Global Justice and the Transition: Wellbeing and Differentiation

By:

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In this contribution, I make three claims. First, just transition interventions around the world are dominantly insular and 'State-first'. The dominance of nationalist just transition policy making is evident in the America-first emphasis of the US Inflation Reduction Act (IRA) and the EU-first tilt of the European Green Deal (EGD). Second, the insular nature of just transition policies is hallmarking a new epoch of global injustice that, if not cauterized and dealt with early (if not already late), will become a major sphere of global inequality. Third, human and ecological wellbeing as an organizing principle, and differentiation as an implementation framework, will be key to any meaningful attempt to inject the 'global' into just transition.

Amartya Sen, in the *Idea of Justice*, notes that to the transcendentalists, global justice is 'unaddressable'. While the works of justice theorists like Rawls (justice and equality) and Hobbes (justice and sovereignty) fall under this category of transcendental skepticism, Nagel's pointed dismissal perhaps best summarizes dominant arguments against the possibility of 'global justice'. Nagel argues that

“in the absence of global sovereignty we may not be able to describe the world order as unjust”. In other words, a system of world ‘government’ is central to global justice, and the absence of such institution which can be contested and perhaps changed makes the pursuit of ‘global justice’ as mythical as a ‘chimera’. Yet, the pursuit of global justice continues. It remains in the unending clamour for addressing the historical horrors of slavery and colonialism. It echoes still in the crusade of Indigenous communities around the world against the tyranny of the Westphalian State construct. It remains evident in the debilitating poverty in the Global South. As Sen reminds us, “the world beyond a country’s borders cannot but come into the assessment of justice in a country”.

Justice is not a simple concept. It becomes even further complicated when it is prefixed with amorphous qualifiers like ‘global’ and ‘environmental’ (global environmental justice). It is in fact unclear if the correct qualifying descriptor for a transboundary and meta-state notion of justice is ‘global’. Sen, for example, draws a line between the demands of ‘global justice’ and ‘international justice’ (entailing engagement between representatives of different nations). It is noteworthy that although the concept of environmental justice has caught on since after the Brundtland report (1987), global environmental justice is still a relatively unknown quantity. What is known is the ever-rising alphabet soup of notional contraptions which, arguably, touch on various subsets of or allied ideas to environmental justice, including, intergenerational justice, intragenerational justice, ecological justice, climate justice, energy justice, just transition, etc. Just transition is a more recent addition to this alphabet soup. Its failure to address the global dimensions of the transition is the focus of this intervention.

Claim One: Nationalism and Just Transition

Through its Just Transition Mechanism, the EGD aims to leave “no person and no place” behind by addressing the “social and economic effects of the transition”. It does this by mobilizing €55 billion under three Just Transition Mechanism (JTM) policy pillars - the just transition fund (JTF), InvestEU just transition scheme, and a Public Sector Loan Facility. The JTF focuses on “the economic diversification and reconversion” of EU territories most adversely impacted by the transition. EU territories are required to develop Territorial Just

Transition Plans (TJTP) which inform funding decisions under the JTF and the other two pillars of the JTM. At the core of initiatives targeted by the JTF is jobs-transition in fossil fuel sectors. The Social Climate Fund (SCF), with a budget of up to €65 billion between 2026 – 2032, is a more recent EU initiative to support EU businesses and people most affected by the expansion of the EU emissions trading system. Like the EU JTM and Social Climate Fund, the US is providing $5 billion under the IRA to facilitate $250 billion in low-cost loans to utilities, and $9.7 billion in assistance to rural electric cooperatives to support the transition from coal to clean energy source. There is an easily provable mischaracterization in describing the JTM, SCF, and just transition components of the IRA as initiatives designed to leave “no person and no place” behind. At best, these initiatives are meant to leave “no person and no place” in the EU and US behind. A low-bar objective, which these frameworks will fail to attain. Active and meaningful social dialogue is the common denominator of the diverse conceptualizations of just transition. The JTM, SCF and IRA have, in their design failed to satisfy this very basic requirement. Crespy and Munta, also, highlight the problematic narrow scoping of the JTF and SCF, the anchorage of the initiatives in a reactive logic of complementing social investment initiatives, and the limited focus on reskilling the workforce hit by decarbonisation. These just transition initiatives also manifest a heavy corporatization of justice and the transition with the underpinning ideology of limitless ‘green’ economic growth.

The absence of the global in the JTM, SCF, and just transition components of the IRA is attributable, at least in part, to the basic assumption that just transition begins and is, in fact, co-extensive with jobs transition. Integral to jobs transition are new industries – green – where workers will work. And, since industries are mostly enslaved to profit making in a finite market space, competition and first-mover market domination becomes a crucial feature of jobs-centric just transition. It is, therefore, not shocking that the broader transition frameworks (the EGD and IRA) that house the referenced just transition initiatives are fundamentally protectionist. It is also not surprising that justice concerns pertaining to the transition are localized. The point is that the fundamental assumption that actuates a vision of just transition matters. Dominant policies on just transition as epitomized by the JTM, SCF, and IRA are heavily shaped by the market, and the result is a vision of justice that is insular,

local, and jobs centric.

Claim Two: Transboundary Impacts of Dominant Transition Policies

Beyond the latent inequity of taking an insular approach to addressing the justice concerns connected to an inherently global phenomenon caused primarily by the Global North, dominant transition policies favoured by the Global North and international organizations actively foster transboundary injustice. This is true of seemingly harmless initiatives like moratoria on fossil fuel exploration and production, fossil fuel subsidy reform, diversification, divestment, and requirements for the adoption of technological solutions like carbon capture.

Each of these policies wear the toga of technically sound, scientifically supported, and unarguably pro-climate interventions. In some cases, they are the gold standard raised and flown by environmental NGOs, climate change scholars, and pro-climate governments alike. However, while States have built in features to protect local industries and jobs into these transition policies, they fail to address transboundary socio-ecological impacts. While I focus on moratoria policies here, other contributions to this symposium including Gamze Erdem Türkelli's and Janet Jebichii Sego's analysis of the EU's Global Gateway and Godwin Dzah's inquiry on green finance provide pointed criticisms on cross-border impacts of transition policies.

There has been a wave of announcements of bans or moratoria on oil and gas production and exploration. Most of these are futuristic partial bans. The bans are 'futuristic' because they fix a time in the future to phase out fossil fuel production (mostly 2040 as in the case of France or 2050 as in the case of Denmark). They are partial because they are often narrowly scoped, and even when broad, the ban or moratorium often leaves wriggle room for the continuation of exploration and production.

The injustice of bans and moratoria is woven into these ostensibly innocuous adjectives – 'futuristic' and 'partial'. In justifying 2040 as a tenable phase-out year for oil and gas production in France, the French Administrative Supreme Court in IPC Petroleum v France held that the date is to allow companies attain "economic equilibrium … and exploit discovered deposit for a period of time". In other words, French companies and by extension, France, have judicial

imprimatur to continually challenge for a place in a shrinking global energy market, pump out more fossil fuel, and further add to its carbon budget deficit. In this free for-all race to the bottom to capture fossil market gains before the D-Day of the moratorium taking effect, the green paradox is put on steroid and global energy justice suffers even more.

In the United Kingdom, a moratorium on financing oil and gas exploration abroad was announced in December 2020. The moratorium does not include oil and gas exploration in the UK, or particularly, in the North Sea. The UK Prime Minister restated the intention to protect oil and gas production in the North Sea even more overtly in a recent statement. The 2020 Oil and Gas Authority Strategy emphasized that the central obligation of UK oil and gas entities is to "secure the maximum value of economically recoverable petroleum from the strata beneath relevant UK waters". Other countries like Canada and the US have adopted similar policies favouring oil and gas production at home while disincentivizing foreign production.

The overt, unapologetic, imperial, and cut-throat disadvantaging of already depressed and vulnerable economies is bad, very bad! But what is worse is the exportation and diffusion of these regimes of exploitation and oppression. The Carbon Border Adjustment Mechanism (CBAM), a subset of the EU Fit for 55 Agenda, and its growing popularity (e.g., Canada and the US) despite its inbuilt adverse impacts for the Global South is another example. Julia Dehm and Usha Natarajan are vindicated in their conclusion (see Dehm and Natarajan's contribution to this symposium) that green deals are re-entrenching global exploitation and domination and are contributing to the "articulation of new forms of global authority over lands and resources in the Global South".

Claim Three: Just Transition, Wellbeing, and Differentiation

Amartya Sen's *national particularism* – where the State is the primary domain of the exercise of fairness and international equity is only supplementary to national arrangements – captures the emphasis of the localization of just transition as described above. What then are the alternatives? Having rejected grand universalism – where the locus of justice is with all people everywhere taken together without distinction of nationality, Sen settles on a vision of global justice he describes as *plural affiliation*. A full-on analysis of plural

affiliation is outside the scope of this contribution. However, its most basic propositions are relevant here. The nationality contraption is but one of the diverse identities that human beings possess. As Sen notes, being human is our "most basic identity"; an identity if when fully seized might result in a broadened viewpoint and reinform the imperatives we associate with our shared humanities which might not be mediated by national collectivities.

Plural affiliation implies the identification of imperatives which transcend the boundaries of States. I have shown above how market objectives and the competition for scarce resource and opportunities they compel have produced national particularism in the transition context. A different imperative not easily captured in the national web, and of the nature of a global public good is, therefore needed. Socio-ecological Wellbeing is such imperative. At the minimum, it is non-excludable (can be enjoyed by all) and non-rivalrous (enjoyment by some does not diminish enjoyment by others). Of course, such claim (public good nature of wellbeing) is dependent on what wellbeing is understood to be. Nussbaum's list of core human capabilities, while not perfect, are helpful in highlighting key wellbeing objectives. Life, health, bodily integrity, community, harmony with nature, and participation and recognition are particularly important wellbeing indicia for a global just transition.

There is no principled justification for a nationalistic outlook on the impacts of transition measures when wellbeing is the primary indicia. Wellbeing draws on our shared humanities. For example, that the CBAM would have serious implications for the lives and livelihood of people and communities in Europe and Africa creates an identity amongst such people and communities irrespective geographical boundaries. Global justice, therefore, compels functional awareness - an acknowledgment of transboundary impacts and a redress approach that does not confer more importance to adverse impacts in Europe. It is noteworthy that the CBAM impact assessment showed that it would have considerable effects on people, communities, and industries particularly in Africa. The mechanism, however, failed to address those impacts.

Differentiation is the other side of the global just transition coin. I do not comment on the nuts and bolts of differentiation as an international climate law principle here. Rather, I sketch a reform agenda of the principle based on a

loose application of the plural affiliation concept. The most popular variant of differentiation is the common but differentiated responsibilities and respective capabilities, in the light of different national circumstances principle (CBDR). While acknowledging that climate change must be addressed by all, CBDR apportions duties and rights under the international climate regime on the bases of historical responsibility, capability, and more recently, national circumstances. The animation of the differentiation principle by the nation state construct has made crippling conflict (developing States vs. developed State) the staple of international climate governance. Plural affiliation makes persons, communities, and ecosystems the beneficiaries of differentiation rather than States.

There is a global community of the vulnerable including the energy poor and climate vulnerable of Africa, the endangered communities in small island states, and the deprived Indigenous peoples of Canada, Australia, and Norway. A common denominator is that these peoples and communities are least responsible for climate change, least capable to respond to climate change, and most impacted by climate change. There is also a global community of entities responsible for climate change which though concentrated in the Global North (more so considering emissions from the 1860s), also include institutions and interests in the Global South. For example, close to half of the 25 entities accounting for 51% of global industrial emissions since 1988 are in the Global South.

Global just transition is impossible without differentiation. However, the transition will be unattainable if State-centric differentiation remains a barrier to ambitious climate actions. What is required is a notion of differentiation that transcends States – a new framework which recognizes the global community of the vulnerable in its diverse and multiplex dimensions. As far as possible, transition policies should be designed and implemented with attention to the unique circumstances of vulnerable communities and provide opportunities for enriching the wellbeing capabilities of such communities.

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