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DOI

[10.1093/oso/9780198889755.003.0004](https://doi.org/10.1093/oso/9780198889755.003.0004)

Publication date

2024

Document Version

Final published version

Published in

Labour Law Utopias

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Citation for published version (APA):

Zekić, N. (2024). Labour Law for Degrowth and Meaningful Work. In N. Bueno, B. ter Haar, & N. Zekić (Eds.), *Labour Law Utopias: Post-Growth and Post-Productive Work Approaches* (pp. 51-70). Oxford University Press. <https://doi.org/10.1093/oso/9780198889755.003.0004>

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Labour Law for Degrowth and Meaningful Work

Nuna Zekić

I. Introduction

As labour law scholars, we often either start or finish our scholarly work with the explanation that the ‘world of work’ is changing and note that labour law needs to adapt to those changes. The challenges that the field faces are not trivial: Globalization and intensified market competition, technological changes and the use of artificial intelligence (AI), falling unionization rates, growing economic inequality, climate change and the need to transition to a truly sustainable economy—they all affect the workplace and work relations. Thinking in terms of utopias (for labour law) can seem to be wishful thinking, because many of these challenges have been debated for a long time, while seeing too little improvement. However, the Covid-19 pandemic has taught us that big changes can happen fast and that ideas for a better future are never wasted.

When we think about how labour law should look in an ecologically sustainable and just future, we need to include the question of what meaning paid work has in people’s lives and in our societies. After all, paid work is a powerful driver of the economy. Most governments have always pursued, and still pursue, full employment as one of their main social policy objectives. However, as will be explained below, an economy dependent on continuous economic growth (eg measured as Gross Domestic Product (GDP)) comes with costs and is ecologically not sustainable. Greenhouse gas emissions, waste, and pollution are causing environmental problems for the entire globe. In the end, we must prioritize the environment, as both society and economy are dependent on it.¹

¹ Halliki Kreinin and Ernest Aigner, ‘From “Decent Work and Economic Growth” to “Sustainable Work and Economic Degrowth”: A New Framework for SDG 8’ (2022) 49 *Empirica* 283.

A transition to an economy that is in balance with planetary boundaries will most likely have to involve some kind of degrowth policy.

This chapter further explains that argument and explores the implications for labour law. First, the post-growth approach and the degrowth strategy will be explained (Section II). Next, it unfolds how current labour law is bound up with growth dynamics (Section III). The chapter then explores what role labour law can play in a post-growth society (Section IV). Section V concludes.

II. Post-Growth Approach and Degrowth Strategy

Climate change is a global problem and is, therefore, on top of the agenda of many international organizations. It has led to important international treaties and declarations, such as the Paris Climate Accords of 2015, the UN 2030 Agenda for Sustainable Development, the 2023 UN High Seas Treaty, the 2015 ILO Guidelines for a Just Transition, and the 2019 EU ‘Green Deal’. There seems to be consensus—at least based on these documents—on the need to change the (fossil-fuelled) economy to address climate change, even though this consensus is yet to be reached on many national levels where most of the concrete steps need to be taken.

These steps towards a different kind of economy are good steps in terms of ecological sustainability. The so-called ‘new’ economy seeks to develop a sustainable economic system. By contrast, the ‘old’ market economy, which is in fact the economy we are still living in, does not take into account the adverse environmental impacts. There is, however, no way to escape the evidence that greenhouse gas emissions have been rising globally, resulting in climate change. The fossil-driven industries are especially problematic in this regard, also because natural resources are not inexhaustible. It has become clear that our fossil-fuelled economies of production and consumption have led to a ‘climate emergency’ including habitat and biodiversity loss.²

Businesses in the old and still dominant capitalist economy have one purpose above all others: to make a profit. Building on the concepts of ‘use-value’ and ‘exchange-value’ from Marx’s *Capital*, Hickel (and many others) have shown that under capitalism, it is not enough to generate a steady profit.³ Because there is no end point—the profit is not meant to satisfy particular

² eg Subhabrata Bobby Banerjee and others, ‘Theoretical Perspectives on Organizations and Organizing in a Post-Growth Era’ (2021) *Organization* 338.

³ Jason Hickel, *Less is More: How Degrowth Will Save the World* (Penguin Random House 2021) 81–83.

concrete (human) needs—the goal becomes to reinvest that profit (that has become *capital*) to expand the production process and generate more profit than the year before. If capital sits still, it loses value due to inflation, depreciation, etc. That is why our economy relies on *growth*. And growth, as Kallis and others argue, requires continuous enumeration and valorization of unmonetized ‘goods’ and services—environmental, caring, and relational—and their integration into the market.⁴

But it’s not only how the capitalist system works that ensures the focus is on growth. There are all kinds of (legal) infrastructures created to facilitate the expansion of capital: limited liability, corporate personhood, shareholder value rules, etc.⁵ In addition, governments have placed GDP growth at the centre of their economic policies for decades, even though GDP is a system that reveals the monetary value of all the goods and services produced in the economy, but does not care whether these economic activities are useful or destructive.⁶ It says nothing about possible adverse effects of those economic activities on the environment or society. In addition, GDP only counts the activities that are exchanged on the *market*. As Hickel explains: ‘If you cut down a forest for timber, GDP goes up. . . . If you grow your own food, clean your own house or care for your ageing parents, GDP says nothing. It only counts if you pay companies to do these things for you.’⁷

National governments have not been alone in using GDP growth to manage economies, thus internalizing the interests of capital. International organizations, such as the Organisation for Economic Cooperation and Development (OECD) and the International Monetary Fund (IMF), have also focused on reducing all possible barriers to making a profit and to advance GDP growth. Many industries that were once in public hands have become privatized in the last few decades, including the financial industry, where states have removed important national decisions (eg money supply) from the realm of democratic choice and attributed them to markets and independent bodies (eg Central Banks).⁸ This (neoliberal) policy has also—or perhaps, especially—been pushed across the Global South.⁹ Policies advancing economic growth—pursued even in societies that have attained relatively high levels of income and

⁴ Giorgos Kallis, Christian Kerschner, and Joan Martinez-Alier, ‘The Economics of Degrowth’ (2012) *Ecological Economics* 173.

⁵ eg Katharina Pistor, *The Code of Capital. How the Law Creates Wealth and Inequality* (Princeton UP 2019).

⁶ Hickel, *Less is More* (n 3) 87.

⁷ *ibid.*

⁸ Kallis and others, ‘The Economics of Degrowth’ (n 4) 173.

⁹ See Chapter 6 by Deva and Anand in this book

wealth—are still justified by saying that GDP growth is the only way to reduce poverty, to create jobs, and to improve people’s lives. A second justification often used for the pursuit of economic growth, as Rose explains, is that it spurs ongoing innovation, which enhances people’s opportunities and protects a society against future risks.¹⁰ Finally, continued economic growth is supposed to foster attitudes of openness, tolerance, and generosity, which are essential to the functioning of a liberal democratic society. However, Rose and many others argue that it is possible to achieve these goals through other means and policies.

A. Green Growth

There are indeed steps being taken to include aspects *other* than GDP growth when looking at economic progress. More importantly, more attention is being given to the adverse (ecological) effects of the ‘old’ economy. In the treaties, agreements, and declarations, like the UN 2030 Agenda for Sustainable Development, the Paris Climate Agreement, and others mentioned above, governments commit themselves to lower the environmental costs, for example by reducing carbon dioxide emission. A transition to a ‘green economy’ is the main focus of this currently dominant view, which is now also supported by influential organizations such as the OECD and the World Bank.¹¹ However, this conception of the green economy has been greatly criticized. In this green economy, the focus is still on economic growth, but it should be ‘green growth’. The underlying premise is that society can keep expanding production and consumption while achieving a reduction of emissions and material demands on the planet. There are, for instance, contradictions within the UN 2030 Sustainable Development Goals (SDGs) that, on the one hand, aim to fight climate change (SDG 13) and to promote ‘sustainable consumption and production patterns’ (SDG 12), but on the other hand also promote ‘sustainable growth’. SDG 8 aims to ‘promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all’.¹² However, long-term economic growth is at odds with ecological sustainability.¹³ In this

¹⁰ Julie Rose, ‘On the Value of Economic Growth’ (2020) *Politics, Philosophy & Economics* 128.

¹¹ In 2011, the OECD launched the ‘Green Growth Strategy’, see OECD, *Towards Green Growth*, 25 May 2011. See also World Bank, *Toward a Green, Clean, and Resilient World for All: A World Bank Group Environment Strategy 2012–2022*, 1 May 2015.

¹² UN General Assembly, Res 70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development*, 25 September 2015, 14.

¹³ Kreinin and Aigner, ‘From “Decent Work”’ (n 1) 282.

green growth idea, a lot of trust is being put in technological innovation, for example renewable energy, and the market to ‘decouple’ the economy from fossil fuel and to create economic growth with new (green) jobs, but it remains unclear whether this is possible and how it will happen.

Moreover, the underlying mechanisms of the market economy that not only exacerbate ecological degradation and climate change, but also perpetuate social inequality and global injustice, do not seem to be addressed.¹⁴ An important critique has been that the green economy ‘reconfigures power structures through the economization and monetization of nature, and the ecologization of the economy.’¹⁵ In addition, specifically regarding the UN 2030 Agenda for Sustainable Development, disagreement has been expressed on the way in which ‘decent work’ is coupled with economic growth.¹⁶

It should be noted that there is no *one* coherent green growth approach. To scrutinize the green growth approach, which is *not* the aim of this contribution, would require taking into account the concrete (proposed) policies under this heading. The main point for our purpose is, however, that the green economy seems to assume that continuous growth of production and consumption is desirable and necessary, but that production should be organized differently.

B. Degrowth

The post-growth approach departs from the premise that continuous economic growth and sustainability are irreconcilable. There are different strategies within the post-growth approach, but they all have in common that they do not place (GDP) growth—even if green—at the centre. The degrowth strategy is perhaps the best known. The degrowth strategy criticizes global capitalism and continuous growth policies for not only having accelerated environmental degradation, but also for having failed to bring about greater prosperity for all. Instead, they have caused greater economic inequality and ‘a radical reduction in workers’ bargaining power.’¹⁷ In turn, growing economic inequality has, for example, caused social mobility to fall.¹⁸

¹⁴ See Ariel Salleh, ‘Climate, Water, and Livelihood Skills: A Post Development Reading of the SDGs’ (2016) 13(6) *Globalizations* 952–59.

¹⁵ Beate Littig, ‘Good Work? Sustainable Work and Sustainable Development: A Critical Gender Perspective from the Global North’ (2018) 15(4) *Globalizations* 567.

¹⁶ Gillian MacNaughton and Diane Frey, ‘Decent Work for All: A Holistic Human Rights Approach’ (2011) 26(2) *American University International Law Review* 468.

¹⁷ Aaron Benanav, *Automation and the Future of Work* (Verso 2020) 9.

¹⁸ *ibid* 63. Benanav refers to UN, *Human development report 2019: Beyond Income. Beyond Averages, beyond Today: Inequalities in Human Development in the 21st Century*, 2019.

Just like with the green economy, there is no *one* coherent degrowth strategy. Besides a shared underlying critique of growth-based approaches, the different strategies proposed also have in common that they rely on two pillars: they address environmental degradation on the one hand and economic and social inequality on the other. The degrowth strategy proposed by Hickel¹⁹ has become known as a strategy that purposes a planned, coherent policy to reduce the ecological impact of the economy, reduce inequality, and improve wellbeing.²⁰ Its intention is to slow down the pace of material production and consumption by, for example, ending ‘planned obsolescence’²¹ or introducing a right to repair.²² This resembles the circular economy, but it has a broader scope. Slowing down the pace of material production and consumption would moreover mean gradually scaling down ecologically destructive and ‘socially less necessary’ production, such as fossil fuels, mass-produced meat and dairy, fast fashion, advertising, cars and aviation, including private jets, while expanding other sectors that are socially important like healthcare and education.²³ Scaling down ecologically destructive industries and scaling down on material throughput will eventually lead to employment loss, at least in some sectors, as Hickel acknowledges. However, degrowth is different from a recession, because it is planned and has specific goals, namely to address climate change effectively while at the same time reducing inequality and improving wellbeing. Various solutions are proposed to reach this goal.

To offset the negative consequences of employment losses in some sectors, Hickel proposes all kinds of redistributive measures, notably shortening working hours, redistributing work more evenly, maintaining high enough wages, as well as investing in and expanding public goods so that people can live well. These measures are in fact close to some existing models; the measures are not that ‘radical’ as degrowth strategy would, at first glance, seem to some. However, a radical reduction of income and wealth inequality through a progressive tax system forms an integral part of the degrowth strategy, at least as Hickel and others propose.²⁴ In addition, the degrowth strategy proposed would only mean degrowth for wealthy economies; the Global South could still

¹⁹ Hickel, *Less is More* (n 3).

²⁰ *ibid.*

²¹ This is when products are designed with an artificially limited useful life.

²² The European Commission presented its proposal for a Right to Repair in March 2023, see COM(2023) 155 fin.

²³ Jason Hickel and others, ‘Degrowth Can Work—Here’s How Science Can Help’ (2022) 612 *Nature* 401.

²⁴ *ibid.*

expand its production and consumption.²⁵ This approach resonates with the literature on ecologically unequal exchange between high-income countries and low-income countries as a persistent feature of the global economy from 1990 to 2015.²⁶ High-income countries depend on resource-intensive industrial technologies and infrastructures whose efficient functioning is contingent on annual net transfers of biophysical resources from distant areas.²⁷ Or, in the words of David Doorey: ‘Large and powerful business enterprises produce a substantial proportion of greenhouse gases, and citizens of wealthy nations contribute far more to climate harm than do citizens of poor nations.’²⁸

It could very well be that even without adopting a deliberate degrowth strategy, the economies in the Global North will need to adjust to low- or zero-growth, since growth has been slowing down in high-income countries for decades.²⁹ From the 1970s onwards, rates of manufacturing-output growth stagnated in most countries, resulting in a true global deindustrialization.³⁰ Instead, the service sector has expanded. However, the service sector is generally characterized by low-productivity jobs. Overall, this has resulted in a slowdown in GDP growth rates. Such a slowdown already gives rise to serious challenges in economic policies and we see many industrialized countries struggling to grow their economies.

However, a deliberate degrowth strategy is politically extremely complicated. As Kallis and others argue, growth economies—and mainstream economics—simply do not know how to degrow. According to them, the core question for twenty-first-century economics is no longer how nations get rich, but how they ‘manage without growth.’³¹ In recent years, many academic contributions have been written concerning limits to growth and alternative pathways to wellbeing. These scholars maintain that a form of degrowth is humanity’s best bet to avoid global warming’s devastating effects, as predicted in the reports by

²⁵ The policies for low- and middle-income countries would also have to include cancelling unfair and unpayable debts and curbing unequal exchange in international trade. See also Chapter 6 by Deva and Anand in this book.

²⁶ Christian Dorninger and others, ‘Global Patterns of Ecologically Unequal Exchange: Implications for Sustainability in the 21st Century’ (2021) 179 *Ecological Economics* 1–14.

²⁷ *ibid* 2.

²⁸ David Doorey, ‘Just Transitions Law: Putting Labour Law to Work on Climate Change’ (2017) 30(2) *Journal of Environmental Law and Practice* 226.

²⁹ eg Kate Raworth, *Doughnut Economics: Seven Ways to Think Like a 21st-Century Economist* (Random House 2017) 221.

³⁰ Benanav, *Automation and the Future of Work* (n 17) 28.

³¹ Kallis and others, ‘The Economics of Degrowth’ (n 4) 172.

the UN Intergovernmental Panel on Climate Change (IPCC).³² Nevertheless, many challenges lie ahead.

III. Labour Law and the Growth Economy

A. Labour Law as a Legal Framework for Wage Labour

Paid work is a powerful driver of economic growth.³³ Therefore, considerable attention is paid to *work* in the post-growth literature. Scholars are exploring how work is bound up with growth dynamics, explaining the adverse effects of this, and exploring what role work will play in a post-growth society.³⁴ However, existing (labour) laws are often neglected in such scholarly works (ie usually economic literature), even though some authors acknowledge that ‘paid work in the growth society not only represents a “phenomenon” (as an activity), but also an “institution”, and an “ideology”—with effects on welfare and the environment.’³⁵ This is probably because these observers often focus on other disciplines and treat law as a sideshow.³⁶ However, as Pistor argues in her influential book *Code of Capital*, capitalism cannot function without legal institutions or what she calls ‘legal codes’: capital owes its wealth-creating capacity to its legal coding.³⁷ So, what role does labour law play in the growth economy?

Just like other legal domains, labour law plays a role in determining the ‘rules of the game’ when it comes to how our economies function. As Dermine and Dumont explain, labour law, including social security law (ie social law), is fully integrated into the legal structure of—what they call—the productivist model and what boils down to the ideology of economic growth, as explained above.³⁸ According to Dermine and Dumont, social law is a tool that serves the end pursued by the productivist model, namely to continually increase

³² Kreinin and Aigner, ‘From “Decent Work”’ (n 1) 282; Dominique Méda, ‘Work and Employment in a Post-Growth Era’ in Isabelle Cassiers, Kevin Maréchal, and Dominique Méda, *Post-Growth Economics and Society* (Routledge 2018) 14.

³³ Irmí Seidl and Angelika Zahrnt, ‘Employment, Meaningful Activity and the Post-Growth Society’ in Irmí Seidl and Angelika Zahrnt (eds), *Post-Growth Work* (Routledge 2022) 4.

³⁴ eg Simon Mair, Angela Druckman, and Tim Jackson, ‘A Tale of Two Utopias: Work in a Post-Growth World’ (2020) 173 *Ecological Economics* 1; Seidl and Zahrnt, *Post-Growth Work* (n 33).

³⁵ Kreinin and Aigner, ‘From “Decent Work”’ (n 1) 295.

³⁶ Pistor, *The Code of Capital* (n 5) 4.

³⁷ *ibid.* 12. Pistor shows in depth how land, firms, debt, and know-how have been legally coded as capital.

³⁸ Elise Dermine and Daniel Dumont, ‘A Renewed Critical Perspective on Social Law: Disentangling Its Ambivalent Relationship with Productivism’ (2022) 38(3) *International Journal of Comparative Labour Law and Industrial Relations* 239. According to Dermine and Dumont, productivism is an ideology inherited from the Industrial Revolution, based on the belief that continually increasing

production within society.³⁹ Indeed, at its core, labour law allows for human labour to be exchanged on the labour market, making work itself a commodity. Labour law is constructed around labour exchanged on the market, but it also puts a legal structure in place for wage labour.

In addition to establishing a legal framework for wage labour, labour law institutionalizes power relations and converts factual power into structural power.⁴⁰ Control by the employer over the employee is an integral part of the employment contract, the central feature of labour law. Subordination of the worker to the employer is the distinctive and central element of the legal definition of the employment contract. Even though we can explain this by pointing to the embeddedness of the employment contract in a specific production system, we cannot deny the fact that labour law plays its supporting role for that very same system. The employment contract as a legal institution first distributes power to the employer before it is curtailed by the laws governing the employment contract.

However, labour law is most often defined as *protective law*. And indeed, labour law (albeit implicitly) recognizes the unequal and vulnerable position of workers and gives them a protected status in order to protect their human dignity. By providing different minimum norms and procedures that need to be respected in employment relationships, such as minimum wages and collective bargaining, labour law also modifies the way profits are distributed. However, it is important to stress that the protective goals of labour law have been developed in the framework of a growth- and profit-driven productive system, in the framework of a market economy.⁴¹ As Fudge has put it: ‘Labour law, even during its golden period, was concerned with *production* and *protection*.’⁴² At the same time that labour law limits the employer’s legal right to command, it also constitutes the legal authority of the employer and the subordination of the worker.⁴³ The subordination is not a natural phenomenon, it needs to be created—and coded—in law. Subordination and wage labour are

production in society is both possible and desirable, and that economic growth should be the central objective of all human organization.

³⁹ *ibid* 246.

⁴⁰ Marc Rigaux, *Labour Law or Social Competition Law? On Labour in Its Relation with Capital through Law* (Intersentia 2009) 23.

⁴¹ Nuna Zekić, ‘The Normative Framework of Labour Law’ (2019) 9(2) *Law and Method* 9–10.

⁴² Judy Fudge, ‘Labour as a “Fictive Commodity”’ in Guy Davidov and Brian Langille (eds), *The Idea of Labour Law* (OUP 2011) 123.

⁴³ Simon Deakin, ‘The Many Futures of the Contract of Employment’ in Joanne Conaghan, Richard Michael Fischl, and Karl Klare (eds), *Labour Law in an Era of Globalization: Transformative Practices and Possibilities* (OUP 2002) 187.

very important for economies focused on growth. As Dermine and Dumont explain, it is this form of organization of work that is best able to create value at large scale, because it enables the division of labour.⁴⁴ The employer can purchase the labour needed for production and then break down the complex tasks into smaller, simple tasks carried out by specialized and therefore more efficient workers. These workers can also be steered easily towards (professional) changes according to the company's needs.

Moreover, property relations between employers (ie capital owners) and workers are for the most part left untouched within this system. Employers are *automatically* owners of the fruit of labour. This is often an implicit aspect of labour law, but it is usually made explicit in the legal regulation of the ownership of intellectual property rights. For example, copyright laws will usually stipulate that the person who creates a work becomes the owner of the copyright vested in that work. But when a work is created by an employee in the course of his employment, copyright law stipulates that the employer is the owner of the copyright, unless the parties explicitly agree otherwise. The employees are supposed to be compensated by their wages only. The contribution of labour in a company does not lead to a right to acquire shares in that company. It needs no explanation that next to legal subordination, this is also an important element of the market economy and capital accumulation.

B. Labour Law as Protective, but also Indifferent Law?

We now turn back to the protective side of labour law. As indicated earlier, although labour law legitimizes labour as a commodity exchanged on the market, it also recognizes that labour cannot be separated from the worker and that the worker is dependent on employment. Protection of the worker as the weaker party to the employment contract is therefore one of the main goals of labour and employment law. This is a well-known side of labour law. However, when put against the ecological crisis, a deficit in this approach becomes visible. Some aspects of workers' needs as human beings are protected, but others are not. Similar to the GDP system, which reveals the monetary value of all the goods and services produced in the economy but does not care whether these economic activities are useful or destructive, labour law is designed in a way that it protects workers in formal employment in terms of, for example, income and job security, but it doesn't care whether the work performed (*as*

⁴⁴ Dermine and Dumont, 'A Renewed Critical Perspective on Social Law' (n 38) 252.

an activity) is useful or destructive for the planet, society, or the individual workers involved.

Admittedly, when it comes to adverse environmental impacts, it's the companies, the organizations, and the institutions we should look at in the first place, not the individual jobs. However, having a legal framework in place for the exchange of labour on the market that is practically indifferent to the end that labour is used for has resulted in the situation where the most profitable companies can offer the most profitable jobs and can thus attract some of the best workers. Many of the most profitable jobs are to be found in environmentally destructive industries. Labour law has paid little to no attention to the environmental consequences of productive employment. As long as jobs meet the criteria of decent work, labour law is not concerned with the possible environmental effects of remunerated work, even though the ecological effects of some activities performed in paid employment have historically been damaging. This indifference—or neutrality—towards work as an activity that workers perform contributes to capitalist growth economies.

As important as jobs generally are, at the same time, many jobs do little to enhance individual, family, or community wellbeing.⁴⁵ In addition, they can be dangerous, demoralizing, demeaning, or just plain boring.⁴⁶ Even when a job is stable and relatively well paid, it may still do little for one's own wellbeing. Jobs described by Graeber in his book, *Bullshit Jobs*, are good examples of such jobs.⁴⁷ Graeber's main claim is that in contemporary developed service economies there are many pointless and even pernicious jobs. While usually well paid, people in these jobs do very little of—what Graeber calls—social value, but the jobs themselves take an enormous 'spiritual' toll on the workers. There is, however, no space for such considerations in labour law. Also Graeber's *bullshit jobs* are good jobs, according to labour law standards, because they are stable and relatively well paid.

Why is this problematic? Because, at the same time, labour law and more broadly the social security systems do promote wage labour actively. 'Jobs, jobs, jobs' has been the mantra for many governments in the past few decades. We see a coupling of the growth economy and the right to work, one of the most important notions in labour law. It has a place in many constitutions, and a prominent one in the European Social Charter since it is in the first article. Many ILO Declarations can be seen as an elaboration of this right.⁴⁸ The right is

⁴⁵ See also Bas Rombouts and Nuna Zekić, 'Decent and Sustainable Work for the Future?' (2020) 24(2) *UCLA Journal of International Law and Foreign Affairs* 353.

⁴⁶ MacNaughton and Frey, 'Decent Work for All' (n 16) 633.

⁴⁷ David Graeber, *Bullshit Jobs: A Theory* (Allen Lane 2018).

⁴⁸ See eg ILO Declaration No 122 and No 168.

understood as an obligation on the part of the government to put measures in place that promote and stimulate employment.⁴⁹ It entails an obligation for the state to have a labour market policy in place, which is targeted towards full employment. Income security of individuals depends on performing productive labour. In fact, the realization of a large number of social rights and social security are linked to (having performed) wage labour, like unemployment benefits, pensions, disability allowances. In turn, all kinds of activation policies in social security are geared towards reintegrating individuals as soon as possible back into employment.⁵⁰ This strongly steers individuals to seek employment.

Even though labour law can be described as indifferent to some effects of wage labour, it does, however, identify what type of labour is considered to create economic value and thus should be protected.⁵¹ Labour law only protects 'market work', also called 'wage labour' or 'productive work': work that is remunerated on the market and controlled by an employer. 'Market work' also includes paid employment at public and non-profit organizations that are necessary for a market economy to function. Non-market forms of work, notably reproductive and domestic work, mostly done by women, but also communal work and participation in common affairs, fall outside the scope of labour law. This has been a long-standing critique from the feminist legal scholarship, but it has also been picked up in the post-growth literature.⁵² Feminist scholars have discussed the exclusion of 'family labour' (eg domestic housework and taking care of families), notably from labour law regulation. Family labour is not granted the protection wage labour receives, even though family work is productive work and very necessary for the functioning of the economy. Furthermore, many of its forms converge with conventional employment, such as work performed by housekeepers, nurses, nannies, etc.⁵³ Volunteer work and work done by trainees or interns also falls (largely) outside the boundaries of protection by labour and social security law. Concluding, while labour and social security law strongly promote subordinate wage work, they are indifferent to advancement of meaningful work.

⁴⁹ See eg Colm O'Cinneide, 'The Right to Work in International Human Rights Law' in Virginia Mantouvalou (ed), *The Right to Work: Legal and Philosophical Perspectives* (Hart Publishing 2015) 121.

⁵⁰ Also see Dermine and Dumont, 'A Renewed Critical Perspective on Social Law' (n 38) 253.

⁵¹ *ibid* 245.

⁵² Hickel, *Less is More* (n 3). See also Chapter 9 by Encinas de Muñagorri in this book.

⁵³ Noah Zatz, 'The Impossibility of Work Law' in Guy Davidov and Brian Langille (eds), *The Idea of Labour Law* (OUP 2011) 234, 235.

IV. What Role for Labour Law in a Post-Growth Society?

For a long time, labour law scholars were largely absent from climate discussions. That has been changing in the last couple of years.⁵⁴ As Dermine and Dumont argue, the scientific and social consensus around what they call ‘productivism’ is beginning to crumble; there is currently a crucial momentum for a revival of the critical movement in law.⁵⁵ It is important to think about how labour law can be deployed to support a degrowth strategy. However, for many, one of the important questions is whether degrowth means fewer jobs. Not necessarily. As explained, degrowth means scaling down the production and consumption in ecologically destructive industries and investing in others. It also means redistributing work and income more equally. Furthermore, degrowth is a strategy to stabilize economies; hardly anyone in the degrowth literature is preaching eternal degrowth.⁵⁶ It is important to think about decoupling our labour laws and welfare systems in general from growth. To make them, as it were, agnostic to growth.⁵⁷ So, what role is there for labour law in this post-growth future?

When studying the different degrowth strategies proposed, it quickly becomes clear that the proposed ecological and redistributive measures are inherently connected. The proposed strategies are not only about degrowth, but also about inequality. It can be said that degrowth is in fact about reorienting the economy towards societal welfare. While maintaining that improvements of human welfare and wellbeing can be achieved without GDP growth, Hickel states in his book: ‘It’s not income itself that matters, but how it’s distributed.’⁵⁸ This corresponds with the longstanding labour law goals of distributive justice, income security, social inclusion,⁵⁹ and solidarity.⁶⁰ As explained above, labour law (re)distributes resources, power, and risks to compensate for unequal bargaining power. Whereas tax law (and to some extent social security law) is more about the redistribution of market *outcomes*, labour law directly determines the rules of the labour market. It intervenes in the contractual freedom of the parties because it presupposes that labour exchange cannot be left to market

⁵⁴ eg Doorey, ‘Just Transitions Law’ (n 28) 223; see also eg special issue ‘Work Regulation and Environmental Sustainability’ in (2018) 40(1) *Comparative Labor Law and Policy Journal*, edited by Ania Zbyszewska.

⁵⁵ Dermine and Dumont, ‘A Renewed Critical Perspective on Social Law’ (n 38) 244–45.

⁵⁶ Kallis and others, ‘The Economics of Degrowth’ (n 4) 173.

⁵⁷ Raworth, *Doughnut Economics* (n 29).

⁵⁸ Hickel, *Less is More* (n 3).

⁵⁹ Guy Davidov, *A Purposive Approach to Labour Law* (OUP 2016) 57–59.

⁶⁰ Wolfgang Däubler, ‘Labour Law and Competition’ in Marc Rigaux, Jan Buelens, and Amanda Latinne (eds), *From Labour Law to Social Competition Law?* (Intersentia 2014) 58–59.

forces alone. One could say that this is not redistribution, but rather ‘pre-distribution.’⁶¹ However, this function of labour law is no longer guaranteed.

Before the neoliberal era and mainly in the 1970s, what might have been the ‘golden period’ for labour law in European countries, (re)distribution was a prominent policy theme. In many countries, but also globally, there was the idea that the state had to play a significant role in redistributing income. Moreover, the fact that some individual citizens have incomes that are too low, and the scarcity of resources, were considered to be a collective problem. With the rise of the neoliberal economy, the resource scarcity problem has been strongly individualized; one’s fate has to a large degree—once again—become one’s own problem; this corresponded with the gradual replacement of stable employment relationships with flexible ones, also referred to as non-standard forms of work.⁶²

Strengthening the distributive role of labour law should be one of the core aims of labour law if it is to support a degrowth strategy. But does that mean that the ‘standard’ employment relationship should once again become the norm in a post-growth future? Probably not the old standard employment relationships of lifelong employment, working forty hours per week. In fact, an overall reduction of working hours is one of the recurring proposals for a post-growth future. As stated by Kreinin and Aigner: ‘A reduction in the *quantity* of paid or “productive” employment is necessary to stay within the planetary boundaries, as well as a *qualitative* change in work itself—towards societally and environmentally necessary work.’⁶³ Méda argues, as well, that in a post-growth future, quality should have priority over quantity: ‘Absolute priority must now be given to producing goods and services with lighter ecological and carbon footprints and making the quality of goods and services the crucial criterion.’⁶⁴

If we scale down environmentally destructive industries, consume less, make products that last longer, share products among each other, and reduce food waste, employment in some sectors will inevitably decline. For Hickel, shortening the working week is ‘the way out’ of mass unemployment that might follow a degrowth agenda; it is ‘key to building a humane, ecological economy.’⁶⁵ He proposes introducing a job guarantee (coupled with a ‘living

⁶¹ Nick Bunker, ‘What is predistribution?’ June 2015 <<http://equitablegrowth.org/equitablog/predistribution/>> accessed 11 June 2023.

⁶² David Weil, *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It* (Harvard UP 2014).

⁶³ Kreinin and Aigner, ‘From “Decent Work”’ (n 1) 296–98.

⁶⁴ Méda, ‘Work and Employment’ (n 32) 22.

⁶⁵ Hickel, *Less is More* (n 3) 197, 199.

wage' that is adequate for people to live well) and rolling out retraining programmes so that redundant workers from shrinking industries can transition easily to other sectors, such as renewable energy and public services. The necessary labour can be distributed more evenly among the working population and in this way full employment can be maintained.

Benanav argues that despite the stories of robots replacing humans in almost every activity, it is unlikely that technological progress will lead to a future in which machines have fully substituted human labour.⁶⁶ Even in, what he calls, a post-scarcity world—a world where all people have adequate means of income and access to enough healthcare, education, and welfare to reach their full potential—we will need to find other ways to allocate the necessary labours that serve as the foundation for all other activities. After all, in this post-scarcity world, people would not be in a position where they eventually have to accept the best possible job offered on the labour market to make a living. Following Karl Marx, Thomas More, Étienne Cabet, and Peter Kropotkin, Benanav divides social life into two separate but interrelated spheres: a realm of necessity and one of freedom. The extent of the necessary labour (eg the provision of housing, food, clothing, sanitation, water, electricity, healthcare, education, child and elderly care, or transportation) would need to be decided democratically. Estimates are that these 'common labours' would take up around three to five hours a day.⁶⁷

The focus should be on the quantity of work (reduction of work, more free time) and the quality of work (for the individual and the planet).⁶⁸ It's important to realize that the degrowth proposals are more in the stage of ideas than detailed plans. Most scholars, however, believe that there will remain work that needs to be performed, but people will not have to devote so much time to it as they currently do. There are different ways to distribute this 'necessary labour' that remains to be performed. But it is certain that when labour *needs* to be performed, there is a need for labour laws. Benanav admits there could still be sanctions to ensure that necessary work is actually undertaken.⁶⁹ Indeed, it is plausible that within a society, there will always be work that has to be performed because of its necessity. It is likely that work relations will remain power relations, even though the dynamics would be different than they are

⁶⁶ Benanav, *Automation and the Future of Work* (n 17) 83.

⁶⁷ *ibid* 86. Hickel thinks the reduced working week would be 'thirty or perhaps even twenty hours' per week, Hickel, *Less is More* (n 3) 197.

⁶⁸ On quality of work, see eg Chapter 7 by Bueno in this book.

⁶⁹ Benanav, *Automation and the Future of Work* (n 17) 89.

today.⁷⁰ Existing principles established as part of labour law will still be relevant, for example the right to work or free choice of occupation.⁷¹

For Dermine and Dumont, the right to free choice of work can ‘relativize and even challenge’ productivism.⁷² Free choice of work is a component of the right to work, which is enshrined in several human rights documents and constitutions. Dermine and Dumont rightly emphasize that the right to work does not only entail the obligation for the state to keep increasing the number of jobs available but also obligations for the authorities to respect and protect individuals’ free choice of employment.⁷³ Through its component of freely chosen work, the right to work sets out limits on the duty to work. With free choice of employment, labour law wants to promote individual autonomy and self-fulfilment. This is important in an economy focused on growth, but also in a post-growth economy.

Promoting autonomy and self-fulfilment might be characterized as the ‘old’ goals of labour law, but they will not lose their relevance in a post-growth world. However, linking labour rights to ecological sustainability does bring about a new way of looking at remunerated work, and this new way might lead us to broadening the concept of work in law and policy.⁷⁴ A starting point could be to think about broadening our understanding of ‘good jobs.’ Already in the Philadelphia Declaration, both the material and immaterial dimensions of work were acknowledged: ‘All human beings, irrespective of race, creed or sex, have the right to pursue both their material wellbeing and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.’⁷⁵ The immaterial (or social) dimension of work, however, has not yet been fully addressed in the regulation of work. We need to find ways to align the ‘necessary labour’ in the post-growth world with work through which people can find self-fulfilment.⁷⁶ The existing concept of ‘decent work’ needs to be extended beyond the material needs, including human development and workers’ wellbeing. For many people, work is not just a way to make a living but also a way to contribute to society; work can be important as an act of self-expression, self-fulfilment, and a venue for socialization.⁷⁷ There are

⁷⁰ On power relations, see Chapter 12 by Gamonal in this book.

⁷¹ See Chapter 5 by Carelli in this book.

⁷² Dermine and Dumont, ‘A Renewed Critical Perspective on Social Law’ (n 38) 255.

⁷³ *ibid* 256.

⁷⁴ Paolo Tomassetti, ‘Labour Law and Environmental Sustainability’ (2018) 40(1) *Comparative Labor Law and Policy Journal* 61, 64.

⁷⁵ Annex to ILO-Constitution sub II a.

⁷⁶ Nicolas Bueno, ‘From Productive Work to Capability-Enhancing Work: Implications for Labour Law and Policy’ (2022) 23(3) *Journal of Human Development and Capabilities* 354–72.

⁷⁷ Virginia Mantouvalou, ‘Introduction’ in Virginia Mantouvalou (ed), *The Right to Work: Legal and Philosophical Perspectives* (Hart Publishing 2015) 1.

no reasons to think this will change in a post-growth future where ‘necessary labour’ remains, even though the importance of work in this context will probably diminish if the working time is (drastically) reduced. Instead of only focusing on (material) working conditions, an effort should be made to include ‘meaningful work’ in the labour law discourse.

Vocational training could, for example, be directed more towards the needs of the workers themselves. In the recent years, vocational training and ‘life-long learning’ have been used mostly in the framework of employability and worker’s adaptability.⁷⁸ The credo is: In a flexible (or volatile) market, workers need to be adaptable. However, a right to training and development—provided that it is ‘robust’ enough and gives an individual a right to get training according to one’s own choice—can also be placed within the framework of personal development and autonomy. The workers gain more options to choose work that fits best with their personal interests.

Moreover, the discussion on the division between market work and non-market work and how we treat the two in labour and social security law has not lost its importance. On the contrary, it is increasingly important to investigate the justifications for such divisions, especially if we want to redirect the economy towards meeting the needs of all humans and respecting planetary boundaries. The importance of non-market forms of work, such as caring and communal work, cannot be stressed enough. The same is true of work in public services. During the Covid 19-period, it became clear how important—nay, essential—some jobs are for society.⁷⁹ If reducing working hours were to become a reality, people will have more time to devote themselves to caring, communal, and voluntary work when they find it personally meaningful;⁸⁰ or they will simply have more leisure time. We need to find ways to recognize and reward types of meaningful work other than formal employment, for example by granting tax and social security benefits to workers performing such work.

V. Conclusion

Degrowth is an *agenda*,⁸¹ and as such it needs to be developed and made concrete in a democratic conversation. Ultimately, it’s a matter of politics. Until

⁷⁸ Nuna Zekić, *Werkzekerheid in het arbeidsrecht* (Kluwer 2011).

⁷⁹ ILO, *World Employment and Social Outlook 2023: The Value of Essential Work*, March 2023.

⁸⁰ See, for more on this, Chapter 7 by Bueno in this book.

⁸¹ Federico Savini, ‘Post-growth, degrowth, the doughnut and circular economy: a short guide’, 7 November 2022 <<http://www.planetamateur.com>>> accessed 26 March 2023.

now, no real degrowth policies seem to have been embraced on a significant scale, probably because most politicians think it is unrealistic to hope their electorate will give up on growth. That might be a correct assessment of the current situation. However, in the meantime, our thinking in natural and social sciences about a (global) economic system that is not dependent on growth continues to develop, and labour law scholarship is catching up as well. Even though post-growth thinking is very convincing in the statement that unlimited expansion of production and consumption is impossible on a finite planet, it is only an approach, and it does not have a strategy or an agenda yet.⁸² Degrowth can be that strategy, and doughnut economics⁸³ an analytical tool, but as said: that will depend on political actions taken. *How* a post-growth future can be achieved remains a profound challenge for theorists and for society.

That does not remove the need to think about and investigate possible avenues in which labour law can play a role to facilitate a post-growth society. Many of the 'old' goals and principles of labour law, like (re)distribution, the right to work, and free choice of occupation will remain relevant. We will, however, need to fundamentally rethink the role of work in our society in order to bring the economy back in balance with planetary boundaries and to redistribute labour, income, and wealth more fairly. In this chapter an attempt was made to do just that by bringing degrowth and post-growth thinking in labour law discourse.

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⁸² *ibid.*

⁸³ Raworth, *Doughnut Economics* (n 29).

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