The Contested Boundaries of Just Transitions Law

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What Role for Law in Addressing Climate Change?

- Environmental Law
- Energy Law
- Land Use & Planning
- Property Law
- Immigration Law
- Indigenous Law
What Role for Law in Addressing Climate Change?

- Environmental Law
- Energy Law
- Land Use & Planning
- Property Law
- Immigration Law
- Indigenous Law
- International Law

Climate Change Law

Labour Law???
• Unions focused on providing supports for fossil fuel workers & communities as these sectors are phased out in the transition to a lower carbon economy.

• In this narrow sense, Just Transition prescribed a set of policies and funding to implement those policies. Based on “justice” to workers and their families adversely affected by a transition to lower carbon economy.

• Some of these policies engaged traditional Labour Law subject matter:
  • Re-training and apprenticeships
  • Pension bridging rights
  • Revised unemployment insurance schemes
  • Preferential hiring rules
  • Collective bargaining rules and the scope of bargaining, etc
An attempt to bring Labour Law into the Climate Change discussion.

Thought Exercise

If we created a legal field called Just Transitions Law, what would be the content of that field?

Just Transitions Law: Putting Labour Law to Work on Climate Change

David J. Doorey

Climate change will dramatically affect labour markets, but labour law scholars have mostly ignored it. Environmental law scholars are concerned with climate change, but they lack expertise in the complexities of regulating the labour relationship. Neither legal field is equipped to deal adequately with the challenge of transitioning to a lower carbon economy and the effects of that transition on labour markets, employers, and workers. This essay considers whether a legal field organized around the concept of a “just transition” to a lower carbon economy could bring together environmental law, labour law, and environment justice scholars in interesting and valuable ways. “Just transitions” is a concept originally developed by the North American labour movement, but has since been endorsed by important global institutions including the International Labour Organization, the UNFCCC, and the U.N. Environmental Program. Although “just transitions” has received considerable policy attention, it has been under-explored by legal scholars. This paper marks an early contribution to this challenge. It explores the factual and normative boundaries of a legal field called Just Transitions Law and considers whether such a field would offer any new, valuable insights into the challenge of regulating a response to climate change.
JUST TRANSITIONS LAW:
The Narrow Original Version

PART I: INTRODUCTION

1. Introduction: What is Just Transitions Law?
2. The Effects of Climate Change on Labour Markets and the Need for a Transition to a Lower Carbon Economy
3. Law’s Historical Role in Transitioning Economies

PART II: THE LAW OF TRANSITIONS (USE OF LAW TO TRANSITION TO A LOWER CARBON ECONOMY)

5. Environmental Law (Cap-and-Trade; Carbon Taxes, etc.)
6. Energy Law and the Transition to a Lower Carbon Economy
7. Tax and Procurement Law (incentives, rebates, infrastructure, etc.)
8. Indigenous Law, Sovereignty, and Self-Determination
9. Land Use and Property Law

PART III: LAW AND A “JUST” TRANSITION [FOCUS ON AFFECTED WORKERS]

10. Unemployment Insurance Law Through an Energy Transition
11. Social Security and Health Law
12. Pension Law and Retirement Through a Transition
13. Training and Apprenticeship Regulation in Transitional Periods
15. Labour Mobility Law and the Right to Work
16. Occupational Health and Safety Law and Climate Change
17. Labour Standards and the Law of Recruitment During an Energy Transition
“The definition, scope and scale of [Just Transitions] range from a modest claim for jobs in the green economy to a radical and alternative global vision that replaces extractive capitalism and expanding militarism and imperialism with a civilizing globalization”.


“The broader usage of “just transition” . . . emphasizes the importance of not continuing to sacrifice the well-being of vulnerable groups for the sake of advantaging others, as has been the norm in the fossil-fuel-driven economy. Thus, the broad concept of a “just transition” may in fact be even more radical than the narrow one because the former calls for a grand restructuring of societal inequality.”


“JT is defined as a fair and equitable process for moving towards a post carbon society. This process must seek fairness and equity with regards to the major global justice concerns such as ethnicity, income, gender, within both developed and developing contexts . . . [JT must ensure] both a fair and equitable transition for all individuals and communities.”

FIGURE 3. Sustainable Development Framework with Environmental Justice and Just Transitions

Eisenberg, 2019
A “Just” Transition: Narrow Vision

A Just transition is one that accounts for the economic and social harms that will befall workers and communities as fossil fuel and other “high” carbon industries are phased out.

**Canadian Government Task Force on Just Transition** was given a mandate to:

- engage workers and communities in the provinces affected by the coal phase-out
- provide options and recommendations to the Government of Canada, via the Minister, on:
  - what could be included in a just transition plan for coal power workers and communities
  - how to structure a subsequent phase of consultation and analysis concerning just transition
<table>
<thead>
<tr>
<th>Legal Field</th>
<th>Justice Story</th>
<th>Normative Justice Narrative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labour Law</td>
<td>Labour Justice</td>
<td>Labour is not a Commodity, Inequality of Bargaining Power, unequal distribution of labour market risks, benefits.</td>
</tr>
<tr>
<td>Environmental Law</td>
<td>Environmental Justice</td>
<td>Risk, benefits of environmental decisions are unjustly distributed, particularly but not exclusively in regard to race. Distributional and participatory justice.</td>
</tr>
<tr>
<td>Energy Law</td>
<td>Energy Justice</td>
<td>Energy policy, including access to and affordability of reliable energy and exposure to harm associated with energy production has been unfairly distributed. Participatory rights are not equal.</td>
</tr>
<tr>
<td>Climate Change Law</td>
<td>Climate Justice</td>
<td>The impacts of climate change are distributed in vastly inequitable ways, harming the least advantaged populations worse who have contributed to climate change least. Distributional and participatory justice</td>
</tr>
<tr>
<td>Other</td>
<td>Restorative Justice</td>
<td>Righting past wrongs.</td>
</tr>
</tbody>
</table>
Thanks for listening.

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