Law, power and the climate crisis: proposing a critical theory approach for EU sustainability law

Kate O'Reilly

A. Introduction

What, and whom, is sustainability law for?[1] This chapter begins with the premise that to answer this question we must consider how the ways in which we *do* legal scholarship shape the unsustainable social structures of the societies that we live in. By centring law as a social institution that produces and stabilises patterns of social ordering, this chapter reflects on a pathway for a critical approach in sustainability law scholarship in the European Union (EU) that is grounded in the Frankfurt School's critical theory of society.[2]

Critical theory operates in a space outside of the epistemological boundaries of conventional legal approaches, which are predicated on an assumption of law as a neutral force or mere instrument of social engineering that reacts to and acts upon the world while remaining, to a large degree,

1 Drawing on the same question proposed by Isailović concerning EU law, see Ivana Isailović, 'Introduction: Critical Legal Approaches in EU Law – Reflections on New Research Directions' (2024) 15(4) Transnational Legal Theory, p. 493.

2 The critical theory tradition referred to throughout this chapter is the Frankfurt School's critical theory of society.

isolated from the realm of the social.[3] What place ought critical theory have in sustainability law scholarship, and by extension legal scholarship more generally? While EU sustainability law scholarship does engage in substantive critique,[4] critique without reflexivity promotes crises.[5] As Koselleck argues, the abstracted moral critique that characterised the Enlightenment project was detached from the institutional reality of politics and power dynamics in society. This disconnect gave rise to instability when critique crystalised into ideological programmes that fostered the historical crises in Western Europe.[6] Like the Enlightenment philosophical project, sustainable development is grounded in a universalised normative vision of a socially just and ecologically viable social order.[7] This is a social order radically different from the extractive capitalist model of economic growth that lies at the centre of contemporary social ordering.[8] Grand visions of sustainable development also risk hardening into prescriptions on development that are detached from the social and that undermine social and ecological sustainability.[9]

The discussion in this chapter reflects on how a critical approach can provide an alternative frame for answering: what, and whom, is sustainability law for? In Section B, the analysis explores how law, when positioned as a social institution, produces and sustains processes of global warming. The failure of conventional legal approaches in capturing the complex entanglement of law with the climate crisis will be traced, alongside the role that legal scholarship plays in disconnecting the collective imaginary

3 For an exception to this see scholarship from the critical legal studies movement in the US and the revitalized field of law and political economy scholarship engage in critical approaches to law, see for example Anna Grear, 'Deconstructing Anthropos: A Critical Legal Reflection on "Anthropocentric" Law and Anthropocene "Humanity"' (2015) 26(3) Law and Critique, p. 225.

4 For an exposition of the disconnect between law that promotes energy communities, and the material reality of these legal entities see Björn Hoops, 'Two Tales of the Energy Commons Through the Lens of Complexity' (2025) 25 Global Jurist, p. 1.

5 Reinhart Koselleck, Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society, Thomas McCarthy (tr.), MIT Press (2000).

6 Ibid.

7 On sustainable development as a grundnorm, see Klaus Bosselmann, 'International Environmental Law in the Anthropocene: Towards a Purposive System of Multilateral Environmental Agreements' (2013) 2(2) Transnational Environmental Law, p. 285.

8 Kate Aronoff et al., A Planet to Win: Why We Need a Green New Deal (2019).

9 Eduardo Gudynas, 'Debates on Development and Its Alternatives in Latin America: A Brief Heterodox Guide', in Miriam Lang/Dunia Mokrani (eds.), Beyond Development: Alternative Visions from Latin America (2013), p.15, 28 et seq.

of the climate crises from the realities of global warming. In Section C, it will be considered how a critical approach can be integrated into the methodological toolbox of sustainability law scholarship, grounded in the example of Renewable Energy Communities (RECs) in EU law.

B. Diagnosing the role of law in processes of global warming

In the following, law will be positioned as a social institution that drives processes of global warming. Sustainability is first and foremost an issue of social ordering. The social inequalities that prevent sustainable practices, human induced increases in global temperatures, and over-extraction of planetary resources are products of (historically) embedded social structures.[10] Sustainable development policies, such as the EU Green Deal, aim to reconfigure unsustainable patterns of production and consumption using law as a tool for changing market behaviours.[11] By situating law as a social institution, law can be theorised as a part of society that constitutes the social order and stabilises one of several competing normative social logics.[12] This reveals a key epistemological and methodological challenge for sustainability law: how can legal scholarship position law in society when legal analysis treats law as an autonomous system that acts upon society and what does this reframing mean for how we can conceptualise the role of law in processes of global warming.

I. Law as a social institution

Sociological approaches produce knowledge about the nature of society and are concerned with the study of social relations, social institutions and social structures.[13] The social can be defined as 'the general range of recurring forms, or patterned features, of interactions and relationships

10 Sam Adelman/Abdul Paliwala, 'Introduction', in Sam Adelman/Abdul Paliwala (eds.), The Limits of Law and Development: Neoliberalism, Governance and Social Justice (2021).

11 European Commission, The European Green Deal, COM (2019) 640.

12 Roberto Esposito, Instituting Thought: Three Paradigms of Political Ontology (2021).

13 Mitch Duneier, 'Sociology: Overview', in James Wright (ed.), International Encyclopedia of the Social & Behavioral Sciences, 2nd ed. (2015).

between people'[14] while social institutions are more specifically 'a complex of positions, roles, norms and values lodged in particular types of social structures and organising relatively stable patterns of human activity with respect to fundamental problems in producing life-sustaining resources, in reproducing individuals, and in sustaining viable societal structures within a given environment'.[15] This definition does not equate social institutions with (macro) structures or (micro) agency. Instead, social institutions are located at the meso-layer of society and, as Beckers proposes, 'bridge systems and create stable sets of expectations'.[16] The function of law as a social institution is then to stabilise patterns of ordering in society. This is an ontological claim that law is both constitutive of and constituted by the social.[17] This embedding of law in society broadens the scope of what legal scholars can study and calls for alternative methodological approaches.

II. Connecting law with processes of global warming

If law is theorised as a social institution, the frame of analysis expands to include approaches that interrogate how legal institutions shape social structures. Human-induced climate change stems from patterns of production and consumption, where fossil fuels are a leading cause of rising global temperatures. For society, fossil fuels are more than just an energy source. They are a resource through which capitalist processes, facilitated by the coding of law, translate surplus into wealth.[18] They are a medium through which ubiquitous forms of oppression permeate the globe in complex webs of social patterning that span the global north and south.[19] As Malm argues 'The fossil economy has the character of a totality, a distinguishable entity: a socio-ecological structure, in which a certain economic process and a

14 Roger Cotterrell, Law, Culture and Society: Legal Ideas in the Mirror of Social Theory (2006), p. 15.
15 Jonathan Turner, The Institutional Order (1997), p. 6.
16 Anna Beckers, Private Law and the Institutional (Re)Turn (2024), p. 1, 5.
17 Roger Cotterrell, 'Law as Constitutive', in James (ed.), Wright International Encyclopedia of the Social & Behavioral Sciences, 2nd ed. (2015), p. 550, 550 et seqq.
18 Katharina Pistor, The Code of Capital: How the Law Creates Wealth and Inequality (2019), pp. 6 et seqq.
19 Marcel Llavero-Pasquina et al., 'The Political Ecology of Oil and Gas Corporations: TotalEnergies and Post-Colonial Exploitation to Concentrate Energy in Industrial Economies' (2024) 109 Energy Research & Social Science, p. 1.

certain form of energy are welded together'.[20] This captures the interconnectedness of fossil fuels and capitalist modes of production where energy systems constitute the social order (of which the economy is part).

The concept of carbon lock-in brings this entanglement into sharp relief as it looks beyond economic theory to analyse why industrialised societies struggle to decarbonise.[21] Path dependency in industrialised countries leads to carbon lock-in through an interplay of social norms that legitimise high-carbon practices, technological infrastructures built around fossil fuel energy systems, and governance structures in energy systems produced by public and private institutions. For Unruh, these forces create a Techno-Institutional Complex (TIC), a self-reinforcing system that is deeply resistant to change.[22] The co-dependency of fossil fuels and capitalist ordering in TICs foregrounds the interwoven and messy complexity of the super-wicked problem that is the climate crisis.[23] Law is a part of this entanglement, and yet conventional doctrinal and theoretical approaches elide social complexity through frames that narrow by selecting what is and what is not relevant for law.[24]

III. Sustainability law and the great derangement

Conventional legal scholarship contributes to what Ghosh calls the 'great derangement'; the collective inability within dominant cultural forms to imagine and narrate the climate crisis.[25] In the following, I sketch out three propositions that highlight why the climate crises is not caused by human technologies alone but is sustained by an epistemological blindness to the realities of the climate crises and how we are conditioned to know and produce knowledge about the world.

---

20 Andreas Malm, Fossil Capital: The Rise of Steam Power and the Roots of Global Warming (2016), p. 12.

21 Gregory Unruh, 'Understanding Carbon Lock-in' (2000) 28 Energy Policy, p. 817.

22 Ibid.

23 Graeme Auld et al., 'Managing Pandemics as Super Wicked Problems: Lessons from, and for, COVID-19 and the Climate Crisis' (2021) 54 Policy Sciences, p. 707, 709 et seqq.

24 On the simplification of wicked problems through legal frames in the context of private property, see Lorna Fox O'Mahony/Marc Roark, Squatting and the State (2022), pp. 209 et seqq.

25 Amitav Ghosh, The Great Derangement: Climate Change and the Unthinkable (2016), pp. 11, 135.

First, law was central for structuring capitalist ordering in Western societies; it did not simply respond to the emergence of capitalism.[26] Historically, law has stabilised capitalist and anthropocentric rationalities, while modern legal categories constitute and stabilise these logics. Capitalist rationalities and modes of ordering have spread across the globe through processes of imperialism, colonialism and the liberalization of markets, made possible by western legal institutions such as private property and freedom of contract.[27]

Second, the global capitalist order depends on structural inequality.[28] Legal categories are not neutral but instead reflect and reproduce the inequalities that animate the global order. The introduction of the Brundtland's conceptualisation of sustainable development in 1987 signalled a recognition that the climate crisis is fuelled by poverty and inequality between the global north and south.[29] The costs of decarbonisation are not born equally.[30] Countries in the global south struggle with decarbonisation during a period of industrial development that depends on fossil fuels. While at the local level, the individuals, communities and industries who already experience structural inequality are disadvantaged by processes of decarbonisation.[31]

Third, law constitutes structures of power. Privilege and disadvantage are scaled, reproduced and stabilized through law.[32] Legal scholars do not deal in neutral legal categories but participate in the reproduction of power dynamics.[33] Liability doctrines offer an example of this dynamic by defin-

26 Pistor (2019).

27 Gareth Austin, 'Capitalism and the Colonies', in Larry Neal/Jeffry Williamson (eds.), The Cambridge History of Capitalism (2014), p. 301; Beckers (2024), p. 9.

28 Jason Hickel et al., 'Imperialist appropriation in the world economy: Drain from the global South through unequal exchange, 1990–2015' (2022), 73 Glob. Environ. Change, p. 1.

29 Iris Borowy, Defining Sustainable Development for Our Common Future: A History of the World Commission on Environment and Development (Brundtland Commission) (2013).

30 Ghosh (2016), pp. 145 et seq.

31 Benjamin Sovacool et al. 'Dispossessed by Decarbonisation: Reducing Vulnerability, Injustice, and Inequality in the Lived Experience of Low-Carbon Pathways' (2021) 137 World Development, p. 1.

32 On the role of law in the distribution of privilege and disadvantage, see Martha Albertson Fineman, 'Vulnerability Theory and the Trinity Lectures: Institutionalizing the Individual' (2025).

33 Pierre Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field' (1987) 38 The Hastings Law Journal, p. 814.

ing what counts as harm, who can be held accountable, and the interests legitimised and protected through law. While climate litigation cases in the Netherlands signal a shift in recognising the accountability of both public and private actors, they also expose the doctrinal barriers that arise in the context of liability as a legal institution capable of recognising the harms that arise from climate change.[34] These limitations reflect the active role that tort law plays in stabilising a social order that recognises accountability for certain forms of conduct while excluding others.[35]

C. Critical theory and sustainability law

The discussion in this section introduces critical theory as a methodological approach for the toolbox of sustainability law scholars that aim to study the embeddedness of law in society. While it is not possible to offer a comprehensive account of the premises of critical theory and critical theoretical approaches, the following introduces the core concepts of ideology, reflexivity, and the dialectical using the case of RECs in EU energy law to give substance to these abstracted concepts.[36]

I. From criticism to critique as method

The interdisciplinary critical theory tradition of the Frankfurt School is united by a commitment to a critique of the failures of modernity and to the transformation of the oppressive social structures that reproduce domination, alienation, and inequality. Critical theory in this vein is 'as a branch of social theory that seeks to critique and transform power rela-

34 Hoge Raad, 20 December 2019, C/19/00135 Rechtbank Den Haag, 26 May 2021, C/09/571932.

35 Wendy Bonython, 'Tort Law and Climate Change' (2021), 40(3) UQ Law Journal, p. 422.

36 For a comprehensive discussion of critical theory and EU law, see Päivi Johanna Neuvonen, 'A Way of Critique: What Can EU Law Scholars Learn from Critical Theory?' (2022) 1 European Law Open, p. 60, 60; see also Emilios Christodoulidis/Ruth Dukes/Marco Goldoni (eds.), Research Handbook on Critical Legal Theory (2019); and the special issue 'Critical Legal Approaches in EU Law' (2024) 15(4) Transnational Legal Theory, p. 493.

tions and structures that thwart political and social emancipation'.[37] It is an approach that combines critique (deconstruction) with emancipation (transformation).

Like critical theory approaches, critical theory in law encompasses a diversity of methodological approaches[38] that align on the shared aim to 'describe and critically analyse the inner logics of the law in light of their continuous reproduction and legitimation of intersecting forms of power asymmetries based on gender, class, race and sexuality – among others'.[39] Critical legal approaches interrogate the rationalities and normative commitments embedded within the logic of law's institutions. Neuvonen observes that within EU law scholarship, critique has become a buzzword, where critical interventions are characterised by a 'persistent imbalance between the zest for critical research and the thinness of critical methodology'.[40] What she is pointing to here is a difference between approaches that critique law substantively, such as the failures of EU energy law in promoting renewable energy communities,[41] and a critical approach that engages in an immanent critique of law, such as tracing the contradiction between law's commitment to a just transition and the market-based rationalities embedded in the legal frameworks that regulate RECs.[42] Another concern relates to the emancipatory aims of critical theory, which are inherently political in nature. On the one hand, the critical scholar engages in the negative project of understanding the failures and contradictions in society. On the other hand, the critical scholar also engages in the positive project of developing a better alternative to the object of critique. Legal scholarship tends to view law and legal knowledge as apolitical, which is in no small part due to legal positivism and how legal education is organised.[43] This leads to the belief that a neutral and objective critique of law is possible, reducing the negative dimension of critical theory to pure description.

37 Päivi Johanna Neuvonen, 'The "Crisis of Critique" in EU Law', 7 May 2025, https://verfassungsblog.de/the-crisis-of-critique-in-eu-law/ (last accessed: 16 July 2025).
38 See Christodoulidis/Dukes/Goldoni (2019).
39 Isailović, (2024), p. 493.
40 Neuvonen (2022), p. 60.
41 Hoops (2025).
42 On a critical account of the energy transition, see Mariusz Baranowski, 'Critical Theory of the Energy Transformation: Sociology's Approach' (2023) 7(4) Societies Register, p. 7.
43 Ubaldus de Vries, 'Law in Context – Towards a Reflexive Approach in (Dutch) Legal Education', in Emma Jones/Fiona Cownie (eds.), Key Directions in Legal Education: National and International Perspectives (2020).

It also elides the positive dimension of critical theory and precludes an engagement with what alternatives are possible and how they can be translated into the language of law.[44] Critical approaches to EU (sustainability) law must therefore engage with ideology and integrate both reflexivity and dialectics into critical legal methodologies.

II. Ideology

The concept of ideology is central to critical theory.[45] The emancipatory commitment of critical theory demands of a critical scholar that they engage in a critique of the ideologies in society that lead to oppression. Ideology tends to be defined in two ways. First, as an analytical concept that describes 'an intellectual framework, a way of talking, or a set of beliefs that helps constitute the way people experience the world'.[46] Second, is the value-laden understandings of ideology as 'a kind of mystification that serves class interests, promotes a false view of social relations, or produces injustice' or 'a way of thinking and talking that helps constitute and sustain illegitimate and unacknowledged relationships of power'.[47] Haslanger offers a third view of ideology as a cultural technē gone wrong.[48] A cultural technē is the framework of meaning we use to understand and interact with the world.[49] It includes the 'social meanings (…) that provides tools for interpreting and responding to each other and the world around us, and does so in ways that facilitate (better or worse) forms of coordination'.[50] We unconsciously use cultural technēs to navigate daily life, such as when we buy Disney princess dolls for girls and male superhero figures for boys. Ideologies permeate these interpretive horizons that colour how we view and

44 For alternative methodological approaches see Anna Beckers/Gunther Teubner, 'Sociological Jurisprudence and Digital Technology: The Need for Cross-Disciplinary Analysis' (2024) 18 Court of Conscience, p. 137.

45 Raymond Geuss, The Idea of a Critical Theory (1981), pp. 2 et seq.

46 Jack Balkin, Cultural Software: A Theory of Ideology (1998), p. 3.

47 Ibid.

48 Sally Haslanger, 'Going On, Not in the Same Way', in Alexis Burgess/Herman Cappelen/David Plunkett (eds.), Conceptual Engineering and Conceptual Ethics (2020), p. 230, 232.

49 This view aligns with the concept of practical consciousness of Giddens, see Anthony Giddens, The Constitution of Society: Outline of the Theory of Structuration (1984), p. xxiii.

50 Haslanger (2020), p. 232.

understand the social. A critique of ideology therefore requires reflexivity and a method of dialectical reasoning to confront how relations of power shape the production of knowledge for 'There is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations'.[51]

The example of RECs in EU law allows us to trace how ideology operates through cultural technēs (that emerge from law and policy narratives) and how it shapes the normative direction of the just energy transition. EU law recognises, promotes and supports RECs.[52] Definitions in the recast Renewable Energy Directive (RED III) invoke an image of RECs as local, grassroots collectives consisting of environmentally conscious, empowered individuals who willingly participate in the clean energy transition with projects that produce renewable energy.[53] The normative vision embedded in the RED III positions RECs as localised, not-for-profit and democratised legal entities that pursue environmental and social goals within the broader context of liberalised energy markets.[54] RECs are portrayed as socially conscious legal entities that pursue social and environmental aims, forming communities characterised by active participation and democratic governance, where proximity to the REC project ensures equal opportunity for local individuals to participate.[55] In EU policy discourse, energy communities are a mechanism for transitioning to a just decarbonised economy and must be 'strengthened to allow local communities, citizens and companies to join forces and invest in clean energy projects at local level; thereby allowing them to produce, sell and consume their renewable energy'.[56] This framing positions RECs as a material site where the abstract aims of social justice and environmental protection intersect, obscuring that RECs function within the overarching rationality of liberalised energy markets.[57] A critical approach to the study of RECs then begins with an exposition

51 Michel Foucault, Discipline and Punish: The Birth of the Prison, Alan Sheridan (tr.), Vintage Books (1995 [1975]), p. 27.
52 Council Directive (EU) 2023/2413 of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652 [2023] OJ L, 2023/2413 (RED III).
53 Art. 2(16)(a) RED III.
54 Art. 2(16)(c) RED III.
55 Art. 2(16)(a), (b) & (c) RED III.
56 European Commission, 'An Affordable Energy Action Plan', 26 February 2025, COM (2025) 79 final, p. 8.
57 Art. 22 RED III.

of the ideologies in energy law and policy that obscure underlying power relations as well as the structural inequalities that permeate processes of decarbonisation that are collectively (re)produced through law.

III. Reflexivity and dialectics

Alongside the centrality of ideology in critical theory, the combination of reflexivity with dialectics gives critical theory its critical form and is what distinguishes critical theory from traditional theory.[58] Reflexivity without the dialectic reduces the scholarly analysis to the subjective position of the scholar, while dialectics without reflexivity risks a reproduction of the oppressive structures of power the scholar aims to deconstruct and transform.

As socialised beings, the presumptions (practical consciousness) of an individual are a pre-condition for knowledge production.[59] As Fish states, an open mind is an empty mind.[60] This means that all knowledge is partial because no one can reason from a 'view from nowhere'.[61] Reflexivity requires that we make explicit the position from which we engage in critique by clarifying our underlying epistemological and ideational position (positionality);[62] no one exists outside of society or the power relations within society.[63] While engaging in critique, the scholar assumes a normative vision that serves as the foundational interpretive horizon against which to distinguish between the emancipatory and oppressive structures in society that are the object of study. Whether we make our interpretive horizons explicit or not does not negate the existence of this normativity. Reflexivity requires that as scholars we reflect on our positionality, that we make explicit the frameworks that guide our critique *and* that we reflect on how the methods that we use to produce knowledge are themselves shaped by ideologies and relations of power.

58 Max Horkheimer, Critical Theory: Selected Essays, Matthew J. O'Connell et al. (trs.) (1972).
59 Balkin (1998), p. 273.
60 Stanley Fish, There's No Such Thing as Free Speech, and It's a Good Thing Too (1994), p. 117.
61 Donna Haraway, 'Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective' (1988) 14(3) Feminist Studies, p. 575.
62 Neuvonen (2022), p. 72.
63 Judith Butler, Gender Trouble: Feminism and the Subversion of Identity (1990), p. 2.

Moving on to the centrality of dialectics for critical theory, a dialectical process '(…) moves from an initial positive (thesis) through its rejection (antithesis) to a transcendent synthesis or 'sublation' (…) that maintains both moments, and preserves the transcended in the act of overcoming it'.[64] Combined with reflexivity, dialectical reasoning is a process through which we can draw out the contradictions in society (immanent critique). For EU sustainability law, dialectics are a means to move beyond a critique of the substantive content of law to tracing the contradictions that are embedded in the normative structure and rationality of law itself.[65] This immanent critique exposes the contradictions between the ideals and values of EU sustainability law and the material reality of the social that is (re)produced. The nature of the contradictions that emerge depend on the interpretive frame adopted by the scholar. These frames should prioritise marginalised perspectives, with critical feminist theories offering just one of several potential approaches.[66]

RECs allow us to consider how reflexivity and a dialectical approach can expose the contradictions in EU energy law. The forms that RECs take are diverse and yet the same cannot be said of their members. REC members tend to be financially secure and highly educated home-owning individuals, small and medium enterprises, or local municipalities.[67] Decarbonisation disproportionately burdens low-income households, renters, immigrants, precarious workers, and other marginalized groups.[68] These disadvantaged persons experience financial and social barriers that prevent participation in energy communities. Legal frameworks such as the RED III, designed to promote participatory energy governance and a just energy transition in the EU, stabilize existing economic structures and patterns of inequality by distributing privilege and disadvantage.[69] The legal frameworks that govern

64 Emilios Christodoulidis, 'Critical Theory and the Law: Reflections on Origins, Trajectories and Conjunctures', in Emilios Christodoulidis/Ruth Dukes/Marco Goldoni (eds.), Research Handbook on Critical Legal Theory (2019), p. 10.

65 Neuvonen (2022), p. 87.

66 Julia Wood, 'Critical Feminist Theories', in Dawn O. Braithwaite/Paul Schrodt (eds.), Engaging Theories in Interpersonal Communication: Multiple Perspectives (2008).

67 Jasmine Arnould/Diana Quiroz, 'Energy Communities in the EU: Fulfilling Consumer Rights and Protections' (2022), https://www.beuc.eu/sites/default/files/publications/BEUC-X-2023-010_Energy_communities_in_the_EU-report.pdf (last accessed 13 August 2025), pp. 24 et seq.

68 Ibid.

69 To trace this distribution, vulnerability theory can provide and interpretive frame, see Fineman (2025).

RECs are not neutral; they reproduce and stabilize a capitalist rationality of sustainable development as one of several competing normative visions of sustainability. A contradiction then emerges (anthesis) between the normative vision of RECs portrayed in EU law and policy and the material reality of RECs that exclude disadvantaged and marginalised groups from participating and benefiting from renewable projects. This brief example illustrates how a critical legal approach can both embed and critique sustainability law within society. The critical legal analysis that could follow from this example would engage in the challenging doctrinal task of translating emancipatory alternatives into the language and logic of law and legal doctrine.

D. Conclusion

Sustainable development calls for social transformation, where law is viewed as a tool for driving change. The pressures of the climate crisis demand a turn from this view of law as a neutral instrument that acts upon society to an understanding of law as a social institution that constitutes and stabilizes patterns of social ordering. Conventional legal approaches are insulated from the role that legal institutions play in producing and sustaining extractive, capitalist modes of ordering. In doing so, legal scholarship contributes to the 'great derangement' of our time by thinking through frames that obscure the entanglement of law in processes of climate change. Drawing on the Frankfurt School's commitment to emancipation and critique as method, a critical theory approach was explored as a methodology for EU sustainability law scholarship. The concepts of ideology, reflexivity, and the dialectic in critical theory illustrate how legal frameworks, such as the RED III, that are designed to promote sustainability, democratic participation and equality, work to embed existing inequalities in society under the guise of the normative vision of a just and inclusive energy transition. The emancipatory aim of critical theory highlights that legal scholarship, while epistemologically insulated from the social, is not apolitical. The key insight that can be drawn from this chapter is that by understanding how law reproduces (rather than merely responds to) the climate crisis, EU sustainability law scholarship can identify, critique and transform the legal institutions that structure processes of global warming.