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## 8. Tracing the roots of energy justice in action: environmental justice, climate justice, and the New York Climate Leadership and Community Protection Act

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### 1. INTRODUCTION

The concept of energy justice focuses on energy law and policy and both refines and expands our understanding of how we plan for, invest in and regulate energy (Salter et al., 2018). Broadly, it places a moral justice lens on the impacts of past, present and future energy development of all types across the energy life-cycle. In doing so, energy justice examines the social, economic, health and environmental impacts of energy systems to life and the natural world. It also recognizes the role that civic participation, including new and inclusive models of ownership for energy assets, plays in the just and equitable development of energy systems (Salter et al., 2018). Put another way, energy justice seeks just and equitable inputs and outcomes to energy systems, including the remediation of past harms.

Energy justice is the natural and temporal progression of environmental and climate justice theory and advocacy in the context of the escalating climate crisis. Climate change and its disparate impact on people of color, previously thought to be a problem of the future, is now known to be a daunting contemporary challenge (Wuebbles et al., 2017).<sup>1</sup> Accordingly, energy justice has increasingly become a rallying cry for activists seeking equitable clean energy transitions (Stein, 2018; Baker, 2021). In practice, this reflects significant overlap between environmental, climate, and energy justice theory and advocacy as it has emerged over time. Many environmental and climate justice advocacy groups have, over the past decade, developed energy justice platforms; and out of those traditions, new groups have formed with a focus on energy justice issues. This includes the NY Renews coalition, the force behind the 2019 Climate Leadership and Community Protection Act (“CLCPA” or the “Act”), which, as further discussed below, has set important precedents for both climate action and energy justice in state and federal law.

At the same time, energy justice has recently grown as an area for academic inquiry, and its underpinnings are still in development (Salter et al., 2018). In the quest to define energy justice, there has been a separation of energy justice from its movement roots. This includes explorations of “new” moral and justice frameworks for energy justice rooted in Western philosophy or other traditions (Sovacool and Dworkin, 2014). Some authors have even called for the separation of energy justice from what they consider to be the “ineffective” trappings of environmental and climate justice (Jenkins, 2018). This amounts to boiling down the roots of energy justice into “social justice concerns” when the true heritage of energy justice is movements by people of color for transformational societal change.

This is a problematic approach. Energy justice is an important and growing interdisciplinary field that is ripe for expansion. It is not, however, a “new” area of thought without derivation. Contemporary definitions of energy justice are built upon pre-existing environmental and climate justice theory and movements (Salter et al., 2018). Specifically, energy justice is a direct descendant of climate and environmental justice and, as such, shares a foundation in civil and human rights, including indigenous rights. This ancestry provides not only established legal and moral underpinnings for energy justice but also important models for applied theory and practice.

It is important to understand definitions of energy justice in this context. Failing to recognize the origins of energy justice in environmental justice, climate justice, human rights and civil rights both dismisses and appropriates the labor and progress of movements while overlooking actionable frameworks that can bring about the conditions for energy justice itself. It is also important to examine definitions of energy justice in the context of attribution.

Attribution functions both to create theories of causation and to ascribe work to a particular person, line of thought or tradition. It has been a mechanism of erasure and possession of the knowledge of marginalized peoples when used as a technique of ownership that signifies an authorial relationship (Anderson, 2019). Attribution can rewrite relationships to knowledge through colonial legal property paradigms that can lead to the harmful control, misuse and appropriation of knowledge (Anderson, 2019). Definitions of energy justice are important and useful, and further research on the structural and ideological components of energy injustice is needed (Lee and Byrne, 2019). Care should be taken, however, to avoid the erasure of energy justice’s roots in Black and brown movements and the traditions that underpin them.

This chapter first provides a review of the foundations of environmental justice and climate justice and their origins in civil rights and human rights. It then examines how contemporary definitions of energy justice arose from the theory and practice of environmental and climate justice. Finally, it provides a case study of the passage and implementation of the CLCPA as a framework for energy justice movement, theory and legal practice in action. The author was the Policy Organizer for the NY Renews coalition from 2020 to 2022 and is an appointed member of the New York State Climate Action Council (CAC); it is discussed further below.

## 2. CIVIL AND HUMAN RIGHTS FOUNDATIONS OF ENVIRONMENTAL AND CLIMATE JUSTICE

### 2.1 Foundations of Environmental Justice

The environmental justice movement in the US, which fully emerged in the 1980s, forged a link between social justice, civil rights and environmental protection. Broadly, environmental justice recognizes that environmental racism has caused disproportionate environmental burdens on people of color over time. Environmental justice is a framework for understanding and addressing the disproportionate and unfair environmental burdens that poor and people of color populations experience due to both increased exposure to toxic harm and unequal legal protection (Bullard and Johnson, 2000). The concept of “equal protection,” originating from the Fourteenth Amendment of the US Constitution, is the foundation of civil rights law (US Const., amend. 14).<sup>2</sup>

Thus, a key environmental justice tenet is that all people and communities have a right to equal protection and equal enforcement of environmental laws and regulations (Kaswan, 1999). Environmental justice also requires the just and equitable distribution of environmental benefits and harms (including cumulative impacts over time) (Kaswan, 1999). In this way, environmental justice provides frameworks to interrupt and remediate environmental harms caused by inequitable and/or racist practices that disenfranchise and target people of color and other marginalized groups.

## 2.2 Foundations of Climate Justice

An escalating understanding of climate change and its disproportionate negative impacts on the global south prompted new reflections on the temporal and spatial aspects of justice, including transnational justice and intergenerational justice (Humphreys, 2014).<sup>3</sup> Thus climate justice operates in multiple dimensions – between nations, within society and over time (Puaschunder, 2016). Climate justice emerged as a movement in the 2000s and was heavily influenced by environmental justice (Schlosberg and Collins, 2014). Climate justice is global in scope and provides normative justification for global climate policy and, increasingly, domestic policy (Schlosberg and Collins, 2014).

Climate justice principles include demands for historical responsibility for the unequal impacts of climate change to human, indigenous and environmental rights-based arguments (Salter et al., 2018; Schlosberg and Collins, 2014). The historical responsibility approach includes the transnational “polluter pays” principle that specific states have disproportionately contributed to the climate crisis and should pay for the costs of their actions (Keston, 2020; Schlosberg and Collins, 2014). A human rights approach, resonant with environmental justice and indigenous rights concerns, asserts that climate change violates basic human rights of life, health and subsistence (Keston, 2020; Schlosberg and Collins, 2014). Both have included a call for the development of clean energy transitions in the context of participation and consent (Ten Principles of Climate Justice, 2002; Bali Principles of Climate Justice, 2002).<sup>4</sup> In movements, climate justice grassroots activists, including Black, brown and indigenous groups, have drawn upon earlier frameworks that understand environmental issues as encompassing labor rights, land rights, housing, toxics, health and other social justice concerns (Bond, 2012; Moellendorf, 2012; Keston, 2020; Schlosberg and Collins, 2014). In this way, climate change and climate justice are seen as inextricable from broader social, political and economic processes, important on both a transnational and subnational scale (Bond, 2012; Moellendorf, 2012).

## 3. CONTEMPORARY DEFINITIONS OF ENERGY JUSTICE IN THE CONTEXT OF ENVIRONMENTAL JUSTICE AND CLIMATE JUSTICE

Definitions serve to establish and clarify shared understanding in ways that facilitate both communication and the development of knowledge. As a philosophical or research tool, definitions are a compass to learning, exploration and, ultimately, attribution. Since energy is unitary to the human experience and also diverse and complex, energy justice can be challenging to define. As the area of research and practice evolves, however, it is important to examine,

explore and ground truth definitions of energy justice. To date, two main definitions of energy justice have emerged as particularly influential (Salter et al., 2018). Both build upon justice theories that, in energy advocacy, have traditional roots in environmental justice and climate justice (Salter et al., 2018).

### 3.1 The “Three Tenets” Framework: Distributive, Procedural and Recognition Justice

The first definition advances the idea that energy justice is composed of three central tenets, namely distributive, procedural and recognition justice (McCauley et al., 2013). These “tenets” are often presented as the “foundations” of energy justice, yet they are derivative from environmental and climate justice theory (Jenkins et al., 2014). Further, the tenets are conceptually flawed and ultimately subvert, rather than forward, practical and actionable advocacy. The tenets are an energy justice theory to be examined; they are not, however, an acceptable definition, or underpinning, of energy justice.

Distributive justice examines the allocation of the costs and benefits of the energy system across society (Walker, 2009; Sovacool and Dworkin, 2014). Procedural justice calls for processes that meaningfully and fairly engage stakeholders in an inclusive and non-discriminatory way (Sovacool and Dworkin, 2014). Recognition justice seeks fair representation, including equal political rights and freedom from denigration or disrespect based on poverty, race, culture, ethnicity, gender or other characteristics (Sovacool and Dworkin, 2014). These “three tenets” of energy justice borrow heavily from environmental justice theory, rooted in civil rights law but evolved to embrace climate justice as demonstrated by the Ten Principles of Climate Justice (2002). Namely, equitable distribution, equal protection, participation and non-discrimination.

Distributive justice in particular tracks a core tenet of environmental justice, namely the equal distribution of environmental benefits and harms. Procedural justice hems closely to both participation and non-discrimination. It is also a direct derivation from the legal framework of “substantive and procedural justice.” Substantive justice generally speaks to the analysis or application of principles of law, while the concern of procedural justice is the process of legal outcomes, including the public perception of process (Brandstedt and Brölde, 2019). Both distributive and procedural justice, as derived from climate and environmental justice, are helpful in the context of energy justice.

The third, however, or “recognition justice” is problematic, as it should not stand as its own tenet but should be viewed as a subset of existing procedural justice. Why? First, freedom from discrimination and equal political rights in the pursuit of a justice outcome are procedural in nature. Second, one must ask – who is doing the recognizing? Equal political rights and freedom from discrimination are foundational human rights based on norms of international morality (United Nations General Assembly, 1966a, 1966b). They are not granted by individuals or institutions. Instead, they are *recognized in the process of just outcomes*.

Thus, recognition justice on its own and in the absence of process asks institutions for what they cannot confer. This is paternalistic, and in practice leaves advocates to submit prayers for respect and decency as *victims* to authorities without legal foundation, instead of using the full legal toolbox available to *claimants*. Legal arguments for equal political rights or freedom from denigration are, in practice and depending on the forum, best couched in civil or human rights (as also expressed through climate and environmental justice doctrine).

In addition, recognition justice as a singular tenet also subverts universal human rights because it implicitly and unnecessarily asks for a re-examination of universal norms. The recognition justice tenet should be subsumed within procedural justice where the tenet framework is used. It should be noted that the three-tenet framework itself has come under mounting critique (Lee and Byrne, 2019). Its value as a “foundation” of energy justice is diminishing and should be questioned.

### 3.2 The “Core Principles” Framework

The second significant contemporary energy justice definition emphasizes eight core principles: energy availability, sustainability, affordability, due process, transparency and accountability, intragenerational equity, intergenerational equity and responsibility to protect the natural environment (Sovacool and Dworkin, 2014). This core principles approach attempts to get its theoretical arms around all aspects of justice concerns related to energy from extraction to end use, and it does an admirable job. These principles are analyzed by their creators in the context of the Western philosophical tradition, human rights and other perspectives (Sovacool and Dworkin, 2014). The principles themselves also lean heavily into environmental and climate justice principles.

The core principles embody, for example, environmental and climate justice principles as presented in a human rights frame further exemplified in the Ten Principles of Climate Justice and the Bali Principles of 2002. Availability, affordability and intragenerational equity require the eradication of energy poverty and the provision of high-quality energy services on an equitable basis to all (Sovacool and Dworkin, 2014; Bali Principles of Climate Justice, 2002; UN Sustainable Development Goals, 2015 at 7). Due process, transparency and accountability can be implemented through a variety of mechanisms, including social and environmental impact assessments and free, prior and informed consent procedures (Bali Principles of Climate Justice, 2002; UN Sustainable Development Goals, 2015). Sustainability and intergenerational equity call for energy systems that respect ecological limits and the rights of future generations (Sovacool and Dworkin, 2014). Finally, responsibility refers to the obligation of all nations to protect the natural environment (Sovacool and Dworkin, 2014). These principles do provide guidelines to use in the development of advocacy frameworks. As discussed further below, advocates and activists in practice will find success in uplifting these energy justice principles while also using the tools of the established rights-based doctrines.

Centering Western frameworks of morality to apply to energy justice, however, as the core principles framework strives to do, can alienate or appropriate the traditions of marginalized peoples. In addition, the technique of “choosing” a subset of moral systems for application to energy systems can structurally leave out important intersectional and universal perspectives. For an example of this, Sovacool et al. (2017) suggest an exploration of justice philosophies for energy justice, but they omit the movement philosophy of the American civil rights movement, the very impetus for environmental justice. This chapter does not seek to short circuit or limit energy justice research to climate and environmental justice or fault the work of those who focus on other traditions. Instead, it seeks to emphasize the need to not only acknowledge but *attribute* the environmental and climate justice roots of energy justice. This principles framework, and any energy justice framework, should be mindful of this context.

### 3.3 Energy Justice Frameworks and Movements

Human rights, civil rights and indigenous rights as expressed through environmental and climate justice frames have formed the foundation for energy justice theory. Examinations of energy, environmental and climate justice frameworks reveal that energy justice should be understood as evolving from environmental and climate justice on a temporal continuum. The three justice frameworks, therefore, necessarily overlap.

As policymakers work to institutionalize energy justice into law and policy, the development of clean and renewable energy becomes an energy justice instrument to address environmental and climate concerns. A clean energy transition is necessary to prevent climate injustice or disproportionate climate harm to Black, brown and indigenous communities. It must also address past and current harm, including the alleviation of environmental racism and unequal protection of laws, with environmental justice policy. Further, as finally acknowledged by the Intergovernmental Panel on Climate Change (IPCC) Report in 2022, indigenous and local traditions are a critical aspect of addressing the climate crisis (IPCC, 2022).

These are concepts that reflect the call from the climate justice movement for a just transition, which would end extractive economies and provoke systemic change (Movement Generation, 2016; Gonzalez, 2020).<sup>5</sup> As such, if energy justice is to achieve just outcomes of increasing urgency, it should not be removed from its roots. This is true in theory and is demonstrated in practice, as exemplified in the justice framework of the CLCPA.

## 4. A CASE STUDY OF ENERGY JUSTICE IN ACTION: NY RENEWS AND THE PASSAGE AND IMPLEMENTATION OF THE CLCPA

Renewable portfolio standard (“RPS”) mandates have been a significant driver of renewable energy growth in the US. Approximately half of all growth in US renewable electricity generation and capacity since 2000 is associated with state RPS policy (United States Energy Information Agency, 2021). A majority of states have adopted some form of RPS designed to promote renewable energy and address climate change by lowering overall greenhouse gas (“GHG”) emissions (US Energy Information Agency, 2021). Many include some kind of emissions trading scheme based on renewable energy credits or similar market-based mechanism designed to promote the development of renewables. A subset of states have also established broader “clean” or “zero-carbon” electricity goals, requiring that a percentage of sales comes from renewables (often 80%–100%) over a longer timeframe (2040–2050) (US Energy Information Agency, 2021).

The CLCPA represents a break from traditional RPS or “goals”-style climate legislation, in that it does not have a singular focus on maximizing overall GHG emissions. The CLCPA does establish an RPS and a broader, economy-wide GHG emissions reduction goal. The law, however, also contains justice provisions that are unique in US state climate law. This is because the CLCPA was written and championed by grassroots activists, notably the NY Renews coalition. NY Renews is a coalition of over 280 environmental justice, faith, labor, community groups and others in NY State.

NY Renews, by forwarding what was then called the Climate and Community Protection Act, challenged New York State Governor Andrew Cuomo’s traditional clean energy

mandate-style proposal, the Climate Leadership Act (Lipsitz, 2019). NY Renew's activism culminated in a direct action in May of 2019, where over 200 climate activists staged a "die in" in front of Governor Cuomo's Albany office (Enking, 2019). The author of this article served as legal support for that action. Ultimately, what emerged from the fray was the CLCPA, which represented the nation's most ambitious traditional clean energy mandates and the most robust energy, environmental and climate justice provisions ever to be included in a state climate law.

These provisions of the CLCPA are directly based on energy, environmental and climate justice theory as they have emerged in the context of grassroots movements. The Act's justice framework, paired with traditional mandates, has created a new standard for state climate action. Aspects of the CLCPA's justice framework have already been adopted by other states and at the federal level. The passage of the CLCPA also illustrates the emerging potency of energy justice from its roots in environmental and climate justice.

## 5. THE CLCPA'S JUSTICE FRAMEWORK

The justice framework of the CLCPA seeks to implement a clean energy transition while changing the trajectory of harm that energy and related infrastructure has caused historically marginalized communities. To do so it incorporates concepts of energy, environmental and climate justice (CLCPA, 2019).

First, the Act sets a climate justice frame by finding that climate change heightens the vulnerability of the historically disadvantaged, who "bear environmental and socioeconomic burdens as well as legacies of racial and ethnic discrimination" (CLCPA, 2019 sec. 7). Therefore, actions undertaken by the state to mitigate GHG emissions must address environmental and climate justice concerns. Specifically, the CLCPA finds that the state must prioritize the safety and health of disadvantaged communities now to address past and current harms (environmental justice), while ensuring that future climate change mitigation and adaptation policies do not harm these communities (climate justice) (CLCPA, 2019 sec. 7).

To achieve these objectives, the Act outlines a process to identify disadvantaged communities. The CLCPA then utilizes: (1) overarching state decision-making and spending mandates, (2) specific programmatic mandates and (3) participatory processes and public input to ensure the law's equity objectives are reached. Each incorporates principles of energy, environmental and climate justice.

### 5.1 Defining Disadvantaged Communities

To identify which areas and communities have been historically marginalized and face disproportionate risk, the CLCPA borrows the phrase "disadvantaged community" from California law (California Assembly Bill, 2016).<sup>6</sup> To ensure inclusive participation and self-determination in decision-making, the CLCPA does not attempt to finalize the definition of disadvantaged community. The Act provides initial criteria to identify disadvantaged communities (CLCPA, 2019). Then the CLCPA establishes a participatory body called the Climate Justice Working Group ("CJWG") to engage in an identification process (CLCPA, 2019 sec. 2). The CJWG comprises environmental justice advocates in addition to other state agency officials (CLCPA, 2019 sec. 2). The CLCPA tasks the CJWG with determining the final disadvantaged

community criteria, subject to a public comment process (CLCPA, 2019 sec. 2). The work of the CJWG is part of a broader participatory process created by the CLCPA that is discussed further below.

## **5.2 Disadvantaged Communities and State Decision-Making**

The CLCPA provides express direction to state agencies with regards to disadvantaged communities and implementation of the Act's goals, spending and programs. To ensure that New York's 100% clean and renewable energy goals are achieved fairly and in time to avoid the worst climate impacts, the CLCPA requires that state agencies consider disadvantaged communities as decisions are made. Specifically, the CLCPA requires that,

1. commensurate with principles of environmental justice, all state agencies, in considering and issuing permits, licenses and other approvals, must not "disproportionately burden disadvantaged communities" (the "EJ Guardrails") (CLCPA, 2019 sec. 7);
2. commensurate with principles of climate justice, projects requiring major permits must demonstrate that future climate risk has been considered, including impacts on disadvantaged communities, and mitigate those risks as required (CLCPA, 2019 sec. 9);
3. commensurate with principles of environmental justice, early action must be taken to prioritize reductions of co-pollutants and GHG in disadvantaged communities (CLCPA, 2019 sec. 7); and
4. to redirect investments to those experiencing the most harm from energy systems, no less than 35%, and a goal of 40%, of the benefits from state climate investments must be realized by disadvantaged communities (the "Investment Mandate") (CLCPA, 2019 sec. 2).

## **5.3 Disadvantaged Communities and Programmatic Mandates: Renewable Energy Program**

To achieve the Act's goals for the electric sector, the CLCPA, among other things, directed the New York Public Service Commission to establish a renewable energy program ("REP") to meet the CLCPA's decarbonization targets for the generation sector (CLCPA, 2019 sec. 2). The decision-making mandates with regard to disadvantaged communities discussed above also apply to the REP. The REP must be designed in a way that provides substantial benefits to disadvantaged communities. These include mandates to decrease the use of polluting peaking facilities located near disadvantaged communities while increasing the penetration of clean distributed generation in those communities (New York Department of Public Service, 2020b). The state is also required to develop a report on barriers to community ownership of distributed generation in disadvantaged communities (CLCPA, 2019 sec. 6).

Thus, commensurate with energy justice, the RPS is expressly required to focus on environmental health and justice outcomes through the equitable implementation of clean and renewable energy systems. The aim is to both reduce emissions to prevent the disproportionate impacts of climate change (climate justice) and address the environmental health burdens on low-income communities of color (environmental justice). This represents a significant departure from RPS-style mandates that prioritize maximizing overall emissions reductions.



## 5.4 Disadvantaged Communities and Programmatic Mandates: Air Monitoring Program

The CLCPA requires that the state, in consultation with the CJWG, must prepare a program demonstrating community air monitoring systems that measure and record air pollutant concentrations in disadvantaged communities (CLCPA, 2019, sec. 2). The state is required to select at least four disadvantaged communities around the state with high-exposure burdens in order to prepare for community emissions reduction programs (CLCPA, 2019, sec. 2).

## 5.5 Participatory Process and Public Input: The Climate Action Council

The CLCPA creates a broad process of public participation designed to steer the development of climate policy in New York. This was intended to build transparency, accountability and participation into the process, commensurate with energy justice principles. The Act CAC is composed of state officials and civilian appointees and is tasked with creating the state's scoping plan to achieve the goals of the CLCPA (CLCPA, 2019, sec. 2). The author of this article is an appointed member of the CAC. The CAC receives recommendations from a series of advisory panels created by the Act (CLCPA, 2019, sec. 2). The scoping plan to be created by the CAC is required to go through a regional public comment process, before being promulgated as regulations by state agencies (CLCPA, 2019, sec. 2).

# 6. IMPLEMENTATION OF THE CLCPA JUSTICE PROVISIONS: REFLECTIONS AND CRITIQUES

Since the passage of the CLCPA and of this writing, several of the Act's mandates have roared to life, while others have been incomplete. The CAC process to develop the scoping deployed over 100 experts, advocates and other stakeholders in addition to the CAC and CJWG. The agency's decision-making directives and spending mandate discussed above have been codified into the State Energy Plan, which, pursuant to New York law, sets the direction of energy policy for the state (New York State Energy Plan, 2020). The CAC released its draft scoping plan at the end of 2021 and, as of this writing, it is out for public comment. Likewise, the CJWG released its Disadvantaged Communities Criteria in 2022 and it is also, at the time of this writing, out for public comment.

Implementation of the Investment Mandate and the Guardrails, however, has been uneven. On the one hand, the state has included the spending mandate into some major spending programs, including the Regional Greenhouse Gas Initiative (New York State Code of Rules and Regulations, Part 507) and the New York Clean Energy Fund (New York Department of Public Service, 2020a). This has resulted in significant investments being redirected to disadvantaged communities, even as the state waits for the final identification criteria from the CJWG. Of great concern to advocates, however, is a lack of a rigorous state "benefit standard" (Aidun et al., 2021). There have been discussions that the state will use "dollars spent" as a metric, which is the preferred approach. Advocates have expressed general concern about the CAC transparency of the CAC process. In addition, important bodies required by the Act, including an Environmental Justice Advisory Group, have not yet been established by the state.

Further, the state has not executed an accounting of its current climate spending, a requisite step to redirecting funds to disadvantaged communities. Nor has the state fully developed an interagency compliance plan to administer it. This means that the overall benefit of state climate spending is not well understood and has not been universally applied. This includes, for instance, the REP, which was unable to articulate how significant investments, including billions of dollars in clean energy procurements, would benefit disadvantaged communities (New York State Department of Public Service, 2020b). The Commission did, however, direct the implementing agency to move forward on developing and implementing disadvantaged communities benefit frameworks into its solicitations (New York Department of Public Service, 2020b).

The Investment Mandate has been influential nationally. The Biden administration has embraced the policy, which it calls the “Justice 40.” Further, the Investment Mandate concept was incorporated into Washington state’s recent climate law (Washington Senate Bill 5126, 2021).<sup>7</sup> Concerns about rigorous standards for “benefit,” remain, however, in both instances.

The state’s failure to articulate justice methodologies is also a problem for the Guardrails and the mandate to take early action on emissions and co-pollutant reductions in disadvantaged communities. The state has failed to develop a framework to determine where a “disproportionate burden” has occurred in state decision-making or clean energy projects. It has also failed to place metrics in place to measure how emissions and co-pollutant reductions will be tracked or evaluated. It is of great concern that the REP and other programs will move forward without a mechanism to measure or enforce when a disproportionate burden has been placed on disadvantaged communities.

In addition, while the CLCPA is the first of its kind in state climate legislation, examining the CLCPA’s actual implementation has revealed that the law is far from perfect. The law, for instance, did not include provisions related to indigenous nations, and it appears that work to implement the CLCPA between the state and indigenous nations is not happening according to protocol. Advocates, who originally fought the law’s “net zero” approach, are concerned that the fossil fuel industry will succeed in forwarding harmful biofuels and “renewable natural gas” into the CAC scoping plan (NY Renews Policy Committee, 2021). The CLCPA also failed to include significant provisions related to labor standards, something that remains on the wish list for advocates. A final critique offered here is the lack of a funding mechanism to pay for the recommendations to be included in the CAC’s scoping plan. Without a way to pay for it, the scoping plan could be relegated to a shelf and never become reality.

## 7. CONCLUSION

The CLCPA has set a new standard for state climate legislation and shifted the narrative away from the account that the primary goal of an RPS is to maximize overall GHG reductions. It is hard to see another state RPS or broader climate goals law being enacted in the US today without some reference to the energy justice provisions of the CLCPA. In addition, the CLCPA has lifted the broader energy justice narrative to the national level and is an example of how state action on climate can reach beyond any one state’s borders.

The CLCPA has also demonstrated the power of energy justice in action. Energy justice can be used to implement just and equitable clean energy transitions. Grassroots activists can carry the message and policy of energy justice to the statehouse and on to the White House

and beyond. The story of NY Renewables and the CLCPA also reveals that energy justice frames necessarily overlap with environmental and climate justice frameworks. This is because energy justice itself has emerged from environmental and climate justice and the longstanding legal and movement traditions of civil rights, indigenous rights and human rights. Looked at from this temporal perspective, environmental and climate justice theory and movement practice have created the legal, policy and advocacy infrastructure to implement energy justice outcomes.

Energy justice provides a lens to design just energy systems and transitions. Just energy outcomes, however, require the application of solutions found in frameworks of environmental and climate justice. Further, putting energy justice into law does not guarantee its successful implementation. Ensuring that energy justice takes hold in energy transitions requires true participation and ongoing advocacy from stakeholders, including grassroots advocates. As the field of energy justice and the pursuit of just energy transitions evolve, refinements of ways to develop equitable energy systems should continue to improve just energy outcomes. In order to do so we must, however, both acknowledge and attribute the roots of energy justice.

## NOTES

1. The US Fourth National Climate Assessment, describing how the United States is currently experiencing the effects of climate change
2. United States Constitution, Fourteenth Amendment, as amended in 1868, states in part, “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” In *Brown v. Board of Education*, 347 U.S. 483 (1954), the Supreme Court held that racially segregated public schools denied Black Americans equal protection of the law under the Fourteenth Amendment to the United States Constitution.
3. It should be noted that transnational climate activism has also developed as an “elite” NGO activity, focused on impacting political approaches, coordinated north–south negotiations and commitments to market-based approaches to GHG reductions that can be in tension with movement-oriented climate justice principles.
4. An international coalition of climate and environmental justice groups redefined climate change from a human rights and environmental justice perspective.
5. The concept of a “just transition,” which initially emanated from the labor movement, has also come to represent a framework of a fair transformation of systems to address the climate crisis and its root causes, which include colonialism, racial capitalism and white supremacy.
6. This bill requires at least 25% of funds from the state’s cap and trade program go to projects within and benefitting “disadvantaged communities” and at least an additional 10% is for low-income households or communities. The author notes that the term “disadvantaged community” itself is not favored by many advocates, who find that it enforces a negative or stereotypical archetype of marginalized communities.
7. The bill institutes a cap and trade scheme, something that is opposed by many environmental and climate justice advocates.

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