sustainable development because it denies the growth-oriented rationales necessitating the capitalist social relations within each regime. From the perspective of degrowth, international investment law would more substantially pursue international norms of investor responsibility, and corporate governance would prioritize a binding multilateral effort against multinational tax avoidance over the corporate self-regulation of corporate social responsibility.

A. *International Investment Law and Investor Responsibility*

IIL represents an exemplar case study for my argument because a paradigm shift to degrowth in the regime would not mean abandoning the efforts to instill principles of sustainable development within IIL’s operation. Rather, the shift in paradigm would instead be about the underlying values and assumptions of IIL’s actors concerning the regime and foreign direct investment’s role in sustainable development and these assumptions’ corollary impact on social and environmental well-being in developing states. For example, where both would advocate for environmental and social obligations and investor responsibility to be set out in investor agreements,¹⁰⁰ sustainable development attempts to accommodate social and environmental concerns into IIL’s operation, but maintains the protection of foreign investment as the regime’s primary concern. Degrowth would instead refute investment’s pre-eminence in investment agreements and emphasize states’ capacity to shape their own relationship to foreign investment and its precise role within their borders concerning environmental and social interests, for example, by including principles of investor responsibility in investment agreements through such instruments as counter-claims based on international obligations. Of course, such an example does not grapple with the intricacies found in IIL about the common disconnect between states and local communities’ social and environmental interests.¹⁰¹

⁹⁸ Robert KNOX, “Marxism, International Law, and Political Strategy” (2009) 22 *Leiden Journal of International Law* 413 at 433.

⁹⁹ *Ibid.*

¹⁰⁰ UNCTAD, “Investment Policy Framework for Sustainable Development” (2015) at 109, online: UNCTAD <https://unctad.org/system/files/official-document/diaepcb2015d5_en.pdf>.

¹⁰¹ Nicolás M. PERRONE, “The “Invisible” Local Communities: Foreign Investor Obligations, Inclusiveness, and the International Investment Regime” (2019) 113 *AJIL Unbound* 16.

Nonetheless, it serves as a good example to illustrate how the values and assumptions found in IIL's discourse would be different from the perspective of degrowth.

IIL provides an international legal basis for the movement of foreign direct investment between states primarily through a body of international investment agreements and international investor-state arbitration.¹⁰² Scholars have encouraged the regime's relationship to sustainable development as states and foreign investors increasingly became embroiled in environmental disputes since the regime's emergence in the 1990s.¹⁰³ There has gradually been more integration of the concept in IIL's treaty-making with states including sustainable development provisions in recent investment agreements¹⁰⁴ as well as further provisions, for example, aimed at clarifying exceptions to expropriation, providing more space for environmental regulation.¹⁰⁵ Currently, the United Nations Commission on International Trade Law's Working Group III is exploring further methods by which the regime can be more compatible with both the Sustainable Development Goals and the Paris Agreement with proposals such as a multilateral advisory centre, changing arbitrator selection methods, or establishing an appellate body.¹⁰⁶

Since its inception, IIL has received criticism for its perceived imbalance between protecting the rights of the investors to their investments without offering similar protections to host states. Sornarajah has argued that this is due to the regime's neoliberal structuring in which "all foreign investment is [considered] uniformly beneficial" and, therefore, multinational corporations' (MNCs) interests are "accentuated" over the social and/or environmental interests of host states.¹⁰⁷ Other scholars have argued that the disciplinary effect from these uneven protections afforded to investors in investment agreements, such as the fair and equitable treatment standard or provisions against indirect expropriation, have resulted in a regulatory chill on developing states' efforts to regulate on behalf of their environmental and social concerns.¹⁰⁸ Indeed, over the last thirty years there have been numerous high profile cases where a state's regulatory actions have come into direct conflict with the protections enshrined in investment agreements with a

¹⁰² Rudolf DOLZER and Christoph SCHREUER, *Principles of International Investment Law*, 2nd ed. (Oxford: Oxford University Press, 2012); Muthucumaraswamy SORNARAJAH, *The International Law on Foreign Investment*, 3rd ed. (Cambridge: Cambridge University Press, 2010).

¹⁰³ Lorenzo COTULA, *Foreign Investment, Law and Sustainable Development: A Handbook on Agriculture and Extractive Industries*, 2nd ed. (London: International Institute for Environment and Development, 2016); Cordonier Segger, Gehring, and Newcombe, *supra* note 33; Howard MANN, "Reconceptualizing International Investment Law: Its Role in Sustainable Development" (2013) 17 *Lewis & Clark Law Review* 521; Nathalie BERNASCONI-OSTERWALDER, Martin D. BRAUCH, Aaron COSBEY, Maria Bisila TORAO GARCIA, Ivetta GERASIMCHUK, Erica PETROFSKY, Temur POTASKAEVI, Lourdes SANCHEZ, and Yanick TOUCHETTE, "Treaty on Sustainable Investment for Climate Mitigation and Adaptation: Aligning International Investment Law with the Urgent Need for Climate Change Action" (2019) 36 *Journal of International Arbitration* 7.

¹⁰⁴ *Reciprocal Investment Promotion and Protection Agreement between the Government of the Kingdom of Morocco and the Government of the Federal Republic of Nigeria*, 3 December 2016 (not in force as of 17 March 2020), Art. 24.

¹⁰⁵ *EU - Canada Comprehensive Economic and Trade Agreement*, 30 October 2016 (entered into force 14 January 2017) Annex 8-A (3).

¹⁰⁶ *Possible Reform of Investor-State Dispute Settlement (ISDS)*, Note by the Secretariat, 30 July 2019, UN Doc. A/CN.9/WG.III/WP.166 (2019), at paras. 12-64; Amandine VAN DEN BERGHE and Kyla TIENHAARA, "Potential Solutions for Phase 3: Aligning the Objectives of UNCITRAL Working Group III with States' International Obligations to Combat Climate Change" (2019) at 2, online: ClientEarth <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/wgiii_clientearth.pdf>.

¹⁰⁷ Muthucumaraswamy SORNARAJAH, "A Law for Need or a Law for Greed?: Restoring the Lost Law in the International Law of Foreign Investment" (2006) 6 *International Environmental Agreements: Politics, Law and Economics* 329 at 331.

¹⁰⁸ Kyla TIENHAARA, "Regulatory Chill in a Warming World: The Threat to Climate Policy Posed by Investor-State Dispute Settlement" (2018) 7 *Transnational Environmental Law* 229.

number being decided in favour of the investor.¹⁰⁹ Consequently, the efforts regarding sustainable development listed above have been put forward by scholars and policy-makers alike in order to rebalance the regime in line with the environmental and social exigencies of host states.

Degrowth differs from sustainable development in how it approaches the alignment of foreign investment, environmental demands, and social factors because sustainable development still accepts economic growth as a necessity for human well-being. For example, the Sustainable Development Goals invoke growth, with Goal 8 calling for decent work and economic growth, and encourage foreign investment with Goal 17, urging further private participation through foreign investment to fund the initiatives.¹¹⁰ Correspondingly, scholars continue to analyze how the concept of sustainable development can be read into emerging free trade agreements such as the Trans-Pacific Partnership Agreement or the EU-Singapore Free Trade Agreement in an effort to find a synergy between the regime and sustainable development.¹¹¹ By maintaining the link between sustainable development and foreign investment with IIL, policy-makers and scholars perpetuate the classic notion of the “Grand Bargain” in IIL – that developing states benefit from sacrificing a measure of their regulatory sovereignty to investment treaty protections in order to attract foreign investment¹¹² – because they still accept that foreign investment is a prerequisite for development,¹¹³ subsequently necessitating special protection. In contrast, degrowth emphasizes other, community-oriented, grassroots forms of economic organizing that refute the economic rationale behind this grand bargain. Therefore, for there to be more balance in the regime, norms largely absent in IIL, such as investor responsibility or obligations, would necessarily need to be given importance with clearly codified provisions in investment agreements and given precedence in international arbitration.¹¹⁴ The difference between degrowth, with its refutation of the economic rationale and sustainable development, with its maintaining of a balance between the economic, social, and environmental factors, can be seen in some of the scholarship about counter-claims.

Assuming that arbitration is a desirable feature in IIL and one that states want to maintain,¹¹⁵ there is no guarantee that tribunals will read either principles of sustainable development or degrowth into their decisions as even the newer provisions in the agreements listed above maintain vague wording¹¹⁶ and there is no binding precedent in

¹⁰⁹ A number of the more high profile cases include: *Compañía del Desarrollo de Santa Elena, S.A. v The Republic of Costa Rica*, Award of 17 February 2000, ICSID Case No. ARB/96/1; *Metalclad Corporation v The United Mexican States*, Award of 30 August 2000, ICSID Case No. ARB(AF)/97/1; *Técnicas Medioambientales Tecmed, S.A. v The United Mexican States*, Final Award of 29 May 2003, ICSID Case No. ARB(AF)/00/2; *Methanex Corporation v United States of America*, UNCITRAL, Final Award of the Tribunal on Jurisdiction and Merits, 3 August 2005; *Bear Creek Mining Corporation v Republic of Peru*, Final Award of 30 November 2017, ICSID Case No. ARB/14/21.

¹¹⁰ The Sustainable Development Goals can be found online: <https://sdgs.un.org/goals>.

¹¹¹ Maria CHOCHORELOU and Carlos Espaliu BERDUD, “Sustainable Development in New Generation FTAs: Could Arbitrators Further the Principle through ISDS?” (2018) 27 *Review of European, Comparative and International Environmental Law* 176.

¹¹² Jeswald W. SALACUSE and Nicholas P. SULLIVAN, “Do BITs Really Work?: An Evaluation of Bilateral Investment Treaties and Their Grand Bargain” in Karl P. SAUVANT and Lisa E. SACHS, eds., *The Effect of Treaties on Foreign Direct Investment: Bilateral Investment Treaties, Double Taxation Treaties, and Investment Flows* (Oxford: Oxford University Press, 2009), 109.

¹¹³ Pahuja, *supra* note 25 at 115.

¹¹⁴ James GATHII and Sergio PUIG, “Introduction to the Symposium on Investor Responsibility: The Next Frontier in International Investment Law” (2019) 113 *AJIL Unbound* 1.

¹¹⁵ Maria Laura MARCEDDU and Pietro ORTOLANI, “What is Wrong with Investment Arbitration? Evidence from a Set of Behavioural Experiments” (2020) 31 *European Journal of International Law* 405.

¹¹⁶ Chochorelou and Berdud, *supra* note 111 at 180–5

arbitration.¹¹⁷ Nonetheless, tribunals are gradually recognizing counter-claims based on human rights and environmental concerns in recent investor-state arbitration.¹¹⁸ These developments are potentially beneficial to developing states because counter-claims could allow states the ability to challenge investor claims with the investors' own environmental and social misconduct, like Argentina did in *Urbaser v Argentina* when it brought human rights-based counter-claims over Urbaser's failure to provide drinking water to local communities.¹¹⁹ Similarly, in *Aven v Costa Rica*, Costa Rica brought counter-claims against the claimants for environmental damage that breached their environmental obligations according to international law.¹²⁰ However, such counter-claims have thus far not precipitated in the kind of rebalancing desired by proponents because, while tribunals like in *Urbaser* and *Aven* have recognized their jurisdiction over such matters, enforcing substantive international human rights or environmental obligations on investors from international legal instruments remains difficult.¹²¹ In *Urbaser*, the counter-claims failed on merit because the tribunal reasoned that positive obligations of international human rights must fall on states and, in *Aven*, the tribunal disallowed the counter-claims based on procedural grounds concerning the substantiation of claims and their valuation.¹²²

How to implement such provisions in IIL like substantive investor obligations through facets like state counter-claims remains a point of contestation.¹²³ In line with the tribunal in *Urbaser*, Shao points out that it is more within domestic law's remit to hold foreign investors accountable to a state's regulations because "domestic laws are better placed to regulate in detail the conduct of private enterprises, to establish criteria of liability, and to prescribe remedies" whereas international law should only "oblige states to take necessary measures or to provide appropriate remedies under their domestic laws".¹²⁴ While the role of domestic law is and will remain essential in holding foreign investors accountable to their host state's regulations, this reasoning does not rebut the benefits a provision elevating environmental and social concerns to the international plane might bring to rebalancing IIL. A state, particularly a developing state, should have the capacity to invoke international law to make environmental or human rights-based counter-claims against a foreign investor in the same way many investment agreements provide the foreign investor a way to elevate contractual breaches to treaty breaches with the umbrella clause.¹²⁵ An IIL oriented around degrowth would prioritize states' ability to rebalance their investment agreements with provisions emphasizing investor obligations to international environmental and social norms.

¹¹⁷ Irene M. TEN CATE, "The Costs of Consistency: Precedent in Investment Treaty Arbitration" (2013) 51 Columbia Journal of Transnational Law 418.

¹¹⁸ *David R. Aven and Others v. Republic of Costa Rica*, Award of the Tribunal, 18 September 2018, ICSID Case No. UNCT/15/3 [*Aven v Costa Rica*]; *Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. The Argentine Republic*, Award of 8 December 2016, ICSID Case No. ARB/07/26 [*Urbaser v Argentina*]; *Chevron Corporation and Texaco Petroleum Corporation v. The Republic of Ecuador (II)*, First Partial Award on Track I, 17 September 2013, UNCITRAL, PCA Case No. 2009-23.

¹¹⁹ *Urbaser v Argentina*, *supra* note 118 at para. 36.

¹²⁰ *Aven v Costa Rica*, *supra* note 118 at paras. 185, 387.

¹²¹ Jean Ho, "The Creation of Elusive Investor Responsibility" (2019) 113 AJIL Unbound 10.

¹²² Debadatta BOSE, "David R Aven v Costa Rica: The Confluence of Corporations, Public International Law and International Investment Law" (2020) 35 ICSID Review 20 at 21-3.

¹²³ SHAO Xuan, "Environmental and Human Rights Counter-claims in International Investment Arbitration: At the Crossroads of Domestic and International Law" (2021) 24 Journal of International Economic Law 157; Markus KRAJEWSKI, "A Nightmare or a Noble Dream? Establishing Investor Obligations Through Treaty-Making and Treaty-Application" (2020) 5 Business and Human Rights Journal 105.

¹²⁴ Shao, *supra* note 123 at 164.

¹²⁵ *Ibid.*

Perhaps more importantly, the perspective of degrowth draws attention to how an argument like the former regarding counter-claims remains within a growth-oriented logic. For example, Shao and Krajewski both point out substantive international obligations' potential discouragement of international investment entering developing states as a reason against codifying investor responsibility into international agreements.¹²⁶ While these authors' arguments are not explicitly from the standpoint of sustainable development, their point is predicated on the same background assumption as sustainable development that comprises the grand bargain. This background assumption accepts the need of foreign investment in order for developing states to meet their growth targets, like Goal 8 of the Sustainable Development Goals. By arguing that developing states should not seek to codify investor responsibility into investment agreements, commentators are accepting that, for foreign investors to sink their capital into potentially risky investment environments, they will require more attractive investment circumstances that will not place too onerous responsibilities upon them. Consequently, counter-claims should not be enforced through provisions invoking international legal protections.

Degrowth refutes and offers an alternative to this growth-oriented rationale. Degrowth emphasizes developing states' ability to reorient their economies around community-oriented, less materially demanding practices. Developing states that are not beholden to capitalist forms of production are much more likely to model their investment agreements according to their own requirements – which may amount to international obligations for investors. Moreover, if foreign investors rely on the expansion of capital like theorists of alternative political economy suggest,¹²⁷ developing states have more bargaining power than is the dominant understanding. Given foreign investors' structural imperative to expand, if developing states make a concerted effort (reminiscent of the New International Economic Order, for instance) to not outcompete one another in a regulatory race to the bottom following capitalist economic rationale, foreign investors will meet conditions such as counter-claims invoking international legal protections if they desire to expand into these foreign markets.

Fundamentally, the perspective from degrowth insists on developing states' ability to decide for themselves strategies towards foreign investment, or divestment, that work for them outside of the capitalist, growth-oriented framework. Indeed, there are examples of developing states already stepping outside of the dominant practice in IIL. For example, the Southern African Development Community's Model Bilateral Investment Treaty, published in 2012, included several uniquely worded provisions including a section on the rights and obligations of investors towards state parties concerning environmental, human rights, and other relevant issues.¹²⁸ Latin America has been a major site of contestation with the regime and has seen states both pull out of dispute forums like the International Centre for Settlement of Investment Disputes and assert indigenous peoples' rights to collective property in the Inter-American human rights body.¹²⁹ These examples serve to illustrate that developing states can make the regime of international investment work for their sovereign interests. If that means that they write internationally binding human rights or environmental obligations into their investment treaties, they should be able to do so without the growth-oriented rationales persuading them otherwise.

¹²⁶ *Ibid.*, at 164; Krajewski, *supra* note 123 at 120.

¹²⁷ Harvey, *supra* note 23.

¹²⁸ Francesco SEATZU and Paolo VARGIU, "Africanizing Bilateral Investment Treaties (BITS): Some Case Studies and Future Prospects of a Pro-Active African Approach to International Investment" (2015) 30 Connecticut Journal of International Law 143 at 157.

¹²⁹ Lorenzo COTULA, "(Dis)integration in Global Resource Governance: Extractivism, Human Rights, and Investment Treaties" (2020) 23 Journal of International Law 431 at 443–4.

To revisit Knox, these opportunities in IIL present the potential for real progressive change that could amount to a significant paradigm shift in I.Econ.L. because the logic of growth would no longer be the guiding rationale in the international law concerning foreign investment.

B. Corporate Governance and the Shadow Economy

Similar to how the background assumption of economic growth insulates investors' interests in IIL by keeping them out of reach of international legal obligations, this section demonstrates how corporate social responsibility exhibits a growth-oriented rationale which insulates MNCs by only holding themselves accountable for their environmental and social misconduct. Alternatively, where corporate social responsibility focuses on MNCs becoming more compliant with environmental and social directives through self-regulation, degrowth identifies MNCs as the central actors in the crises currently experienced globally and explicitly shifts its focus to redistributing wealth from these private interests to the public commons.¹³⁰ A shift towards degrowth in corporate governance would entail a shift away from the promotion of corporate social responsibility towards more substantially addressing MNC's role in the "shadow economy,"¹³¹ the economy organized around a concerted domestic and international effort by MNCs to recoup tax losses and avoid international tax liabilities, commonly referred to as base erosion and profit shifting.

MNCs represent one of the central drivers of the global economy and as a corollary have a profound impact on both people's livelihoods and the material throughput affecting the environment.¹³² However, the difficulty facing international corporate governance is a matter of jurisdiction and how MNCs can be regulated at an international level,¹³³ as the corporation has traditionally been able to evade international liability by its becoming "a private institution governable only by rules of commercial law".¹³⁴ As international law is fundamentally configured to mediate the legal relations between states, there are very limited direct international legal obligations on MNCs.¹³⁵ Scholars and policy-makers recognize this difficulty, but there is no environmental transformation without addressing the enormous role multinationals play in shaping the relationship between the economy and environment.¹³⁶

Consequently, corporate social responsibility came to be promoted as a medium for consensus and self-regulation to make up for MNC's limited international legal liability.¹³⁷ Soft law instruments embodying the principle of corporate social responsibility emerged

¹³⁰ Hickel, *supra* note 41 at 174–82, 225–9.

¹³¹ Joseph E. STIGLITZ and Mark PIETH, "Overcoming the Shadow Economy" (November 2016) at 4, online: Friedrich-Ebert-Stiftung <<https://library.fes.de/pdf-files/iez/12922.pdf>>.

¹³² See for a brief overview of the size and extent of MNCs and their global economic impact: Elisa MORGERA, "The Need for Corporate Environmental Accountability", in Elisa MORGERA, *Corporate Accountability in International Environmental Law* (Oxford: Oxford University Press, 2009), 3.

¹³³ Janet DINE, "Corporate Regulation, Climate Change and Corporate Law: Challenges and Balance in an International and Global World" (2015) 26 *European Business Law Review* 173 at 174–6.

¹³⁴ Richard TUDWAY, "The Juridical Paradox of the Corporation" in Fiona MACMILLAN, ed., *International Corporate Law - Volume 2 2002* (Oxford: Hart Publishing, 2003), 65 at 66.

¹³⁵ Carlos M. VÁZQUEZ, "Direct vs. Indirect Obligations of Corporations Under International Law" (2005) 43 *Columbia Journal of Transnational Law* 927.

¹³⁶ Sarah E. LIGHT, "The Law of the Corporation as Environmental Law" (2019) 71 *Stanford Law Review* 137.

¹³⁷ Kenneth W. ABBOTT and Duncan SNIDAL, "International Regulation Without International Government: Improving IO Performance Through Orchestration" (2010) 5 *The Review of International Organizations* 315.

to fill the gap in governance between MNCs and their environmental and social impact.¹³⁸ Corporate social responsibility can be understood as a kind of corporate self-regulation¹³⁹ that is promoted through strategies such as compliance with national laws, controlling externalities (risks), charity, and green innovation.¹⁴⁰ Perhaps the most recognizable is the United Nations Global Compact, introduced in 2000.¹⁴¹ The Global Compact is composed of companies and stakeholders who align with the Compact's ten principles incorporating practices of sustainable development, human rights, and anticorruption. Another prominent example, except it is organized around state membership, is the Organisation for Economic Co-operation and Development's (OECD) Guidelines for Multinational Enterprises. It has a similar mandate for its members as the Global Compact. It prescribes a set of standards for its members based upon other international instruments, such as the UN Declaration of Human Rights, and its first principle states to, "Contribute to economic, environmental and social progress with a view to achieving sustainable development."¹⁴²

With its origin already couched in the existence of MNCs, international organizations easily linked and promoted corporate social responsibility as an effective way to nurture sustainable development practices in the business world.¹⁴³ However, its efficacy at balancing social and environmental interests with corporate interests remains contested.¹⁴⁴ Critics have pointed out that the self-regulatory measures of corporate responsibility mechanisms still subscribe to a business first model where, rather than considering the needs of different stakeholders, corporate social responsibility co-opts these stakeholders' interests into the neoliberal orthodoxy of putting the interests of the corporation first.¹⁴⁵ MNCs are still dominantly viewed as the engines of a healthy, growing economy and as a corollary their interests represent the bottom line. From the perspective of degrowth, corporate social responsibility, with its close connection to sustainable development, maintains the background assumption of the capitalist growth imperative. This can be seen in the OECD Guidelines' statement confirming their role to "encourage the positive contribution which multinational enterprises can make to economic, social and environmental progress, and minimise and resolve difficulties which may arise from their operations".¹⁴⁶ This statement insulates MNCs from their environmental and social harm they produce by automatically placing them as the solution despite their role in causing the many problems. There are three areas, *inter alia*, where corporate social responsibility can be seen to fall short in reconciling MNCs' economic interests with environmental and social interests.

¹³⁸ Wesley CRAGG, "Multinational Corporations, Globalisation, and the Challenge of Self-Regulation" in John J. KIRTON and Michael J. TREBILCOCK, eds., *Hard Choices, Soft Law: Voluntary Standards in Global Trade, Environment and Social Governance* (London: Routledge, 2004), 213.

¹³⁹ Bantekas, *supra* note 37 at 311.

¹⁴⁰ Jane NELSON, *Building Linkages for Competitive and Responsible Entrepreneurship* (Hollis: UNIDO and Fellows of Harvard College, 2007) at 57–8.

¹⁴¹ UN Global Compact, "The Ten Principles of the UN Global Compact", online: UN Global Compact <<https://www.unglobalcompact.org/what-is-gc/mission/principles>> [Global Compact].

¹⁴² OECD, *OECD Guidelines for Multinational Enterprises 2011 Edition* (Paris: OECD Publishing, 2011) at 19, online: OECD <<https://www.oecd.org/corporate/mne/48004323.pdf>> [OECD Guidelines].

¹⁴³ Michael BLOWFIELD, "Corporate Social Responsibility: Reinventing the Meaning of Development?" (2005) 81 *International Affairs* 515 at 515–6.

¹⁴⁴ Christian VOEGTLIN and Nicola M. PLESS, "Global Governance: CSR and the Role of the UN Global Compact" (2014) 122 *Journal of Business Ethics* 179.

¹⁴⁵ Subhabrata Bobby BANERJEE, "Corporate Social Responsibility: The Good, the Bad and the Ugly" (2008) 34 *Critical Sociology* 51 at 72; Timothy M. DEVINNEY, "Is the Socially Responsible Corporation a Myth? The Good, the Bad, and the Ugly of Corporate Social Responsibility" (2009) 23 *Academy of Management Perspectives* 44.

¹⁴⁶ OECD Guidelines, *supra* note 142 at preface.

First, as Sethi and Schepers point out, initiatives like the Global Compact have done much to produce reputational benefits for the MNCs involved, even when there is little substantive evidence of meaningful implementation of the principles.¹⁴⁷ In other words, corporate social responsibility provides MNCs with a positive public image that promotes them as vehicles for social and environmental stewardship, even though they consistently prove themselves otherwise. For example, British Petroleum and Shell both maintained active status on the UN Global Compact after British Petroleum's disaster in the Gulf of Mexico in 2010 and Shell's record of environmental degradation in Nigeria's Niger Delta.¹⁴⁸ In this example, these MNCs' reputations were insulated against their environmental actions by them being able to continue to point to their nominal commitment to corporate social responsibility.

Secondly, corporate social responsibility promotes MNCs as vehicles for green innovation while, primarily, leaving reducing their environmental impact up to their discretion. For example, the Global Compact's ninth principle focuses on MNCs' ability to "encourage the development and diffusion of environmentally friendly technologies".¹⁴⁹ By all means, the development of green technologies and renewable energy is imperative to reduce environmental degradation and greenhouse gasses. However, by focusing primarily on innovation, this strategy ignores the issues discussed above like the Jevon's paradox and the fact that current technology is nowhere close to being capable of turning the environmental crisis around.¹⁵⁰ For just one recent example, the world's largest carbon capture plant opened in 2021 in Iceland. Carbon capture is considered a crucial feature in the ongoing fight against climate change. However, this plant's operation will only remove three seconds worth of a year's global carbon output.¹⁵¹ Green innovation will be a necessity in the future fight against environmental degradation, but it must coincide with action towards reducing overall material throughput.

Finally, one of the most apparent areas that corporate social responsibility has fallen short is in base erosion and profit shifting. The kind of self-regulation engendered by corporate social responsibility initiatives like the Global Compact does not account for many of the legal methods by which multinationals can avoid their home country tax systems by moving their operations to tax havens.¹⁵² These methods are not technically illegal but exist rather in the gaps and mismatch between states' tax systems. In order to avoid double taxation, states have agreed to over 3,000 bilateral tax treaties between one another, allowing for transparency and collaboration between state parties.¹⁵³ However, the intensely complex nature of corporate subsidiaries corresponding to increasing globalization has made it possible for MNCs to step outside of treaty jurisdictions and domicile in third countries that provide drastically lower tax rates than either home or host country.¹⁵⁴ Through profit-shifting practices such as transfer mispricing, strategic IP locations,

¹⁴⁷ S. Prakash SETHI and Donald H. SCHEPERS, "United Nations Global Compact: The Promise-Performance Gap" (2014) 122 *Journal of Business Ethics* 193 at 204.

¹⁴⁸ Voegtlin and Pless, *supra* note 144 at 180.

¹⁴⁹ Global Compact, *supra* note 141 at Principle 9.

¹⁵⁰ Diana STUART, Ryan GUNDERSON, and Brian PETERSEN, *The Degrowth Alternative: A Path to Address our Environmental Crisis?* (London: Routledge, 2020) at 14–20.

¹⁵¹ Aylin WOODWARD, "The World's Biggest Carbon-Removal Plant Just Opened. In a Year, It'll Negate Just 3 Seconds' Worth of Global Emissions" (25 September 2021), online: Business Insider <<https://www.businessinsider.com/carbon-capture-storage-expensive-climate-change-2021-9?r=US&IR=T>>.

¹⁵² Jasmine M. FISHER, "Fairer Shores: Tax Havens, Tax Avoidance, and Corporate Social Responsibility" (2014) 94 *Boston University Law Review* 337 at 339–46.

¹⁵³ Robert T. KUDRLE, "Tax Havens and the Transparency Wave of International Tax Legalization" (2016) 37 *University of Pennsylvania Journal of International Law* 1153 at 1159.

¹⁵⁴ *Ibid.*, at 1162–3.

debt shifting through intracompany loans, tax treaty shopping, and strategic corporate inversions¹⁵⁵ MNCs have effectively been able to achieve double non-taxation. The persistence of these practices is regularly evinced by the various data leaks over the years such as the Luxleaks, Paradise, and most recently the Pandora Papers.¹⁵⁶ One study estimates that tax havens are responsible for keeping 500–600 billion of corporate tax dollars (US) out of the reach of domestic tax jurisdictions.¹⁵⁷ These practices are problematic because they take what could be state funding for green infrastructure or other public endeavours and shift domestic tax burdens on other sections of society such as income earners.

With these shortcomings of corporate social responsibility in mind, degrowth's re-orientation of corporate governance would necessarily entail the promotion of a binding international tax agreement that requires tax accountability at both a domestic and international level. None of degrowth's lofty aims, such as a Green New Deal without growth, reduction in working hours, or a revolution in urban planning come without a complete overhaul of the global jobs and tax sectors. Thousands, if not millions, of people would require public programs like retraining, a universal basic income, or job guarantees.¹⁵⁸ Accordingly, degrowth insists that commons or community-oriented programs can only exist concomitant to restructuring global tax governance on MNCs.¹⁵⁹ It therefore supports a more concerted effort by states to recuperate the lost tax revenue through several ideas, including a binding multilateral convention that taxes multinational's global profits,¹⁶⁰ stronger transparency mechanisms, and domestic regulations that make it illegal for domiciled corporations to have business operations in non-cooperative jurisdictions.¹⁶¹

A comprehensive multilateral tax convention would bring the benefit of further networking between states, assist states in tax administration, engender co-operation in taxing MNCs with multiple domiciles, and weaken treaty shopping opportunities.¹⁶² The OECD has spearheaded efforts in these areas with its Base Erosion and Profit Shifting project. This project has put forward a country-by-country reporting mechanism amongst its members to increase intercountry tax transparency and a multilateral agreement called the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS.¹⁶³ This instrument includes a number of modifications aimed at decreasing base erosion and profit shifting that apply to its signatories' already existing bilateral tax treaties.¹⁶⁴ However, concerns remain about these initiatives' inclusiveness regarding

¹⁵⁵ Sebastian BEER, Ruud DE MOOIJ and LIU Li, *International Corporate Tax Avoidance: A Review of the Channels, Magnitudes, and Blind Spots*, International Monetary Fund Working Paper WP/18/168, 23 July 2018, at 7–10.

¹⁵⁶ International Consortium of Investigative Journalists, "Offshore Havens and Hidden Riches of World Leaders and Billionaires Exposed in Unprecedented Leak" (3 October 2021), online: ICIJ <<https://www.icij.org/investigations/pandora-papers/global-investigation-tax-havens-offshore/>>.

¹⁵⁷ Nicholas SHAXSON, "Tackling Tax Havens" (2019) 56 *Finance & Development* 6 at 7, online: IMF <<https://www.imf.org/external/pubs/ft/fandd/2019/09/tackling-global-tax-havens-shaxon.htm>>.

¹⁵⁸ Hickel, *supra* note 41 at 221.

¹⁵⁹ Kallis, Paulson, D'Alisa, and Demaria, *supra* note 43 at 78–9.

¹⁶⁰ Reuven S. AVI-YONAH, "Hanging Together: A Multilateral Approach to Taxing Multinationals" (2016) 5 *Michigan Business & Entrepreneurial Law Review* 137 at 141–4.

¹⁶¹ Stiglitz and Pieth, *supra* note 131 at 14.

¹⁶² KIM Jung-hong, "A New Age of Multilateralism in International Taxation?" (2015) 21 *Seoul Tax Law Review* 227 at 237.

¹⁶³ OECD, "Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS", online: <<https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-beps.htm>>.

¹⁶⁴ Reuven S. AVI-YONAH and XU Haiyan, "A Global Treaty Override? The New OECD Multilateral Tax Instrument and Its Limits" (2018) 39 *Michigan Journal of International Law* 155.

developing states since OECD states presided over their creation which could result in them unevenly representing powerful states' interests.¹⁶⁵ In order for a multilateral tax treaty to be effective, there must be a broad consensus across the international community that its benefits will be evenly distributed. Therefore, to make such efforts inclusive of developing states, the convention and reporting mechanisms need to be based on agreed upon principles of fairness within domestic tax systems alongside an emphasis on the involvement of least developed states in any future decision-making.¹⁶⁶

Fundamentally, degrowth would differ from corporate social responsibility by refuting the latter's background assumption about the intrinsic benefit MNCs have on growth and, as a corollary, their role in achieving sustainable development. Rather than leaving MNCs' relationship to social and environmental factors up to their discretion, degrowth would emphasize the importance in holding MNCs legally accountable to their respective tax liabilities through a concerted effort between domestic and international bodies in a binding international tax agreement. To again invoke Knox, such strategies would not be pursued because they are "the law", but because they would advance the interests of progressive constituencies that do not equate the economic health of MNCs with environmental and social well-being.

III. Conclusion

Given the dire contemporary circumstances of both global climate change and wealth inequality, I.Econ.L. must continue to grapple with its role in attenuating or exacerbating these dynamics globally. I.Econ.L.'s current integration of the framework of sustainable development has been both a step in the right direction and a hindrance to progressively tackling these exigencies. On the one hand, it has introduced the importance of social and environmental factors to an area of international law that previously had the economy as its dominant paradigm. On the other hand, sustainable development has never been able to transcend its background assumption of a growth-oriented political economy. Sustainable development contains within its domain assumptions a contradiction between these two aspects that will never enable it to provide a paradigm shift from fundamental economism to genuine economic, social, and environmental sustainability. Degrowth, with its postulate concerning the active contraction of capitalist growth, enables a group of coherent domain assumptions to organize the economic, social, and environmental society. Degrowth would represent a paradigm shift for the thought, discourse, and activity taking place within I.Econ.L. This paradigm shift would be visible in an IIL that does not prioritize the protection of foreigner's capital over the specific social or environmental needs of a host state and a global corporate governance that prioritizes the reining in of a shadow economy that disables states from providing the resources for their commons. Taken together, degrowth would amount to a paradigm shift for international economic law.

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¹⁶⁵ Arthur COCKFIELD, "Shaping International Tax Law and Policy in Challenging Times" (2018) 54 *Stanford Journal of International Law* 223 at 231.

¹⁶⁶ Irene BURGERS and Irma MOSQUERA, "Corporate Taxation and BEPS: A Fair Slice for Developing Countries?" (2017) 1 *Erasmus Law Review* 29 at 37-38.

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