

# The legal avenues of prosperity without growth

---

Antoine Bailleux

UNIBS, 19 April 2018

# Limits of a growth-obsessed governance model

- Growth has long been the primary objective of public policies, based on the assumption that the increase in global wealth production leads to more prosperity for all.
- Yet the centrality of this objective is increasingly criticised on at least four empirical grounds.

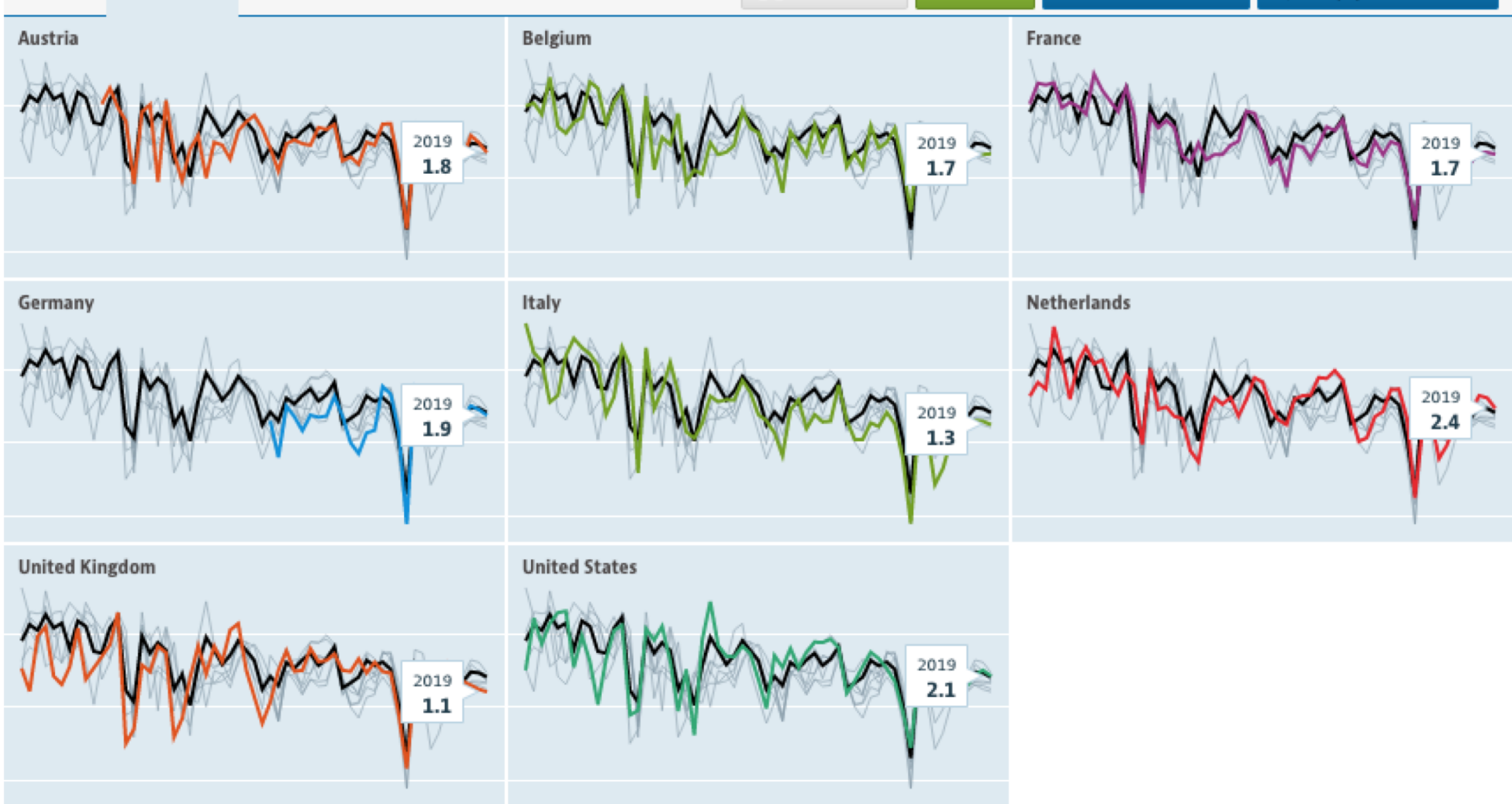
# Limits of a growth-centered governance model (1)

## INNOVATION & ENERGY

G-C GM is hazardous

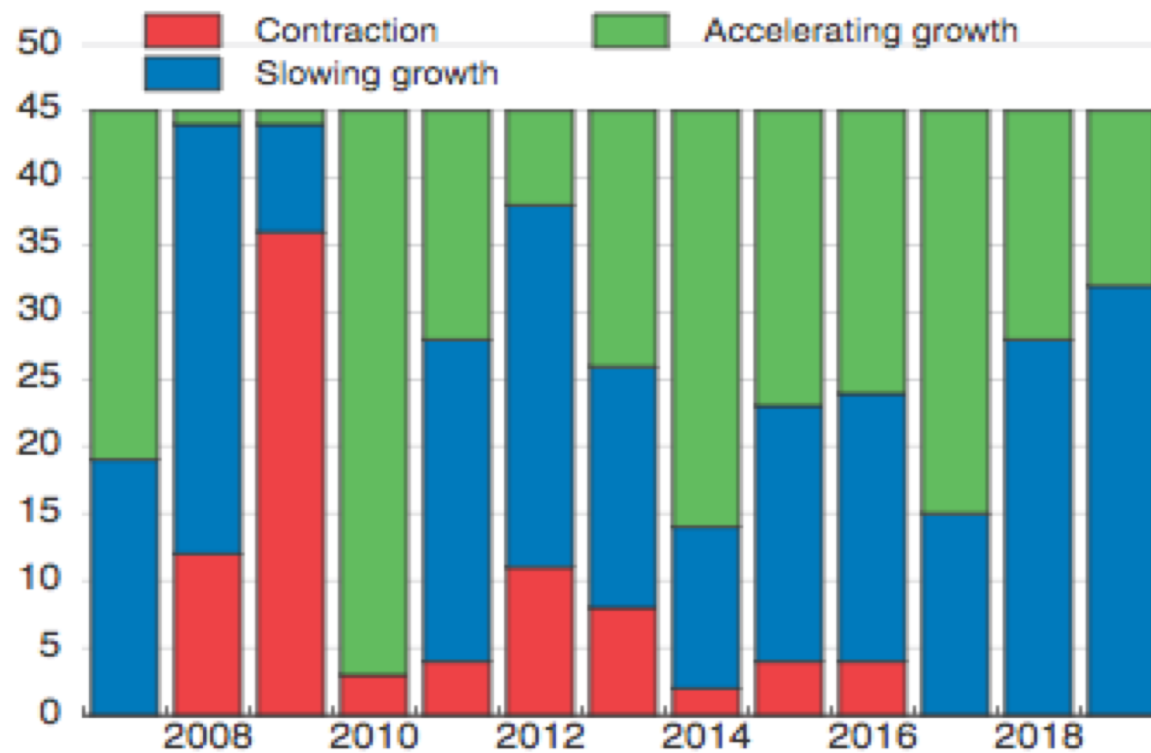
The growth rate has been rather low in Europe ever since the beginning of the 1970's and, but for some unpredictable technological breakthrough, there is no evidence that it will get back to post-WWII levels in the near future.

## Real GDP evolution (1961-2019) - OECD



### A. GDP growth of selected countries<sup>1</sup>

Number of countries



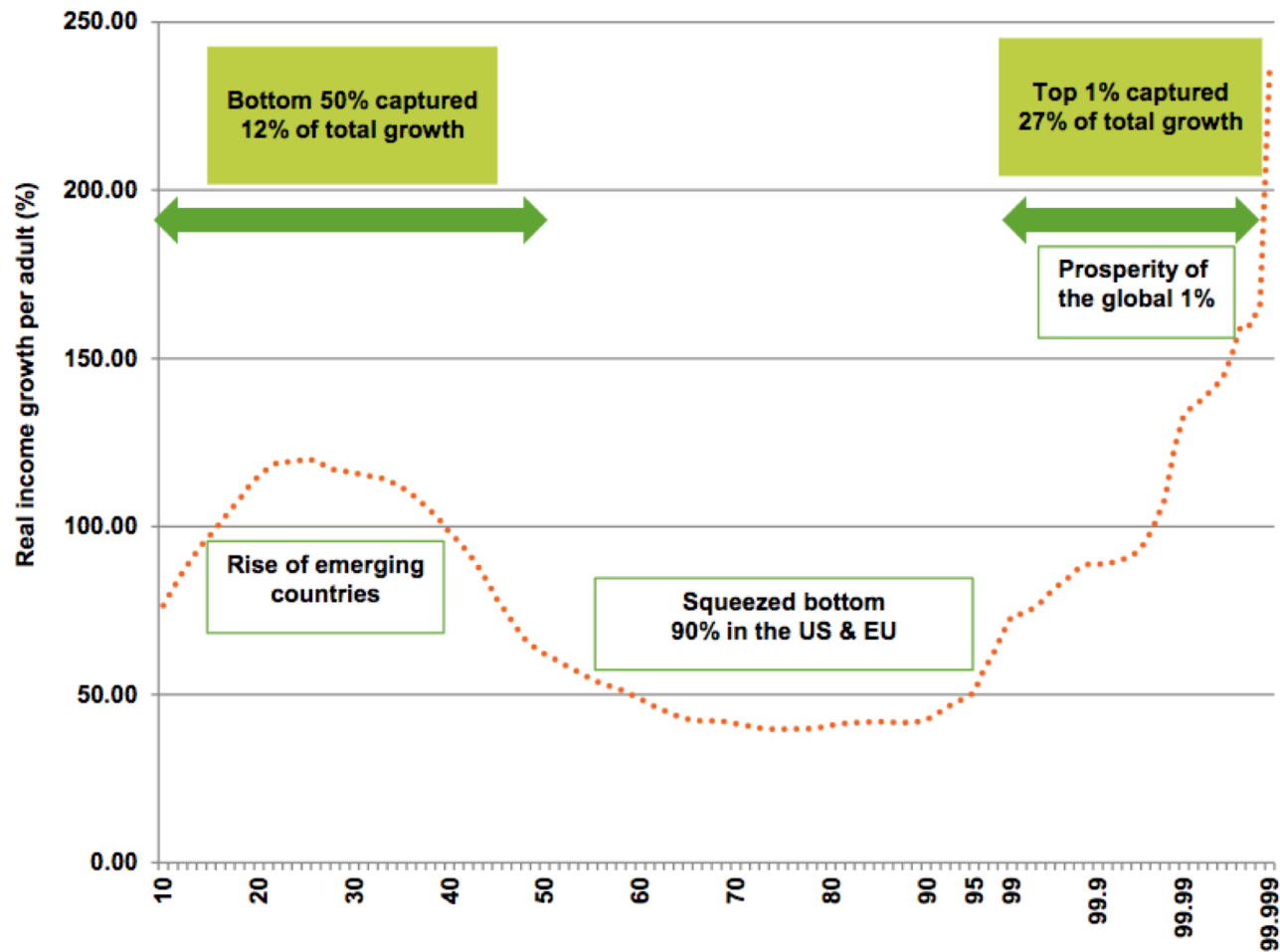
## Limits of a growth-centered governance model (2)

### INEQUALITIES

GC-GM is deceptive

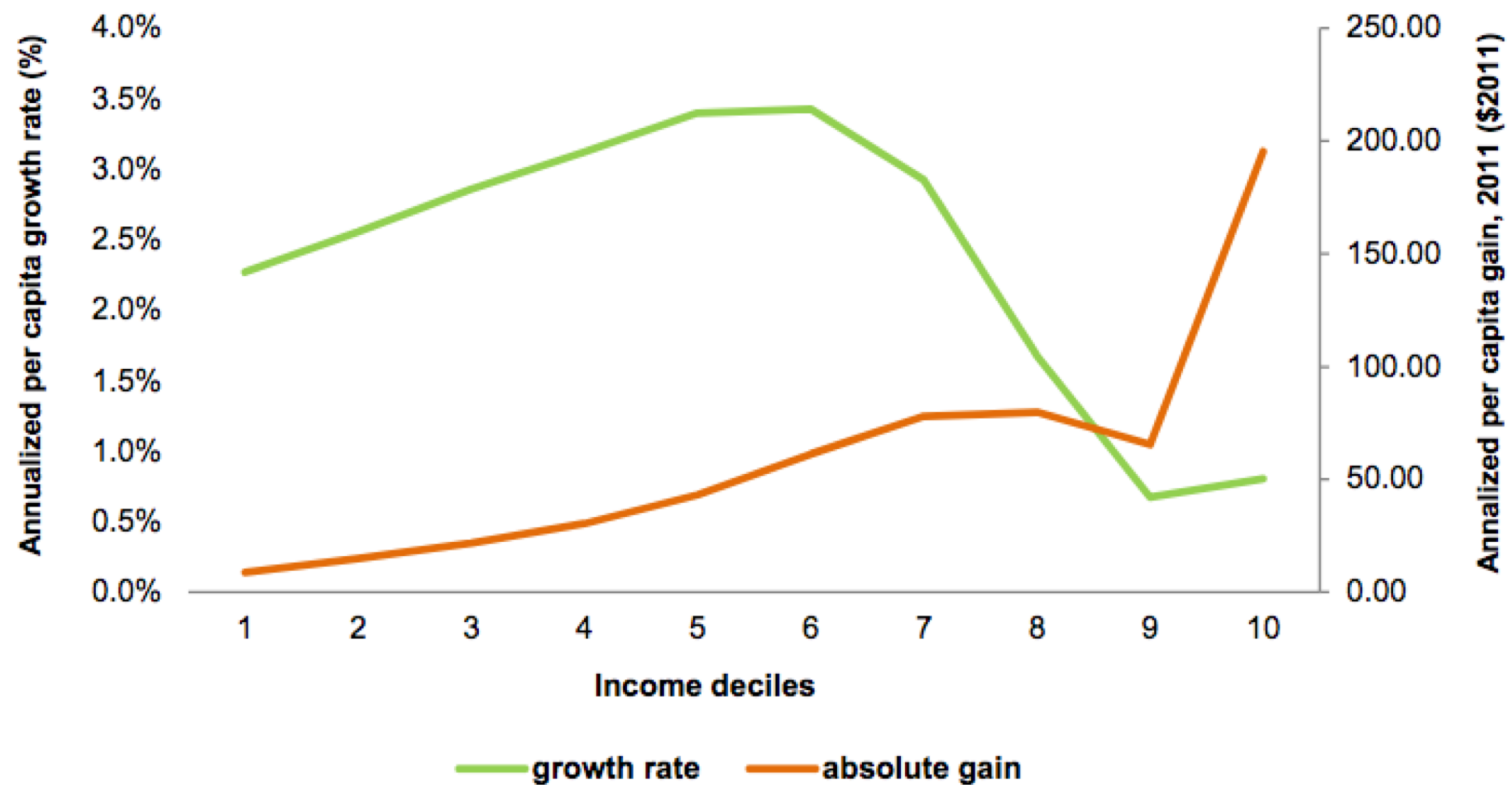
Decades of steady growth have hardly (if at all) reduced inequalities in advanced economies.

Figure 4: Total income growth by percentile, 1980–2016



Source: Made by authors using F. Alvaredo, L. Chancel, T. Piketty, E. Saez and G. Zucman. (2017). *The World Inequality Report 2018*. World Inequality Lab. data available from <http://wir2018.wid.world/>.

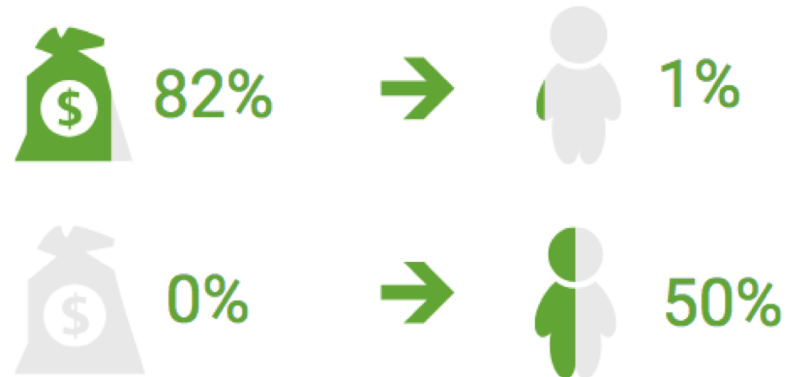
**Figure 3: Elephant or Hockey Stick? Absolute and relative changes in global income by deciles, 1988–2013**



Source: Author calculations using: C. Lakner and B. Milanovic. (2016). *Global Income Distribution: From the Fall of the Berlin Wall to the Great Recession*. Washington, DC. *World Bank Economic Review*. 30 (2): 203–32; Milanovic (2016)<sup>117</sup> and World Bank (2016).

## Billionaire bonanza

Last year saw the biggest increase in billionaires in history, one more every two days. Billionaires saw their wealth increase by \$762bn in just 12 months (March 2016 - March 2017). This huge increase could have ended global extreme poverty seven times over. **82% of the new wealth created has gone to top 1%, while 0% has gone to the world's poorest 50%.**



**In 12 months, the wealth of billionaires has increased by \$762bn**

**This is enough to end extreme poverty 7x over**



**Over the last decade, ordinary workers have seen their incomes rise by an average of just 2% a year**

**While billionaire wealth has been rising by 13% a year**

# Limits of a growth-centered governance model (3)

## HAPPINESS & WELL-BEING

G-C GM is inappropriate

It appears from surveys and psychological studies that, once a threshold of minimal wealth is reached, any further increase in personal income does not necessarily translate into an increased sense of happiness.

## Prosperity without growth? (Prof. Tim Jackson)

Figure 5 Factors influencing subjective wellbeing (happiness)\*

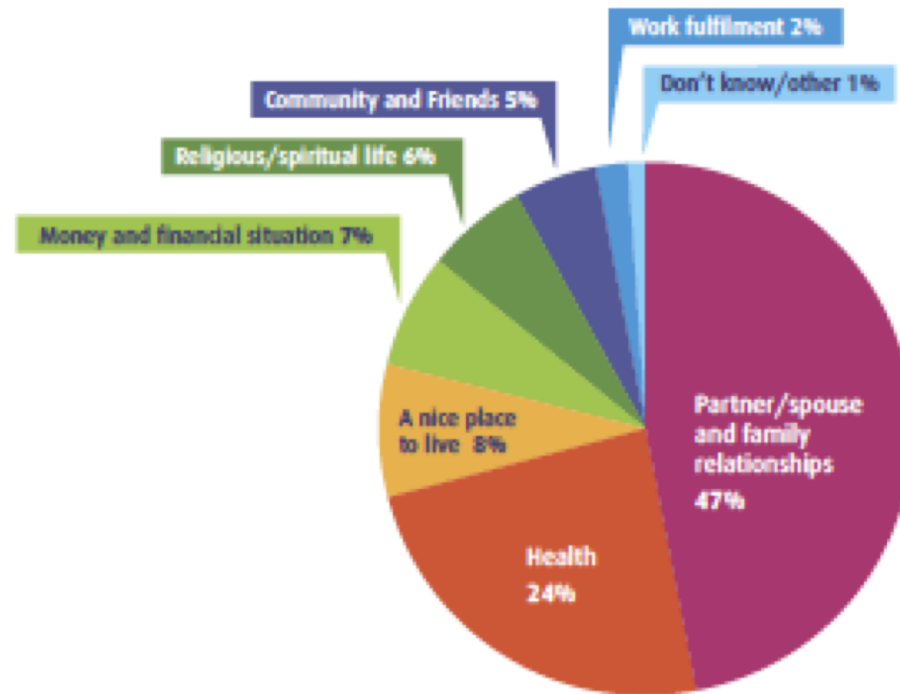


Figure 6 Happiness and average annual income<sup>1)</sup>



Figure 8 Life expectancy at birth vs average annual income<sup>14</sup>

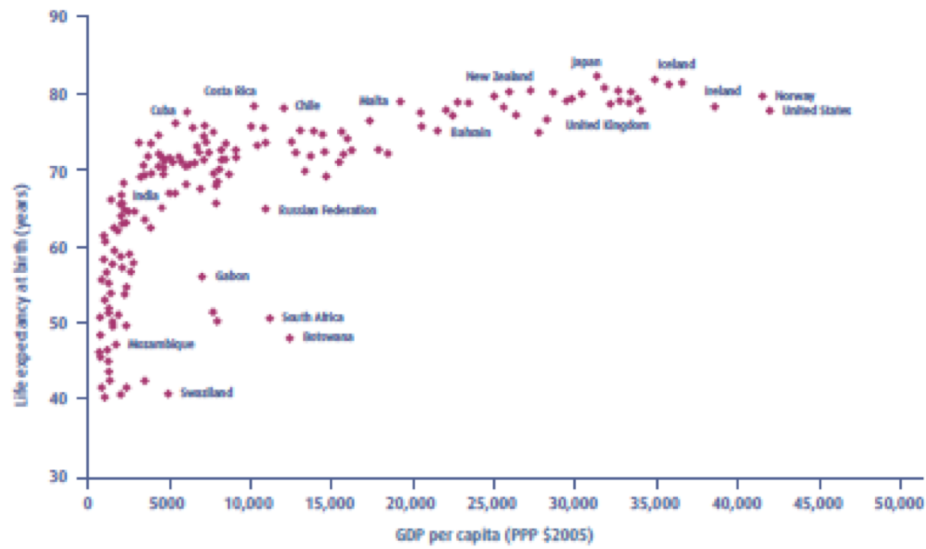
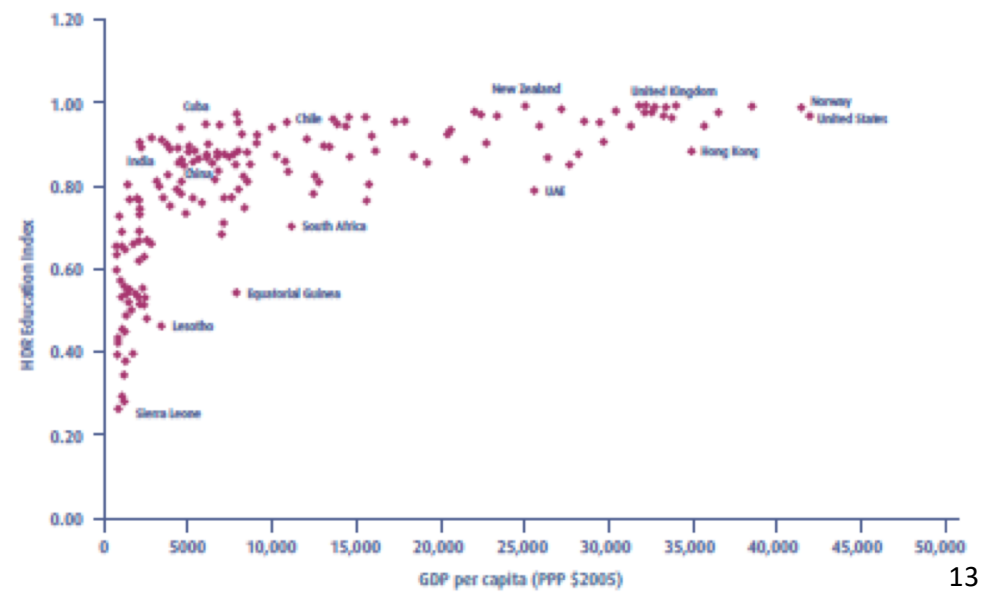


Figure 10 Participation in education vs income per capita<sup>14</sup>



# Limits of a growth-centered governance model (4)

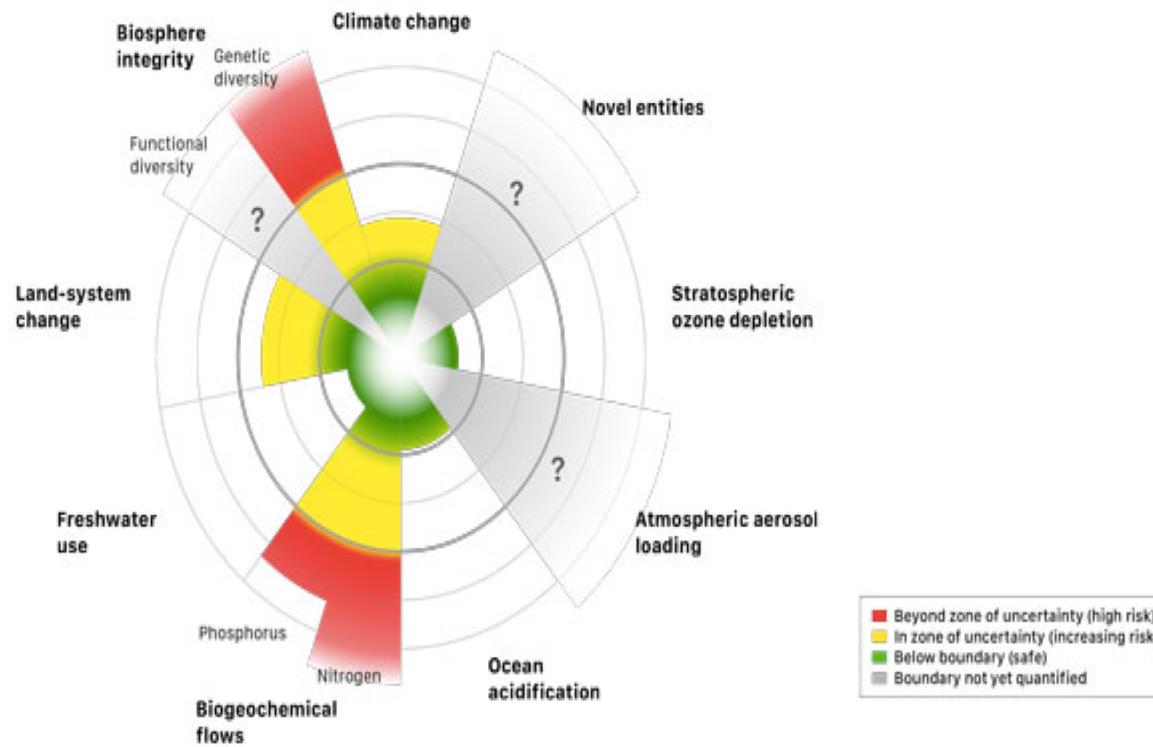
## ENVIRONMENT

G-C GM is unsustainable

Growth puts a huge strain on the environment, the limits of which jeopardise the promise of an endless increase in output production.

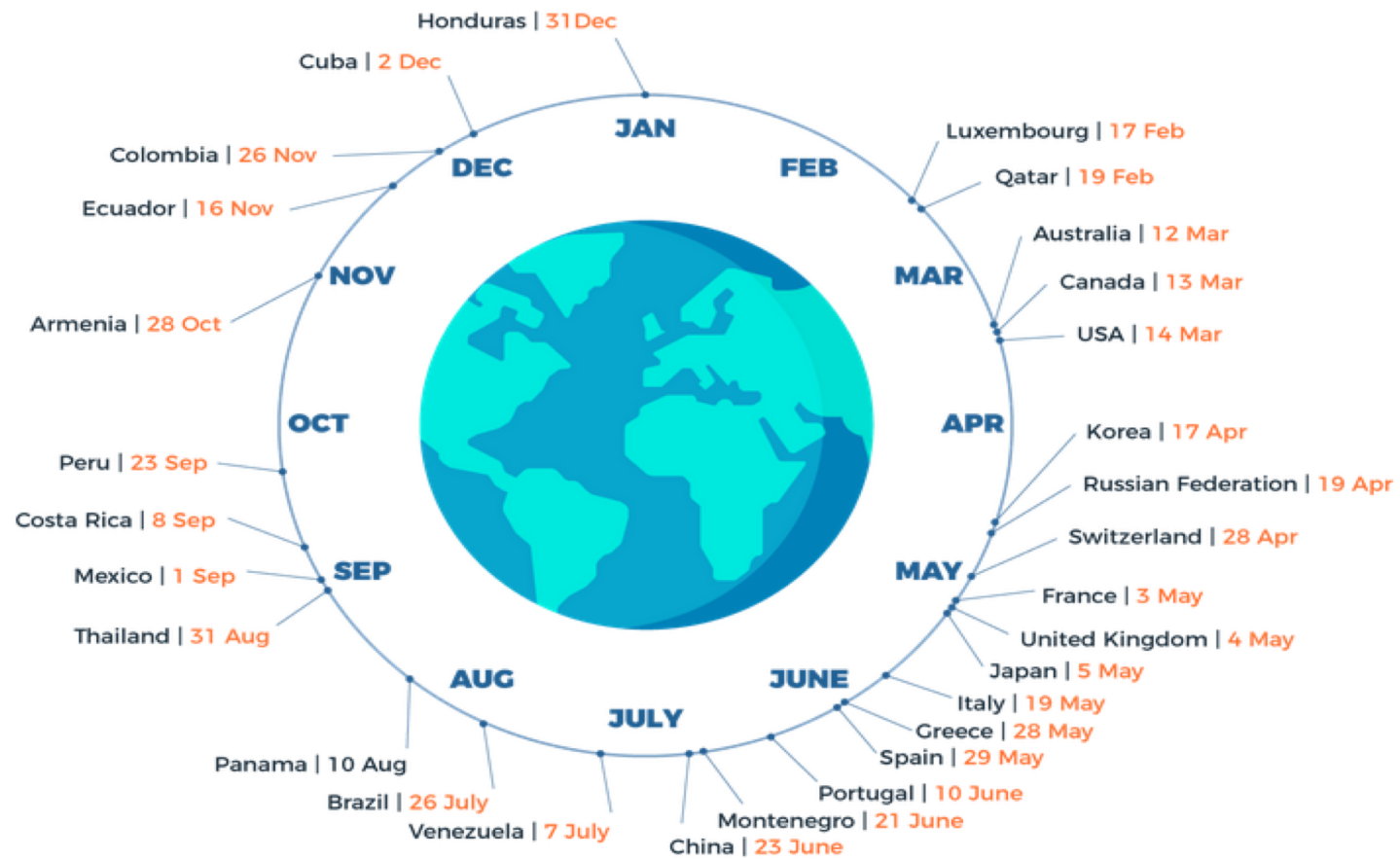
The promise of a 'green' and 'smart' growth is largely elusive because of its total dependency on 'rare earth'

## Planetary boundaries (Stockholm Resilience Center)

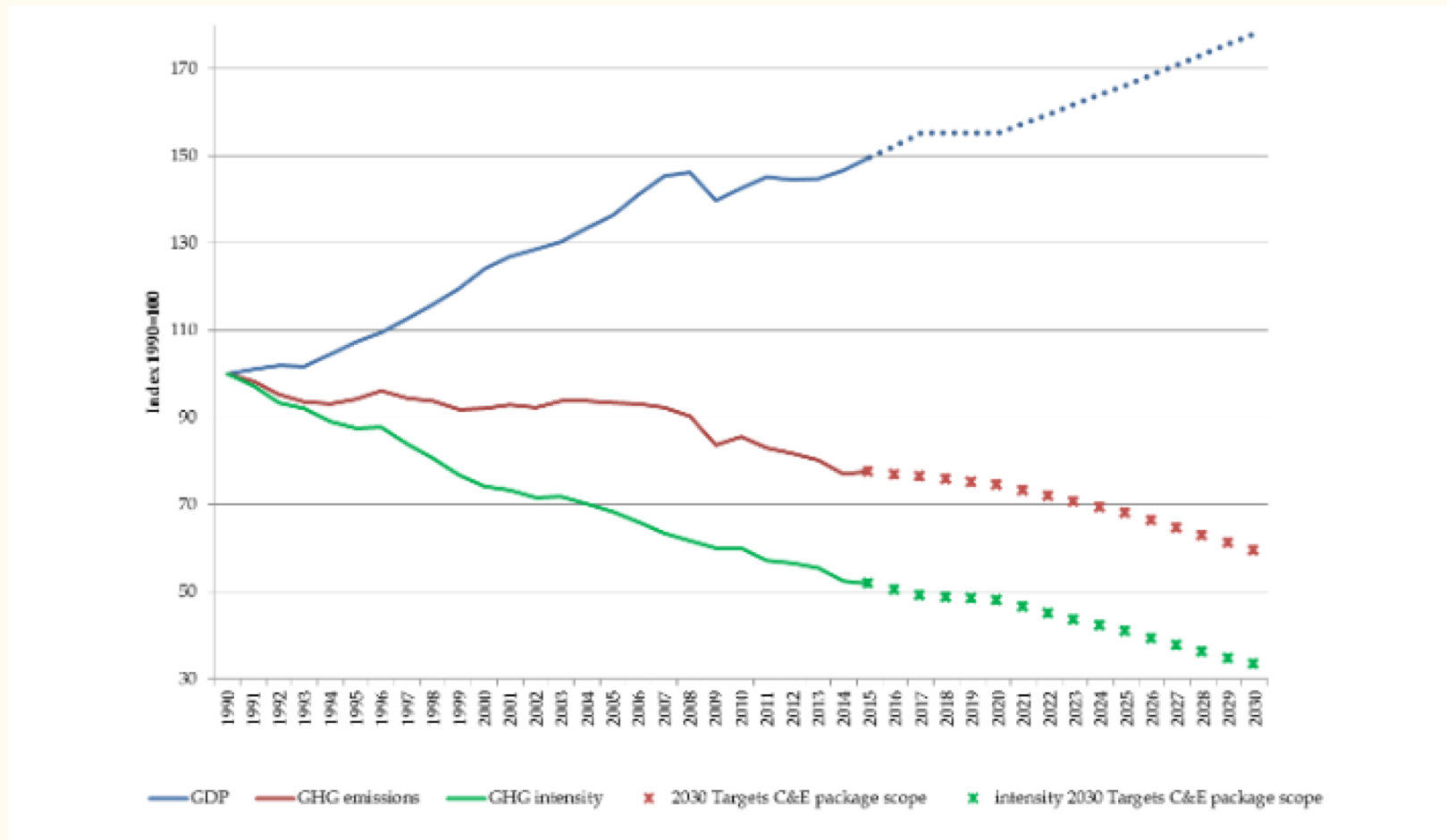


Estimates of how the different control variables for seven planetary boundaries have changed from 1950 to present. The green shaded polygon represents the safe operating space. Source: Steffen et al. 2015

## Country overshoot days (Global Footprint Network)



## The myth of absolute decoupling (COM(2017) 53 final)



# Prosperity without/beyond growth?

- Conclusion: G-C GM is based on the assumption that more global wealth leads to more autonomy and less vulnerability for all.

Wealth → Autonomy ↔ Poverty → Vulnerability.

- But even regardless of equality concerns (and left-wing debate), that assumption is true only up to a certain point.

# Prosperity without/beyond growth?

- Wealth-derived autonomy is inherently fragile:
  - Mediated autonomy: dependent on others' skills
  - Elusive autonomy: 'keeping up with the Jones' and 'radical monopolies' (Illich)
  - Destructive autonomy: jeopardises the potential for future generations' autonomy
  - Winners' autonomy: competition-driven system

# Prosperity without/beyond growth?

- Vulnerability acknowledged all along the way : vulnerability and dependency (upon human and non-human environment) as an unsurpassable given of our living condition
- From vulnerable autonomy to vulnerability-based autonomy - the concept of resilience
  - 'in the context of communities and settlements, it refers to their ability to not collapse at first sight of oil or food shortages, and to their ability to respond with adaptability to disturbance' (R. Hopkins, *The transition handbook*)
  - Self-reliance, frugality and inclusiveness: Matching (individual and community) needs with (individual and community) skills in a two-way adjustment process.

# Prosperity without/beyond growth?

- Economy (and politics) 'reclaimed' : a less market-intensive society
  - By the civil society - the Transition movement: moving toward
    - Bottom-up movement; 'active' democracy; aimed at reducing exposure to systemic risks and restoring a sense of commoning
    - Typical examples of transition initiatives include:
      - Local currencies (less speculation)
      - Farm-to-fork economy (less intermediaries)
      - Commoning (vegetable gardens, windmills, solar panels, cooperative groceries, repair cafés etc.) (less market exchanges)
  - By public entities (and their lawyers)?

# The EU legal present - A market-based vision

- Legal categories are market-oriented
  - Personal data, animals, human cells = goods
  - A worker's family life = work incentive
  - Hospitals and universities = undertakings
  - Patients = service recipients
  - Migrants = potential work capital to be shared among MS through 'quotas'
  - Citizens can only move across the EU if they are workers and/or consumers
  - Seeds = sources of agricultural productivity
  - Drug trafficking and prostitution = economic activities that can be counted in a MS's GDP

# The EU legal present - A market-based vision

- Legal categories are market-oriented
  - Environment = a provider of 'ecosystemic services' protected through trade instruments (ETS)
  - Product-related norms = private goods (standards)
  - Third countries = potential markets
  - Consumer = 'vulnerable'
  - Advertising = fundamental right to free speech
  - Social dumping = legitimate exercise of freedom of establishment / Free provision of services

# The EU legal present - A market-based vision

- Asymmetry of conflicts between 'growth-based' and 'resilience-based' sets of regulation
  - Free movement vs public interest objectives (culture, health, environment, etc.)
    - Rule vs exception;
    - International law vs national laws
  - Public procurement and free competition principles vs collective negotiation autonomy (trade unions and employers' representatives, schools and local food producers, etc.)
  - IP and its exceptions : copyright and patents vs open access and commons
- A problem of competence... and narrative

# The EU legal future - The others and the life worth living

- Enlarge the narrative and the competences
  - Historical EC/EU narrative:
    - Prosperity requires growth, which in turn requires open markets: free movement is the key (no attention to environmental impact)
    - EC protects MS from themselves and short-term politics by forcing them to resist protectionist temptations and open up markets, which is a necessary condition to achieve collective prosperity: EC protects the 'other' trader. ➡ Proved very successful.

# The EU legal future - The others and the life worth living

- Proposed enlarged EU narrative:
  - Prosperity = securing everyone's right to live a life worth living, namely the right to achieve one's full (vulnerability-based) autonomy potential.
  - EU protects MS from themselves and short-term politics by forcing them to take into account the 'others', i.e. all those who are not electorally significant:
    - Aliens (EU citizens and third-country nationals)
    - Minorities
    - 'Severely materially deprived' people
    - Future generations
    - Non-human beings
  - More and better competences to protect these marginal categories

# The EU legal future - The others and the life worth living

- Use legal expertise to help this shift happen
  - In scholarly writings: Put forward innovative interpretations...
    - Everyone's right to live a life worth living is a general principle of EU law that stems from the EU Charter, the common constitutional traditions of the MS and international HR treaties that they ratified.
    - Should be used as part of the consistent interpretation principle so as to suggest new interpretations of existing rules and principles (equality and non-discrimination principle, free movement, WTO law, free speech, but also procedural and liability rules regarding nature's rights).
    - Should be used as a cross-cutting clause to foster a different exercise of EU's current competences (pesticides authorisation procedure, CAP, advertising on TV, anti-dumping regulations, etc.).

# The EU legal future - The others and the life worth living

- Use legal expertise to help this shift happen
  - In practice: reap the full benefit of current principles and legal texts. Examples drawn from the 'Law in Transition' Clinic:
    - Example 1: the renewal of approval of glyphosate and the precautionary principle
    - Example 2: investor-state dispute settlement between Dubai-based company and Belgium about extension of harbour in Antwerp: use of Aarhus Convention and *Achmea* ECJ judgment to challenge the legality of such clauses.