

# Just Cessation: How Might the Climate Imperative to Phase Out Fossil Fuel Extraction Reshape the Concept of Just Transition?

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*Just transition has emerged as a master conceptual framework for limiting environmental and socially destructive industrial activity in the climate change era. While it has been widely embraced, its anchoring in the open-ended concept of sustainable development has meant that it has been used to legitimate ongoing future fossil fuel extraction. This article discusses the implications for just transition that arise from the recognition that the timely cessation of fossil fuel extraction is the sine qua non of the realization of the sustainable development goals. It offers a historical explanation for the minimal engagement to date between just transition advocacy and fossil fuel cessation. It then discusses the implications of acknowledging the necessity of fossil fuel cessation in terms of core labour law principles. Finally, the article outlines the implications of explicitly embedding fossil fuel phase down as an objective of just transition for government actors and social partners.*

**Keywords:** Just Transition, Climate Change, Labour Law, Sustainable Development Goals, Anti-Fossil Fuel Norms, Industrial Relations, Unions, Environment, Supply-Side Environmental Policies, Hugo Sinzheimer

## 1 INTRODUCTION

The scientific recognition that 90% of global coal ore reserves are ‘unextractable’ if atmospheric temperature rise is to remain within 1.5 degrees presents a jarring challenge for labour law.<sup>1</sup> To give effect to the imperative to keep these fossil ores in the earth, legal systems must be capable of compelling the cessation of profitable industrial activities related to fossil fuel extraction: state actors must stop approving new fossil fuel extraction projects; they must require existing mines and infrastructures to be ‘prematurely’ closed and they must phase down employment in fossil fuel extractive industries. The concept of ‘just transition’, a set of flexible principles oriented to ensuring that the ‘greening’ of

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<sup>1</sup> Dan Welsby et al., *Unextractable Fossil Fuels in a 1.5C World*, 597 Nature (2021), doi: 10.1038/s41586-021-03821-8. The percentage of ‘unextractable’ fossil fuel reserves is particularly high in Australia (where 95% of coal, e.g., must remain *in situ*), Russia (97%), the USA (97%) and the Middle East (100%) 233.

economies is well managed and contributes to the goals of decent work for all, social inclusion and the eradication of poverty, currently contemplates these objectives in an inchoate fashion only.<sup>2</sup> Just transition is anchored in a commitment to sustainable development, defined as development where ‘the needs of the present generation should be met without compromising the ability of future generations to meet their own needs’. It is premised on the notion that the economic, social and environmental dimensions of development are of ‘equal importance and must be addressed together’,<sup>3</sup> a formulation that is in tension with the more recent recognition that timely fossil fuel phase-out is the *sine qua non* of both social and economic development. Without it, as Daley and Lawrie have observed, all seventeen of the Sustainable Development Goals will be continually undermined.<sup>4</sup>

This article discusses the implications arising from the recognition that the timely cessation of fossil fuel extraction is an essential dimension of climate change mitigation for the concept of just transition. Despite an emerging literature on the importance of restricting fossil fuel supply to climate change mitigation<sup>5</sup> and the rise of anti-fossil fuel legal norms,<sup>6</sup> the question of how fossil fuel phase out should bear upon just transition, or labour law more generally, has received little attention to date.

<sup>2</sup> Just Transition has received extended consideration by the International Labour Organization (ILO), it was included in the Paris Agreement and received the endorsement of over fifty nations during COP24. ILO, *Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for All* (2015), [https://www.ilo.org/wcmsp5/groups/public/—ed\\_emp/—emp\\_ent/documents/publication/wcms\\_432859.pdf](https://www.ilo.org/wcmsp5/groups/public/—ed_emp/—emp_ent/documents/publication/wcms_432859.pdf) (accessed 26 Jul. 2023). United Nations, *Framework Convention on Climate Change*, FCCC/CP/2015/10/Add.1 (2016), <https://unfccc.int/resource/docs/2015/cop21/eng/10a01.Pdf> (accessed 26 Jul. 2023); Anmol Arora & Heike Schroeder, *How to Avoid Unjust Energy Transitions: Insights from the Ruhr Region*, 12 Energy Sustainability Soc’y 2, 19 (2022), doi: 10.1186/s13705-022-00345-5.

<sup>3</sup> ILO, *Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for All* 4 (2015), [https://www.ilo.org/wcmsp5/groups/public/@ed\\_emp/@emp\\_ent/documents/publication/wcms\\_432859.pdf](https://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/documents/publication/wcms_432859.pdf) (accessed 7 Dec. 2022).

<sup>4</sup> Freddie Daley & Charlie Lawrie, *Fuelling Failure: How Coal, Oil and Gas Sabotage All Seventeen Sustainable Development Goals* (2022), [https://static1.squarespace.com/static/5dd3cc5b7fd99372fbb04561/t/629621606337cb2779a632f9/1654006125016/FFN\\_MVSA003+Report+-+Fossil+Fuels+vs.+the+Sustainable+Development+Goals\\_V4-FA-Screen-Single.pdf](https://static1.squarespace.com/static/5dd3cc5b7fd99372fbb04561/t/629621606337cb2779a632f9/1654006125016/FFN_MVSA003+Report+-+Fossil+Fuels+vs.+the+Sustainable+Development+Goals_V4-FA-Screen-Single.pdf) (accessed 5 Apr. 2023).

<sup>5</sup> Michael Lazarus & Harro van Asselt, *Fossil Fuel Supply and Climate Policy: Exploring the Road Less Taken*, 150 Climatic Change 1 (2018), doi: 10.1007/s10584-018-2266-3; Filip Johnsson, Jan Kjarstad & Johan Rootzen, *The Threat to Climate Change Mitigation Posed by the Abundance of Fossil Fuels*, 19 Climate Pol’y 258 (2019), doi: 10.1080/14693062.2018.1483885; Fergus Green & Richard Denniss, *Cutting With Both Arms of the Scissors: The Economic and Political Case for Restrictive Supply-Side Climate Policies*, 150 Climatic Change 73 (2018), doi: 10.1007/s10584-018-2162-x.

<sup>6</sup> Greg Muttitt & Sivan Kartha, *Equity, Climate Justice and Fossil Fuel Extraction: Principles for a Managed Phase Out*, 20 Climate Pol’y 1024 (2020), doi: 10.1080/14693062.2020.1763900; Fergus Green, *Anti-fossil Fuel Norms*, 150 Climatic Change 103 (2018), doi: 10.1007/s10584-017-2134-6; James Goodman, Riikka Heikkinen & Bruce Knobloch, *Not Resource Curse Nor Resource Benefit, But ‘Resource Negation’? Communities Against Coal Seam Gas on the Fossil Frontier*, 89 J. Austl. Pol. Econ. 136 (2022); Fergus Green, *Fossil Free Zones: a Proposal*, 22 Climate Policy 9-10 (2022), doi: 10.1080/14693062.2022.2118657; Peter Newell & Andrew Simms, *Towards a Fossil Fuel Non-proliferation Treaty*, 20 Climate Pol’y 1043 (2020), doi: 10.1080/14693062.2019.1636759; Matthew Paterson,

While the appropriate breadth and scope of the just transition concept has been widely debated in terms of the varieties of justice it contemplates (such as distributional, recognition and procedural) and the range of interests and participants it includes, most just transition scholarship does not discuss the environmental substance of particular transitions.<sup>7</sup> Some scholars have argued for the merits of a narrow definition that confines ‘just transition’ to its original meaning, as a process concerned with ‘easing the burden decarbonization poses to those who depend on high-carbon industries’.<sup>8</sup> Others have argued for wider and more transformational bases for the concept, in which ‘justice’ dimensions of transition encompass generalized shifts in property, radical redistributions of power and degrowth,<sup>9</sup> a conception appears currently dominant.<sup>10</sup> What advocates of both narrow and broad definitions of the concept share is a preeminent concern with questions of human inclusion within the ‘justice’ process, rather than in delving into the nature of the ‘greening’ that is contemplated in terms that recognize the superordinate significance of fossil fuel cessation as a precondition for the long-term success of other sustainability initiatives. Ciplet and Harrison’s analysis of ‘transition tensions’, for example, bundles together different kinds of environmental measures such as the construction of renewables infrastructure, subsidies, carbon

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‘The End of the Fossil Fuel Age’? *Discourse Politics and Climate Change Political Economy*, 26 New Pol. Econ. 923 (2021), doi: 10.1080/13563467.2020.1810218; Giorel Curran, *Divestment, Energy Incumbency and the Global Political Economy of Energy Transition: The Case of Adani’s Carmichael Mine in Australia*, 20 Climate Pol’y 949 (2020), doi: 10.1080/14693062.2020.1756731; Noel Healy & John Barry, *Politicizing Energy Justice and Energy System Transitions: Fossil Fuel Divestment and a ‘Just Transition’*, 108 Energy Pol’y 451 (2017), doi: 10.1016/j.enpol.2017.06.014.

<sup>7</sup> One of the earliest analyses of the implications of the just transition concept for labour law was David Doorey, *Just Transitions Law: Putting Labour Law to Work on Climate Change*, 30 J. Envtl. L. & Prac. 2 (2017). See Raphael J. Heffron & Darren McCauley, *What Is the ‘Just Transition’?*, 88 Geoforum 74 (2018), doi: 10.1016/j.geoforum.2017.11.016 for a discussion of the varieties of justice contemplated by just transition. Pablo García-García, Óscar Carpintero & Luis Buendía, *Just Energy Transitions to Low Carbon Economies: A Review of the Concept and Its Effects on Labour and Income*, 70 Energy Res. & Soc. Sci. 101664 (2020), doi: 10.1016/j.erss.2020.101664 offers a review of the use of the concept in the social sciences. Paolo Tomassetti, *Energy Transition: A Labour Law Retrospective*, Indus. L.J. (2022), doi: 10.1093/indlaw/dwac008 investigates the nexus between labour law and industrial relations institutions and different energy paradigms.

<sup>8</sup> Ann Eisenberg, *Just Transitions*, 92 S. Cal. L. Rev. 273, 273 (2019), doi: 10.1212/WNL.0000000000007018.

<sup>9</sup> For a mapping of the spectrum of just transition definitions, see García-García, Carpintero & Buendía, *supra* n. 7, at 101664.

<sup>10</sup> While recent UN conceptions of just transition do not extend to embracing degrowth, they are characterized by an extremely broad range of matters that are asserted as preconditions to just transition, including ‘gender equality, racial equality and social cohesion; protection of the rights of Indigenous Peoples; disability inclusion; intergenerational equity and young people; the promotion of women and girls; marginalized persons’ leadership and involvement in decision-making; and recognition of the value of their knowledge and leadership; and support for the collective climate action of diverse social groups’. UN Climate Change Conference UK (COP26), *Supporting the Conditions for a Just Transition Internationally* (2021), <https://ukcop26.org/supporting-the-conditions-for-a-just-transition-internationally/>.

offsets, cap and trade policies, oil and gas moratoria and degrowth campaigns as examples of ‘sustainability priorities’. They analyse these in terms of generic standards of ‘boldness’, ‘timeliness’, ‘impact’ and ‘measurability’, but do not frame their analysis in terms of the global imperative to phase down fossil fuel extraction as a precondition for climate stability.<sup>11</sup> Similarly, Stevis divides environmental orientations in just transitions processes in terms of ‘business environmentalism’ and ‘social environmentalism’ and ‘weak’ and ‘strong’ forms of environmental modernization, typologies that do not categorically grapple with the significance of fossil fuel extraction.<sup>12</sup>

The first section of this article outlines the scientific findings relating to fossil fuel extraction and its relationship to climate stability, and discusses the place of fossil fuel cessation within existing just transitions discourse. It sets the just transition concept in its historical context, as an organized labour demand made outside a climate change context and explains how the selective interpretation of particular transition case studies has served to marginalize the normative environmental content of just transitions. The next section discusses how the acknowledgement of the imperative of fossil fuel cessation can be understood as a realization of traditional labour law principles. The article then unpacks some of the practical implications that might arise from explicitly recognizing the climate imperative of fossil fuel phase down in terms of reshaping the objectives, methods, and roles for states and social partners set out in the 2015 International Labour Organization (ILO) Just Transition Principles.

## 2 THE SIGNIFICANCE OF FOSSIL FUEL CESSATION AND ITS PLACE WITHIN THE EXISTING JUST TRANSITION FRAMEWORKS

The recognition that phasing out fossil fuel extraction is fundamental to limiting global warming came to prominence in the mid-2010s with the publication of a range of articles and reports using terms such as ‘unburnable carbon’ and ‘stranded assets’.<sup>13</sup> Previously, restrictive supply-side climate policies such as coal mining moratoria received comparatively less public attention than restrictive demand-side climate policies (such as carbon taxes and cap and trade schemes), supportive

<sup>11</sup> David Ciptet & Jill Lindsey Harrison, *Transition Tensions: Mapping Conflicts in Movements for a Just and Sustainable Transition*, 29 *Envtl. Pol.* 435 (2020), doi: 10.1080/09644016.2019.1595883.

<sup>12</sup> Dimitris Stevis, *Unions and the Environment: Pathways to Global Labor Environmentalism*, 14 *Working USA: J. Lab. & Soc’y* 145 (2011), doi: 10.1111/j.1743-4580.2011.00329.x.

<sup>13</sup> Christophe McGlade & Paul Ekins, *The Geographical Distribution of Fossil Fuels Unused When Limiting Global Warming to 2 °C*, 517 *Nature* 187 (2015), doi: 10.1038/nature14016; James Leaton, *Unburnable Carbon – Are the World’s Financial Markets Carrying a Carbon Bubble?*, <https://carbontracker.org/reports/carbon-bubble/> (accessed 26 Jul. 2023) <https://carbontracker.org/wp-content/uploads/2014/09/Unburnable-Carbon-Full-rev2-1.pdf>; Paterson, *supra* n. 6.

supply-side climate policies (such as subsidies and investment stimulus for the construction of low carbon infrastructure) and supportive demand-side climate policies (such as consumer subsidies for renewable energy use).<sup>14</sup> In the 2020s, declarations of the incompatibility of continued fossil fuel extraction and a stable climate have become increasingly emphatic. In 2021, the International Energy Agency published its roadmap for the global energy sector, which asserted that no new unabated coal, oil or gas developments could be approved if the world is to limit temperature rises to 1.5 C above pre-industrial levels.<sup>15</sup> The *Production Gap* report calculated that governments plan to produce more than twice the amount of fossil fuels in 2030 than would be consistent with limiting warming to 1.5 degrees.<sup>16</sup> The 2023 International Governmental Panel on Climate Change (IPCC) Synthesis Report confirmed that remaining carbon budgets limiting warming to 1.5C would soon be exhausted, and that the window of opportunity to secure a liveable and sustainable future for all was rapidly closing.<sup>17</sup> In the same year, the UN Secretary-General called for no new coal and the phasing out of coal by 2030 in OECD countries and 2040 in all other countries, an end to all international public and private funding of coal, all licensing or funding of new oil or gas, an end to the expansion of existing oil and gas reserves, a shifting of subsidies from fossil fuels to a just energy transition, and a global phase down of oil and gas production compatible with the 2050 global net zero target.<sup>18</sup> Informing all of these conclusions has been an awareness that there is an acute time sensitivity to the task of reducing atmosphere greenhouse gases in order to mitigate climate change. The longer fossil fuels continue to be extracted and combusted, the higher the probability that ‘tipping points’ within the climate system will be crossed that trigger feedback loops that result in a ‘hothouse Earth’ scenario where climate stabilization becomes beyond the control of humans.<sup>19</sup>

Active policies directed toward destabilizing fossil fuel extractive industries are required to avoid this scenario.<sup>20</sup> Given the history of long periods of co-existence

<sup>14</sup> Green & Denniss, *supra* n. 5, at 75.

<sup>15</sup> International Energy Agency, *Net Zero by 2050 – A Roadmap for the Global Energy Sector* 224 (2021), <https://www.iea.org/reports/net-zero-by-2050>.

<sup>16</sup> SEI, IISD, ODI, E3G and UNP, *The Production Gap Report 2021* 2, <http://productiongap.org/2021report> (accessed 14 Jul. 2022).

<sup>17</sup> IPCC, *Synthesis Report of the IPCC Sixth Assessment Report: Longer Report* 53 (2023), [https://report.ipcc.ch/ar6syr/pdf/IPCC\\_AR6\\_SYR\\_LongerReport.pdf](https://report.ipcc.ch/ar6syr/pdf/IPCC_AR6_SYR_LongerReport.pdf) (accessed 5 Apr. 2023).

<sup>18</sup> Antonio Guterres, *Secretary-General’s Video Message for Press Conference to Launch the Synthesis Report of the Intergovernmental Panel on Climate Change* (2023), <https://www.un.org/sg/en/content/sg/state-ment/2023-03-20/secretary-generals-video-message-for-press-conference-launch-the-synthesis-report-of-the-intergovernmental-panel-climate-change> (accessed 3 Apr. 2023).

<sup>19</sup> Will Steffen et al., *Trajectories of the Earth System in the Anthropocene*, 115 *Proc. Nat’l Acad. Sci.* 8252 (2018), doi: 10.1073/pnas.1810141115.

<sup>20</sup> Peter Newell & Andrew Simms, *How Did We Do That? Histories and Political Economies of Rapid and Just Transitions*, 26 *New Pol. Econ.* 907 (2021), doi: 10.1080/13563467.2020.1810216; Roger Fouquet,

between ‘old’ and ‘new’ technologies, there is no reason to suppose that the large-scale introduction of renewable energy infrastructures will spontaneously displace fossil fuels rapidly or comprehensively enough to meet the targets set by the Paris Agreement.<sup>21</sup> As Lazarus and Asselt have observed, all societies are entangled with carbon-intensive pathways created by the political, institutional and legal frameworks that were forged within a carbon-dependent age. Overcoming these lock-ins entails actively dismantling fossil fuel incumbencies, rather than merely adding renewables infrastructure in the hope that market pressures will be adequate to prevent the extraction of ‘unburnable’ fossil ores.<sup>22</sup>

At present, the co-existence of rapidly expanding renewables infrastructure, emissions regulation and continued fossil fuel extraction looms large in many states. While exit dates for coal extraction, for instance, have been announced in several nations (2025 in Italy and Spain, 2030 in Portugal, 2038 in Germany,<sup>23</sup> 2049 in Poland,<sup>24</sup> 2050 in Denmark<sup>25</sup>), in major extractive states such as Indonesia, Australia, India, the US and China, no public temporal commitments have been made. Globally, governments expend public funds on fossil fuel subsidies at a vast scale, estimated at USD 5.7 trillion in 2020 (equivalent to 6.8% of global GDP) according to the International Monetary Fund (IMF) in 2021.<sup>26</sup> In the US, the Biden administration’s consent to the Willow Project will produce more than 100,000 barrels of oil every day until 2053,<sup>27</sup> producing approximately double the carbon pollution that will be cut by new renewable infrastructure by 2030.<sup>28</sup> In Australia, historic climate legislation limiting emissions has been passed at the same time as licenses for the long-term extraction of coal and gas for export are continually issued. Despite the long lifespans of many of these new projects (one has permissions

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*The Slow Search for Solutions: Lessons from Historical Energy Transitions by Sector and Service*, 38 Energy Pol’y 6586 (2010), doi: 10.1016/j.enpol.2010.06.029.

<sup>21</sup> David Edgerton, *The Shock of the Old* (2006).

<sup>22</sup> Lazarus & Asselt, *supra* n. 5, at 3.

<sup>23</sup> Béla Galgóczi, *Phasing Out Coal – A Just Transition Approach*, SSRN journal 21 (2019), <https://www.ssrn.com/abstract=3402876> (accessed 6 Jul. 2022).

<sup>24</sup> <https://beyond-coal.eu/2021/11/04/poland-backtracks-on-cop26-coal-exit-pledge/>.

<sup>25</sup> Denmark to end oil, gas extraction in North Sea | AP News, <https://apnews.com/article/europe-climate-climate-change-denmark-environment-60ba6a2b3acdf9f1188a74ebdc5d5d6f> (accessed 5 Apr. 2023).

<sup>26</sup> Ian W. H. Parry, Simon Black & Nate Vernon, *Still Not Getting Energy Prices Right: A Global and Country Update of Fossil Fuel Subsidies*, IMF, <https://www.imf.org/en/Publications/WP/Issues/2021/09/23/Still-Not-Getting-Energy-Prices-Right-A-Global-and-Country-Update-of-Fossil-Fuel-Subsidies-466004> (accessed 6 Apr. 2023).

<sup>27</sup> Lisa Friedman, *Biden Administration Defends Huge Alaska Oil Drilling Project*, The New York Times (27 May 2021), <https://www.nytimes.com/2021/05/26/climate/biden-alaska-drilling.html> (accessed 5 Apr. 2023).

<sup>28</sup> *The Biden Administration’s Easiest Climate Win Is Waiting in the Arctic*, Center for American Progress (2022), <https://www.americanprogress.org/article/the-biden-administrations-easiest-climate-win-is-waiting-in-the-arctic/> (accessed 5 Apr. 2023).

to extract until the year 2099)<sup>29</sup> and the high volumes of emissions they create these projects evade domestic emissions restrictions because the majority of emissions they produce occur at the point of combustion (outside Australia). In Scotland, initiatives to move toward ‘net zero carbon’ by 2045, such as a Just Transition Commission, until recently co-existed with policies to ‘maximize oil and gas recovery’.<sup>30</sup> In each of these instances, the effectiveness of positive sustainability measures are undermined by the grant of permissions for ongoing fossil fuel extraction.

The centrality of global fossil fuel phase out as a precondition of climate stability has not been a major theme of just transition discourse. While climate change is referred to in the 2015 ILO Just Transition Guidelines, it is not invoked as a general destabilizing dynamic that threatens the fabric of life. Rather, it appears as a potential source of unemployment, an occupational health and safety risk, an impetus to adaptation and a stimulus to resilience policies. While there are many injunctions to develop, incentivize, facilitate, encourage and enable green industries, there is no imperative on parties to withdraw support for fossil fuel extraction: indeed, fossil fuels are not mentioned in the Guidelines at all.<sup>31</sup> The ILO Guidelines explain the importance of managing potential losses to ‘industries, regions, communities and workers’ such as worker displacement, job losses, loss of assets and livelihoods, yet these are framed as matters that just transition negotiations must *respond* to, rather than as issues that are to be debated and contested *within* just transition processes.

The overarching imperative of the ILO Guidelines is inclusion: the participation of *all relevant stakeholders* at the international, national, regional, sectoral and local levels in the building of an appropriate policy framework. The Guidelines consistently emphasize the importance of flexibility and diversity in the management of environmental transitions. ‘There are different approaches, models and tools available to each country, in accordance with its national circumstances and priorities to achieve sustainable development in its three dimensions (economic, social and environmental)’.<sup>32</sup> Macroeconomic, industrial, sectoral and labour policies are all said to be relevant, and ‘no one size fits all’. There are no substantive criteria, then, for what counts as ‘just’ in a transition in the Guidelines. ‘Just’

<sup>29</sup> Matthew Killoran, *Dirty Dozen: Qld Coalmines to Stay Open Beyond Net-Zero Deadline*, Courier Mail (2022).

<sup>30</sup> Sinead Mercier, *Four Case Studies on Just Transition: Lessons for Ireland* 123 (2020), [http://files.nesc.ie/nesc\\_research\\_series/Research\\_Series\\_Paper\\_15\\_TTCasestudies.pdf](http://files.nesc.ie/nesc_research_series/Research_Series_Paper_15_TTCasestudies.pdf) (accessed 19 Dec. 2022).

<sup>31</sup> ILO, *supra* n. 2, at 12–13.

<sup>32</sup> ILO, *Just Transition Towards Environmentally Sustainable Economies and Societies for All – ILO ACTRAV Policy Brief* 4 (2018), [https://www.ilo.org/wcmsp5/groups/public/—ed\\_dialogue/—actrav/documents/publication/wcms\\_647648.pdf](https://www.ilo.org/wcmsp5/groups/public/—ed_dialogue/—actrav/documents/publication/wcms_647648.pdf) (accessed 9 Jun. 2020).



outcomes are rather framed in procedural terms, as flowing from the process of social dialogue itself, to which each actor brings its own environmental norms.

The environmentally indeterminate nature of just transition principles must be understood in the context of the concept's origins in the context of a non-climate change-related context. The initial concept of a Superfund for Workers, later renamed a Just Transition Fund, emerged from US Oil, Chemical and Atomic Workers Union Tony Mazzocchi's observation of the unfair and neglectful treatment of human beings left behind by cessation policies in comparison to physical spaces. As Mazzocchi noted, the law afforded recognition and resources to remediate the contaminated landscapes left when toxic pesticide manufacturing plants were closed, yet no such recognition or remedial funding was afforded to the workers and their families.<sup>33</sup> The sense that it is appropriate for questions of labour transition to follow in the *aftermath* of already-concluded cessation decisions, rather than labour having a stake in making those decisions, has been reinforced by the ways in which particular examples of transition have been selected and narrated as sources of 'lessons' for just transition processes.<sup>34</sup>

Many case studies of just transition concern the winding-up of coal mines and infrastructure. Ostensibly, these appear highly relevant in a climate change context given the necessity of phasing down coal extraction. However, overwhelmingly the historical examples that are drawn upon to illustrate just transition principles are not coal closures that were motivated by environmental concerns. Hard coal mining in the Ruhr region of Germany, for instance, ceased as the result of declining economic competitiveness.<sup>35</sup> The closure of coal mines in the Upper Silesia region of Poland between 1990 and 2002 was intimately tied to the fall of the Soviet Union.<sup>36</sup> The closure of Spanish coal mines between 1985 and 2005 occurred in the context of declining competitiveness with imports, depletion of brown lignite and EU Directives to withdraw public funding for uncompetitive coal mines.<sup>37</sup> The Appalachian coal mines were closed in the context of the rise of shale gas in the US.<sup>38</sup> The closure of coal mines and power stations in Scotland

<sup>33</sup> Tony Mazzocchi, *An Answer to the Jobs-Environment Conflict?*, Green Left Review (8 Sep. 1993), <https://www.greenleft.org.au/content/answer-jobs-environment-conflict>.

<sup>34</sup> Mercier, *supra* n. 30.

<sup>35</sup> Arora & Schroeder, *supra* n. 2, at 9.

<sup>36</sup> Ben Caldecott, Oliver Sartor & Thomas Spencer, *Lessons from Previous 'Coal Transitions'* 5 (2017), [https://www.iddri.org/sites/default/files/import/publications/coal\\_synthesisreport\\_v04.pdf](https://www.iddri.org/sites/default/files/import/publications/coal_synthesisreport_v04.pdf) (accessed 21 Nov. 2022).

<sup>37</sup> Catherine Saget, Trang Luu & Tahmina Karimova, *A Just Transition Towards Environmental Sustainability for All*, in *The Palgrave Handbook of Environmental Labour Studies* 467, 480–481 (Nora Räthzel, Dimitris Stevis & David Uzzell eds, 2021), [https://doi.org/10.1007/978-3-030-71909-8\\_20](https://doi.org/10.1007/978-3-030-71909-8_20) (accessed 7 Apr. 2022).

<sup>38</sup> Caldecott, Sartor & Spencer, *supra* n. 36, at 6.



between 1960 and the 1980s, and in the 2010s were the result of economic and political factors, rather than environmental policy.<sup>39</sup>

In drawing ‘lessons’ from these examples, just transition commentators have overwhelmingly focused on the depth and scope of the social measures implemented after transition decisions have been taken, relegating the environmental context as to the status of backdrop. An implicit binary is commonly drawn in these studies between ‘good’ transitions (involving long-term, comprehensively planned worker transition policies with extensive social protections, job guarantees, worker retraining provision, job pooling, redeployment measures and early retirement) and ‘bad’ transitions (involving no planning or labour force strategy, minimal or no union consultation, reactive approaches to displacement, short time frames). Commonly cited examples of the former are the Ruhr Valley, where long-term coordinated planning meant that forced redundancies were wholly avoided,<sup>40</sup> and Spain where an eight-year *Plan del Carbon* was concluded with EU support over five coal mining regions involving comprehensive provision for early retirements, redundancy payments and miner preference environmental regeneration work in former mining sites.<sup>41</sup> Archetypally ‘bad’ transition examples are to be found in the Appalachia region of the US, which lacked any unified regional strategy<sup>42</sup> and the closure of the coal-fired Hazelwood power station in Australia, which occurred without collaborative discussions with workers and with only five months’ notice.<sup>43</sup> This binary, and the examples that are advanced to illustrate it, serves to bracket out substantive environmental considerations from just transitions processes. It obscures the agency of actors in strengthening or weakening the longer-term determinants of fossil fuel dependency, such as the efforts of Appalachian coal mining companies to foster narratives of themselves as guardians of workers’ interests and social and economic standing through the notion of ‘coal culture’.<sup>44</sup> It also downplays the significance of the character of industrial relations systems as coordinated or liberal, which has a powerful bearing on the possibility and legitimacy of long-term labour planning in any context, not merely environmental ones.<sup>45</sup> Workers in a region are framed as mere *receivers* of already-decided environmental policy, rather than as potential

<sup>39</sup> Mercier, *supra* n. 30, at 123.

<sup>40</sup> Stavros Macrogenis, *Just Transition Is Possible! The Case of Ruhr (Germany)* (11 Apr. 2018), <https://www.just-transition.info/just-transition-is-possible-the-case-of-ruhr-germany/>.

<sup>41</sup> Saget, Luu & Karimova, *supra* n. 37, at 480–481.

<sup>42</sup> Dean Stroud et al., *Skill Development in the Transition to a ‘Green Economy’: A ‘Varieties of Capitalism’ Analysis*, 25 Econ. & Lab. Rel. Rev. 10, 18 (2014), doi: 10.1177/1035304613517457.

<sup>43</sup> Mercier, *supra* n. 30, at 19.

<sup>44</sup> Philip G. Lewin, ‘Coal Is Not Just a Job, It’s a Way of Life’: The Cultural Politics of Coal Production in Central Appalachia, 66 Soc. Probs. 51 (2019), doi: 10.1093/socpro/spx030.

<sup>45</sup> Stroud et al., *supra* n. 42, at 10.

co-creators of decisions concerning whether, when and how profitable mines should be phased down and on what terms.

Viewed through the prism of the imperative of fossil fuel cessation (and recognizing the anachronism of the concept for historic just transition case studies), many of the celebrated just transition ‘successes’ rather appear as losses, in the sense that they exemplify varieties of fossil fuel continuity rather than categorical disruption. In the case of the Ruhr, extensive efforts were made by each actor to delay cessation and preserve coal and steel production (including through the payment of extensive state subsidies).<sup>46</sup> In the Limberg region of the Netherlands, the closure of coal mines was consensually accepted *because* of widespread acceptance that another fossil fuel energy source, gas, would replace it.<sup>47</sup> Most Hazelwood power station employees in Latrobe Valley, Australia, were transitioned into other kinds of fossil fuel employment.<sup>48</sup> The erasure of questions of timing and resistance to extraction are significant to the range of issues understood to ‘count’ within just transition negotiation. If just transition involves little more than a government choice between, as one report put it, ‘the Ruhr or Appalachia’,<sup>49</sup> the concept offers no space for genuine deliberation over both environmental and labour entitlements.

The anchoring of just transitions within highly flexible and open-ended ‘sustainability’ norms has meant that the concept is vulnerable to becoming an empty signifier.<sup>50</sup> As García-García has observed, the just transition term is consistent with a wide spectrum of environmental values, including individualist, market-based, voluntary and growth-oriented approaches<sup>51</sup> that ignore fossil fuel cessation imperatives. It has been used to by major fossil fuel firms and lobby groups to legitimize their plans for future extraction, despite the incompatibility of such plans with the Paris Agreement and the International Energy Association’s roadmap.<sup>52</sup> The World Coal Association, for instance, has claimed to support a ‘just energy transition’ through its support of ‘efficient’ coal combustion and its advocacy of the role of coal in poverty alleviation.<sup>53</sup> Woodside, a major Australian

<sup>46</sup> Arora & Schroeder, *supra* n. 2, at 9.

<sup>47</sup> Caldecott, Sartor & Spencer, *supra* n. 36, at 10.

<sup>48</sup> Mercier, *supra* n. 30, at 39.

<sup>49</sup> Peter Sheldon, *The Ruhr or Appalachia? Deciding the Future of Australia’s Coal Power Workers and Communities* 84.

<sup>50</sup> Nicholas Bainton, *The Energy-Extractives Nexus and the Just Transition*, 29 Sustainable Dev. 624 (2021), doi: 10.1002/sd.2163. For an argument that just transition’s lack of clarity is a strength, see Darryn Snell, *‘Just Transition’? Conceptual Challenges Meet Stark Reality in a ‘Transitioning’ Coal Region in Australia*, 15 Global. 550 (2018), doi: 10.1080/14747731.2018.1454679.

<sup>51</sup> García-García, Carpintero & Buendía, *supra* n. 7, at 101664. See also Bainton, *supra* n. 50, at 626.

<sup>52</sup> International Energy Agency, *supra* n. 15, at 224.

<sup>53</sup> Barry Barton, *Fossil Fuel Mineral Wealth and Climate Change Law: Expectations of Coal Mine Development in a Time of Decarbonisation*, 39 J. Energy & Nat. Res. L. 469, 470 (2021), doi: 10.1080/02646811.2020.1866275.

oil and gas operator with plans for offshore gas extraction projects that are calculated to generate more than three times Australia's current annual greenhouse gas emissions,<sup>54</sup> describes itself as contributing to just transition by virtue of its contributions to 'providing decent work', 'stakeholder engagement' and the provision of 'lower carbon and affordable energy'.<sup>55</sup> In Australia the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) has used just transition terminology to simultaneously position itself as a responsible climate actor<sup>56</sup> that sees export coal mining as an industry with a long-term future that will be 'in demand for decades to come'.<sup>57</sup> Some officials of Industriegewerkschaft Bergbau, Chemie, Energie (IGBCE) in Germany envisage a 'just' transition as 'a slow transition that preserves the status quo as long as possible'.<sup>58</sup> Frustration, disappointment and cynicism at the definitional imprecision and perceived misuse of the just transition concept on the part of local actors, unions and workers have been observed by some researchers.<sup>59</sup>

The detachment of current just transition principles from recent struggles over the phasing out of fossil fuels must be understood in the context of its origins in a non-climate change context, where the imperative to challenge the false 'jobs versus environment' binary was paramount. While the imperative to challenge the 'jobs versus climate' dichotomy still remains, the fact that fossil fuel cessation is now recognized as a global imperative and that policies to achieve cessation are not presently in place in key extractive states represent fundamental differences between the present context and the predicament faced by the US Oil, Chemical and Atomic Workers in the early 1990s. Absent any substantive normative environmental framing, there is a risk that the just transition concept will continue to be vulnerable to being invoked to legitimate ongoing fossil fuel extraction. Given the global popularity of the just transition concept, there are compelling reasons to consider how it might be adjusted to better take account of

<sup>54</sup> Bill Hare, *The Ultra-Polluting Scarborough-Pluto Gas Project Could Blow Through Labor's Climate Target*, The Conversation (4 Jun. 2022), <http://theconversation.com/the-ultra-polluting-scarborough-pluto-gas-project-could-blow-through-labors-climate-target-and-it-just-got-the-green-light-184379>.

<sup>55</sup> Woodside, *Just Transition* (Jul. 2021), [https://www.woodside.com/docs/default-source/sustainability-documents/climate-change/just-transition-\(july-2021\).pdf](https://www.woodside.com/docs/default-source/sustainability-documents/climate-change/just-transition-(july-2021).pdf).

<sup>56</sup> Tony Maher, *Speech to the Sydney Institute* (27 Nov. 2019), [https://me.cfmeu.org.au/sites/me.cfmeu.org.au/files/uploads/ResearchSubs/Sydney\\_Institute\\_Maher\\_FINAL4.pdf](https://me.cfmeu.org.au/sites/me.cfmeu.org.au/files/uploads/ResearchSubs/Sydney_Institute_Maher_FINAL4.pdf).

<sup>57</sup> Sheldon, *supra* n. 49, at 2.

<sup>58</sup> Tobias Kalt, *Jobs vs. Climate Justice? Contentious Narratives of Labor and Climate Movements in the Coal Transition in Germany*, 30 *Envtl. Pol.* 1135, 1143 (2021), doi: 10.1080/09644016.2021.1892979.

<sup>59</sup> Gareth Edwards et al., *Towards a Just Transition from Coal in Australia? Just Transitions to Decarbonisation in the Asia-Pacific*, *Brit. Acad.* 14 (2022), doi: 10.5871/just-transitions-a-p/G-E. Mijin Cha et al., *A Green New Deal for All: The Centrality of a Worker and Community-Led Just Transition in the US*, 95 *Pol. Geography* 102594 (2022), doi: 10.1016/j.polgeo.2022.102594.

the current context and to function as a space for genuine contestation over competing visions of the socio-ecological order that actively includes unions and workers.<sup>60</sup>

The remainder of the paper considers how an explicit recognition of the imperative to phase out fossil fuels within the just transition framework might contribute to labour law in both conceptual (part 3) and practical (part 4) terms.

### 3 RECOGNITION OF THE FOSSIL FUEL CESSATION IMPERATIVE AND TRADITIONAL LABOUR LAW PRINCIPLES

The current just transition concept holds the promise of integrating labour and environmental norms via the concept of sustainable development. In providing an open-ended scope for the kinds of environmental transition that may be said to be 'just', this section argues that the current concept of just transition represents a missed opportunity to apply and realize core labour principles in the current climate change context. Two conceptual dimensions of labour law are discussed below: the obligation on states to establish an economic and social order in the common interest that offers the foundations for well-being; and the role of labour law as a site of contestation from which transformations in norms can take place.

As Dukes has argued, Hugo Sinzheimer conceived of labour law as being inherently concerned with the establishment economic and social orders.<sup>61</sup> According to this view, labour law can be understood as a tool for democratizing the economy, in the sense of both ensuring that it is a space where individuals are free from abusive treatment from employers and providing workers with the opportunity to meaningfully participate in the economic and social institutions that shape their lives. States play a crucial role in Sinzheimer's conception of labour law, as the ultimate guarantors of the public interest, with responsibility for setting the outer boundaries of legitimate economic activity with reference to norms that are non-economic, but rather referable to 'other life spheres'.<sup>62</sup> States are also responsible for ensuring that, within those boundaries, institutions are present and recognized, allowing workers to participate and enforce norms which govern their working lives.<sup>63</sup>

<sup>60</sup> Erik Swyngedouw, *Apocalypse Forever?: Post-Political Populism and the Spectre of Climate Change*, 27 *Theory, Culture & Soc'y* 213 (2010), doi: 10.1177/0263276409358728; Chantal Mouffe, *On the Political* (2005).

<sup>61</sup> Ruth Dukes, *Hugo Sinzheimer and the Constitutional Function of Labour Law* 65, <http://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780199693610.001.0001/acprof-9780199693610-chapter-5> (accessed 2 Sep. 2020).

<sup>62</sup> *Ibid.*, at 61.

<sup>63</sup> *Ibid.*, at 64.

In the climate change era, where ongoing fossil fuel extraction threatens to unravel the preconditions for the pursuit of human well-being, it is relevant to consider whether sustainable development has been an adequate foundation for enabling states to perform their boundary-setting role in the common interest. Sustainable development, despite its conceptual promise as a basis for integrating environmental and labour norms,<sup>64</sup> has not impeded continued fossil fuel extraction in practice. Sustainable development focusses on meeting the needs of present and future generations, while addressing economic, social and environmental pillars ‘together’. It does not prescribe any priority for how those different pillars should be addressed, nor reflect any sense of temporal urgency in addressing the causes of ecological instability as a precondition for meeting social needs. In Sinzheimer’s terms, the cessation imperative represents a clear non-economic norm that is a crucial and necessary reference point for establishing the outer boundary of legitimate economic activity. Not only must fossil fuel extraction cease, it must do so within a narrow window of time to prevent the triggering of tipping points and feedback loops, that will heat the atmosphere uncontrollably.<sup>65</sup> Nor has sustainable development been an adequate stimulus to the development of frameworks in domestic labour law supporting collective worker engagement with environmental issues.<sup>66</sup> Such frameworks are crucial to realizing what Sinzheimer conceived as the core labour law objective of supporting workers to participate in the economic and social institutions that shape their lives.

As Fudge and Mundlak have argued, it is a feature of labour law that agents are able to shape the meaning of work and markets, a process that involves ongoing critical reflection on the assumptions and premises that underpin the constitution of the market.<sup>67</sup> Labour laws both reflect and contribute to

<sup>64</sup> Paolo Tomassetti, *Labor Law and Environmental Sustainability Work Regulation and Environmental Sustainability*, 40 Comp. Lab. L. & Pol’y J. 61 (2018); *Legal Perspectives on Sustainability* (Margherita Pieraccini & Tonia Novitz eds, 1 ed. 2020), <http://www.jstor.org/stable/10.2307/j.ctvz0h891> (accessed 19 Jun. 2020).

<sup>65</sup> Steffen et al., *supra* n. 19.

<sup>66</sup> The Australia High Court, for instance, has excluded ‘demands of an academic, political, social or managerial nature’ as ‘matters pertaining’ to the employment relationship, characterizing them rather as managerial prerogative (*Electrolux Home Products v. Australian Workers Union* [2004] HCA 40 (at 60)). The *Fair Work Act 2009* includes no environmental objectives in its overall purpose, nor are parties permitted to include enforceable environmental issues in enterprise agreements or include them as an objective of industrial action. *Fair Work Act 2009* s409 (1)(a); s172(1). See Raymond Markey & Joseph McIvor, *Environmental Bargaining in Australia*, 61 J. Indus. Rel. 79 (2019), doi: 10.1177/0022185618814056. Nor are there any meaningful entitlements to bargain or take industrial action over environmental issues that do not have an immediate impact on workers in the UK *Legal Perspectives on Sustainability*, *supra* n. 64, at 163–164.

<sup>67</sup> Judy Fudge & Guy Mundlak, *Law and Gendered Labour Market Segmentation*, 161 Int’l Lab. Rev. 657, 659 (2022), doi: 10.1111/ilr.12339.

historically specific normative concepts, such as the household and the enterprise.<sup>68</sup> Modern labour law has not only drawn from and contributed to gendered conceptions of social order, it has also formed part of a set of socio-ecological paradigms which associate fossil fuels with the stable reproduction of life and narratives of progress and social prosperity.<sup>69</sup> Fossil fuel extraction (and coal extraction, in particular) was entwined with the original recognition of labour rights,<sup>70</sup> and fossil fuel extraction-related occupations were specifically privileged through the use of public power to support twentieth-century nation-building projects in many countries.<sup>71</sup> A suite of laws and institutions strengthened the employment conditions of fossil fuel employees, including industrial policy, trade agreements, training regimes, industrial policies, tariff policies, social security laws and economic development initiatives, domains which Howe argues should be understood *as* labour law, and not merely the context for it.<sup>72</sup>

Just transition principles and the sustainable development norms that underpin them have not, to date, been conspicuous forces for denaturalizing and unsettling the anachronistic ecological assumptions that continue to underpin labour laws. The assumption that the pollution created by the combustion of fossil fuels is of primary concern to the workers and populations in the immediate area of combustion (rather than to the global fabric of life) is encoded, for instance, in occupational health and safety law, with limited recognition of the categorically different harms that are also created by the accumulation of greenhouse gases in the atmosphere. Patterns of labour segmentation, income inequality and representational inequality created by socio-ecological assumptions of the nineteenth and twentieth centuries largely remain in place, having been challenged only indirectly through equal remuneration

<sup>68</sup> Simon Deakin, *The Comparative Evolution of the Employment Relationship*, in *Boundaries and Frontiers of Labour Law* 92 (Guy Davidov & Brian Langille eds 2006).

<sup>69</sup> Devleena Ghosh, *Rights and Coercion: Adivasi Rights and Coal Mining in Central India*, in *Dipesh Chakrabarty and the Global South* 93, 94 (Saurabh Dube, Sanjay Seth & Ajay Skaria eds 2020).

<sup>70</sup> Timothy Mitchell, *Carbon Democracy: Political Power in the Age of Oil* (2011).

<sup>71</sup> For instance, in Australia, coal production had a pre-eminent place in the tariff protected manufacturing-based nation-building projects of the mid-twentieth century, which saw the introduction of special institutions such as the Joint Coal Board and Coal Industry Tribunals as 'carve outs' that enabled collective bargaining to flourish in tandem with centralized arbitration. James Goodman, *Beyond the Coal Rush: A Turning Point for Global Energy and Climate Policy?* (James Goodman et al. eds, 2020) 164; Laura Bennett, *Making Labour law in Australia: Industrial Relations, Politics and Law* 111 (1994).

<sup>72</sup> John Howe, *The Broad Idea of Labour Law: Industrial Policy, Labour Market Regulation and Decent Work*, in *The Idea of Labour Law* 302 (Guy Davidov & Brian Langille eds 2011).

laws.<sup>73</sup> While the recognition of the imperative of fossil fuel cessation does not purport to offer a comprehensive vision of how labour norms might be reconceptualized in light of recent understandings of climate change, it does serve to denaturalize some of the assumptions underpinning many labour laws, and underline the fact that the current, environmentally-agnostic orders of work value are merely one particular form, rather than *the* form, of labour law.<sup>74</sup>

#### 4 JUST TRANSITION AND JUST CESSATION

The current just transition principles are oriented to achieving ‘an environmentally sustainable economy’ which is well managed, contributing to the goals of decent work for all, social inclusion and the eradication of poverty.<sup>75</sup> They do not explicitly include any substantive environmental norms beyond the open-ended notion of ‘greening’. Rather, they emphasize the procedural inclusion of stakeholders in environmental transitions and encourage long-term co-ordination and planning as enabling conditions for justice in transitions. This section discusses the potential implications that might flow from the inclusion of an additional statement to the Guidelines that reflects the imperative to phase out fossil fuel extraction and infrastructure, consistent with the findings of the International Energy Agency, as an essential element of an environmentally sustainable economy. Such a statement could potentially mirror the language used by the UN Secretary-General, who recently called for ‘no new coal and the phasing out of coal by 2030 in OECD countries and 2040 in all other countries’, ‘ceasing all licensing or funding of new oil and gas’, ‘stopping any expansions of existing oil and gas reserves’ and ‘establishing a global phase down of existing oil and gas production compatible with the 2050 global net zero target’.<sup>76</sup> Other formulations of an equitable framework for phasing out fossil fuel extraction are of course

<sup>73</sup> For instance, the mining sector has the highest average earnings of any sector in the Australian economy, with average weekly total cash earnings of AUD 2798.40 compared with the AUD 1287.40 earned by employees in health care and social assistance. Australian Bureau of Statistics, *Employee Earnings and Hours* (May 2021), <https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/employee-earnings-and-hours-australia/latest-release>; Judy Fudge, *After Industrial Citizenship: Market Citizenship or Citizenship at Work?*, 60 *Rel. Industrielles* 631 (2005).

<sup>74</sup> Judy Fudge, *Labour as a ‘Fictive Commodity’: Radically Reconceptualizing Labour Law*, in *The Idea of Labour Law* 120, 121 (Guy Davidov & Brian Langille eds 2011), <https://oxford-universitypressscholarship-com.ezproxy1.library.usyd.edu.au/view/10.1093/acprof:oso/9780199693610.001.0001/acprof-9780199693610-chapter-9> (accessed 2 Sep. 2020).

<sup>75</sup> *ILO*, *supra* n. 3, at 4.

<sup>76</sup> Guterres, *supra* n. 18.



possible,<sup>77</sup> however the UN Secretary-General's formulation has the merit of simplicity, clarity and a recognition of the greater responsibilities owed by wealthy nations to act quickly. The inclusion of a statement which sets down the key positive requirements of fossil fuel cessation in terms similar to the above is referred to as 'just cessation' in the remainder of this paper. Just cessation is proposed here as an addition to existing just transition principles, rather than a replacement for any of them. Its inclusion would have the effect of creating firmer boundaries to the ambit of just transition, and exclude matters that involve ongoing fossil fuel extraction beyond the prescribed timeframes, or that involve the delaying or undermining of fossil fuel cessation policies.

In proposing a just cessation statement, it is acknowledged that many (indeed most) transitions do not directly relate to fossil fuel extractive workers. However, including an explicit recognition of the collective social imperative of fossil fuel cessation can be understood as an application of Sinzheimer's conception of the governmental obligation to set the outer boundary of legitimate economic activity with reference to non-economic norms. While parties remain free to 'meet and bargain' (or in this case, negotiate just transition arrangements), according to this view there are outer limits to the categories of legitimate agreement that are determined by the public interest. In this respect, the inclusion of fossil fuel cessation as an explicit objective of just transition can be thought of as a measure that contributes to the 'constitutionalization' of labour law within global socio-ecological systems.<sup>78</sup>

The addition of a just cessation statement brings with it a range of implications for the way just transition processes and actor obligations are conceived, as summarized in Table 1. It is not proposed that these implications need be encoded within just transition principles. They are rather included here to demonstrate the extent to which the addition of a small, scientifically uncontroversial norm to the present Guidelines might potentially shape the focus and dynamics of states and social partners in far-reaching ways.

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<sup>77</sup> For an analysis of how equity considerations might be applied to fossil fuel phase out, see Muttitt & Kartha, *supra* n. 6.

<sup>78</sup> Dukes, *supra* n. 61.

Table 1 Comparison of Key Elements of Just Transition and Just Cessation

	<i>Current Just Transition Approach</i>	<i>Approach With Additional Just Cessation Statement</i>
Outcome sought	Decent work for all in an inclusive society without poverty. <sup>79</sup>	Decent work for all in an inclusive society without poverty that does not include new fossil fuel extraction projects and where existing fossil fuel projects infrastructure is phased out by 2030 in OECD countries and 2040 in non-OECD countries.
Process	Meaningful social dialogue at all levels to make sure that burdens are justly shared and no one is left behind. <sup>80</sup> A country-specific mix of macroeconomic, industrial, sectoral and labour policies, with an emphasis on promoting social dialogue at all levels. <sup>81</sup>	Meaningful social dialogue to make sure that burdens are justly shared, no one is left behind and fossil fuel phase down is timely. A country-specific mix of macroeconomic, industrial, sectoral, labour, international trade, mining, property, environmental and education policies, with the recognition that some degree of conflict between parties over the terms and timing of fossil fuel phase out is likely.
Obligations on states	To provide stable policy signals, promote international labour standards, integrate just transition provisions into national plans and policies, provide opportunities for the participation of social partners, set goals for continuous improvement. <sup>82</sup>	To create the public expectation that cessation will occur for environmental (rather than only economic) reasons and to assume overarching responsibility for the sequencing and implementation of the necessary policies, processes, changed laws and institutions to ensure that burdens of transition are shared and no one is left behind. To use the full range of relevant public powers and policies to phase out fossil fuel extraction within the

<sup>79</sup> ILO, *supra* n. 32, at 2.<sup>80</sup> *Ibid.*<sup>81</sup> ILO, *supra* n. 2, s. 13(a), 17(a).<sup>82</sup> *Ibid.*, at 8.

	<i>Current Just Transition Approach</i>	<i>Approach With Additional Just Cessation Statement</i>
		relevant time frames and ensure that existing fossil fuel workforces are fairly transitioned and that future generations of fossil fuel workers are not created.
		To actively support social partners to unwind the legal and economic structures that tie them to ongoing fossil fuel dependency and ensure that no worker is left behind, including in terms of industrial representation.
Obligations on Social Partners	To play an active role in formulating, implementing and monitoring national sustainable development policies, encouraging member participation in social dialogue, promoting the inclusion of environmental provisions through collective agreements. <sup>83</sup>	To not directly or indirectly impede the implementation of policies, laws and institutions required for the timely phasing out fossil fuel extraction and withdraw support from organizations and alliances premised on the continued extraction of fossil fuels. To support the embedding of existing just transition plans within wider systematic fossil fuel cessation objectives. To work with Governments and the social partners to unwind the legal and economic structures that tie them to ongoing fossil fuel dependency.

#### 4.1 OBLIGATIONS ON STATES

The current Guidelines emphasize the importance of governments undertaking a range of activities, including the provision of coherent and stable policy frameworks for sustainable enterprise development, adopting ‘appropriate regulations and instruments’ such as ‘taxes, subsidies, incentives, guaranteed prices, and loans to encourage a transition toward economically sustainable activities’, the use of

<sup>83</sup> *Ibid.*

targeted fiscal policy measures, market-based instruments, public procurement and investment policies and compliance activities.<sup>84</sup> They are encouraged, in consultation with social partners, to set goals for continuous improvement in the social, economic and environmental sustainability of the sectors and design sectoral policies.<sup>85</sup> States are also assigned specific obligations associated with transition assistance and information-sharing.<sup>86</sup> While none of these obligations are necessarily inconsistent with the cessation of fossil fuel extraction as a foundational environmental objective in climate change times, they are not necessarily well-suited to achieving it either. They do not recognize the profoundly important role of state actors as the ultimate regulators of industrial relations and energy systems and as primary owners, globally, of fossil fuel ores and extractive infrastructure.<sup>87</sup> They also understate the range of laws and public powers that are relevant to the cessation of fossil fuel extraction and its workforce.

The just cessation proposal, by contrast, invites attention to the responsibilities of state actors and assumes that the capacity for incumbent actors to contribute to just cessation policies is profoundly asymmetrical. The particular public powers that sustain ongoing fossil fuel extraction in each country will, of course differ, however the following overview of the range of powers of relevance in Australia provides some indication of the span of domains that may be relevant. In Australia, state actors make, tame and shape energy markets,<sup>88</sup> own most coal reserves, and exclusively hold the right to grant and terminate mining leases<sup>89</sup> on just terms.<sup>90</sup> They grant mining and exploration licenses, the terms of which entrench a ‘use it or lose it’ dynamic that require lease holders to actively pursue mining activities regardless of environmental impact or surrender their licences.<sup>91</sup> States make decisions over the payment and terms of fossil fuel subsidies<sup>92</sup> and have the power to enter international trade agreements, several of which include terms

<sup>84</sup> ILO, *supra* n. 32, at 9.

<sup>85</sup> *Ibid.*, at 11.

<sup>86</sup> ILO, *supra* n. 2, at 13.

<sup>87</sup> More than half of global fossil fuels and are produced by states as owners. See Milan Babic & Adam D. Dixon, *Decarbonising States as Owners*, New Pol. Econ. 1 (2022), doi: 10.31219/osf.io/p6f7v.

<sup>88</sup> Sangeetha Chandrashekeran, *Re-stating Power: How States Make, Tame, and Shape Markets*, 60 Geographical Res. 138 (2022), doi: 10.1111/1745-5871.12507.

<sup>89</sup> Section 9 *Mineral Resources Act 1989* (Qld).

<sup>90</sup> For instance, s. 10AAA *Mineral Resources Act 1989* (Qld) contemplates the extinguishment of mining tenements following the taking of land for purposes wholly incompatible with the mining tenement.

<sup>91</sup> Under the terms of the *Mineral Resources Act 1989* (Qld) (to take one example of many state mining law regimes) a mining lease holder contemplating the ‘cessation or reduction of mining’ must apply to the Minister with a proposed development plan which shows they have ‘taken all reasonable steps to prevent the cessation or reduction’, or face cancellation. Section 318EF (e)(ii).

<sup>92</sup> A recent study calculated that Australian fossil fuel subsidies are paid at levels that exceed the budget of the Australian Army see *Australian Fossil Fuel Subsidies Surge to \$11.6 Billion in 2021–22*, Australia Institute (28 Mar. 2022), <https://australiainstitute.org.au/post/australian-fossil-fuel-subsidies-surge-to-11-6-billion-in-2021-22/>.

that economically entrench extraction.<sup>93</sup> State actors determine industrial relations laws which overwhelmingly exclude environmental considerations and values as relevant considerations in bargaining,<sup>94</sup> work value claims<sup>95</sup> and in redundancy processes.<sup>96</sup> They provide and fund tertiary education in fossil fuel extractive occupations and recognize qualifications of occupations unique to fossil fuel extraction.<sup>97</sup> States also determine the terms of environmental law and the terms by which fossil fuel mines and infrastructures are granted conditional permission to operate,<sup>98</sup> as well as the participative complexions of such laws.<sup>99</sup>

A just cessation statement would open up the expectation that Governments would use all of these powers to phase out extraction and do so pursuant to publicly announced timeframes that are explicitly anchored in environmental, rather than economic, objectives. This public grounding in a climate justification is crucial in enabling the social partners to anticipate and accept the inevitability of change and to make their own commitments to undertake preparatory action in terms of their own organizational objectives, investments, relationships and

<sup>93</sup> Australia holds investment treaties with ISDS provisions in the CPTPP (Comprehensive and Progressive Agreement for a Trans-Pacific Partnership), China-Australia Free Trade Agreement, Australia-Hong Kong Free Trade Agreement and Associated Investment Agreement, Singapore-Australia Free Trade Agreement (See <https://www.dfat.gov.au/trade/investment/investor-state-dispute-settlement>). A number of coal interests in Queensland and NSW are held by investors from these countries, such as the Japanese firms Mitsui and Co, Mitsubishi and Idemitsu Kosan; the Singapore-based Golden Investments among others. Glencore, the owner of the central Queensland coal mining operation Valeria Coal Holdings sued Columbia after a Colombian court prevented it from expanding a coal mine, using ISDS provisions in the UK-Colombia and Switzerland-Colombia trade agreements. See <https://www.isds.bilaterals.org/?glencore-begins-arbitration> Glencore *v.* Colombia (III) Glencore International A.G. *v.* Republic of Colombia (III) (ICSID Case No. ARB/21/30).

Kyla Tienhaara, *Regulatory Chill in a Warming World: The Threat to Climate Policy Posed by Investor-State Dispute Settlement*, 7 *Transnat'l Envtl. L.* 231 (2018), doi: 10.1017/S2047102517000309.

<sup>94</sup> *Electrolux Home Products v. Australian Workers Union* [2004] HCA 40 (at 60); *Fair Work Act 2009* s409 (1)(a); s172(1).

<sup>95</sup> Fiona Macdonald & Sara Charlesworth, *Equal Pay Under the Fair Work Act 2009 (Cth): Mainstreamed or Marginalised?*, 36 *UNSW L.J.* 563.

<sup>96</sup> Australian redundancy law is inherently individualistic and employer-driven, requiring potential beneficiaries to demonstrate they have been dismissed for 'genuine operational reasons', defined as 'reasons of an economic technological, structure or similar nature relating to the employer's undertaking, establishment, service or business'. Elizabeth Shi, *A Tiger With No Teeth: Genuine Redundancy and Reasonable Redeployment Under the Fair Work Act*, 31 *U. Queensl. L.J.* 105 (2012).

<sup>97</sup> Chris Briggs, *Renewable Energy Jobs in Australia: Stage One* 13 (2020), <https://assets.cleanenergycouncil.org.au/documents/resources/reports/Clean-Energy-at-Work/renewable-energy-jobs-in-australia.pdf> (accessed 5 Jul. 2022). As Briggs notes, many occupations in coal mining are readily applicable to renewable energy sectors, including construction, engineering, mechanical trades, electricians, storpersons and drivers. Carr similarly observes the potential for many fossil fuel workers to deploy their skills in the 'repair and care' caused by climate crisis. Chantel Carr, *Repair and care: Locating the work of climate crisis*, *Dialogues in Human Geography* 204382062210883, 4 (2022).

<sup>98</sup> Victoria McGinness & Murray Raff, *Coal and Climate Change: A Study of Contemporary Climate Litigation in Australia*, 37 *Envtl. & Plan. L.J.* 87.

<sup>99</sup> Chiara Armeni & Maria Lee, *Participation in a Time of Climate Crisis*, 48 *J.L. Soc.* 549 (2021), doi: 10.1111/jols.12320.

economic and legal dependence on ongoing fossil fuel mining and infrastructure.<sup>100</sup> The provision of explicit dates for the phasing down of existing infrastructure is important, too, in ensuring that new generations of fossil fuel workers are not created. They will also assist workers, unions and communities to plan and arrange support for transition into different sectors.<sup>101</sup>

While the above analysis suggests that state actors, as the entities responsible for authorizing fossil fuel extractive activity, will necessarily play a crucial role in responding to demands that public power be reconfigured to support an agenda of just cessation, it is also important to recognize the limits they face. In many national contexts, and particularly much of the Global South, governments are significantly constrained in their capacity to enact such policies by relationships of financial dependency and/or imposed market-based institutions.<sup>102</sup> For this reason, it is important for any just cessation approach to also focus on identifying and winding back the legal and economic structures that act to limit the use of public power for ecologically sustainable ends.

#### 4.2 OBLIGATIONS ON SOCIAL PARTNERS

The current just transition guidelines suggest that the social partners should play an active role in formulating, implementing, and monitoring national sustainable development policies, encouraging member participation in social dialogue and promoting the inclusion of environmental provisions through collective agreements. Within this framework, no distinctions are made between different kinds of social partners in terms of their relative entanglement within fossil fuel systems. The Guidelines assume that all social partners are capable of immediate social dialogue over the terms of just transition, and that the primary orientation of such dialogue will and should be collaborative and cooperative rather than conflictual.

A just cessation lens, by contrast, implicitly acknowledges the prospect of asymmetries between the parties' capacity to engage in dialogue over just cessation outcomes, and the fact that many parties do not come to negotiations with equivalent capacity to agree to meaningful climate action due to pre-existing legal obligations and organizational objectives beyond their immediate control. The just cessation lens instead recognizes that part of the long timeframes that are inherent to meaningful just transitions<sup>103</sup> must also include time for social partners

<sup>100</sup> Caldecott, Sartor & Spencer, *supra* n. 36, at 14.

<sup>101</sup> Jesse Adams Stein, *Unresolved Tensions in Green Transitions: Retraining and the Question of 'How'?*, 1–5 Dialogues in Human Geography (2022).

<sup>102</sup> Theodoros Papadopoulos & Antonios Roumpakis, *Rattling Europe's Ordoliberal 'Iron Cage': The Contestation of Austerity in Southern Europe*, 38 Critical Soc. Pol'y 505 (2018), doi: 10.1177/0261018318766987.

<sup>103</sup> Mercier, *supra* n. 30, at 9.

to negotiate *within* as well as *between* their organizations, and to reconfigure their constitutions and relationships on a non-fossil fuel dependent footing.

Incumbent fossil fuel employers and unions confront significant legal, political and economic limitations in their capacity to support cessation in the short- and medium-term. Fossil fuel extractive firms operating to extract black coal for export in Queensland, for example, hold tenements pursuant to mining legislation that require them to actively pursue mining activities or face lease cancellations.<sup>104</sup> Any company director who attempted to require the company to cease mining on climate change grounds would risk breaching their directors' duties under corporations law to act in the best interests of the corporation,<sup>105</sup> common law fiduciary obligations, as well as sacrificing the personal remuneration that is associated with fossil fuel company directorship.<sup>106</sup> As well as being enmeshed in contractual obligations to supply coal to purchasers (or face claims for liquidated damages), some multinational coal mining companies also benefit from investment treaties with Investor-state dispute settlement (ISDS) provisions that enable them to bring compensation claims against governments who undertake actions (including by imposing environmental regulation) that may reduce the profitability of their investments. The combination of these legal frameworks have led some scholars to conclude that fossil fuel companies have no real alternative other than to resist environmental regulations for as long as possible and 'milk assets'.<sup>107</sup> Even where such firms represent a minority membership within employer associations, they have been demonstrated to have been influential in shaping employer association public advocacy directed toward shifting public opinion against climate policies.<sup>108</sup>

Many unions with a high proportion of fossil fuel extraction workers are also entangled in laws and institutional frameworks that commit them to support the existence of carbon extractive industries in the short and medium term. The current objects of the main union representing coal miners responsible for coal exports in Australia, the Queensland Mining and Energy Division of the Construction, Forestry, Mining and Energy Union (CFMEU), require the union to 'endeavour, by all lawful means ... to carry on, or participate directly or indirectly and alone or with others the carrying on of any mining or prospecting operation and related activities thereto' and to 'watch over, improve, foster and protect the industrial and social interests of the membership'. The membership is

<sup>104</sup> Section 318EF (e)(ii) *Mineral Resources Act 1989* (Qld).

<sup>105</sup> Section 180 *Corporations Act 2001* (Cth).

<sup>106</sup> Dario Kenner & Richard Heede, *White Knights, or Horsemen of the Apocalypse? Prospects for Big Oil to Align Emissions With a 1.5 °C Pathway*, 79 *Energy Res. & Soc. Sci.* 102049 (2021), doi: 10.1016/j.erss.2021.102049.

<sup>107</sup> *Ibid.*

<sup>108</sup> Caleb Goods & Bradon Ellem, *Employer Associations: Climate Change, Power and Politics*, *Econ. & Indus. Democracy* 1 (2022), doi: 10.1177/0143831X221081551.



defined within the rules as employees ‘engaged in or in connect with the Coal and Shale Industry; the mining or exploration industries; or as employees or as employees of contractors in or in connection with the following industries: power generation, co-generation, transmission and distribution; oil, gas, nuclear and chemical production’<sup>109</sup> For the union to oppose export coal mining on environmental grounds would not only require it to depart from the terms of its Constitution, it would also invite significant risks of membership loss, given the findings of recent research on the extent to which officials in fossil-extraction unions do not regard decarbonizing the national economy as part of their ‘task’ as unionists, despite high levels of understanding and support for such policies.<sup>110</sup>

Against this context, a just cessation lens suggests that the long-term planning involved in conventional models of just transition should include plans and active frameworks to ensure that, in the longer term, workers receive collective representation from entities that are not existentially tied to continued extraction, whether that be existing unions with reconfigured constitutions or new ones. The public announcement of clear and unambiguous timeframes for fossil fuel cessation will again be crucial in enabling such transformations to occur, as it is unreasonable to expect organizations to change their objects if there remains any possibility that they will remain necessary and relevant in their unchanged form in the future.

## 5 CONCLUSION

While the concept of just transition has provided a valuable set of principles for facilitating tripartite dialogue over environmental change, its breadth, flexibility and non-prescriptive nature has meant that it has been vulnerable to legitimating ongoing fossil fuel extraction that is incompatible with less than 1.5 degree temperature rises. This article has advanced a proposal for adjusting the objective of the just transition concept to explicitly include the timely phase out of fossil fuel extraction and the cessation of new fossil fuel projects. While this addition would aim to do no more than affirm a set of imperatives that are scientifically uncontroversial, the consequences of its inclusion are potentially far-reaching in terms of reshaping the existing ambit of obligations for different actors within just transition processes. Many of these are comparatively onerous in comparison with the *status quo*. However, they would resituate just transitions as a set of principles that are

<sup>109</sup> CFMEU *Qld Mining and Energy Division Rules*, <https://www.cfmeuqld.asn.au/wp/wp-content/uploads/Divisional-Mining-Energy-Rules.pdf>.

<sup>110</sup> Camilla Houeland & David Jordhus-Lier, ‘Not My Task’: Role Perceptions in a Green Transition Among Shop Stewards in the Norwegian Petroleum Industry, 64(4) *J. Indus. Rel.* (2022), doi: 10.1177/00221856211068500.

appropriate and attuned to the true scope of the collective environmental crisis at hand. At a practical level, just cessation also opens up the possibility of new alliances between workers and unions and environmental justice movements advocating anti-fossil fuel norms,<sup>111</sup> such as movements for a Fossil Fuel Non-Proliferation Treaty,<sup>112</sup> moratoria on new coal mines and fracking,<sup>113</sup> fossil fuel divestment and the official recognition of ecocide as an international crime.<sup>114</sup> In so doing, just cessation would also better integrate just transition with debates around how to apply the UN's recognition that climate protection should occur in accordance with states' common but differentiated responsibilities and respective capabilities.<sup>115</sup>

Integrating a just cessation lens to just transition would enhance its conceptual coherence as a framework for integrating labour and environmental norms and make it less susceptible to being applied to legitimate ongoing fossil fuel extraction. Just cessation does not undermine the diversity of existing just transition approaches, nor restrict the wide range of policies that may be relevant to any given region or country, including the development and implementation of a multitude of novel instruments and laws for distributing and protecting value that are unfamiliar today.<sup>116</sup> However, it does impose an outer boundary on the kinds of transition that, when the context and nature of climate change is taken into account, may be understood as 'just'. In this respect, just cessation can be understood as an application of Sinzheimer's conception of the necessity of labour law being shaped by non-economic norms, and the necessity of governmental actors imposing outer limits on economic activity with reference to the common good.

An explicit recognition of the imperative of fossil fuel cessation, then, can be viewed as an appropriate and timely adjustment to just transition principles to better meet the challenges of the present conjuncture where active policies to phase out extraction are urgent and not yet committed to by key state actors. While just cessation does not itself represent an attempt to instantiate comprehensive new labour-environmental norms, in asserting a finite time horizon for fossil fuel extraction it makes visible and contingent labour law's historical entwinement

<sup>111</sup> Green, *supra* n. 6.

<sup>112</sup> Newell & Simms, *supra* n. 6, at 1043.

<sup>113</sup> *Ibid.*, at 1044.

<sup>114</sup> Reece Walters, *Ecocide, Climate Criminals and the Politics of Bushfires*, *The British Journal of Criminology* (27 Apr. 2022), <https://doi.org/10.1093/bjc/azac018>.

<sup>115</sup> UNFCCC, *United Nations Framework Convention on Climate Change* (1992), <https://unfccc.int/resource/docs/convkp/conveng.pdf>; Greg Muttitt & Sivan Kartha, *Equity, Climate Justice and Fossil Fuel Extraction: Principles for a Managed Phase Out*, 20 *Climate Pol'y* 1024, 1027–1030 (2020), doi: 10.1080/14693062.2020.1763900.

<sup>116</sup> Sangeetha Chandrashekeran, *Rent and Reparation: How the Law Shapes Indigenous Opportunities from Large Renewable Energy Projects*, 26 *Loc. Env't* 379, 390 (2021), doi: 10.1080/13549839.2020.1861590.

in narratives of progress that were anchored in the false premise of unlimited fossil fuel extraction as a foundation for collective well-being. In what will be an inevitably carbon-constrained future, the overt acknowledgement of the imperative to cease fossil fuel extraction is consistent with the idea of labour law as a framework in motion, capable of reconfiguration and responsiveness to the distinctive and changing landscapes of need and injustice that continually emerge in every historical period and place.

