

The Pathway to a Green New Deal: Synthesizing Transdisciplinary Literatures and Activist Frameworks to Achieve a Just Energy Transition

Shalanda H. Baker and Andrew Kinde**

The “Green New Deal” resolution introduced into Congress by Representative Alexandria Ocasio Cortez and Senator Ed Markey in February 2019 articulated a vision of a “just” transition away from fossil fuels. That vision involves reckoning with the injustices of the current, fossil-fuel based energy system while also creating a clean energy system that ensures that all people, especially the most vulnerable, have access to jobs, healthcare, and other life-sustaining supports. As debates over the resolution ensued, the question of how lawmakers might move from vision to implementation emerged.

Energy justice is a discursive phenomenon that spans the social science and legal literatures, as well as a set of emerging activist frameworks and practices that comprise a larger movement for a just energy transition. These three discourses—social science, law, and practice—remain largely siloed and insular, without substantial cross-pollination or cross-fertilization. This disconnect threatens to scuttle the overall effort for an energy transition deeply rooted in notions of equity, fairness, and racial justice.

This Article makes a novel intervention in the energy transition discourse. This Article attempts to harmonize the three discourses of energy justice to provide a coherent framework for social scientists, legal scholars, and practitioners engaged in the praxis of energy justice. We introduce a framework, rooted in the theoretical principles of the interdisciplinary field of energy justice and within a synthesized framework of praxis, to assist lawmakers with the implementation of

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* Professor of Law, Public Policy and Urban Affairs, Northeastern University. Co-Founder and Co-Director, Initiative for Energy Justice. This author owes a debt of gratitude to her colleagues, friends, and thought partners, Subin DeVar and Shiva Prakash, the Co-Founders and Co-Directors of the Initiative for Energy Justice, for their thoughtful review of the concepts and ideas presented in this Article. Attendees at the 2019 Colorado Junior Energy Scholars Workshop and 2019 Energy Justice Workshop hosted by the Initiative for Energy Justice also contributed invaluable comments to this work. Alexis Laundry provided impeccable research assistance.

*Associate, Nixon Peabody LLP.

not only a federal Green New Deal, but also state or local energy policies designed to facilitate the transition away from fossil fuels. Our energy justice framework departs from the rapidly-expanding literature on energy justice by centering frontline voices and explicitly building on the theoretical and advocacy frameworks of environmental justice and climate justice.

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I. INTRODUCTION

In February 2019, word of a solution to the climate crisis began to spread like—for lack of a better word—wildfire. That year, a young, charismatic junior Congresswoman from the Bronx and a veteran Senator from Massachusetts introduced twin resolutions to Congress that painted a stark picture of the climate reality we face, and offered an ambitious framework for moving into that climate

future with justice at the center. The resolutions—H. Res. 109 and S. Res. 59—became known as “The Green New Deal.”¹

The Green New Deal reflects the justice-centered hopes and dreams of those engaged in the movement for climate and energy justice. It also reflects the ambition of those in the traditional climate and environmental movement to reduce greenhouse gas emissions. Those goals, to “be accomplished through a 10-year national mobilization,” notably include achieving “net-zero greenhouse gas emissions through a fair and just transition for all communities and workers . . . [and investing] in the infrastructure and industry of the United States to sustainably meet the challenges of the 21st century.”² These goals are fundamentally based on the concept of energy justice, the notion that distributive, procedural, and restorative justice should inform energy policy.

Pundits and politicians immediately assailed the Green New Deal. “Expensive.” “Unrealistic.” “A green dream.” Or worse, “socialist.” At the heart of each critique lay a deeper concern regarding how policymakers might operationalize a framework imbued with such ambition. Even before the introduction of the Green New Deal, states around the country began to act in the absence of clear federal guidance on climate. We are witnessing a sea change through a suite of policy actions, from ambitious renewable energy targets to rooftop solar programs, community energy legislation, and market innovations such as community choice aggregation.

In the face of this rapidly-evolving landscape, those long impacted by the fossil-fuel based energy system—environmental justice communities, low-income communities, and communities of color (“frontline communities”)—seek to place equity and distributive justice at the heart of new policies addressing the transition away from fossil fuels to clean and renewable energy sources. The Green New Deal and related state- and municipal-level legislation around the country are exemplars of this broader movement. As noted by industry observers and community activists alike, this energy transition offers an opportunity to reshape the socio-economic relationships created by energy choices. Specifically, the energy transition offers an opportunity for communities to own and control clean energy resources while reducing localized environmental and health impacts associated with the burning of fossil-fuels.

Energy justice has emerged as both a field of study and an activist practice to guide the energy transition. It provides a workable framework to begin to operationalize the complex justice-related concepts within legislation like the Green New Deal. Scholars in both social science and law have begun to grapple

¹ David Roberts, *There's Now an Official Green New Deal. Here's What's In It.*, VOX (last updated Feb. 7, 2019, 12:58 PM), <https://www.vox.com/energy-and-environment/2019/2/7/18211709/green-new-deal-resolution-alexandria-ocasio-cortez-markey>.

² Recognizing the Duty of the Federal Government to Create a Green New Deal, H.R. Res. 109, 116th Cong. (2019), <https://www.congress.gov/bill/116th-congress/house-resolution/109/text> (introduced Feb. 7, 2019).

with the theoretical aspects of energy justice as well as its practical applications. In parallel, advocates on the ground have begun to engage in a diversity of activities connected to energy justice through its corollary, energy democracy. Although scholars and advocates frequently rely on energy justice to animate parallel strands of study and practice, these two constituencies are not in active conversation. This disconnect threatens the coherency of the field and the ability to advance clear policy guidance rooted in energy justice. It also threatens to undermine ambitious legislative efforts to bridge concerns about gross inequality and climate change.

Taking advantage of the opportunity for structural transformation that energy policy presents requires that equity be placed at the center of emerging policy frameworks; however, community participants in policy debates concerning the energy transition often lack concrete examples of energy policies that actually do place equity at the center. Similarly, policy makers lack theoretical grounding and practical frameworks with which to create and implement equity-centered energy policy.

One possible way to bridge the divide between these constituencies and create an overarching conversation is through the framework of the Green New Deal. The Green New Deal framework mirrors elements of the “just transition,” which “represent[s] a host of strategies to transition whole communities to build thriving economies that provide dignified, productive and ecologically sustainable livelihoods; democratic governance, and ecological resilience.”³ Energy justice, which is often framed as part of such a broader just transition to a low-carbon future that remedies the injustices of the fossil-fuel energy system across multiple sectors of the economy,⁴ fits seamlessly within the expansive holistic framework of the Green New Deal. Representative Ocasio-Cortez and Senator Bernie Sanders introduced legislation in November of 2019 that emphasizes this potential.⁵ Their legislation, titled the Green New Deal for Public Housing Act,

³ On its website, Climate Justice Alliance lays out a comprehensive set of Just Transition Principles that include: Buen Vivir (living well without living better at the expense of others); Meaningful Work; Self Determination; Equitable Redistribution of Resources and Power; Regenerative Ecological Economics; Culture and Tradition (acknowledging the harms to culture and tradition enacted by capitalism, colonialism, patriarchy, genocide and slavery); and Solidarity. *Just Transition*, CLIMATE JUST. ALLIANCE, <https://climatejusticealliance.org/just-transition/> (last visited Nov. 19, 2019).

⁴ See Ann M. Eisenberg, *Just Transitions*, 92 S. CAL. L. REV. 273, 280-81 (2018) (noting that the term, “just transition” arises in the context of the energy transition as well as the nexus between labor and environmental reform); See Darren McCauley and Raphael Heffron, *Just Transition: Integrating Climate, Energy, and Environmental Justice*, 119 ENERGY POLICY 1, 1 (2018) (noting that “just transition” emerged from the global trade unions in the 1980’s); See *History of the Climate Justice Alliance*, CLIMATE JUST. ALLIANCE, <https://climatejusticealliance.org/cja-history/> (framing the “just transition” as a move “away from the global ‘dig, burn, drive, dump economy,’ towards a vision of many local, living caring and sharing economies.”).

⁵ Morgan Baskin, *AOC and Bernie Are Teaming Up on a Green New Deal for Housing. Here’s Why It Matters*, VICE NEWS (last updated Nov. 1, 2020, 10:57 AM), <https://www.vice.com/en>

has the primary purpose of “provid[ing] economic empowerment opportunities in the United States through the modernization of public housing.”⁶ The Act aims to do this by rehabilitating, upgrading, modernizing, and transitioning public housing, which includes modernizing public housing laws to “maximize tenant participation and management by low- and very low-income individuals” and attempting “to transition the entire public housing stock . . . into highly energy-efficient homes that produce on-site, or procure, enough carbon-free renewable energy to meet total energy consumption annually.”⁷ It is this type of policy, as Ocasio-Cortez describes, that is “exemplary of what we try to do with the Green New Deal, where we have a frontline community that has historically gotten the short end of the stick with environmental justice.”⁸

Similarly, energy policies emerging from Green New Deal approaches require a framework for addressing distributive, procedural, and restorative justice concerns. Energy justice is both a theoretical and practice-focused framework for the implementation of equity-centered energy policy; however, too often the epistemic communities (academics) creating principles and frameworks for energy justice are disconnected from the policymakers and practitioners actively working to materialize energy justice on the ground. Creating a common language and approach to energy justice will be essential to ensuring a broader just transition.

This Article makes a novel intervention in the energy transition discourse. This Article attempts to harmonize the three discourses of energy justice to provide a coherent framework for social scientists, legal scholars, and practitioners engaged in the praxis of energy justice. We introduce a framework, rooted in the theoretical principles of the interdisciplinary field of energy justice and within a synthesized framework of praxis, to assist lawmakers with the implementation of not only a federal Green New Deal, but also state or local energy policies designed to facilitate the transition away from fossil fuels. Our energy justice framework departs from the rapidly-expanding literature on energy justice by centering frontline voices and explicitly building on the theoretical and advocacy frameworks of environmental justice and climate justice.

The pages that follow provide a broad overview of “energy justice,” synthesizing energy justice as framed by scholars of energy justice as well as practitioners in the field. This Article is designed to be a guide for activists on the ground working for energy justice at the state and federal levels, as well as policy makers seeking to understand how to incorporate energy justice into emerging

/article/kz4ve3/aoc-and-bernie-are-teaming-up-on-a-green-new-deal-for-housing-heres-why-it-matters.

⁶ Green New Deal for Public Housing Act, S. 2876, 116th Cong. (2019-2020), <https://www.congress.gov/bill/116th-congress/senate-bill/2876/text> (introduced Nov. 14, 2019).

⁷ *Id.*

⁸ Renae Merle & David Weigel, *Ocasio-Cortez, Sanders pitch Green New Deal bill for public housing*, WASH. POST (Nov. 14, 2019, 5:00 AM EST), <https://www.washingtonpost.com/business/2019/11/13/ocasio-cortez-sanders-pitch-green-new-deal-bill-public-housing/>.

energy policy frameworks like the Green New Deal. Further, it aims to bridge the disparate conversations concerning energy justice across disciplines.

The Article proceeds in five parts. The second Part provides a brief overview of environmental justice and climate justice, the movement-based and theoretical “priors” of energy justice. Part three offers an overview and synthesis of energy justice, as discussed by social science scholars. Part four addresses the work of legal scholars. Part five summarizes the views of frontline activists, and Part six offers a synthesis of the key energy justice principles that should animate transitional energy policy.

II. ENERGY JUSTICE PRIORS

Energy justice connects to and builds upon the deep scholarly and activist traditions of the environmental justice and climate change movements.⁹ They are inextricably linked, both in terms of their theoretical underpinnings and activist roots. Related to being part of a broader just transition, energy justice also encompasses discussions of energy poverty, which refers to the lack of access to affordable energy;¹⁰ and energy democracy, the notion that communities should have a say in shaping their energy future.¹¹ Issues of racial and social justice are not new aspects of political discourse in the United States; however, recognition of their nexus with issues of energy and the environment is a relatively recent phenomenon.

Environmental justice emerged in the early 1980’s as both an activist practice and field of scholarship in the wake of damning evidence that communities of color often faced disproportionate environmental burdens, and that the suite of recently-passed environmental laws did little to protect such communities from

⁹ Shalanda H. Baker, *Mexican Energy Reform, Climate Change, and Energy Justice in Indigenous Communities*, 56 NAT. RESOURCES J. 369, 379-80 (2016); see also Darren McCauley & Raphael Heffron, *Just Transition: Integrating Climate, Energy, and Environmental Justice*, 119 ENERGY POL’Y 1, 1 (2018) (arguing that just transition conceptual frame can unite “climate, energy and environmental [] justice to provide a more comprehensive framework for analyzing and ultimately promoting fairness and equity throughout the transition from fossil fuels.”).

¹⁰ Diana Hernández & Stephen Bird, *Energy Burden & the Need for Integrated Low-Income Housing & Energy Pol.*, 2 POVERTY & PUB. POL’Y 5, 7 (2010) (exploring energy burden in the United States); Lakshman Guruswamy, *Energy Justice and Sustainable Development*, 21 COLO. J. INT’L ENVTL. L. & POL’Y 231, 234, 255-58 (2010) (framing energy justice as the lack of access to energy by “the other third,” individuals living in Sub-Sahara Africa and Asia).

¹¹ Baker, *supra* note 9 at 380; ENERGY DEMOCRACY: ADVANCING EQUITY IN CLEAN ENERGY SOLUTIONS 1-2 (Denise Fairchild & Al Weinrub eds., 2017); Matthew J. Burke & Jennie C. Stephens, *Energy Democracy: Goals and Policy Instruments for Sociotechnical Transitions*, 33 ENERGY RES. & SOC. SCI. 35, 36 (2017); Sean Sweeney, *Resist, Reclaim, Restructure: Unions and the Struggle for Energy Democracy*, Trade Unions for Energy Democracy (Apr. 2013), http://unionsforenergydemocracy.org/wp-content/uploads/2014/05/resistreclaimrestructure_2013_english.pdf; James Angel, *Strategies of Energy Democracy* 9 (2016), https://www.academia.edu/21776932/Strategies_Of_Energy_Democracy.

environmental harm.¹² Eventually, in response to a mounting body of evidence produced by activists¹³ and academics alike,¹⁴ in 1994, President Bill Clinton issued Executive Order 12898 directing federal agencies to, to “the greatest extent practicable and permitted by law . . . make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States. . . .”¹⁵ Although some scholars have questioned the efficacy of the environmental justice movement, as well as its utility as a policy tool,¹⁶ others have noted the importance of relying on the environmental justice movement to inform the current transition away from fossil fuels.¹⁷ In either case, environmental justice spawned the climate justice movement, which addresses the acute climate change issues facing communities of color.

¹² Robert D. Bullard, Paul Mohai, Robin Saha, & Beverly Wright, *Toxic Wastes and Race at Twenty* (Mar. 2007), <https://www.nrdc.org/sites/default/files/toxic-wastes-and-race-at-twenty-1987-2007.pdf>.

¹³ The United States Department of Energy, Office of Legacy Management, traces the beginning of the environmental justice movement to protests in Warren County, North Carolina in 1982, when a Black community protested their designation as the host site of a hazardous waste landfill. *Environmental Justice History*, DEPARTMENT OF ENERGY OFFICE OF LEGACY MANAGEMENT, <https://www.energy.gov/lm/services/environmental-justice/environmental-justice-history> (last visited Dec. 6, 2020). Their protest led to the involvement of the National Association for the Advancement of Colored People (NAACP) and Dr. Benjamin F. Chavis, Jr., of the United Church of Christ. *Id.* The protest and national engagement led to future protests by communities of color around the country concerning the siting of hazardous wastes and high rates of environmental illness in their communities. *Id.* In 1991, delegates to the First National People of Color Environmental Leadership Summit adopted seventeen principles of environmental justice that helped to galvanize the grassroots movement for environmental democracy. Reflected in the principles are respect for Mother Earth, an acknowledgment of the fundamental right to “political, economic, cultural and environmental self-determination of all peoples,” and demands for equal participation “at every level of decision-making, including needs assessment, planning, implementation, enforcement and evaluation” concerning the environment. For a complete overview of the Principles, see ENERGY JUSTICE NETWORK, *Principles of Environmental Justice*, ENVTL. JUST./ENVTL. RACISM, <https://www.ejnet.org/ej/principles.html> (last modified Apr. 6, 1996).

¹⁴ Robert D. Bullard, Paul Mohai, Robin Saha, & Beverly Wright, *Toxic Wastes and Race at Twenty* (Mar. 2007), <https://www.nrdc.org/sites/default/files/toxic-wastes-and-race-at-twenty-1987-2007.pdf>; Richard J. Lazarus & Stephanie Tai, *Integrating Environmental Justice Into EPA Permitting Authority*, 26 *ECOLOGICAL L.Q.* 617, 617-18, 627 (1999).

¹⁵ Exec. Order No. 12898, Fed. Reg. 7629 at 1-101 (Feb. 16, 1994), <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>.

¹⁶ Kirsten Jenkins, *Setting Energy Justice Apart from the Crowd: Lessons from Environmental and Climate Justice*, 39 *ENERGY RES. AND SOC. SCI.* 117, 118 (2018) (arguing, among other things, that environmental justice failed to have an impact beyond the grassroots level, and that the concept “lacks defined and recognised [*sic*] content—a structure or approach that can be readily applied at a range of scales in a systematic manner”).

¹⁷ Uma Outka, *Fairness in the Low-Carbon Shift: Learning from Environmental Justice*, 82 *BROOK. L. REV.* 789, 792 (2017) (arguing that “environmental justice can and should inform the transition’s trajectory *early* to achieve robust integration of the movement’s core principles with the legal and physical infrastructure for a low-carbon energy sector”).

While environmental justice might be seen as more of a domestic, United States-centric, movement,¹⁸ climate justice is decidedly global in scope. The movement emerged in the late 1990's and 2000's in light of the recognition that climate change would disproportionately affect those in the Global South, who did very little to contribute to creating the problem of climate change.¹⁹ Around the world, those with the least ability to respond to the impacts of climate change—the poor and people of color, including island nations and indigenous peoples—would bear the brunt of its affects. In the United States, climate justice advocates broadly recognize that the poor and people of color in this country will suffer the deepest impacts of climate change, given legacies of legalized segregation, redlining, and disinvestment that have left communities of color and the poor on marginal land most vulnerable to climate change impacts. Moreover, such communities lack the economic resources to easily “bounce back” from climate change related events.²⁰ High water marks of the climate justice movement include the creation of the People's Agreement in Cochabamba, Bolivia in 2010, where participants called for the creation of an International and Climate Environmental Justice Tribunal with the legal capacity to “prevent, judge, and penalize States, industries and people that by commission or omission contaminate and provoke climate change,”²¹ the product of the People's Conference on Climate Change and the Rights of Mother Earth after the disastrous 2009 United Nations meeting in Copenhagen to address climate change; and the 2014 People's Climate March organized by activist groups, where 400,000 people gathered in New York City to center “the leadership of Indigenous communities, communities of color, and working-class white communities” in the climate movement.²²

¹⁸ See Kirsten Jenkins, *Setting Energy Justice Apart from the Crowd: Lessons from Environmental and Climate Justice*, 39 ENERGY RES. AND SOC. SCI. 117, 118 (2018) (arguing that environmental justice is more of a U.S.-based movement). *But see generally* Carmen G. Gonzalez, *Environmental Justice, Human Rights, and the Global South*, 13 SANTA CLARA J. INT'L L. 151 (2015) (arguing for global application of environmental justice principles).

¹⁹ Kirsten Jenkins, *Setting Energy Justice Apart from the Crowd: Lessons from Environmental and Climate Justice*, 39 ENERGY RES. AND SOC. SCI. 117, 118 (2018) (noting that climate justice emerged in the 1990's with a focus on “assisting those affected by climate change, sharing the burdens and benefits of climate change; mitigation and adaptation; and reducing CO2 emissions”).

²⁰ See generally Reilly Morse, *Environmental Justice Through the Eye of Hurricane Katrina* (2008), https://inequality.stanford.edu/sites/default/files/media/_media/pdf/key_issues/Environment_policy.pdf; Shalanda H. Baker, *Anti-Resilience: A Roadmap for Transformational Justice within the Energy System*, 54 HARV. CIVIL RIGHTS-CIVIL LIBERTIES L. REV. 1, 9-10 (2019); see generally Naomi Klein, *The Battle for Paradise: Puerto Rico Takes on the Disaster Capitalists* (2018).

²¹ *People's Agreement*, WORLD PEOPLE'S CONF. ON CLIMATE CHANGE & THE RTS. OF MOTHER EARTH (Apr. 22, 2010), <https://pwccc.wordpress.com/support/>.

²² See *History of the Climate Justice Alliance*, CLIMATE JUST. ALLIANCE, <https://climatejusticealliance.org/cja-history/> (last visited Nov. 19, 2019) (noting that a coalition of activist groups including Climate Justice Alliance, “UPROSE, NYC EJ Alliance, Ironbound Community Corporation, IEN, GAIA, GGJ, and a number of allied national green groups and labor unions” organized the Peoples' Climate March).

Both environmental justice and climate justice weave together the requirements of procedural justice; substantive (or distributive) justice; and recognition justice. In the case of environmental justice, key claims of the movement include fair distribution of the burdens of development, and involvement in all aspects of “the development, implementation and enforcement of environmental laws, regulations and policies.”²³ Further, within environmental justice, recognition justice refers to the acknowledgement of the cultural, racial, and social factors that contribute to injustice.²⁴ Climate justice proponents, on the other hand, argue for policies that address the disproportionate burdens that will be borne by vulnerable communities due to climate change, even going so far as to argue for distributive justice in the form of reparations.²⁵ Further, as noted by the Climate Justice Alliance, climate justice requires that voices of communities of color, indigenous peoples, and working-class whites be placed at the forefront of discussions concerning climate.²⁶

Energy justice emerges from this rich history. As Eleanor Stein elegantly summarizes, the general view of scholars is that an energy just world involves equitable sharing of benefits and burdens involved in the production and consumption of energy services.²⁷ It is also one that is fair in how it treats people and communities in energy decision-making.²⁸ Further, key concerns of the field are issues of access, distribution of harms, fairness of energy decision-making to ensure that decisions do not infringe on human rights and civil liberties, and informed participation.²⁹ Parts III-V provide an in-depth review of the conceptual underpinnings of energy justice theory and practice.

²³ Raphael J. Heffron & Darren McCauley, *What is the 'Just Transition'*, 88 *GEOFORUM* 74 (2018); Robert D. Bullard & Glenn S. Johnson, *Environmental Justice: Grassroots Activism and the Impact on Public Policy Decision-Making*, 56 *J. OF SOC. ISSUES* 555, 558 (2000) (“Environmental justice is defined as the fair treatment and meaningful involvement of all people ... with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people ... should bear a disproportionate share of the negative environmental consequences”). For the comprehensive set of environmental justice principles set forth by the First National People of Color Environmental Leadership Summit in 1991, see *Principles of Environmental Justice*, ENVTL. JUST./ENVTL. RACISM, <https://www.ejnet.org/ej/principles.html> (last modified Apr. 6, 1996).

²⁴ David Schlosberg, *DEFINING ENVIRONMENTAL JUSTICE: THEORIES, MOVEMENTS, AND NATURE* 58-64 (Oxford University Press 2007).

²⁵ Maxine Burkett, *Climate Reparations*, 10 *MELB. J. INT'L L.* 509, 521-22 (2009).

²⁶ *Just Transition*, CLIMATE JUST. ALLIANCE, *supra* note 3; see also *Jemez Principles for Democratic Organizing*, Energy Justice Network (Dec. 1996), <https://www.ejnet.org/ej/jemez.pdf>.

²⁷ Eleanor Stein, *Energy Democracy: Power to the People? in Energy Justice: US and International Perspectives* 258, 265 (Raya Salter et al. eds., 2018).

²⁸ *Id.*

²⁹ *Id.*

III. ENERGY JUSTICE IN SOCIAL SCIENCE

Social scientists have attempted to create a conceptual framework for energy justice that includes procedural, distributive, and recognition justice, as well as restorative justice, across the life cycle of the energy system. The framework also includes a consideration of certain principles of energy justice: availability, affordability, due process, transparency and accountability, sustainability, intra-generational equity, and inter-generational equity. Participation (energy democracy), burden of energy costs relative to other household expenditures and income (energy burden), and ability to meet energy needs (energy insecurity), also form a part of the broad picture of energy justice as conceptualized by social scientists in the field. This mix of terms and definitions can create challenges for practitioners and policymakers seeking deeper understanding of a coherent framework for energy justice. Part VI of this Article addresses this difficulty and attempts to bring together the following Sections, which provide a detailed overview of the various approaches to energy justice relied on within the social science field.

A. *The Triumvirate of Tenets and Related Frameworks*

Northern European scholars currently dominate the energy justice academic landscape, producing over one hundred articles on the topic since 2014. In particular, four scholars have made the biggest impact on the field: Benjamin Sovacool, Darren McCauley, Raphael Heffron,³⁰ and Kirsten Jenkins. Over the past several years, these authors have come to define energy justice as “a global energy system that fairly disseminates both the benefits and costs of energy services, and one that has representative and impartial energy decision-making.”³¹ Energy justice is also comprised of a triumvirate of tenets that include distributional justice, procedural justice, recognition justice³² and, more recently, restorative justice. All of the tenets should apply across the life cycle of the energy system.³³ Sovacool et al. have also advanced the concept of “eight core principles” of energy justice: availability, affordability, due process, transparency and accountability, sustainability, intra-generational equity, inter-generational equity, and responsibility;³⁴ as well as “intersectionality” and “resistance.”³⁵

³⁰ Raphael J. Heffron holds a law degree, but publishes mainly in non-legal journals.

³¹ Benjamin K. Sovacool & Michael H. Dworkin, *Global Energy Justice: Problems, Principles, and Practices* 13 (Cambridge Univ. Press 2014).

³² Raphael J. Heffron & Darren McCauley, *The Concept of Energy Justice Across the Disciplines*, 105 ENERGY POL’Y 658, 659 (2017).

³³ *Id.*

³⁴ Benjamin K. Sovacool, Raphael J. Heffron, Darren McCauley & Andreas Goldthau, *Energy Decisions Reframed as Justice & Ethical Concerns*, 1 NATURE ENERGY 1, 5 (2016).

³⁵ Benjamin K. Sovacool et al., *New Frontiers and Conceptual Frameworks for Energy Justice*, 105 Energy Policy 677, 687 and (2017).

As Heffron and McCauley note, these “defined concepts of energy justice compete with each other and at the same time complement each other.”³⁶ Further, a “major limitation of the approaches outlined above—the triumvirate of tenets, energy life-cycle (systems) approach, and the principle-based approach—is that there is little reflection of how these transfer into practice and are ‘enforced’ in practice, i.e. energy justice becomes a delivered outcome through policy.”³⁷ Despite these shortcomings, it is useful to review the key aspects of the foregoing frameworks.

In McCauley et al.’s assessment, distributional justice is concerned with the spatial dimensions of energy, in particular, the “physically unequal allocation of environmental benefits and ills and the uneven distribution of their associated responsibilities.”³⁸ Procedural justice “manifests as a call for equitable procedures that engage all stakeholders in a non-discriminatory way.”³⁹ Recognition justice relates to procedural justice, but contains additional elements. According to McCauley et al., recognition justice is “more than tolerance, and states that individuals must be fairly represented, that they must be free from physical threats and that they must be offered complete and equal political rights.”⁴⁰ Further, recognition justice “includes calls to recognise [sic] the divergent perspectives rooted in social, cultural, ethnic, racial and gender differences[.]”⁴¹ Restorative justice “aims to repair the harm done to people (and/or society/nature).”⁴² The concept applies when “applying energy justice decision-making forces decision-makers to engage with justice concerns and consider the full range of issues, as any injustice caused by an energy activity would have to be rectified.”⁴³

Applying these complex conceptual frameworks within policy-making and real-world scenarios poses a challenge. Heffron and McCauley suggest that,

[i]n looking at the energy justice conceptual framework, one begins with looking at the core tenets of the energy justice [framework] to see if they are present before then broadening their scope to see where the issues fit within the energy life-cycle (or energy system) in the context of having a world-view, i.e. a cosmopolitan perspective. They then look at how to apply energy justice in practice and look for how the problem, issue, and/or challenge they are researching can be addressed (or not) by the [eight] principles.⁴⁴

³⁶ Heffron & McCauley, *supra* note 32.

³⁷ *Id.* at 659-60.

³⁸ Darren McCauley, Raphael J. Heffron, Hannes Stephan, and Kirsten Jenkins, *Advancing Energy Justice: The Triumvirate of Tenets*, 32 INT’L ENERGY L. REV. 107 (2013).

³⁹ *Id.* at 108.

⁴⁰ *Id.* at 109.

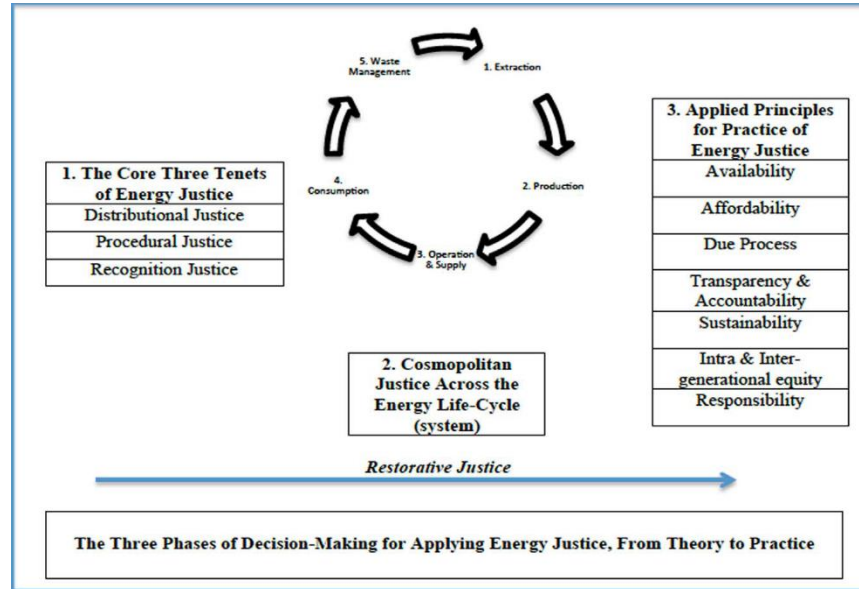
⁴¹ *Id.*

⁴² Heffron & McCauley, *supra* note 32 at 660.

⁴³ *Id.*

⁴⁴ *Id.*

The diagram below reflects this analytical approach.



Heffron and McCauley (2017).

Before moving into the legal literature, three related concepts—energy democracy, energy insecurity, and energy burden—deserve discussion, as they also fit under the broad umbrella of energy justice.

B. Energy Democracy

As with environmental justice and climate justice, energy democracy exists both as an organizing principle for activists as well as an area of increasing scholarly engagement.⁴⁵ Energy democracy, the movement, “seeks to create opportunities for destabilizing power relations, reversing histories of dispossession, marginalization and social and environmental injustices, and replacing monopolized fossil fuel energy systems with democratic and renewable structures.”⁴⁶ Borrowing from the Trade Unions for Energy Democracy approach to energy democracy, scholars Matthew Burke and Jennie Stephens note that energy democracy goals include: (1) resisting the dominant fossil fuel agenda in order to shift to 100% renewable energy resources; (2) reclaiming public control of the energy sector; and (3) restructuring the energy sector to “better support

⁴⁵ Matthew J. Burke & Jennie C. Stephens, *Energy Democracy: Goals and Policy Instruments for Sociotechnical Transitions*, 33 ENERGY RES. & SOC. SCI. 35, 36 (2017).

⁴⁶ *Id.*

democratic processes, social justice and inclusion, and environmental sustainability.”⁴⁷

Notably, energy democracy does not always incorporate equity-based principles or a historical analysis,⁴⁸ and the use of the term, “democracy” can actually mask inequality. Under an uncritical approach, energy democracy could simply mean democratizing the energy system to allow for greater participation in energy production and ownership without attention to underlying inequities. Such participation may, by design, privilege those with access to financial resources and other types of capital that flow from an unequal society. This ahistorical, equity-agnostic approach to energy democracy threatens to replicate the injustices in the existing energy system by “democratizing” the grid and opportunities for self-generation of electricity only for those who can afford it, rather than emphasizing broader grid access for those whose voices have traditionally been excluded from energy decisions affecting their communities.⁴⁹ Policymakers and advocates should thus use caution and be clear when using this term to reflect more meaningful opportunities to participate in the energy system.

C. Energy Insecurity and Energy Burden

Diana Hernández’s work has explored the concept of “energy insecurity,” which “reflects hardships with the cost and quality of household energy” and is “defined as ‘the inability to meet basic household energy needs.’”⁵⁰ Energy insecurity also “describes the interplay between physical conditions of housing, household energy expenditures and energy-related coping strategies.”⁵¹ Energy insecurity frequently appears alongside “energy burden,” a term that reflects the amount of overall household income spent to cover energy costs.⁵² The concerns of low- to moderate-income communities fit under both conceptual frameworks, as studies indicate that such communities consistently find themselves making difficult choices that balance energy expenditures against other household expenses, and simply pay a greater portion of their overall income to cover energy costs. Energy insecurity and energy burden also disproportionately impact communities of color.⁵³ An energy justice approach to energy policy would aim

⁴⁷ *Id.* at 37.

⁴⁸ See generally Stein, *supra* note 27.

⁴⁹ Shelley Welton, *Grasping for Energy Democracy*, 116 MICH. L. REV. 581, 585 (2018).

⁵⁰ Diana Hernández & Eva Siegel, *Energy Insecurity and its Ill Health Effects: A Community Perspective on the Energy-Health Nexus in New York City*, 47 ENERGY RES. & SOC. SCI. 78, 78 (2019).

⁵¹ Diana Hernández, *Understanding ‘Energy Insecurity’ and Why it Matters to Health*, 167 SOC. SCI. & MED. 1, 1 (2016).

⁵² Aladdine Joroff, *Energy Justice: What it Means and How to Integrate it into State Regulation of Electricity Markets*, 47 ENVTL. L. REP. NEWS & ANALYSIS 10927, 10928 (2017).

⁵³ See *Survey of Household Energy Insecurity in Time of COVID Preliminary Results of Wave-2, and Wave-1 and Wave-2 Combined September 22, 2020*, ENVTL. RESILIENCE INST. AT IND. U., <https://eri.iu.edu/research/text-alternatives/wave-2-energy-insecurity-in-time-of-covid-text-alternative.html> (last visited Dec. 6,

to remediate such burdens by making access to clean energy affordable to those most burdened under the existing energy system.

Although social scientists have developed a robust energy justice literature, it is largely separate from the legal scholars discussing energy justice and related terms. The disconnect between academia and practitioners is wider yet; recent energy justice scholarship explicitly delinks the scholarly discourse of energy justice from its activist underpinnings, and argues that the lack of impact of environmental justice can be traced, in part, to its activist orientation, a limitation that can be overcome in energy justice by a narrow focus on policy solutions.⁵⁴ These disconnects illustrate the need for a synthesized approach to energy justice within the policy arena. The next Part provides an overview of the discussion amongst legal scholars around concerns of equity and fairness within the energy system.

IV. ENERGY JUSTICE IN LEGAL LITERATURE

Although the first mention of energy justice in scholarship appears in a 2010 article, *Energy Justice and Sustainable Development*, by legal scholar, Lakshman Guruswamy,⁵⁵ with few exceptions,⁵⁶ legal scholars have done little to explicitly advance the field. In fact, at least one scholar suggests that there is no need for a “uniform definition of what energy justice means or what it seeks to achieve.”⁵⁷ Such a dearth of “energy justice” scholarship is ironic in a field committed to justice and equity, but rather than make explicit mention of “energy justice” through a series of self-referential debates (as we see in some of the social science literature), in legal scholarship, discussions of energy justice have generally evolved to include somewhat disparate discussions of “energy poverty,”⁵⁸ “energy democracy,”⁵⁹ “clean energy justice,”⁶⁰ “clean energy equity,”⁶¹ and “fairness.”⁶² Although the term, “energy justice” is used rarely and is often not fully fleshed

2020) (addressing energy insecurity during the COVID-19 pandemic); and Dominic J. Bednar, Tony Gerard Reams, and Gregory A. Keoleian, *The Intersection of Energy and Justice: Modeling the Spatial, Racial/Ethnic and Socioeconomic Patterns of Urban Residential Heating Consumption and Efficiency in Detroit, Michigan*, 143 ENERGY AND BUILDINGS 25 (2017) (addressing energy burden and communities of color).

⁵⁴ Kirsten Jenkins, *Setting Energy Justice Apart from the Crowd: Lessons from Environmental and Climate Justice*, 39 ENERGY RES. AND SOC. SCI. 117, 118 (2018).

⁵⁵ Guruswamy, *supra* note 10; see Baker, *supra* note 9 at 379-80.

⁵⁶ Baker, *supra* note 9 at 379-80.; Shelley Welton, *Clean Electrification*, 88 U. COLO. L. REV. 571 (Apr. 10, 2017).

⁵⁷ Joroff, *supra* note 52 at 10927.

⁵⁸ Guruswamy, *supra* note 10; Joroff, *supra* note 52 at 10927.

⁵⁹ Welton, *supra* note 49.

⁶⁰ Welton, *supra* note 56.

⁶¹ Felix Mormann, *Clean Energy Equity*, 2019 UTAH L. REV. 335 (2019).

⁶² Outka, *supra* note 17; cf. Troy A. Rule, *Solar Energy, Utilities, and Fairness*, 6 SAN DIEGO J. OF CLIMATE & ENERGY L. 115 (2014-15) (arguing against “general appeals to fairness” in policy debates concerning distributed solar energy).

out, there is some consensus in legal scholarship that energy justice closely relates to environmental justice and should, at the very least, build upon its key principles of distributive and procedural justice.⁶³ The following discussion provides an overview of the legal discourse.

A. *Energy Poverty*

Guruswamy's 2010 law review article concerns itself with the "energy oppressed poor," defined as people "devoid of life sustainable energy." In the article, he brings together two terms, energy and justice, to suggest that, as a single term, "[e]nergy justice seeks to apply basic principles of justice as fairness to the injustice evident among ... the energy oppressed poor" and that energy justice "is an integral and inseparable dimension of the universally accepted foundational principle, or groundnorm, of international law and policy..."⁶⁴ Guruswamy's later work evolves: energy oppressed poor becomes the "energy poor" and "energy justice," converts to "energy poverty."⁶⁵ In her article discussing energy justice, Joroff connects energy poverty concepts to the domestic sphere, referencing "energy burdens" that force low-income families that face "disproportionately high energy costs relative to income" to make dangerous tradeoffs that "can jeopardize health, safety, and housing stability," rendering children and the elderly particularly vulnerable.⁶⁶

B. *Energy Democracy*

Defining energy democracy has proven more difficult. In a 2016 article concerning Mexico's energy transition and energy justice, Baker locates energy democracy within the broader umbrella of energy justice, stating that energy democracy "provides affected communities a role in determining the types of energy distributed to them—clean or fossil fuel based—as well as the types of entities that distribute it."⁶⁷ Further, she notes that energy democracy provides a vehicle for "participatory rights vis-à-vis financing mechanisms or other contractual mechanisms that incorporate mutually beneficial terms."⁶⁸ This broad

⁶³ Baker, *supra* note 20; Joroff, *supra* note 52 at 10927 (proposing that energy justice be defined as building on the "tenets of environmental justice, which provide that all people have a right to be protected from environmental pollution . . . energy justice is based on the principle that all people should have a reliable, safe, and affordable source of energy; protection from a disproportionate share of costs or negative impacts or externalities associated with building, operating, and maintaining electric power generation, transmission, and distribution systems; and equitable distribution of and access to benefits from such systems."); Outka, *supra* note 17.

⁶⁴ Guruswamy, *supra* note 10 at 233.

⁶⁵ Lakshman Guruswamy, *The Contours of Energy Justice*, in INTERNATIONAL ENVIRONMENTAL LAW AND THE GLOBAL SOUTH 529 (Gonzales ed., Cambridge University Press 2015).

⁶⁶ Joroff, *supra* note 52 at 10928.

⁶⁷ Baker, *supra* note 9 at 380.

⁶⁸ *Id.*

framing contrasts more recent scholarship outlining the scope of energy democracy.

In *Grasping for Energy Democracy*, Shelley Welton acknowledges the competing and contradictory approaches to, and definitions of, energy democracy. As we do here, Welton argues for convergence of definitions and coherence within scholarship to adequately inform policy makers. She states,

[n]umerous other scholars are writing around the concept of energy democracy without labeling it as such: those embracing localism as a climate change strategy;[] those considering the evolving mandate and powers of public utility commissions;[] those exploring the relationship between federal energy markets and state policy objectives;[] and those focused on the opportunities and challenges posed by new, small-scale energy technologies (citations omitted).⁶⁹

Further, she notes that energy democracy itself remains incoherent in scholarship, flying “under other reform banners, including those of consumer empowerment, consumer participation, local energy, and energy justice.”⁷⁰ These various competing definitions of energy democracy present a “troubling hurdle to the project of democratizing the field, as different conceptions of the term counsel for divergent legal reforms.”⁷¹

For her part, Welton takes a decidedly granular approach to energy democracy. She outlines three concepts of energy democracy that have emerged in discussions of energy reform: consumer choice, which suggests that “[e]nergy governance regimes should be redesigned to give consumers more choices in their energy purchasing decisions, including more control over their level of energy demand and the opportunity to generate, store, and sell their own electricity;” local control, which decentralizes energy decision making to local communities “claiming ownership and control of energy resources and control over energy decision making;” and access to process, which urges regulators to “embrace procedural reforms that enable more citizens to participate in governmental decision making processes about energy policy across all levels of government.”⁷² These three conceptual outlines mirror Baker’s emphasis on the ownership and control of energy resources, and incorporate the added dimension of consumer choice.

C. *Fairness as a Broad Conceptual Frame*

In another departure from the social science literature, legal scholars exploring energy justice concepts and theories beyond energy poverty have tended to examine justice (or fairness) across a range of policy debates concerning the participatory grid, including, for example, net energy metering, community solar, and community choice aggregation. Although fully-fleshed out discussions of

⁶⁹ Welton, *supra* note 49 at 588.

⁷⁰ *Id.* at 594.

⁷¹ *Id.* at 585.

⁷² *Id.* at 585.

energy justice are rare in the legal literature, Welton distinguishes energy justice from “clean energy justice”, but notes that, in each case, the focus is on distributive justice with respect to the energy system, whether that be a system powered by clean energy and smart technology, or one organized around fossil fuels.⁷³ Further, Welton notes, electricity law has a “long-standing equity commitment,” which can help to guide the suite of justice-based challenges that have emerged with the clean energy transition.⁷⁴

Additional discussions of justice within energy policy literature argue for approaches to transitional policy that are less “polarizing” and politically fraught than the “fairness rhetoric”, arguing for equity-based approaches rooted in the familiar cost-benefit analysis framework.⁷⁵ Although cost-benefit analysis in policy has done little to advance the aims of deep justice in poor and low-income communities of color, Felix Mormann argues that equity, framed in cost-benefit terms, “offers a reliable metric of socio-economic impact.”⁷⁶ Mormann ultimately calls for deeper participation in the formation of clean energy policies (feed-in tariffs, tender regimes, net energy metering, tax credits, and renewable portfolio standards), in order to avoid unintended negative distributional problems.

IN SUM, ALTHOUGH THE CURRENT LEGAL APPROACH TO ENERGY JUSTICE IS SOMEWHAT SCATTERED AND EVEN INTERNALLY INCONSISTENT, THE FIELD CONTRIBUTES TO THE OVERALL UNDERSTANDING OF ENERGY JUSTICE BY HEWING CLOSELY TO THE PRINCIPLES OF DISTRIBUTIVE AND PROCEDURAL JUSTICE. THE DIFFERENCES BETWEEN THE SOCIAL SCIENCE LITERATURE AND LEGAL LITERATURE MAY BE PARTIALLY EXPLAINED BY DIFFERENCES IN METHODOLOGY AS WELL AS THE GEOGRAPHICAL AND POLITICAL DIFFERENCES WITHIN THE ACADEMIC COMMUNITIES INVOLVED IN ENERGY JUSTICE-CENTERED KNOWLEDGE PRODUCTION. NO MATTER THE UNDERLYING REASON FOR DISCONNECT, OPERATIONALIZING THESE OVERLAPPING AND SOMETIMES CONTRADICTIONARY CONCEPTS ACROSS A SUITE OF POLICIES POSES A CHALLENGE. THE NEXT SECTION OUTLINES THE VARIOUS PRACTITIONER APPROACHES TO ENERGY JUSTICE.

V. ENERGY JUSTICE IN PRACTICE

In *Framing Energy Justice: Perspectives from Activism and Advocacy*, Sara Fuller and Darren McCauley interrogate energy justice in the context of activist and advocacy movements, seeking to illuminate for the scholarly community the ways that energy justice is defined by those on the ground and the communities that experience the direct impacts of the energy system. The authors observed “energy justice on the ground,” and found no consistent, “single energy justice

⁷³ Welton, *supra* note 49.

⁷⁴ *Id.*

⁷⁵ Mormann, *supra* note 61.

⁷⁶ *Id.* at 340.

frame.”⁷⁷ Instead, they found “the existence of multiple and diverse mobilizations around energy justice[,]” and localized expressions of justice.⁷⁸ “In this article, we do not attempt to *explain* practitioner and advocate approaches to energy justice using tools designed by scholars. By contrast, we acknowledge the unique perspectives and understandings of energy justice as defined by those engaged in the work on the ground, and then synthesize these perspectives into a coherent frame.” Grassroots expertise, grounded in the lived experiences of advocates, provides an invaluable perspective to inform equity-centered energy policy and can offer useful guideposts for policy implementation.

A. *A Survey of Energy Justice Practitioner Approaches*

To gain an understanding of existing community-based approaches to energy justice, we relied mainly on a review of advocacy statements concerning “energy justice.” Our approach to understanding what was happening in the field began with a desktop survey of advocacy groups using the terms “energy justice,” “energy democracy,” or “energy equity” in their mission statements. The search was then narrowed to groups that specifically defined these terms in a way that creates a framework for their mission. Our original search included only those organizations that specifically used the term “energy justice” in their work. However, many advocacy groups favor the phrase “energy democracy” when talking about issues pertaining to developing energy transition frameworks with a social and environmental justice focus. As a result, we expanded the search to include this terminology, as well as the phrase “just transition,” which is also used to describe the transition away from an extractive economy to a regenerative one. Additional sources were found by looking at sources cited in academic papers about community activism and energy justice frameworks.

The foregoing field survey resulted in an Advocate Library (see Table 1).

⁷⁷ Sarah Fuller and Darren McCauley, *Framing Energy Justice: Perspectives from Activism and Advocacy*, 11 ENERGY RES. & SOC. SCI. 1, 6 (2016).

⁷⁸ *Id.*

<u>Advocate Library</u>			
Organization	Location	Preferred Term	Definition of Energy Justice/Democracy/Energy Equity
Center for Social Inclusion / Race Forward	New York, NY	energy democracy	<p>“Energy democracy means that community residents are innovators, planners, and decision-makers on how to use and create energy that is local and renewable. By making our energy solutions more democratic, we can make places environmentally healthier, reduce mounting energy costs so that families can take better care of their needs, and help stem the tide of climate change.”⁷⁹</p> <p>“Energy democracy means ensuring that local communities are innovators, planners, and decision-makers on how to use and create energy that is local and renewable and moves us closer to racial justice.”⁸⁰</p>
Institute for Local Self-Reliance	MN, ME, DC	energy democracy	<p>“Energy democracy means both the sources and ownership of energy generation are distributed widely.</p> <p>Energy democracy means that the management of the energy system be governed by democratic principles that allows ordinary citizens to have a say. This means that communities that wish greater control over their energy system should have minimal barriers to doing so.</p> <p>Energy democracy means that the wide distribution of power generation and ownership, and access to governance of the energy</p>

⁷⁹ *Energy Democracy*, CTR. FOR SOC. INCLUSION, <https://www.centerforsocialinclusion.org/our-work/our-programs/energy-democracy> (last visited Nov. 7, 2020).

⁸⁰ *Energy Democracy*, CTR. FOR SOC. INCLUSION, *supra* note 79.

			system be equitable by race and socioeconomic status.” ⁸¹
Trade Unions for Energy Democracy	New York, NY	energy democracy	“An energy transition can only occur if there is a decisive shift in power towards workers, communities and the public—energy democracy. A transfer of resources, capital and infrastructure from private hands to a democratically controlled public sector will need to occur in order to ensure that a truly sustainable energy system is developed in the decades ahead.” ⁸²
Energy Justice Network	Philadelphia, PA	energy justice	“We seek to ensure that all members of our global society share the same rights to protect and democratically determine the sustainable use of our air, land, food, water and energy resources, so that future generations may thrive.” ⁸³
New York Energy Democracy Alliance	New York	energy democracy	“Our work to promote energy democracy is designed to move the state toward a better system, one in which residents have the right and the authority to determine their own energy future, to protect our most vulnerable populations, and to prevent the wholesale destruction of our precious ecosystems. Putting ownership and control over the means of sustainable energy production into the hands of everyday people, into the hands of

⁸¹ John Farrell, *Energy Democracy Initiative: A New Logo, and a Definition of Energy Democracy*, INST. FOR LOCAL SELF-RELIANCE (May 9, 2016) <https://ilsr.org/a-new-logo-and-a-definition-of-energy-democracy>.

⁸² SEAN SWEENEY, RESIST, RECLAIM, RESTRUCTURE: UNIONS AND THE STRUGGLE FOR ENERGY DEMOCRACY (Trade Unions for Energy Democracy, 2nd ed. 2013), ii, http://unionsforenergydemocracy.org/wp-content/uploads/2014/05/resistreclaimrestructure_2013_english.pdf.

⁸³ *Energy Justice Platform*, ENERGY JUSTICE NETWORK, <http://www.energyjustice.net/platform> (last visited April 10, 2019.)

			municipalities, and into the hands of local businesses.” ⁸⁴
Soulidarity	Highland Park, MI	energy democracy	“Energy Democracy is the idea that the people most impacted by energy decisions should have the greatest say in shaping them.” ⁸⁵
Partnership for Southern Equity	Georgia	energy equity	“Against the backdrop of global climate change, ‘energy equity’ translates into the fair distribution of benefits and burdens from energy production and consumption.” ⁸⁶

Table 1

The library distills the primary practitioner approaches to energy justice and provides a snapshot of the use of the terms “energy justice,” “energy democracy” and similar terms in the advocacy sphere. The list of organizations represents a nation-wide survey of U.S.-based organizations, and one organization from the United Kingdom. The library indicates how the groups define the terms and characterize their work using the terms. The following section discusses our findings.

B. Practitioner Terms and Approaches

Despite the work of these organizations clearly falling under the umbrella of “energy justice,” this term is almost never used in their mission statements or writing. Generally, the word “justice” is used only to incorporate a social, racial, or environmental justice approach to the energy transition, rather than to aid in the development of a new framework specifically for the just transition. Our review also showed that while few groups use the term “energy justice,” many include a justice component in their work, which is often framed in terms of social, racial, or environmental justice. The incorporation of these related frameworks is important because it provides a foundation on which to build a new practitioner framework specifically for energy transition activities.

In a further distinction in terminology, many advocates also use the term “energy equity” to describe energy advocacy that centers on the concerns of frontline communities. Some practitioners use the term equity when talking about energy, though not necessarily “energy equity” as a phrase. For example, some

⁸⁴ *About Us*, NEW YORK ENERGY DEMOCRACY ALLIANCE, <https://energydemocracyny.org/about-us> (last visited April 10, 2019).

⁸⁵ *Why Energy Democracy?*, SOULIDARITY (2014), https://www.soulardarity.com/why_energy_democracy.

⁸⁶ *Just Energy*, P'SHIP FOR S. EQUITY, <http://psequity.org/just-energy> (last visited April 10, 2019).

use specific phrases such as “equitable deep decarbonization” and “equitable energy system” to describe energy transition work that incorporates elements of social, racial, and environmental justice.

The term most often used to describe the missions of these organizations is “energy democracy.” “Energy democracy” appears to be especially favored in the United States among groups advocating for a community-empowerment component to energy transition activities. Energy democracy also includes equitably distributing both the benefits and harms of energy infrastructure across all communities and stakeholders, which will remedy the current disproportionate harm being done to low-income and minority groups.

The common concepts of distributive justice and community control over energy resources are also addressed in the missions of organizations that do not use the term “energy democracy,” but instead favor “energy justice,” “energy equity,” or “just transition.” Advocates tend to place less emphasis on a uniformity of terminology describing the work, compared to social science scholars. Echoed among all of the groups is a desire for upheaval in the current energy system, a shift towards more democratically controlled systems, and a new emphasis on social inclusiveness and equity.

With respect to thematic approaches, the most common theme among the organizations represented in the library above is a focus on the outcomes of the energy transition rather than the process. These outcomes encompass several goals, including transitioning the power and control over the means of energy production into the hands of the community and ensuring fair and equitable distribution of the benefits and burdens of energy production activities.

A key theme across advocacy groups is the equitable distribution of both the benefits and harms of the energy system, which again relates to alleviating the pressure that currently disproportionately affects low-income and minority communities from energy production and distribution systems. Some groups believe a solution to this problem is to allow the communities where the energy production systems are placed to economically benefit from them, which will in turn remedy many of the social issues currently being experienced.⁸⁷ Other aspects of this approach include limiting pollution to decrease negative health impacts and improving efficiency to lower the overall cost of living. Another method of ensuring this equity is by putting the power in the hands of the people most affected by the decisions.⁸⁸ The idea is that these groups will be most motivated to responsibly manage the benefits and risks of energy production and distribution.

⁸⁷ *Just Transition*, KENTUCKIANS FOR THE COMMONWEALTH, *supra* note 3.

⁸⁸ *Why Energy Democracy?*, *infra* note 82.

Environmental justice also appears throughout energy-related advocacy materials.⁸⁹ Environmental justice provides a foundation for advocating for more sustainable, environmentally-friendly energy systems in the first place, and incorporates the history of exploitation and harm in extractive industries into the energy justice discourse.

In sum, grassroots groups tend to advocate for many aspects of the energy justice framework that is being developed by scholars, but utilize different language to describe their work. Moreover, our review illustrates that the community of practice engaged in what is ostensibly energy justice work deeply overlaps with and connects to the fields of practice engaged in environmental and climate justice advocacy. Further, their claims connect to distributive justice across multiple domains, including environmental and climate justice, and link to the broader goal of a just transition. While advocates' efforts contribute to, and in many ways direct, the discursive practice of energy justice, the disconnect between practitioners and scholars threatens the efficacy of scholarship to reach practitioners, and could lead to broader confusion concerning the meaning of energy justice among policymakers.

C. Prevalence of “Energy Democracy”

It is worth emphasizing the prevalence of “energy democracy” framing in practitioner work. Our analysis of practitioner approaches revealed that the term most often used to describe the missions of organizations engaged in equity-based energy policy work is “energy democracy.” Based on our research, it seems that “energy democracy” is especially favored among U.S. groups advocating for a community-empowerment component to energy transition activities. The use of the term “democracy” within the U.S. context could serve two strategic purposes within the movement.

The first strategic goal of using energy democracy might be to portray the importance that involvement from the community plays in these groups' vision for just energy systems. The views and values expressed by the organizations emphasize that justice in energy generation, distribution, and transition activities will be achieved only if the decision-making power and control over the systems lies in the hands of the community affected by that system.⁹⁰ A way of accomplishing that goal is by putting that system under democratic control and

⁸⁹ *About Energy Justice Network*, ENERGY JUSTICE NETWORK, <https://www.energyjustice.net/about> (last visited Nov. 8, 2020); *Energy Equity*, CALIFORNIA ENVIRONMENTAL JUSTICE ALLIANCE, <https://caleja.org/what-we-do/energyequity/> (last visited Nov. 8, 2020).

⁹⁰ *Energy Democracy*, CTR. FOR SOC. INCLUSION, *supra* note 79; *Energy Democracy: The Big Picture*, INSTITUTE FOR LOCAL SELF-RELIANCE, <https://ilsr.org/energy-democracy-the-big-picture/> (last visited Nov. 21, 2019); *About Us*, N.Y. ENERGY DEMOCRACY ALLIANCE, <https://energydemocracyny.org/about-us/> (last visited Nov. 21, 2019); *Resources on Energy Democracy*, LOCAL CLEAN ENERGY ALLIANCE, <http://www.localcleanenergy.org/EnergyDemocracy> (last visited Nov. 21, 2019).

allowing for social and economic participation in that system. Further, as emphasized by Denise Fairchild and Al Weinrub in *Energy Democracy*, “deep democracy,” which centers the engagement of poor people, people of color, and groups traditionally marginalized within energy transition policy discussions, goes further than mere economic and social participation in the energy system.⁹¹ Under the Fairchild and Weinrub analysis, energy democracy requires not only basic participation in the design of the new energy system, but a deeper structural transformation of the social and economic structures underpinning the energy system.⁹²

The second strategic aim of using “energy democracy” could relate to the long, and frequently problematic, history of the term “democracy” in the American context. As noted above, democracy is a core value in American political and social systems, and linking this concept, which evokes feelings of patriotism and equity, to the energy transition movement is likely to yield more positive outcomes than linking the movement to “social justice” or “racial justice,” which can evoke a more negative, or polarized, response. The use of patriotic phrasing could therefore be strategically important in policy advocacy efforts, where public and political support is crucial.⁹³

Groups using the term “energy democracy” tend to include the following concepts of community empowerment in their work: community ownership: the community owning and controlling the sources of energy production; community decision-making: the community having a democratic say in the means of energy production and distribution; and power decentralization: the empowerment of those closest to the means of energy production, geographically, socially and economically.

These concepts indicate a desire to redistribute economic and political power away from centralized energy producers to smaller subsections of society. Advocates press for meaningful community involvement to eradicate many of the inequalities and injustices that currently plague the energy system, such as the disproportionate ecological, economic, and social harms that currently affect low-income communities and communities of color.⁹⁴

⁹¹ ENERGY DEMOCRACY: ADVANCING EQUITY IN CLEAN ENERGY SOLUTIONS 6, (Denise Fairchild & Al Weinrub eds., 2017).

⁹² *Id.* at 6.

⁹³ It is interesting to note that the U.K.-based organization represented in the sample, Centre for Sustainable Energy (CSE), does not feel the same pressure to avoid using the word “justice” to describe its work. However, “justice” in their context takes on a different meaning from that usually found in social and racial justice movements. CSE uses justice to mean fairness in the distribution of the burden of climate action, specifically that every person must feel like his or her required contribution is fair in relation to the contributions of those around them. This definition lacks the restorative and moralistic angles of justice movements in the United States.

⁹⁴ *Energy Democracy*, CTR. FOR SOC. INCLUSION, *supra* note 79.

D. Energy Equity vs. Energy Justice

While energy democracy appears to be the most commonly used term among those working at the intersection of equity and energy, many use energy equity to mean something slightly broader in scope than energy democracy: using energy policy to *center* the concerns of those harmed by the existing energy system. Some advocates also either use or resonate with energy justice as a more holistic and compelling frame to reflect the broader aims of energy advocacy work.

In the advocacy sphere, advocates place less emphasis on a uniformity of terminology describing the work than scholars of energy justice and, appropriately, more emphasis on the outcomes associated with the work. What is echoed among all of the groups we reviewed is a desire for upheaval in the current energy system, a shift towards more democratically controlled systems, and a new emphasis on social inclusiveness and equity.

Advocates are also concerned about the impacts of the energy system and focus on the following key concepts:

- (1) **Equitable Distribution of Benefits and Harms:** Groups emphasize the equitable distribution of both the benefits and harms of the energy system, which again relates to alleviating the pressure that currently disproportionately affects low-income communities and communities of color.
- (2) **Economic Benefits:** Some groups believe allowing frontline communities to economically benefit from the new energy system could remedy many of the social issues currently being experienced by such communities⁹⁵ and lead to social and political empowerment through job creation, local control of economic resources, and improving efficiency to lower the overall cost of living.
- (3) **Decreasing Pollution:** Communities also focus on distributive concerns include limiting pollution to decrease negative health impacts.
- (4) **Centering Frontline Voices and Control:** Advocates stress that another method of ensuring energy equity is by putting the power in the hands of the people most affected by the decisions.⁹⁶ This emphasis reflects the underlying view that these groups will be most motivated to responsibly manage the benefits and risks of energy production and distribution.

In sum, we found that the use of the terms energy justice, energy democracy, and just transition provides a similar framing for advocacy groups as the phrase “energy justice” provides for academic investigations. From the practitioner perspective, energy justice mirrors the distributive and procedural justice demands of the environmental justice and climate justice movements, and encompasses several additional goals including: (1) transitioning the power and control over the means of energy production into the hands of the community; (2)

⁹⁵ *Just Transition*. KENTUCKIANS FOR THE COMMONWEALTH, *supra* note 3.

⁹⁶ *Why Energy Democracy?*, *supra* note 82.

ensuring fair and equitable distribution of the benefits and burdens of energy production activities; and (3) centering the concerns of frontline communities. Our analysis also revealed that for most groups, energy democracy includes a component of community empowerment through transitioning control of energy generation and distribution to the public. These distributive and procedural justice frames echo the themes reflected throughout the social science and legal literature.

VI. A SYNTHESIS OF ENERGY JUSTICE

Each analytical frame—advocacy, social science, and law—emphasizes procedural justice and distributive justice. Procedural justice concerns who is at the decision-making table, and whether, once at the table, everyone’s voice is heard. Distributive justice is outcome focused, and speaks to whether all equally share in the benefits and burdens of the energy system. Despite these similarities and shared understandings, the analytical frames differ in two key ways: (1) the scope of energy justice and its connection to related “justice” concepts and (2) the centering of traditionally excluded voices in energy policy. Each difference is addressed below.

A. *Key Differences Among Analytical Frames*

1. The scope of energy justice and its connection to related “justice” concepts.

Each analytical frame raises questions regarding the scope of the energy justice umbrella. For example, given the focus on the procedural and distributive justice dimensions among energy justice, environmental justice, and climate justice, how do the terms and approaches connect? Further, does energy justice simply build on environmental justice and climate justice principles, and therefore stand apart as a distinct approach to designing energy policy, as suggested by some energy justice scholars? Or, does an energy justice approach to energy policy explicitly incorporate the principles of each framework, as evidenced by the field of practice? Additionally, regarding the scope of energy justice, how do the concepts of energy poverty, energy democracy, and energy insecurity factor into an energy justice policy framework? And finally, is “just transition” a broader conceptual frame that incorporates energy justice, or does it stand alone as an analytical frame? The following discussion addresses these questions.

Energy justice cannot be separated from environmental justice and climate justice. The field of practice, with its overlapping commitments to environmental, climate, and energy justice, as well as the complex lived experiences of frontline communities, reveal an interconnectedness among environmental, climate, and energy justice that would seem to require that energy policy acknowledge the unique ways that environmental harms and climate-related harms affect frontline communities. For example, the Environmental Protection Agency has identified

low-income communities of color residing in the L.A. basin as among the most impacted environmental justice communities in the country; they house hazardous waste clean-up sites (Superfund sites) in disproportionate numbers.⁹⁷ Such communities also face disproportionate risks to climate-related events, given that, for a number of reasons, community members lack mobility in the face of climate-related weather events.⁹⁸ Further, in addition to the well documented energy burden faced by such communities, power outages uniquely burden such communities given that they are unable to “bounce back” as quickly from events that damage food and medicine supplies.⁹⁹ Energy justice requires an exploration

⁹⁷ *Los Angeles Area Environmental Enforcement Collaborative*, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/environmentaljustice/los-angeles-area-environmental-enforcement-collaborative> (last visited Nov. 8, 2020); LIBERTY HILL FOUNDATION, DRILLING DOWN, THE COMMUNITY CONSEQUENCES OF EXPANDED OIL DEVELOPMENT IN LOS ANGELES (2015), https://www.libertyhill.org/sites/libertyhillfoundation/files/Drilling_Down_Report_1.pdf; <https://www.libertyhill.org/sites/default/files/Drilling%20Down%20Report%20-%20Full.pdf>; Tony Barboza, *EPA 'environmental justice' map highlights California's pollution ills*, L.A. TIMES (June 10, 2015), <https://www.latimes.com/local/lanow/la-me-ln-environmental-justice-map-20150609-story.html>.

⁹⁸ See S. Nazrul Islam & John Winkel, *Climate Change and Social Inequality*, Working Paper No. 152, at p. 15, (October 2017), U.N. DEP'T OF ECON. & SOC. AFF., https://www.un.org/esa/desa/papers/2017/wp152_2017.pdf; Rob Moore, *Laura: The Latest Climate Disaster for Low-Income Americans*, NRDC: EXPERT BLOG, <https://www.nrdc.org/experts/rob-moore/laura-latest-climate-disaster-low-income-americans> (last updated Sept. 8, 2020) (highlighting “how low-income communities and communities of color are most vulnerable to climate-fueled disasters . . . [because] [t]hey are less likely to have the financial resources or access to credit to make their home safe before a disaster strikes . . . [a]nd they are likely to be able to afford things like flood insurance coverage, which would give them more financial capacity to rebuild after a flood.”); Clare Morganelli, *Climate Adaptation Shouldn't Fuel Inequitable Displacement*, NRDC: EXPERT BLOG, <https://www.nrdc.org/experts/clare-morganelli/climate-adaptation-shouldnt-fuel-inequitable-displacement> (last modified Apr. 1, 2019) (“Those most able to leave sweltering cities like Phoenix are typically older and wealthier, leaving lower-income residents behind in increasingly unlivable urban centers.”); Martha Merrow, *The Climate Crisis will Worsen Flood Impacts, and Increase U.S. Racial Disparities*, CLIMATEXCHANGE, <https://climate-xchange.org/2020/07/30/the-climate-crisis-will-worsen-flood-impacts-and-increase-u-s-racial-disparities/> (last modified July 30, 2020) (“Individuals who work long hours may be unable to attend community preparedness meetings, and may have less access to warnings and evacuation instructions.”); Tina Yuen, Eric Yurkovich, Lauren Grabowski, & Beth Altshuler, *Guide to Equitable, Community-Drive Climate Preparedness Planning 11-12*, URB. SUSTAINABILITY DIRECTORS NETWORK (May 2017), https://www.usdn.org/uploads/cms/documents/usdn_guide_to_equitable_community-driven_climate_preparedness_high_res.pdf.

⁹⁹ See Islam & Winkel, *supra* note 90, at 17-22; Moore, *supra* note 90 (noting that in Texas after Hurricane Harvey, “low income applicants for aid were denied FEMA Individual Assistance at rates almost twice as high as higher income applicants” . . . [and] . . . the State of Texas . . . gave white, more affluent communities a larger share of [recovery] funding, compared to places like Port Arthur, where damages were arguably much more severe”); Martha Merrow, *The Climate Crisis will Worsen Flood Impacts, and Increase U.S. Racial Disparities*, CLIMATEXCHANGE, <https://climate-xchange.org/2020/07/30/the-climate-crisis-will-worsen-flood-impacts-and-increase-u-s-racial-disparities/> (last modified July 30, 2020) (“Since Katrina, the Black population of [New Orleans] has plummeted, and income gaps between Black people and white people have widened. Many African-American neighborhoods and the businesses supporting them have not fully recovered.”); Carmin Chappell, *Climate Change in the US Will Hurt Poor People the Most, According to a Bombshell Federal Report*, CNBC, <https://www.cnbc.com/2018/11/26/climate-change-will-hurt-poor-people->

of these multiple layers of burden faced by frontline communities in the approach to energy policy design. Rather than create a dispersed policy approach, this approach mirrors the complexity facing frontline communities across multiple dimensions.

Frontline communities rely on the “just transition” framework to illustrate how to transition away from the current, fossil fuel driven economy to a new, regenerative one that honors workers, “redresses past harms, and creat[es] new relationships of power for the future through reparations.”¹⁰⁰ As the Climate Justice Alliance notes, this broader framing ties directly to the unique histories of the environmental justice and climate justice movements.¹⁰¹ Just Transition “represent[s] a host of strategies to transition whole communities to build thriving economies that provide dignified, productive and ecologically sustainable livelihoods; democratic governance and ecological resilience.”¹⁰² From a policymaking standpoint, therefore, energy justice, as a mechanism to help facilitate the transition away from fossil fuels, must be considered within a broader holistic frame that acknowledges, at the very least, the rights of workers to access jobs in the new energy economy. Further, Climate Justice Alliance lays out a comprehensive set of Just Transition Principles that include: Buen Vivir (living well without living better at the expense of others), Meaningful Work; Self Determination, Equitable Redistribution of Resources and Power, Regenerative Ecological Economics, Culture and Tradition (acknowledging the harms to culture and tradition enacted by capitalism, colonialism, patriarchy, genocide and slavery), and Solidarity.¹⁰³ This Climate Justice Alliance framing is transformative, in that its transition principles address a fundamental rethinking of all aspects of the economy away from its existing extractive structure towards something that provides a good life, is regenerative and redistributive, and honors culture.¹⁰⁴

2. The voices that should be centered in an energy justice approach to energy policy.

The second key difference among the analytical frames is the emphasis on whose voices are centered in approaches to energy justice. The social science literature has evolved to include the idea of restorative justice within its analytical frame, which would seem to suggest that an energy justice-based approach to

the-most-federal-report.html (last updated Nov. 26, 2018) (noting that low-income communities “take longer to bounce back from natural disasters . . . [which] will only be exacerbated due to climate change”).

¹⁰⁰ *Just Transition*, CLIMATE JUSTICE ALLIANCE, *supra* note 3.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Shalanda H. Baker, *Fighting for a Just Transition*, NACLA Report on the Americas, 52:2, 144, 149-151 (2020).

energy policy would require the acknowledgement of prior harms to low-income communities and communities of color. This might also be framed as something akin to healing, which has underpinnings in the criminal justice literature concerning restorative justice.¹⁰⁵ Legal scholars have generally avoided a deeper equity analysis in their discussion of energy justice, which would be more focused on the healing potential of energy policy as well as the prior harms faced by certain frontline communities. Legal scholars instead focus on energy access (for the energy poor), energy burdens, and fairness (as an approach to distributed energy generation). The practitioner framing of energy justice unequivocally centers the voices of those who have been the most harmed by the current energy system, and also takes an equity-driven approach.

A synthesized perspective of energy justice requires not only that traditionally excluded voices become a central part of the energy policy conversation, but that they are first in line to receive the benefits of policies adopted to facilitate the energy transition. This approach draws heavily on the advocate orientation to energy justice and also incorporates both the “recognition” and “restorative” justice angles of the social science literature. It is also consistent with a “fairness” based approach to law and policy.

B. Harmonizing and Operationalizing Energy Justice Across Disciplines and the Field

As the foregoing discussion illustrates, the procedural justice, distributive justice, and recognition justice principles that animate both the energy justice literature and field of practice draw heavily on movement-centered approaches to environmental justice and climate justice, as well as the epistemic traditions of environmental and climate justice scholarship. In the movement-based conception of energy justice, it is deeply linked to calls for environmental justice, and connected to the need for climate justice in frontline communities. Further, the movement and principles associated with energy justice are situated squarely within a broader “just transition” frame. Finally, the voices and concerns of traditionally burdened groups are centered in thinking through policymaking approaches. This synthesis gives rise to two additional questions for stakeholders engaging in energy justice policymaking: (1) how should stakeholders approach energy justice (procedural justice), and (2) what types of outcomes should energy justice produce (distributive justice)?

Procedural justice requires that traditionally excluded groups, frontline communities, and those otherwise marginalized due to the energy system work with policymakers to co-create and co-design a fair process for inclusion in energy

¹⁰⁵ See generally Elmar G. M. Weitekamp & Stephan Parmentier, *Restorative Justice as Healing Justice: Looking Back to the Future of the Concept*, RESTORATIVE JUSTICE, 4:2, 141 (2016); Kathleen Daly, *What is Restorative Justice? Fresh Answers to a Vexed Question*, VICTIMS & OFFENDERS, 11:1, 9 (2016).

decision-making. This requires an analysis of the process *relied on* to create new energy policy as well as the procedural justice dimensions *reflected in* the policy. The distributive justice dimensions are much more difficult to discern, and ultimately require stakeholders to evaluate policy efficacy along racial and socio-economic dimensions. Energy policies should therefore be empirically evaluated regularly for efficacy along such equity dimensions.

When designing and evaluating policies through an energy justice lens, policymakers, communities, and academics should ask:

- (1) **Process:** *Have frontline communities participated meaningfully in the policymaking process with sufficient support?* Factors for consideration include, but are not limited to, the following:

Convenience of the meeting for frontline attendees, including location (e.g., proximity to public transportation) and time (e.g., outside of customary work hours, with multiple opportunities to participate);

Communication of meeting time and location to frontline leaders and community groups;

Provision of relevant and clear information to sufficiently evaluate the proposed policy and program;

Financial support to frontline advocates to defray the cost of participation in process (e.g., payment to assist with intervention in a regulatory proceeding); and
Childcare support during meeting.

- (2) **Restoration:** *Does the policy aim to remedy prior and present harms faced by communities negatively impacted by the energy system?*

- (3) **Decision-making:** *Does the policy center the decision-making of frontline communities?* A key consideration here includes an evaluation of whether the policy allows for ownership and control of energy assets by communities at the frontline of pollution and climate change, working class people, indigenous communities, and those historically disenfranchised by racial and social inequity.

- (4) **Benefits:** *Does the policy center economic, social, or health benefits for frontline communities?* A factor to consider is whether the policy considers benefits and harms in other non-energy areas (e.g., gentrification and displacement), including for future generations.

- (5) **Access:** *Does the policy make energy more accessible and affordable to frontline communities?*

These key questions synthesize advocacy and transdisciplinary approaches to energy justice, and should provide a framework for decision making both before and during the creation of equity-centered energy policy. The questions also give voice to the diverse approaches to energy justice we have observed in the field, which form a critical discursive component of energy justice praxis. They should form the basis for creating energy transitional policies that aim to place equity at the center. The next section provides a bridge from this literature analysis and synthesized framework to the design and implementation of a Green New Deal.

C. Approaching Energy Policymaking for a Green New Deal

In 2020, the world found itself in the midst of a pandemic, the magnitude and scope of which, in relation to the upheaval of cultural and economic ways of life, is arguably unprecedented.¹⁰⁶ In response to this crisis, economies have the opportunity to simultaneously attempt to resolve the pre-existing twin crises of our time—extreme wealth inequality and climate change—as an integral part of an interwoven method for solving the current COVID-19 crisis.¹⁰⁷ During the 2020 election season, U.S. presidential candidate Joe Biden’s campaign routinely referred to the concept of “building back better,” a direct reference to the widespread economic devastation wrought by the pandemic and the opportunity it presents.¹⁰⁸ Emerging from the pandemic, governments will have the chance to “move towards actively shaping and creating markets that deliver sustainable and inclusive growth . . . driven by public interest,” with the opportunity to create stimulus packages and conditions for aid centered around Green New Deal principles.¹⁰⁹

¹⁰⁶ See, e.g., Study of the coronavirus’ cultural impact by the USC Center for the Digital Future and Interactive Advertising Bureau finds rapid life changes and concerns – as well as enthusiasm – while Americans confront the pandemic, USC Annenberg School for Communication and Journalism, NEWSWISE (Apr. 29, 2020 8:05 AM EDT), https://www.newswise.com/coronavirus/study-of-the-coronavirus-cultural-impact-by-the-usc-center-for-the-digital-future-and-interactive-advertising-bureau-finds-rapid-life-changes-and-concerns-as-well-as-enthusiasm-as-americans-confront-the-pandemic/?article_id=730719; Vox Staff, *The Legacy of the Pandemic: 11 ways it will change the way we live*, VOX (Apr. 22, 2020, 6:00 AM EDT), <https://www.vox.com/the-highlight/2020/4/16/21213635/coronavirus-covid-19-pandemic-legacy-quarantine-state-of-mind-frugality>; Sam Blum, *Is This the End of Productivity?*, VOX (May 22, 2020, 9:00 AM EDT), <https://www.vox.com/the-highlight/2020/5/15/21252544/coronavirus-covid-19-hustle-work-productivity-ambition-loss>; Eric Rosenbaum, *White House economic advisor Kevin Hassett says unemployment rate will approach Great Depression*, CNBC (Apr. 26, 2020, 11:27 AM EDT), <https://www.cnbc.com/2020/04/26/coronavirus-hassett-says-unemployment-will-approach-great-depression.html>; Ezra Klein, *An Economic Crisis Like We’ve Never Seen*, VOX (Mar. 23, 2020, 12:30 PM EDT), <https://www.vox.com/podcasts/2020/3/23/21190166/what-is-happening-to-the-economy-economic-crisis-annie-lowrey-the-ezra-klein-show>; Emily Stewart, *You Can’t Turn the Economy Back on Like a Light Switch*, VOX (May 21, 2020, 7:10 AM EDT), <https://www.vox.com/2020/5/21/21263934/economy-reopening-stock-market-v-shape-recovery-jerome-powell>; Ed Yong, *America’s Patchwork Pandemic is Fraying Even Further*, THE ATLANTIC (May 20, 2020), <https://www.theatlantic.com/health/archive/2020/05/patchwork-pandemic-states-reopening-inequalities/611866/>.

¹⁰⁷ See, e.g., David Roberts, *A Just and Sustainable Economic Response to Coronavirus, Explained*, VOX (Mar. 25, 2020, 12:00 PM EDT), <https://www.vox.com/energy-and-environment/2020/3/25/21180248/just-sustainable-economic-response-coronavirus-explained>; Mariana Mazzucato, *The Covid-19 Crisis is a Chance to do Capitalism Differently*, THE GUARDIAN (Mar. 18, 2020, 11:49 EDT), <https://www.theguardian.com/commentisfree/2020/mar/18/the-covid-19-crisis-is-a-chance-to-do-capitalism-differently>.

¹⁰⁸ *Build Back Better: Joe Biden’s Jobs and Economic Recovery Plan for Working Families*, BIDEN HARRIS, <https://joebiden.com/build-back-better/> (last visited Dec. 7, 2020); Dylan Matthews, *Joe Biden Has Won. Here’s What Comes Next.*, VOX, <https://www.vox.com/2020/11/6/21534594/joe-biden-wins-2020-presidential-election> (last updated Nov. 8, 2020).

¹⁰⁹ Mazzucato, *supra* note 99.

A University of Oxford study, led by globally acclaimed economists and published in early May 2020, “argues that investing in infrastructure such as clean energy networks, electric vehicles, broadband connectivity, clean R&D and worker retraining could offer a far stronger economic recovery from the impending recession, while also helping combat long term climate risks.”¹¹⁰ The study assessed over 700 government stimulus policies and their impacts since 2008, in addition to surveying over “230 experts from over 50 countries, including senior officials from finance ministries and central banks,” and came to the conclusion “that green stimulus policies tend to have a large return on investment, can be enacted quickly and also have positive impacts on the climate and the wider environment.”¹¹¹ Many major corporations are in agreement. For example, the European Corporate Leaders Group, a coalition of major corporations that includes Unilever and Coca-Cola, “is calling on the EU to fully commit to a European Green Deal that delivers a clear and managed transition to net zero emissions by 2050.”¹¹² Furthermore, the group is “also calling for member states to implement ‘green and equitable’ Covid-19 recovery plans.”¹¹³ Another group of multinational companies, representing over 5 million employees and over US\$ 2.4 trillion in market capitalization, released a signed statement on May 18, 2020, “urging Governments around the world to align their COVID-19 economic aid and recovery efforts with the latest climate science.”¹¹⁴

The International Monetary Fund has made similar recommendations. Kristalina Georgieva, the IMF’s Managing Director, said that “nations must do all they can to promote a recovery that also fights against the climate-change crisis.”¹¹⁵ Regarding the IMF’s recommendation of implementing a carbon tax with “a substantially higher carbon price,” Georgieva said that “[f]or the transition to be fair and growth-friendly, carbon-tax revenues can be used to provide upfront assistance to poorer households, lower burdensome taxes, and support investments in health, education, and infrastructure.”¹¹⁶ Many government leaders

¹¹⁰ Michael Holder, *Leading Economists: Green COVID-19 Recovery Best for Jobs and Growth*, GREENBIZ (May 8, 2020), <https://www.greenbiz.com/article/leading-economists-green-covid-19-recovery-best-jobs-and-growth>.

¹¹¹ *Id.*; Akshat Rathi, *Green Stimulus Finds Support From G-20 Officials, Central Bankers*, BLOOMBERG GREEN (last updated May 5, 2020, 6:12 AM EDT), <https://www.bloomberg.com/news/articles/2020-05-04/world-s-economists-agree-economic-stimulus-ought-to-be-green>.

¹¹² Michael Holder, *Major Corporates Urge EU to Put Net Zero at Heart of Covid-19 Recovery Plans*, BUSINESS GREEN (Apr. 28, 2020), <https://www.businessgreen.com/news/4014492/major-corporates-urge-eu-net-zero-heart-covid-19-recovery-plans>.

¹¹³ *Id.*

¹¹⁴ *Over 150 Global Corporations Urge World Leaders For Net-Zero Recovery From COVID-19*, UN GLOB. COMPACT (May 18, 2020), <https://unglobalcompact.org/news/4535-05-18-2020>; SCI. BASED TARGETS INITIATIVE, UNITING BUSINESS AND GOV’TS TO RECOVER BETTER, <https://ungc-communications-assets.s3.amazonaws.com/docs/publications/recover-better-statement.pdf>.

¹¹⁵ Ana Monteiro, *Nations Must Promote ‘Green Recovery’ From Virus, IMF Chief Says*, BLOOMBERG GREEN (Apr. 29, 2020, 7:15 AM EDT), <https://www.bloomberg.com/news/articles/2020-04-29/nations-must-promote-green-recovery-from-virus-imf-chief-says>.

¹¹⁶ *Id.*

are heeding these recommendations and calls to action.¹¹⁷ In South Korea, where President Moon Jae-in's Democratic Party won the country's April elections in a landslide victory and pledged a Green New Deal of its own, a government working group "has proposed aiming for renewable sources to account for 40% of the nation's installed generation capacity by 2034."¹¹⁸ The European Union is in the process of transforming its Green Deal policy "into a coronavirus economic rescue plan,"¹¹⁹ making "climate change the centerpiece of its post-pandemic development plans for decades in the future."¹²⁰ An economic recovery rooted in ambitious climate plans and renewable energy goals raises the possibility of an energy transition that places issues of justice and equity at the center. The following sub-sections address the operationalization of a justice-centered approach to these policy commitments using the synthesized approach to energy justice outlined in Part IV.B.

1. Federal Energy Justice

During the Trump Administration, the U.S. approach to pandemic recovery, climate change, and energy policy stood in stark contrast to the international community. Early in the COVID-19 pandemic any "consideration of a green recovery appear[ed] dead on arrival."¹²¹ President Trump and Senate Majority Leader Mitch McConnell "both intervened in the initial rounds of stimulus negotiations to prevent clean energy from getting support."¹²² Both also referred to the Green New Deal in mocking fashion, with the President calling it "ridiculous."¹²³ Even with major businesses calling "on a bipartisan group of federal lawmakers to build back a better economy by infusing resilient, long-term

¹¹⁷ Justin Worland, *As the Rest of the World Plans a Green Recovery, America Is Once Again Falling Behind*, TIME (May 15, 2020, 1:09 PM EDT), <https://time.com/5835402/green-stimulus-climate-change-coronavirus/>.

¹¹⁸ Heesu Lee & Dan Murtaugh, *S. Korea May Speed Up Renewable Shift Under Proposal*, BLOOMBERG GREEN (last updated May 13, 2020, 6:27 AM EDT), <https://www.bloomberg.com/news/articles/2020-05-08/south-korea-may-speed-up-renewable-energy-shift-under-proposal?sref=XctE832o>.

¹¹⁹ Ewa Krukowska & Jess Shankleman, *World's Greenest Coronavirus Recovery Package Arriving in Europe*, BLOOMBERG GREEN (last updated May 20, 2020, 8:36 AM EDT), <https://www.bloomberg.com/news/articles/2020-05-20/eu-to-unveil-world-s-greenest-virus-recovery-package>.

¹²⁰ Worland, *supra* note 109. See Ewa Krukowska & Laura Millan Lombrana, *Europe's Recovery Plan Has Green Strings Attached*, BLOOMBERG GREEN (last updated May 28, 2020, 9:01 AM EDT), <https://www.bloomberg.com/news/articles/2020-05-27/europe-pledges-green-recovery-in-historic-stimulus-program>.

¹²¹ Worland, *supra* note 109.

¹²² David Roberts, *As Trump and McConnell Mock Clean Energy, the Industry Could Soon Lose a Half-Million Jobs*, Vox (Apr. 16, 2020, 9:00 AM EDT), <https://www.vox.com/energy-and-environment/2020/4/16/21220312/coronavirus-stimulus-renewable-energy-democrats>.

¹²³ *Id.*

climate solutions into future economic recovery plans,”¹²⁴ the prospect for lawmakers to heed such advice prior to the swearing-in of President-elect Joe Biden in January 2021 appeared limited.

At the opposite end of the spectrum from the Trump administration, during his campaign candidate Joe Biden offered a range of proposals concerning climate change, environmental justice, and energy.¹²⁵ While falling short of the Green New Deal’s desired goals, his platform arguably made the most ambitious climate-related commitments “of any mainstream US presidential candidate” to date.¹²⁶ The plan notably commits to ensuring that the U.S. has “a bold plan to achieve a 100% clean energy economy and net-zero emissions no later than 2050,” which includes establishing enforcement mechanisms, making “historic investment[s] in energy and climate research and innovation,” and incentivizing “the rapid deployment of clean energy innovations across the economy.”¹²⁷ Additionally, to achieve its goals the plan “promises a suite of standards and incentives to decarbonize electricity, transportation, industry, and other polluting sectors; \$2 trillion investments in clean energy, infrastructure, and community development; and a series of measures to ensure that vulnerable communities . . . are protected.”¹²⁸ Candidate Biden also committed to moving 40% of all climate investments to “disadvantaged communities.”¹²⁹

As President-elect, Biden demonstrated how climate change would be one of, if not *the*, most important issues his administration will address starting from his first days in office, noting a commitment “to embed action on climate change across the breadth of the federal government, from the departments of Agriculture to Treasury to State.”¹³⁰ Although energy justice is not explicitly mentioned in the Biden plan, the framework outlined in this Article offers an integrated approach to the plan’s implementation, allowing legislators and policymakers to go further in addressing climate-change mitigation, environmental injustice, and systemic inequality through justice-centered energy policies.

¹²⁴ *More than 330 Major Businesses Call on U.S. Congress to Build Back a More Resilient, Sustainable Economy*, CERES (May 12, 2020), <https://www.ceres.org/news-center/press-releases/more-330-major-businesses-call-us-congress-build-back-more-resilient>.

¹²⁵ *Build Back Better*, *supra* note 100; Matthews, *supra* note 100.

¹²⁶ Matt McGrath, *Joe Biden: How the President-Elect Plans to Tackle Climate Change*, BBC NEWS (Nov. 10, 2020), <https://www.bbc.com/news/science-environment-54858638>; see David Roberts, *Joe Biden Will Be President, But There Will Be No Green New Deal*, VOX (Nov. 6, 2020), <https://www.vox.com/energy-and-environment/21547245/joe-biden-wins-2020-climate-change-clean-energy-policy>.

¹²⁷ *The Biden Plan For a Clean Energy Revolution and Environmental Justice*, BIDEN HARRIS, <https://joebiden.com/climate-plan/> (last visited Dec. 8, 2020).

¹²⁸ Roberts, *supra* note 114; *The Biden Plan for a Clean Energy Revolution*, *supra* note 119.

¹²⁹ *The Biden Plan to Secure Environmental Justice and Equitable Economic Opportunity*, BIDEN HARRIS, <https://joebiden.com/environmental-justice-plan/> (last visited Dec. 12, 2020).

¹³⁰ Juliet Eilperin & Annie Linskey, *How Biden Aims to Amp Up the Government’s Fight Against Climate Change*, WASH. POST (Nov. 11, 2020), <https://www.washingtonpost.com/climate-environment/2020/11/11/biden-climate-change/>.

From a process standpoint, the President-elect should ensure that marginalized communities are not only involved in the policymaking process, but also substantially represented throughout his administration in various departments and agencies. President-elect Biden took some steps in this direction by including “long-standing environmental justice advocates” in his transition team, most notably by appointing Patrice Simms, Vice President for Healthy Communities at Earthjustice, to lead the Biden Environmental Protection Agency review team, and by appointing Cecilia Martinez, co-founder of the Center for Earth, Energy and Democracy, to lead the Council on Environmental Quality review team.¹³¹ By including people from frontline communities in his administration and giving frontline leaders a greater voice, the President-elect’s plan will be better situated to produce energy policies that benefit frontline communities.

In terms of outcomes and distributive justice, the administration’s policies should simultaneously aim to mitigate climate change while also remedying the prior and present harms communities have suffered in relation to the U.S. energy system. The President-elect’s overarching goal of achieving a 100% clean energy economy by 2050 has the potential to give frontline communities greater access to clean, affordable energy and provide vital access to power during climate-related events. Broader clean energy access in frontline communities can be increased through federal support of rooftop solar and community solar policies, novel tax credit policies that offer benefits to people and entities with lower tax burden, or creatively moving federal funds for clean energy development and job creation through underutilized federal programs. Clean energy programs should also explicitly target high-energy burden communities and communities struggling with energy insecurity. Efforts to include communities of color in the clean energy transition should also prioritize democratic ownership and control of clean energy assets in frontline communities.

The administration should also ensure that all its policies create real job opportunities and other benefits for such communities, aligned with principles for a just transition. For example, clean energy developments should prioritize manufacturing and job creation opportunities in low-income communities and frontline communities burdened under the fossil-fuel system. The design of public transportation developments should also focus on creating a clean transportation fleet designed to lower emissions in frontline communities and make business districts more accessible to low-income residents living in outlying areas. These efforts at the federal level would allow the United States to once again become a global leader in climate change mitigation while also ensuring frontline communities are not left behind. The approach outlined here will help to remedy systemic inequalities by centering those most marginalized within the existing energy system.

¹³¹ Hilary Jacobs, Julius Redd & Stacey Halliday, *Early Biden Actions Signal Support For Environmental Justice*, LAW360 (December 8, 2020), <https://www.law360.com/articles/1335394/early-biden-actions-signal-support-for-environmental-justice>.

The foregoing approach to federal energy policy during a Biden administration would elevate all aspects of the energy justice framework: procedural justice, distributive justice, recognition justice, and restorative justice. Deep, early, and authentic participation in the policymaking process are essential aspects of energy justice at the federal level. So is including frontline leaders in key positions within the administration. The design and implementation of policies that target environmental justice communities on the frontlines of climate change for clean energy development and the ownership of clean energy projects will also facilitate distributive justice, recognition justice, and restorative justice. Finally, a Green New Deal-based economic recovery can facilitate a just transition by creating jobs and moving society in the direction of “Buen Vivir”: living well without living better at the expense of others.

2. State Energy Justice

A similar approach to energy policy is possible at the state level, and “the past few years have seen a remarkable flourishing of climate and clean energy policy at the subnational level, in states and cities across the country.”¹³² As of December, 2019, fifteen states (and Washington, DC, and Puerto Rico), representing 28 percent of the U.S.’ electric power demand, had “official targets to get at least 50 percent of their electricity from clean sources.”¹³³ Cities have also unveiled their own Green New Deal or 100 percent renewable energy initiatives, including cities such as Los Angeles, Chicago, Boise, Missoula, Cincinnati, and Washington, DC.¹³⁴ On April 13, 2020, Virginia Governor Ralph Northam also signed the Virginia Clean Economy Act into law, which lays “out a plan for the state to reach 100 percent carbon-free electricity by 2050.”¹³⁵

These actions at the local level demonstrate how a just transition could still be achieved in the absence of significant federal action. States, cities, and municipalities could implement their own “mini” Green New Deals, utilizing the five step process outlined in Part IV.B. to ensure that energy justice principles are consistently a focal point in any efforts to achieve the goals outlined in Congresswoman Ocasio-Cortez’s 2019 Green New Deal Resolution.¹³⁶ With the

¹³² David Roberts, *This One Weird Trick Can Help Any State or City Pass Clean Energy Policy*, VOX (last updated Dec. 26, 2019, 2:35 PM EDT), <https://www.vox.com/energy-and-environment/2019/5/15/18624294/renewable-energy-policy-cities-states>.

¹³³ *Id.*

¹³⁴ *Id.* In fact, more than 120 U.S. cities have committed to 100 percent clean electricity. *See id.* (citing *100% Commitments in Cities, Counties, & States*, SIERRA CLUB, <https://www.sierraclub.org/ready-for-100/commitments>, last visited May 25, 2020).

¹³⁵ David Roberts, *Virginia Becomes the First State in the South to Target 100% Clean Power*, VOX (last updated Apr. 13, 2020, 2:56 PM EDT), <https://www.vox.com/energy-and-environment/2020/3/12/21172836/virginia-renewable-energy-100-percent-clean>.

¹³⁶ Recognizing the Duty of the Federal Government to Create a Green New Deal, H.R. Res. 109, 116th Cong. (2019), <https://www.congress.gov/bill/116th-congress/house-resolution/109/text> (introduced Feb. 7, 2019).

economy in need of recovery, the COVID-19 crisis has created the opportunity for such mini-Green New Deal systemic changes in the absence of similar federal opportunities.¹³⁷ Ensuring that “community-defined projects and strategies” obtain funding and investments is one critical aspect for all of the Green New Deal aspirations. This is procedural justice, and is essential to ensuring that the goals of the Green New Deal such as (1) repairing and upgrading infrastructure; (2) building or upgrading to energy-efficient, distributed, and “smart” power grids; (3) ensuring affordable access to electricity; (4) ensuring all new buildings are energy-efficient and climate-resilient, in addition to making similar upgrades to existing buildings; (5) spurring massive growth in clean manufacturing; (6) overhauling transportation systems to make them as clean as possible, including through investments in zero-emission vehicles and clean, affordable, and accessible public transit; (7) restoring and protecting fragile ecosystems; and (8) cleaning up hazardous waste and abandoned sites¹³⁸—target frontline communities and those in need of the healing benefits of restorative justice. The goal of meeting 100 percent of power through clean energy sources should also have community-defined projects and community-owned projects as central components.¹³⁹

3. Local Energy Justice

Consistent with energy justice principles, local Green New Deals can ensure that “democratic and participatory processes . . . are inclusive of and led by frontline and vulnerable communities and workers to plan, implement, and administer the Green New Deal mobilization at the local level”¹⁴⁰ by broadening opportunities for participation in traditionally excluded groups. The Green New Deal calls on lawmakers to “create[] high-quality union jobs that pay prevailing wages, hires local workers, offer[] training and advancement opportunities, and guarantee[] wage and benefit parity for workers affected by the transition.”¹⁴¹

In consultation with frontline communities, taking into account their advice, needs, and priorities, it will also be important to “direct[] investments to spur economic development, deepen and diversify industry and business in local and regional economies, and build wealth and community ownership, while prioritizing high-quality job creation and economic, social, and environmental benefits in frontline and vulnerable communities, and deindustrialized communities, that may otherwise struggle with the transition away from

¹³⁷ Roberts, *supra* note 99; Mazzucato, *supra* note 99.

¹³⁸ Recognizing the Duty of the Federal Government to Create a Green New Deal, H.R. Res. 109, 2(A)-(N), 116th Cong. (2019), <https://www.congress.gov/bill/116th-congress/house-resolution/109/text> (introduced Feb. 7, 2019).

¹³⁹ *Id.* at 2(C).

¹⁴⁰ *Id.* at 4(F).

¹⁴¹ *Id.* at 4(G).

greenhouse gas intensive industries.”¹⁴² Recognition and restorative justice require the targeting of burdened groups for these opportunities, expanding the pie, rather than focusing on zero-sum approaches to job creation. Implementing such measures in a local Green New Deal would allow communities to start on the path to a just transition in the absence of federal guidance and policy and as a new administration takes shape, while simultaneously creating an effective long-term economic plan for recovery from the COVID-19 pandemic.

We have outlined herein a synthesized framework that connects the literatures and practices of energy justice. Advocates and policy makers should do all they can to ensure that state and local recovery plans include Green New Deal policies rooted in energy justice as the core to any approved stimulus packages and future legislative agendas. This policy approach, coupled with dogged advocacy within and outside of the policymaking process, can facilitate a transformative—and lasting—just transition.

VII. CONCLUSION

Resolving the twin crises of our time—extreme wealth inequality and climate change—will not only require courageous law making. Resolution will require a workable framework to implement climate and energy policies that actually operate to center the concerns of the most marginalized within our collective community. Energy justice, as both a theoretical frame and advocacy framework, provides a solid foundation to create a just transition away from fossil fuels toward a just energy future. Unfortunately, the various strands within the growing interdisciplinary field have not intertwined to create a cohesive framework, nor has the field been in active conversation with the growing body of energy justice scholarship. This Article attempts to build two important bridges. First, it synthesizes and connects the two disparate scholarly discourses in social science and law. Second, it connects this synthesized body of scholarship to the vibrant field of practice. What emerges from this weaving is a powerful framework to help facilitate a just transition, as well as a lodestar for policy makers and advocates alike seeking guidance on how to implement the vision articulated in the Green New Deal.

¹⁴² *Id.* at 4(E).