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Bringing the Force of the Law

Contribution to GTI Forum [The Climate Movement: What's Next?](#)

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In the interest of brevity, I would like to concentrate on one particular aspect of the climate crisis that deserves more attention: it is very important to bring the NEW into the world. But it is equally important to get rid of the OLD.

Take my home country Germany, for example. Thanks to a coalition between Social Democrats and Greens around the turn of the century, Germany has done pretty well at adopting renewable energy, which now is almost 40 percent of total electricity supply. But there was also some kind of tacit pact that left coal untouched, leaving Germany as still the biggest polluter in Europe, with almost all of the ten most-polluting power stations in the EU.

The result is overproduction, with our neighboring countries complaining because of all the excess electricity pushed into their grids (and this despite the fact that Germany phased out two thirds of nuclear capacity after Fukushima). This is why Germany cannot join the international alliance against coal and why it has turned from an international climate champion into an obstacle for greater ambition in Europe and in the global climate regime. And finally, coal has broken the “agreement”: each successive government since 2005 has worsened the conditions for renewables, bringing down new wind and solar installations as a fraction of new supply.

It is important to foresee, invent, and create the NEW. But if the OLD, the “incumbents,” are not removed, they will suffocate those new developments and prevent them from growing. The incumbents of wealth and power use these means to slow new developments—new technologies, new social movements, new ideas of how the world might look and how our economies may function. They fight—and they play hardball—because trillions of dollars, euros,

renminbi, and other currencies are at stake. That is why it is important, as Bill McKibben has written, that we also perceive ourselves in a fight.

And a fight, a struggle for survival, is not won by being nice to one's opponents. It is won by being very clear about what we want and then doing it. This does not mean being rude, of course. As James Thornton, the founder and head of ClientEarth, would describe it, first you write a polite letter to the respective company or government agency that is polluting the environment, asking them to change their behavior and comply with the law. Then, if they don't do it, you sue them.

The time is over to seek cooperation of the incumbents. The time is over to look for win-win solutions. It is high time to force incumbents to make way for the NEW with all permissible means at hand.

Those means range from the power of the streets (the FridaysforFuture movement is a real game changer) and the power of civil disobedience (like the fight against the Keystone pipeline in the US or against lignite mining in Germany) to the financial power of investments (thanks to the divestment movement and ethical investors) and the power of the law, as practiced by ClientEarth and increasingly other organizations.

This latter fight is first about implementation of and compliance with existing regulations, like clean air and water directives in the EU. And it is, second, about writing new and better laws for climate protection. This is where climate justice comes into play, which actively seeks to change the law to account for present and future injustices. The power of the law can furthermore be used to challenge investment decisions, as my Polish colleagues do as shareholders of an energy company: they are suing the company as investors because it plans to build a new coal-fired power plant. Or take the case against the utility RWE, in which a Peruvian farmer is seeking compensation from Germany's biggest polluter for damages incurred by the melting glaciers due to climate change. This is only one step away from charging CEOs for violation of their fiduciary duties and invoking the power of criminal law for sanctioning the utterly ruthless and irresponsible behavior of RWE, Exxon CEOs, the US fossil fuel magnates the Koch brothers, etc.

Using the power of the law appears to be the most effective instrument at present to bring about change by removing the old incumbents. My basic advice is this: if we remove the suffocating concrete, life can grow. We must create cracks in the system so that niche developments can enter the mainstream. Making space by throwing out fossil power plants or the internal combustion engine will allow the new to grow and thrive.

I can hear the question on everybody's mind: How does the NEW come into the world? Well, maybe we should have faith in the younger generations, where thousands of ideas and initiatives are already thriving now. I have no doubt that power and wonderful new concepts, technologies, and social innovations will pop up once the concrete is removed. Maybe the best that older generations can do is to clear the way.

There is not much time left, so let us start immediately to behave like we are in a fight for survival—because we are. Let us do everything we can to win this fight by all legal means available.

About the Author



Hermann Ott is founder and Managing Director of the Germany Office for ClientEarth, an international environmental law organization, and a professor at the University of Sustainable Development in Eberswalde. Previously, he directed the Wuppertal Institute Climate Policy Division and founded its Berlin Office. From 2009 to 2013, he was a Member of the Bundestag and served as the Greens' speaker on climate policy. He has served on the boards of Greenpeace Germany and the German Environment Foundation, and is currently on the Executive Committee of the German League for Nature, Animal and Environment Protection.

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