Circular economy: a concept to eliminate ‘rubbish law’?

By:

Feja Lesniewska
Katrien Steenmans

June 15, 2020

The circular economy concept is receiving an increasing amount of attention by academics, law-and policy-makers, and private stakeholders as an alternative economic model to realise a transition to a low-carbon, sustainable future. Drivers behind the circular economy concept’s popularity include growing public awareness of plastics waste and biodiversity impacts, increasing competitiveness for natural resources globally especially amongst the G20, and innovations in bio and digital technologies. Yet, despite the growing recognition of the concept, the actual implementations of circular approaches remain isolated stories of success, and are ‘limited and fragile’. Much has been written on the ideals and potential benefits of a circular economy but a research gap exists on how to effect the transitions necessary to realise the many cited advantages, particularly within the area of law.

At the inaugural International Economic Law conference at the University of

Warwick we presented our paper '*Seeing Beyond Repackaged 'Rubbish Laws': Conceptual Challenges to Designing Circular Economy Laws'.* In the paper wecritically examined the circular economy concept drawing on policy and law from around the world, both in the global north and south. We sought to establish to what extent current circular economy concepts could deliver a fair, equitable and sustainable economic system that eliminates the 'rubbish laws' that provided the foundations for and currently sustain the unsustainable model. We concluded that the narrative surrounding circular economy concepts demonstrate only a limited appreciation for the need to deconstruct the international economic legal infrastructure. It would appear that the 'green circle' is already broken and, if unchecked, the dominant circular economy concept will fail to deliver the transformative change necessary to eliminate the rubbish laws that underpin the unsustainable economic growth model, no matter how 'green' it is claimed to be.

Many definitions of the circular economy exist, but a recent review of more than 100 definitions by Kirchherr and others has resulted in the often cited definition: *an economic system concerned with the reducing, reusing, recycling and recovering of materials at micro, meso and macro levels in order to achieve environmental protection, economic prosperity and social equity.* This definition and its application highlight some the key conceptual challenges of the concept. First, and despite the environmental, economic and social benefits consistently mentioned as being the key benefits of the concept, the dominant focus in practice in reports, policies and regulation is on the *economic dimensions*, with environmental benefits and the social advantages often being side-lined. This is evident in the statistics used to describe advantages of circular economies: it is estimated that it is a €1.8 trillion economic opportunity for Europe by 2030 and that the global value of resource efficiency gains could eventually reach benefits of US$3.7 trillion per year.

Moreover, the social benefits are often described in economic terms in relation to, for example, job creation or are used to promote own economic agendas while ignoring and without interrogating the substance of the social arguments. These are in addition to some of the similar discussions and questions surrounding this three-pillared approach to the concept of sustainable development: How do these strands relate to one another? How do we balance

the economic, environmental and social dimensions? Which takes priority if there cannot have balanced approach?

Second, the prevention and elimination of waste is being squeezed out of the circular economy concept. The definition includes preventing, reusing, recycling and recovery of materials, but circular economy initiatives tend to focus on the recycling and recovery of waste. The Global Plastic Action Partnership, initiated by the Platform for Accelerating the Circular Economy and hosted by the World Economic Forum, seeks to drive transitions towards circular economies for plastic. Their key policies include: adopting innovative packaging materials, empowering consumers to reuse, recycle or compost plastic products, and growing waste management facilities exponentially in number and capacity. It is alarming that not one of these policies actually encourages the reduction and prevention of waste in the first place. If the growth in waste is not addressed at its source - the production of material goods – then the underlying logic of the unsustainable economic growth model will remain unchallenged. A facile unsustainable green consumerism will result sitting firmly upon the same 'rubbish' legal foundations that supported the linear growth economy.

Third, the application of the circular economy concept shows no signs that it will prioritise fair or equitable outcomes. The extractivist economic model founded on appropriating primary resources and using underpaid, often illegal, labour, particularly from the global south receives no consideration. With the focus in policies and regulation on the challenge of encircling the life cycle chain to capture value it is likely that if rights over waste externalities are to be owned it will be investors not workers and impacted communities who will benefit. This also has implications up the waste stream for how waste is collected, recycled and reused. Ownership, access to and use of materials (natural and manufactured) in a circular economy could become even more unequal as novel markets and property rights are created. The same legal structures that have appropriated resources and denied peoples' rights are fundamental to the circular economy's logic that is being advocated. In other words, we are witnessing the emergence of a green global feudalism.

These conceptual challenges give rise to many questions: Can we reclaim the concept of the circular economy? If so, how? What legal changes are needed if

the same foundational ‘rubbish laws’ for the unsustainable linear economy are not to be greenwashed and repackaged for the ‘circular economy’? International economic legal scholars need to engage with these, and other questions, if real, equitable sustainable economies are to be established. With increasing pressure on natural resources due to unsustainable consumption, especially by the global elite and developed countries and the impact of climate change it is imperative that repackaged ‘rubbish laws’ must not be free to masquerade as innovative economic legal solutions.

---

*School of Interdisciplinary Studies, SOAS and STEaPP, University College London *Coventry Law School and Centre for Business in Society, Coventry University

View online: Circular economy: a concept to eliminate ‘rubbish law’?

Provided by Afronomicslaw