

THE CONTESTED BOUNDARIES OF JUST TRANSITIONS

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Abstract: *Greenhouse gas emissions have already changed our climate. But policies geared toward reducing emissions also stand to yield a variety of unintended consequences. One such potential unintended consequence is that if high-emitting industries are phased out rapidly and without forethought, the workers and communities who depend upon those industries will bear severe losses. Calls for a “just transition” to the low-carbon future have proliferated. But the meaning of this concept remains muddled, potentially undermining its potency as a tool for the climate era.*

This chapter reviews the origins of the just transition concept in the late twentieth century labour movement, characterizes other social movements’ co-optation of the concept over the subsequent decades, and offers a deeper examination of the (many) theories of justice that animate the (contested) just transition concept. We argue that the expansion of the just transition concept beyond its origins in the labour movement represents a real loss, as no other justice concept so concisely and illustratively captures worker and community economic dependence and the suite of concrete policy options to address the rug being pulled out from under people’s livelihoods. Ultimately, though, the concept’s broad appeal and its evolution toward inclusivity offer reason for optimism about its utility in the fight against climate change.

Keywords: Just Transition; Justice; Law; Labour; Environmental Justice; Energy Justice; Distributive Justice; Procedural Justice; Restorative Justice, Planetary Justice

1. INTRODUCTION

Greenhouse gas emissions have already changed our climate. The ongoing, global scramble to reduce emissions is fraught with political, ethical, and practical challenges. But the tasks of mitigating climate change and adapting to its effects extend far beyond reducing emissions. Policies for the climate era also stand to yield a variety of unintended consequences, especially for marginalized populations who have already borne disproportionate burdens of an economy built around fossil fuels (Eisenberg, 2019).

One such potential unintended consequence is that if high-emitting industries are phased out rapidly and without forethought, the workers and communities who depend upon those industries will bear harsh consequences. This risk of disproportionate burdens being imposed on such workers have prompted calls for a “just transition” to the low-carbon future. Yet, little

consensus exists today as to what a just transition means. Although many understand it is a labour concept that originated through labour movement advocacy several decades ago, vastly diverse social movements advocating sometimes conflicting goals now claim it as their own. The contested nature of the just transition and how it can or should be implemented through law thus remain unsettled questions (Doorey, 2017).

The concept and operationalization of the just transition concept is not only compelling from the perspective of necessary climate action. The just transition is also interesting from a variety of scholarly angles. Its widespread usage alongside competing interpretations of the term reflect the organic evolution of language and terms of art. The concept's call for justice has injected an under-explored moral frame into the climate change conversation. And its contested meaning and significance complicate questions of how the concept does, can, or should interact with law and policy.

This chapter provides an overview of the just transition concept, its relationship with social movements, and the theories of justice that animate it. We explore the who, what, when, where, why, and how of the just transition as a term of art and contested concept that has begun to appear across a diverse set of laws and institutions today. Where did the just transition concept come from? What does a just transition to the low-carbon future entail? Who should benefit from a just transition? Who should ensure a just transition? How can a just transition be achieved? Why is a just transition warranted? When and how will we know a just transition is complete?

The murky answers to these questions in turn reveal the contested boundaries of the just transition, which in turn complicates its potential incorporation into law and policy. Overall, we propose that some strengths of the just transition concept have been lost since its origins in the late twentieth century labour movement. The concept has arguably become muddled, less meaningful semantically, and more complex to implement through law since it originated. If everyone is now claiming the just transition as their own, we contemplate, the just transition might not really mean anything anymore. A concept can become so nebulous and contested that it loses its explanatory and normative value.

However, the disadvantages of the concept's evolution are arguably outweighed by the advantages. Yes, the widespread dissemination of the idea and its foothold among competing social movements has confused the concept's meaning. But the just transition concept "going viral" also holds promise. Its dissemination foretells that more populations might make use of it in

their advocacy, meaning it can help secure justice for more people experiencing more diverse axes of disadvantage. Thus, while one might mourn the concept's weakened foothold in labour justice, it is also worth celebrating the concept's more inclusive expansion. If lawyers and legal scholars concerned with a "just transition" can develop an overarching theory of justice that helps explain how these various justice movements relate to one another and how just transitions policy can reconcile competing justice narratives as we transition towards a post-carbon society, the concept stands to become all the more powerful.

Part 2 of this chapter reviews the origins of the just transition concept in the late twentieth century labour movement. Part 3 describes other social movements' co-optation of the concept over the subsequent decades. Parts 4 and 5 then provide a deeper examination of the theories of justice that animate the (contested) just transition concept. We conclude that ultimately, the concept's broad appeal offers reason for hope about its utility in the fight against climate change.

2. THE LABOUR-DRIVEN ORIGINS OF "JUST TRANSITION"

The concept of a "just transition" originated in the North American labour movement beginning in the late twentieth century (Doorey, 2017). The term has been traced to the pioneering work of Tony Mazzocchi, former president of the Oil, Chemical, and Atomic Workers Union in the United States (Eisenberg, 2019; JTI, 2020; Leopold, 2007). Mazzocchi witnessed firsthand the benefits of the American *Servicemen's Readjustment Act*, which provided a menu of benefits to veterans returning to civilian life following WWII. In the 1970s, Mazzocchi argued that governments should similarly provide supports to atomic workers displaced due to disarmament during the Cold War (JTI, 2020). By the 1980s, Mazzocchi had refocused his attention on adverse job effects caused by expanding environmental standards legislation. He lobbied governments to create a "superfund" to assist communities and workers displaced from their jobs as economies transitioned from fossil fuels to a lower carbon economy.

Mazzocchi argued that workers who had been exposed to toxins and environmental risks for years while producing the energy demanded by society deserve compensation and other supports when governments intentionally transition away their jobs (Eisenberg, 2019). Mazzocchi and his colleagues developed alliances with environmental groups with the aim of demonstrating that the pursuit of a cleaner environment need not come at the expense of decent jobs if the

transition was carefully planned. The concept of a “superfund” was replaced in the 1990s by the language of “just transition” after environmental groups expressed concern that the superfund “had too many negative connotations” (Eisenberg, 2019; Leopold, 2007).

By the early 2000s, the labour-driven conception of just transition had been adopted as a strategic framework by national and international labour organizations whose members faced the risk of massive job losses in fossil fuel and other high carbon industries (King 2005; CLC, 2010; UNEP, 2008). A 2008 Report produced by the International Labour Organization and the United Nations Environment Program described the just transition strategy as follows:

The shift to a low carbon and sustainable society must be as equitable as possible. It must, in a phrase, be a “Just Transition.” A Just Transition framework is being assembled as a result of the work of the trade unions, the ILO, national and local governments, sustainability-conscious business and community-based organizations. The framework is built around the idea that the coming transition will have a huge effect on workers and communities. Many will benefit but others may face hardships as certain industries and occupations decline. From the point of view of social solidarity, and in order to mobilize the political and workplace-based support for the changes that are needed, it is imperative that policies be put in place to ensure that those likely to be negatively affected are protected through income support, retraining opportunities, relocation assistance, and the like. (UNEP, 2008, 27)

At the core of the labour-driven just transition conventionalization was the insight that while a transition towards a more sustainable lower carbon economy change may be necessary, that transition must be managed with an eye on protecting workers, families, and communities through the transitional stage and thereafter (Doorey 2017; Rosemberg, 2010; Eisenberg, 2017; Cha, 2017).

Since it was focused relatively narrowly on affected workers and communities, the labour-driven conventionalization of just transition produced a finite and somewhat predictable range of policy prescriptions (Doorey, 2017). These prescriptions typically included wage protection and other unemployment insurance programs to buffer workers through a period of adjustment, or early retirement benefits to bridge older workers to their pensions if their jobs were phased out. They included re-training programs to help fossil fuel workers qualify for new greener jobs, re-location funds to assist former fossil fuel workers move to areas with jobs, and seed money for communities to help them transition away from reliance on fossil fuel tax revenues. Governments were encouraged to support emerging clean industries through procurement policies and direct subsidies and tax incentives and key infrastructure investments, and sometimes to encourage these new industries to locate in former fossil fuel communities when possible. A labour-driven just transition

strategy also encouraged collective bargaining and social dialogue between government, business, unions, and other non-governmental actors to ensure broad-based participation and collective voice throughout the transition process (Evans & Phelan 2016; Novitz 2020).

Therefore, law's role in the labour-driven understanding of just transition focused on two key areas. Firstly, it was concerned with the suite of legal rules that encouraged and managed the transition from fossil fuels to a lower carbon economy. These rules would draw from a range of legal fields, including environmental law, energy law, tax law, business and corporate law, land use and planning law, among other legal fields. Secondly, a *just* transition requires a theory of justice and, in the labour-driven conceptualization, that theory of justice focused primarily (although not exclusively) on *labour justice* (Doorey, 2017). The primary concern was to ensure that workers who were negatively affected by the planned economic transition towards a lower carbon economy were provided with supports and new economic opportunities. Many of the laws that are relevant to the pursuit of labour justice are, unsurprisingly, laws that typically fall within the domain of the field of Labour and Employment Law, including unemployment insurance, training and apprenticeships, pensions, and collective bargaining law.

3. THE CO-OPTATION OF JUST TRANSITIONS AND THE BROADER CONCEPTION

As often happens with terms of art, the idea of the “just transition” has evolved and expanded since Mazzocchi's initial vision of fairness for workers transitioning away from hazardous work that had contributed to societal gain (Eisenberg, 2019). A review of literature in law and social sciences, as well as a review of how the term is used by modern advocates, reveals competing meanings for the idea of a just transition (Stavis & Felli, 2020; Heffron & McCauley, 2018). In many contexts, the original, labour-driven meaning has largely been lost to alternative articulations of the idea (Doorey, 2021).

The most prominent non-labour meaning of a just transition appears to be the plain-language usage of the original term of art (Eisenberg, 2019). That is, “just transition” is interpreted to mean “a transition that is just.” In this broader sense, the idea of a just transition has sometimes been rolled into the emerging discourse advocating for a ‘grand reset’ of the global economy in the post-fossil fuel, post-Covid era (Morgan, 2021). This much broader notion of the just transition offers a vast territory for various social movements and justice advocates to embrace the just

transition concept as a demand for fairness generally, or for their respective communities of interest specifically.

Those communities include communities of colour, communities and nations particularly vulnerable to the effects of climate change, the poor in general, or simply, “everyone” (Stavis & Felli, 2020; McCauley & Heffron, 2018). For example, Swilling and Annecke, two scholars of sustainability studies, authored a book entitled *Just Transitions*, in which the term is defined as a transition “that addresses the widening inequalities between the approximately one billion people who live on or below the poverty line and the billion or so who are responsible for over 80 percent of consumption expenditure” (Swilling & Annecke, 2012, xiii). Another scholar defines a just transition as a transition that avoids “the problems with the fossil fuel economy” in order “to create a truly just economy” or one “that does not create disparate environmental impacts” (Farrell 2012, 45, 49). As Doorey explains, “In recent years, a just transition has been used to describe almost any claim for climate, environmental, energy, restorative, migration, and intergenerational justice” (Doorey, 2021).

The Labor Network for Sustainability describes the contemporary understanding of just transition as operating along a continuum:

Just transition ideals can be seen along a spectrum. On one end is a relatively narrow concept that addresses and mitigates the job and revenue losses from ending use of fossil fuels. From there, the idea expands to incorporate specific attention to workers and communities who were excluded from the benefits of a fossil-fuel economy in the first place, all the way to understanding just transition as a holistic transformation of existing institutions and structures, fundamentally reconfiguring the relationship between human beings, industry, land and resources. (LNS 2021).

Some of the literature that adopts the broader understanding of just transition fails even to acknowledge the original labour-driven roots of the phrase. The plight of displaced fossil fuel workers and communities is not necessarily ignored in this emerging literature, but nor are the concerns of this narrower constituency presumed to take precedence over other communities of concern.

Consequently, we can identify the current state of legal scholarship engaging the idea of the just transition as involving three silos. The first silo continues to embrace the original labour-driven concept of the just transition. These scholars continue to define the just transition as some form of transitional assistance or compensation to fossil fuel workers and communities (Eisenberg 2021; Novitz 2020; Navraj 2019; Chacartegui 2018; Haggerty 2018; Doorey 2017; Segall 2021;

Ghaleigh 2019). A second silo explicitly acknowledges the original labour-driven roots of just transition and advocates for an extension of the idea to other broader contexts (Abate 2021; Murombo 2022; Fleming & Mauger, 2021, Henry, et al 2020). Finally, a third silo embraces the just transition to mean some other demand for fairness without acknowledging the concept's roots in labour (Gundlach & Stein, 2020; Swilling & Annecke, 2012; Farrell, 2012). These parallel evolutions reveal the just transitions concept as highly contested. The resulting confusion has both theoretical and practical implications for the development of coherent just transitions' law and policy.

Certainly, there are pragmatic and conceptual benefits to retaining the original labour-driven, narrow conceptualization of the just transition. Firstly, the labour-driven meaning is relatively simple and specific. This simplicity arguably smooths the road to operationalizing Mazzocchi's vision through law and policy (Eisenberg, 2019). Although even the original labour-driven conventionalization can be interpreted broadly, its policy implications are finite. A labour-driven just transition could involve a radical restructuring of the environmental-economic order and a fuller reimagining of energy economics. But in the short-term, the idea is a helpful shorthand to denote straightforward measures such as job retraining, wage replacements, regional tax and economic development supports, and related initiatives that support workers and communities on the front line of the transition away from fossil fuels. Especially at a time when the task of achieving even straightforward policy goals is often mired in political strife, one could argue that the simpler and more specific a policy idea is, the more likely it is to be achieved. Some environmental law scholars have argued that defining environmental law as a field concerned with 'the environment' leads to a field that is 'uselessly broad' (Plater, 2004, 5). Similarly, if just transition becomes simply a catch-all phrase to describe any and all claims to justice throughout the process of social and economic transition, it "risks stripping the term of any practical policy value" (Doorey, 2021).

Secondly, many of the alternative conceptualizations of the just transition derive from well-developed alternative justice frameworks and movements that correspond to those specific needs, including environmental justice, energy justice, climate justice, intergenerational and restorative justice, and migration justice (Stavis & Felli, 2020; Eisenberg, 2019; Welton & Eisen, 2019; Bieremann & Kalagianni 2020). As depicted in Appendix 1, each of these justice movements is associated with a particular legal field from which a distinct critical movement emerged to identify

and resist inequities and injustice to specific communities produced by the prevailing legal and social orders. Each critical movement calls attention to one or more specific species of injustice that results from an existing legal framework. By sweeping all these movements under a singular, expansive ‘just transition’ framework, we risk losing sight of what makes them distinct. In this sense, the expansive conceptualization of the just transition ‘seems redundant alongside comparable but better-known concepts, such as climate justice and energy justice’ (Eisenberg, 2019).

However, the broader just transition conceptualization may well have taken on a life of its own at this point and gained a place in societal discourse that transcends its original narrower meaning, making it impossible to ‘put the genie back in the bottle’ (Doorey, 2021). Moreover, there are powerful reasons to make the just transition concept more inclusive than just compensatory or transitional assistance for displaced fossil fuel workers and communities. An important one is that the fossil fuel jobs of concern under the labour-driven conceptualization have historically been dominated by white men (Daggett, 2018). Insofar as the just transition principle is used to prioritize this population over others, there is a risk of perpetuating historical injustice by directing resources to those who have enjoyed relative advantage compared to groups that have been excluded from the benefits of the fossil fuel economy while bearing many of its costs.

An important question that arises with respect to the competing conceptualizations of the just transition—from the narrow labour-driven concept up to and including the all-encompassing ‘justice for everyone’ within a new economic order—is whether the varied priorities of the different justice movements and the theories of justice they advocate can be reconciled. Once we transcend beyond the narrow understanding of just transition as a policy framework to aid displaced fossil fuel workers and communities and begin to understand just transition as something much broader than that, we need a theory or framework that will guide policymaking. What do we mean when we advocate for justice in a just transition? Justice for whom, in what circumstances, and in what form, and what happens when competing justice claims conflict (Stevens & Felli 2020)? How we choose to answer these questions will determine the form and substance of just transitions law and policy.

4. UNPACKING ‘LABOUR JUSTICE’ IN THE ORIGINAL LABOUR-DRIVEN CONCEPULAIZATION OF THE JUST TRANSITION

One explanation for the contestation surrounding the just transitions concept in law and in theory is that there has been little coalescence, academic or otherwise, around the precise contours of the ethical or moral underpinnings of the idea (Eisenberg 2019, McCauley & Heffron 2018). In other words, there is little clarity, or at least agreement, on what precisely “justice” entails in the just transition. While legal scholars across the spectrum generally agree that the law’s role in the just transition would include legal measures to encourage, support, or mandate the transition from fossil fuels towards a lower carbon economy—the ‘transition’ component in a just transition—the various conceptualizations present competing normative accounts of the ‘justice’ component.

As discussed above, justice in the original labour-driven account of the just transition is primarily concerned with the plight of fossil fuel workers and communities that have long been dependent upon fossil fuel industries. The concern is that these workers and their communities will be directly harmed in the planned transition away from the source of their livelihoods and, therefore, justice demands that their plight be remedied through a menu of policy initiatives to cushion the blow. This is a justice claim, but there is also a pragmatic element involved, at least some of the time. By taking account of the plight of workers and communities that will be directly affected by the planned phasing out of good local jobs, the labour-driven account of justice also seeks to bring key stakeholders on side, including unions, community leaders, and local businesses and politicians.

‘Labour justice’ itself is a contested concept. At a general level, it refers to procedural and substantive fairness for workers in the sale of their labour (Fink & Palacio 2018, Koenig & Woody 2017; Langille, 2011). However, there is a rich and diverse literature exploring competing justice narratives within labour law and labour studies scholarship, including critical class, feminist, and race labour perspectives, intergenerational justice, migration justice, and many other theories of justice (Davidov & Langille, 2011). There is no one theory of labour justice. Some scholars have argued that the labour-driven conceptualization of the just transition can be animated by principles of *distributive justice*, *restorative justice*, and *procedural justice* (Eisenberg, 2020; Eisenberg, 2019; McCauley & Heffron, 2018). McCauley and Heffron have argued that the labour-driven concept of the just transition also encompasses aspects of energy justice (because of the concept’s demand for equity in transitions to clean energy) and climate justice (because of the energy transition’s context within climate change), and in fact has the potential to unite these themes in scholarship and advocacy (McCauley & Heffron, 2018).

Taking these lenses in turn, the labour-driven version of just transitions can be understood as a principle at the nexus of labour justice and distributive justice in the context of energy transitions necessitated by climate change. Distributive justice has competing meanings. In a narrow sense, labour lawyers often understand distributive justice as a claim to a fair distribution of the share of the wealth created by labour productivity in the form of higher wages for workers, for example. However, distributive justice can also be understood as a form of anti-utilitarianism. Utilitarianism emphasizes and prioritizes maximizing welfare for the greatest number of people as possible; it is a measure of aggregate welfare that tends to diminish or validate the suffering of minorities made worse off in the name of the greater good. Certain theories of distributive justice, by contrast, propose that minority sacrifice in the name of aggregate welfare is ethically repugnant (Eisenberg, 2020; Sen, 2000).

As an example, the Takings Clause of the Fifth Amendment to the U.S. Constitution embodies this ethical principle. That amendment provides that private property shall not “be taken for public use, without just compensation.” This provision reflects the drafters’ sense that it would be unethical for government to pursue a project in the name of aggregate welfare by steamrolling over an individual’s welfare. Although governments in the United States can confiscate private property for public projects, the Takings Clause guarantees compensation for that sacrifice. At least in theory, individuals made worse off for the greater good are made whole through that compensatory protection (Michelman, 1967).

A similar concept of anti-utilitarian distributive justice can be found in the labour-driven conceptualization of the just transition. Like the Takings Clause, it is a forward-looking guard against minority sacrifice in the name of the greater good (Eisenberg, 2020). Like the Takings Clause, this idea of the just transition accepts that changes can be made in the interest of collective needs. Fossil fuel jobs could be phased out completely, the theory tacitly acknowledges. But the idea that this displacement warrants compensation and other protections against minority sacrifice embraces the anti-utilitarian distributive justice principle that discrete groups should not be made worse off in the name of the greater good. Workers and communities displaced by decarbonisation will bear losses, but adequate policy interventions can make them whole—and thereby make decarbonisation “just.” Through this lens, the labour-driven concept of the just transition can be understood as premised on the principle that workers and communities reliant on high-carbon

industries should not be sacrificed in the name of aggregate welfare, now or in the future (Eisenberg, 2019).

Themes of restorative justice also animate the labour-driven concept of the just transition (McCauley & Heffron, 2018). Restorative justice is discussed most often in criminal justice literature. It is considered an alternative to retributive justice, or a punishment model of addressing crime or other harms. Restorative justice emphasizes harmony and healing over penalties or revenge (Gabbay, 2007). In the realms of economic, environmental, or other harms outside the criminal sphere, restorative justice may also refer to compensation for past harms with a view to repairing the damage done. In other words, restorative justice can mean reparations for past harms (Laplante 2015).

Mazzocchi's ideas about just transitions arguably had conceptions of reparations or compensation for past harms embedded in them. Specifically, the principle as originally articulated was not merely present- or future-looking, or an argument that future sacrifices would be unjust. Mazzocchi's proposals also revolved around the idea that workers in certain hazardous industries had *already* been sacrificed in the name of aggregate welfare (energy production). Although just transitions advocates have argued that future sacrifices would be unjust, they are also often demanding recognition of the past harms that workers and their communities have borne in the name of aggregate welfare. The economic and environmental devastation wrought on Central Appalachia by the coal industry over the past century—making this region a “sacrifice zone” for societal gain—provides one such illustration (Eisenberg 2019). Thus, the labour-driven conceptualization of the just transition is proposing that these workers and their communities should not be sacrificed *again*—meaning their past sacrifice should also be recognized. Through this lens, the labour-driven conceptualization of the just transition can be understood as espousing the principle that workers and communities reliant on high-carbon industries have already been sacrificed in the name of aggregate welfare and deserve offsetting measures for that sacrifice.

Finally, the procedural justice component of just transitions has been a prominent theme among advocates of the labour-driven conceptualization. The idea is relatively simple: those workers and communities likely to be affected by decarbonisation policies deserve a seat at the table in decision-making processes that stand to affect them (Eisenberg 2020). Through this lens, the labour-driven conceptualization can be understood as embracing the principle that workers and communities reliant on high-carbon industries are less likely to be sacrificed in the name of

aggregate welfare if they are ensured meaningful avenues to input and decision-making power. In this sense, the procedural justice component of the labour-driven conceptualization of just transition is an extension of the core procedural component of the labour justice commitment to participatory collective bargaining and consultations amongst the ‘social partners’ in the European sense.

5. INJECTING RACE INTO THE BROADER CONCEPTUALIZATION OF THE JUST TRANSITION

The broader conceptualizations of the just transition mentioned above are also animated by principles of distributive justice, restorative justice, and procedural justice. The variations from the labour-driven concept turn largely on questions of scale. For example, restorative justice could be pursued for coal-reliant workers and communities—or for the whole world in the sense intended within the ‘planetary justice’ literature (Stevis & Felli 2020; Chapman & Ahmed 2021). Similarly, distributive justice could be pursued for oil workers—or for the entire Global South as emphasized in ‘climate justice’ literature. We can recognize the legitimate procedural justice claim of workers and their unions to a seat at the table in local economic transition negotiations while also acknowledging the same right for economically developing countries to be directly involved in regional and global climate change negotiations. In this sense, the competing conceptualizations of the just transition do not seem so different from the labour-driven concept. They are taking the narrower original conceptualization of just transition and re-adjusting the focus or scope.

On the other hand, the competing conceptualizations of just transitions discussed earlier generally share a common theme that the labour-driven concept mostly lacks. Specifically, the labour-driven conceptualization, at least as it is often articulated, tends to be presented as neutral or even dismissive on questions of race and racism. The competing narratives about just transitions that have evolved alongside the labour-driven concept often take these multiple concepts of justice—distributive, restorative, and procedural—and add in the crucial overarching lens of *racial justice*.

It makes sense both why the injection of racial justice into the labour-driven concept strikes many as utterly necessary, and why racial justice would also complicate the concept. Take, for instance, the prospect of displaced coal workers. In its simplest sense, the labour-driven conceptualization demands compensation and other assistance to those workers (Mayer 2018;

Canada 2018). However, viewed from the perspectives of environmental justice, energy justice, restorative justice, and migration justice, all of which view the unequal distribution of harms and benefits in society primarily through a racial lens, the prospect of compensatory fairness requires a deeper inquiry. Communities of colour have historically faced barriers to coal jobs and other high-paying fossil fuel jobs and these communities have suffered disproportionate harm from energy and climate related decisions. As such, a just transitions framework that prioritizes assistance to displaced coal workers can be seen as ill-gotten gains from a racist system. Thus, through a racial justice lens, ensuring equitable access of workers of colour to new good green energy jobs emerges as a critical policy recommendation in a program guided by broader conceptualization of the just transition, a recommendation that may conflict with those that preference displaced coal miners when the original labour-driven conceptualization guides policy.

Restorative justice in the labour-driven conceptualization also becomes more complicated when viewed through a racial justice lens. Quite simply, the idea of governments paying large-scale reparations to displaced fossil fuel workers may be perceived as tone-deaf to communities of colour that should arguably be first in line for reparations that have never come despite years of advocacy (CCPA, 2019). Displaced indigenous communities that have suffered state genocide and violence and descendants of enslaved people would seem to have the stronger moral claims for state reparations, for example (Yamamoto et al 2003). At the very least, restorative investments in environmental justice communities—predominately communities of colour who have not enjoyed as many of the economic benefits of the fossil fuel economy (Shriver & Webb, 2009)—emerge as an important component of just transitions policy viewed in the context of the fossil fuel economy's relationship with racialized capitalism.

And finally, a global racial justice view also influences the story. Populations in the global South, residents of island nations, indigenous populations, and communities of colour throughout the world are at the greatest risk of the worst effects of climate change (Keene 2018). Distributive justice requires minimizing the sacrifice those communities will be compelled to bear as the effects of climate change continue to intensify. Restorative justice requires efforts to heal the damage high-emitting countries have wrought on those vulnerable populations (Chapman & Ahmed 2021). And procedural justice requires equal access to information, opportunities to voice concerns, and accountability mechanisms among countries with disparate resources in international climate

negotiations (Grasso & Sacchi, 2011). It is unsurprising, then, that global racial justice and its parallel conceptualization of climate justice blend into the discourse on just transitions.

6. CONCLUSION

The concept of a planned ‘just’ transition away from an economy dependent upon fossil fuels and towards a lower carbon economy began as a policy argument to support advocacy for various financial and other supports for workers and communities that would be directly and negatively impacted by the transition. A benefit of this narrow, labour-driven conceptualization of a just transition was that it focused attention on a relatively narrow range of policy initiatives and legal strategies. When early advocates of the just transition spoke about justice, we knew what they meant: justice for fossil fuel workers, their families, and their communities about to lose their livelihoods.

However, that narrow conceptualization of the just transition has been overtaken by a much broader version. We are still concerned with laws and policies that encourage and guide an economic and energy transition, but the newer and broader conceptualization of just transitions introduces alternative justice narratives. There is no longer a shared, unified theory of justice that defines just transition. Instead, the contemporary ‘just transition movement’ is inhabited by multiple, sometimes complementary, but sometimes conflicting justice movements and justice narratives, including labour justice, environmental justice, migration justice, climate justice, energy justice, and restorative justice.

While there is reason to lament the muddying of the waters surrounding the just transition concept, the concept’s dissemination also holds promise. The idea’s widespread appeal suggests that diverse populations and social movements may be able to use the concept to their advantage. Yet, there is a role for scholars and practitioners to advance this conversation further. An important challenge for lawyers and legal scholars concerned with a “just transition” is to develop an overarching theory of justice that helps explain how these various justice movements relate to one another and how just transitions policy can reconcile competing justice narratives as we transition towards a post-carbon society.

Appendix 1: Justice Movements that Inhabit the Broad Conceptualization of the Just Transition

Legal Field	Justice Movement	Normative Justice Narrative
Labour Law	Labour Justice	Fossil fuel workers and their communities incurred dangerous working conditions, disease, pollution, etc. in providing energy to society for decades, and they will be directly and disproportionately impacted by government policies that shut down the fossil fuel industry.
Environmental Law	Environmental Justice	The risks and benefits of environmental decisions have been unjustly distributed, particularly but not exclusively regarding race, and this is true of the causes and responses to climate change.
Energy Law	Energy Justice	Energy policy, including access to and affordability of reliable energy and exposure to harm associated with energy production has been unfairly distributed.
Climate Change Law	Climate Justice Intergenerational Justice	The impacts of climate change are distributed in vastly inequitable ways, harming the least advantaged populations worse who have contributed to climate change least. This includes global injustice and intergenerational injustice.
Indigenous Law/ Human Rights Law / Other	Restorative Justice	Righting past wrongs and past injustices by creating dialogue between the perpetrators of the harm and the victims and by making reparations or creating opportunities for victims and legacy victims.
Immigration Law	Migration Justice	The necessity for cross-border migration of peoples displaced from their homes due to climate change will disproportionately impact many of the world's most marginalized and impoverished who have contributed least to climate change.

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