

## THE PRECIPICE OF JUSTICE: EQUITY, ENERGY, AND THE ENVIRONMENT IN INDIAN COUNTRY AND RURAL COMMUNITIES

*Ann M. Eisenberg & Elizabeth Kronk Warner\**

**Editor's Note:** As the authors mention at footnote 1, the ideas presented in their essay were first shared during a panel presentation in February of this year at the at the University of Florida Levin College of Law's annual Public Interest Environmental Conference. We and the authors have described their piece as an essay and not an article because it is not intended as a comprehensive approach to solving energy/environmental justice issues, but as an introduction to the subject intended to highlight these issues. As the authors note, their hope – and ours - is that their essay will prompt in depth contributions from authors addressing energy/environmental justice issues in future editions of the Journal.

**Synopsis<sup>1</sup>:** Energy justice, environmental justice, climate justice, and just transitions all offer frameworks for assessing questions of equity, energy, and the environment. This Essay assesses these frameworks' relevance in the context of two case studies: Indian country and coal-reliant rural communities. Both types of communities are, in one sense, prototypical environmental justice communities. Yet, both are unique in distinct and overlapping ways. In Indian country, questions of sovereignty are central to issues of environmental equity. Meanwhile, geographic isolation and a lack of economic diversification shape rural communities and parts of Indian country, making relationships with the energy sector particularly challenging. The Essay examines dynamic, ongoing policy developments relevant to both contexts, including the Biden Administration's new commitments to renewable energy targets, the American Rescue Plan, and state initiatives like Colorado's Just Transitions Office and New Mexico's Energy Transition Act of 2019. The discussion illustrates how questions of equity and the environment often transcend and blur the lines across the theoretical frameworks. Ultimately, we assert that these communities are on the precipice of justice. But justice is within reach for these and similarly situated communities, if the political will remains strong to pursue the policies with the strongest commitments to equity.

---

\* Ann Eisenberg is an Associate Professor of Law at the University Of South Carolina School Of Law. Elizabeth Kronk Warner is the Jefferson and Rita Fordham Presidential Dean and Professor of Law at the S.J. Quinney College of Law at the University of Utah. She is also an enrolled citizen of the Sault Ste. Marie Tribe of Chippewa Indians.

1. The ideas presented in this Essay were first shared on a panel presentation including the co-authors at the 27th Annual Public Interest Environmental Conference at the University of Florida Levin College of Law on February 12, 2021.

I. Introduction.....	282
II. Energy and Environmental Justice in Indian Country.....	285
A. Environmental Justice in Indian Country.....	285
B. Clean and Renewable Energy Development in Indian Country.....	288
III. Just Transitions and Rural Revitalization.....	291
A. Federal Rural Revitalization Initiatives.....	293
B. State Approaches to Renewable Energy Transitions and Coal Reliance .....	294
IV. Conclusion .....	297

## I. INTRODUCTION

Several frameworks have emerged to capture the many equity-based concerns surrounding energy production, energy consumption, pollution, climate change, racial discrimination, and growing socioeconomic disparities. These include frameworks such as environmental justice and, more recently, climate justice. Energy justice is among the latest of these to gain mainstream traction.<sup>2</sup> Energy justice seeks to refine and expand our legal understanding of how we plan for, invest in, and regulate energy to be cost beneficial for international governance, nations and societies.<sup>3</sup> Energy justice examines and promotes a global energy system that is safe, reliable, just, reasonable, and also sustainable for current and future generations.<sup>4</sup> Importantly, it also considers the need for an energy path forward that is restorative, minimizes or reverses the cumulative impacts of the energy system, and engages energy consumers in decision-making processes.<sup>5</sup>

Climate justice, similarly, has emerged relatively recently as another call for equity for “those disproportionately affected by the impacts of climate change.”<sup>6</sup> While energy justice and climate justice have gained momentum in the lexicon on justice and the environment over the past decade, environmental justice is now roughly a half-century old. Environmental justice asks whether vulnerable communities and communities of color are asked to disproportionately bear the impacts of environmental pollution. Rooted in the concept of environmental racism, this movement in the United States “forged a pivotal connection among concerns for social justice, civil rights, and environmental protection.”<sup>7</sup>

---

2. See, e.g., Kirsten Jenkins, *Setting energy justice apart from the crowd: Lessons from environmental and climate justice*, 39 ENERGY RSCH & SOC. SCIENCE 117 (2017).

3. Cf. Aladdine Joroff, *Energy Justice: What It Means and How to Integrate It into State Regulation of Electricity Markets*, 47 ENVTL. L. REP. NEWS & ANALYSIS, 10927-28 (2017) (examining definitions of energy justice).

4. *Id.*

5. CARMEN G. GONZALEZ, ELIZABETH A. KRONK WARNER & RAYA C. SALTER, *ENERGY JUSTICE: US AND INTERNATIONAL PERSPECTIVES* (Raya Salter et al. eds., Edward Elgar Publishing, 2018).

6. Randall S. Abate, *Public Nuisance Suits for the Climate Justice Movement: The Right Thing and the Right Time*, 85 WASH. L. REV. 197, 199 (2010).

7. Uma Outka, *Fairness in the Low-Carbon Shift Learning from Environmental Justice*, 82 BROOK. L. REV. 789, 789 (2017); see also Robert Bullard, *Environmental Justice in the 21st Century: Race Still Matters*,

In the transition to low-carbon energy production, calls for energy justice alongside climate justice “expand the [environmental justice] movement’s conceptual reach in the modern context.”<sup>8</sup> As Uma Outka articulates, “The link between climate change, energy, and environmental justice is unmistakable: the energy sector contributes to climate change more than any other industry; climate change is predicted to affect environmental justice communities most; and the energy sector has a long history with environmental injustice.”<sup>9</sup> In particular, fossil fuel-based energy production has historically been borne on the backs of the poor and communities of color. As a central example, poor and minoritized communities located near sites of fossil fuel extraction and production experience egregious health hazards because of those burdens.<sup>10</sup> As a result, while these frameworks—energy justice, environmental justice, and climate justice—are all discrete concepts, they can overlap at times and all three may be applicable to a particular situation.<sup>11</sup>

Efforts to decarbonize the energy grid and the economy at large are gaining substantial momentum today. However, the transition to renewable energy does not automatically mean that today’s environmental justice communities will necessarily fare better.<sup>12</sup> Marginalized communities risk continuing to bear disproportionate environmental burdens while facing barriers to equitable access to new opportunities, such as “green” jobs.<sup>13</sup> Some environmental justice communities have also grown to depend economically on the very industries that have caused them such harm, prompting calls for just transitions—or equity for workers and communities who depend economically on fossil fuels—to ward off and mitigate regional fiscal collapse and individual hardship.<sup>14</sup>

To help further understanding of the many interacting issues of equity described above, this Essay assesses these frameworks’ relevance to two community case studies: Indian country and coal-reliant rural communities. Specifically, the Essay examines the experiences of Indian country and coal-reliant rural communities in the energy system, those communities’ environmental and energy justice burdens, and the law and policy frameworks that both shape those burdens and are positioned to alleviate and transform them. Both types of communities are, in one sense, prototypical communities burdened by both environ-

---

UNIV. OF WIS. (2008), [https://uwosh.edu/sirt/wp-content/uploads/sites/86/2017/08/Bullard\\_Environmental-Justice-in-the-21st-Century.pdf](https://uwosh.edu/sirt/wp-content/uploads/sites/86/2017/08/Bullard_Environmental-Justice-in-the-21st-Century.pdf).

8. Outka, *supra* note 7, at 790; *see also* Shelley Welton & Joel Eisen, *Clean Energy Justice: Charting an Emerging Agenda*, 43 HARV. ENVTL. L. REV. 307 (2019); J.B. Ruhl, *Climate Change Adaptation and the Structural Transformation of Environmental Law*, 40 ENVTL. L. 363, 408 (2010).

9. Outka, *supra* note 7, at 790; *see also* Alice Kaswan, *Environmental Justice and Domestic Climate Change Policy*, 38 ENVTL. L. REP. NEWS & ANALYSIS 10287 (2008).

10. Outka, *supra* note 9, at 791, 792.

11. *Id.* at 789; Uma Outka, *Environmental Justice Issues in Sustainable Development: Environmental Justice in the Renewable Energy Transition*, 19 J. ENVTL. & SUSTAINABLE L. 60, 74, 122 (2012).

12. Outka, *supra* note 11, at 122.

13. Ann M. Eisenberg, *Just Transitions*, 92 S. CAL. L. REV. 273 (2019).

14. *See generally id.*

mental and energy injustice because both have historically borne disproportionate burdens associated with energy production and the pollution it creates.<sup>15</sup>

Yet, both types of communities' experiences with energy and environmental injustice also arise in unique circumstances. These unique circumstances often go overlooked in the broader conversations on energy justice and environmental justice. First, unlike other environmental justice communities, tribes are sovereign nations with authority to enact their own laws and regulations.<sup>16</sup> Tribes also have other unique legal relationships with the federal government, as discussed below. Coal-reliant rural communities, meanwhile—some of which include parts of Indian country—face unique challenges relating to a lack of economic diversification, geographic isolation, and barriers to accessing public and private resources, creating particularly challenging relationships with the energy sector.<sup>17</sup>

This Essay therefore examines these two types of communities side-by-side in order to assess their overlapping and differing experiences with law, energy justice, and environmental justice, and those experiences' implications for broader conversations on these topics. The Essay is not intended as a comprehensive approach to solving energy and environmental justice issues, but as a contribution intended to highlight these issues in discrete communities and to prompt in-depth contributions from authors in future editions of the Journal. While these communities are unique, their holistic experiences with equity, energy, and the environment are in many ways illustrative of widespread challenges and opportunities. Both also illustrate how the distinct theoretical frameworks described above often have overlapping, blended applicability to communities' complex experiences on the ground.

Part I examines experiences with energy justice and environmental justice within Indian country and ongoing, dynamic policy developments on clean energy projects in Indian country. Part II goes on to explore the same questions within the context of rural communities, with a focus on the loss of coal-based economic activity and the rural economy more broadly. Ultimately, we assert that tribes and rural communities are on the precipice of justice – meaning, the existence of energy and environmental justice problems has been identified, but it remains to be seen whether these problems will truly be ameliorated. But justice is also just within reach if the political will remains strong and the policies that hold promise are pursued. For example, the Biden Administration has identified energy justice and environmental justice as top priorities for the Admin-

---

15. See *infra* Part II.B and Part III.

16. Despite explicit and implicit divestiture by the federal government of tribal authority, tribal sovereignty persists today. Tribal regulatory authority is strongest over tribal citizens on tribal lands. For a full discussion of the scope of tribal sovereignty and the ability of tribes to regulate individuals, see FELIX S. COHEN, COHEN'S HANDBOOK OF FEDERAL INDIAN LAW at 203-379 (Nell Jessup Newton et al. eds., 2012) [hereinafter Cohen Handbook 2012].

17. Ann M. Eisenberg, *Distributive Justice and Rural America*, 61 B.C. L. REV. 189, 224 (2020) (discussing access to resources in rural communities, including more limited school funding, broadband internet, and private philanthropy); Eisenberg, *supra* note 13, at 301-03 (discussing geographic isolation and lack of economic diversification in Appalachia).

istration, but what remains to be seen is whether these priorities are fully funded and directed toward the communities needing the most assistance.<sup>18</sup> The most promising efforts in both contexts—measures such as substantial public investments alongside meaningful localized input and control and laws’ prioritization of racial and geographic equity—also hold promise for other communities burdened by environmental, energy, and climate injustice. We hope that by laying out where energy and environmental justice concerns exist within some communities within the United States, future articles in this Journal can more fully explore whether the combination of public investments and local input results in the amelioration of the concerns raised here.

## II. ENERGY AND ENVIRONMENTAL JUSTICE IN INDIAN COUNTRY

This Part examines questions of environmental and energy justice within the context of tribal communities. As mentioned above, tribes are unique because they are sovereign nations possessing the inherent authority to enact their own laws and regulations.<sup>19</sup> Additionally, the federal government (and states in some instances) owe a fiduciary obligation to act in the best interests of tribal governments. At its broadest, this federal trust responsibility constitutes a moral obligation to act in the best interests of tribes, and, in many instances, the federal government is under a binding legal obligation to act to the benefit of tribes.<sup>20</sup> Other important differences exist as well, and, therefore, it is important to consider how environmental justice and energy justice intertwine with these unique legal frameworks in Indian country.<sup>21</sup> In order to be able to fully understand energy and environmental justice within Indian country, one must first understand how tribal communities differ from other energy and environmental justice communities, so this Part begins with a brief introduction.

### *A. Environmental Justice in Indian Country*<sup>22</sup>

Native communities are environmental justice communities.<sup>23</sup> The history of environmental injustice in Indian country has a strong connection with fossil

---

18. Cathleen Kelly & Mikyla Reta, *Implementing Biden’s Justice40 Commitment to Combat Environmental Racism*, CTR. FOR AM. PROGRESS (2021), <https://www.americanprogress.org/issues/green/reports/2021/06/22/500618/implementing-bidens-justice40-commitment-combat-environmental-racism/>.

19. See Cohen Handbook 2012, *supra* note 16.

20. For a discussion of the development of the federal trust responsibility, see Elizabeth Ann Kronk, *Indian Claims and the Court of Federal Claims: A Legal Overview, Historical Accounting and Examination of the Court of Federal Claims’ and Federal Circuit’s Impact on Federal Indian Law*, 6 J. OF THE FED. CIRCUIT HISTORICAL SOC’Y 59 (2012).

21. “Indian country” is a legal term of art defined at 18 U.S.C. § 1151 as “(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.”

22. Portions of this section were taken from Elizabeth Kronk Warner & Heather Tanana, *Indian Country Post McGirt: Implications for Traditional Energy Development and Beyond*, 45 HARV. ENVTL. L. REV. 249 (2021).

fuel-based energy production. For instance, the Navajo Nation's experience with a coal-fired power plant, the Navajo Generating Station, and a history of joint coercion by federal agencies and mining interests provides an illustrative example of energy injustice and environmental injustice in Indian country.<sup>24</sup>

Although there are similarities with other environmental justice communities,<sup>25</sup> environmental justice claims arising in Indian country differ from environmental justice claims arising elsewhere because of tribal sovereignty, the unique connection between many tribal communities and their environment, as well as other factors.<sup>26</sup> Tribes' legal rights flow from their inherent sovereignty and their related historical management of the land and resources. Tribes exist as entities separate from state and federal governments, and are extra-constitutional, meaning they exist apart from the United States Constitution.<sup>27</sup> As a result of tribal sovereignty, the federal government largely leaves issues related to incidents between tribal members in Indian country solely within the inherent sovereignty of tribal governments.<sup>28</sup> Congress has also explicitly recognized tribal sovereignty through the enactment of various laws<sup>29</sup> and by subsequently amending federal statutes to allow for increased tribal governance.<sup>30</sup>

Unlike claims brought by other environmental justice communities, environmental justice claims raised by tribes "must be consistent with the promotion

---

23. See generally Rebecca Tsosie, *Indigenous People and Environmental Justice: The Impact of Climate Change*, 78 COLO. L. REV. 1625 (2007).

24. Jariel Arvin, *After decades of activism, the Navajo coal plant has been demolished*, VOX (Dec. 19, 2020), <https://www.vox.com/2020/12/19/22189046/navajo-coal-generating-station-smokestacks-demolished>; see also Ezra Rosser, *Ahistorical Indians and Reservation Resources*, 40 ENVTL. L. 437, 439-440 (2010).

25. Like other environmental justice communities, tribes faced historical discrimination. Of relevance is the fact that federal courts often discriminated against tribal and individual Indian claimants, especially before 1934. See Nell Jessup Newton, *Federal Power Over Indians: Its Sources, Scope, and Limitations*, 132 UNIV. OF PA. L. REV. 195, 216-18 (1984) (explaining in general reference to the nineteenth century that "[u]ndoubtedly, racial and cultural prejudice played no small role in federal actions toward Indians during this period."). Given this history of discrimination that Native nations and individual Indians faced in federal courts, access to the courts is of increased importance today.

26. See generally Elizabeth Ann Kronk Warner, *Environmental Justice: A Necessary Lens to Effectively View Environmental Threats to Indigenous Survival*, 26 TRANSNAT'L L. & CONTEMP. PROBS. 343, 343-44 (2017).

27. Ann E. Tweedy, *Connecting the Dots Between the Constitution, the Marshall Trilogy, and United States v. Lara: Notes Toward a Blueprint for the Next Legislative Restoration of Tribal Sovereignty*, 42 U. MICH. J.L. REFORM 651, 656 (2009) (citing Gloria Valencia-Weber, *The Supreme Court's Indian Law Decisions: Deviations from Constitutional Principles and the Crafting of Judicial Smallpox Blankets*, 5 U. PA. J. CONST. L. 405, 417 (2003)).

28. See, e.g., *Worcester v. Georgia*, 31 U.S. 515, 520 (1832) (holding that the laws of Georgia did not have any effect within the Cherokee Nation's territory); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55-56 (1978) (holding that tribes have the power to determine tribal membership).

29. Indian Self-Determination and Education Assistance Act, Pub. L. No. 93-638, 88 Stat. 2203, 2213 (1975) (codified as amended at 25 U.S.C. §§ 5301-5423 (2021)).

30. See, e.g., Clean Air Act, 42 U.S.C. § 7601(d)(1)(A) (1990); Clean Water Act, 33 U.S.C. § 1377(e) (2014); Safe Drinking Water Act, 42 U.S.C. § 300j-11 (1996); and major portions of the Comprehensive Environmental Response, Compensation, and Liability Act [CERCLA], 42 U.S.C. §§ 9601-9657 (1986).

of tribal self-governance,”<sup>31</sup> as both racial and political considerations impact tribal communities.<sup>32</sup> The additional consideration of tribal sovereignty is crucial to any discussion of environmental justice claims arising in Indian country, as tribes exist as both racialized and political communities and their sovereignty is essential to their existence.<sup>33</sup>

The practical impact of tribal sovereignty in considerations of environmental justice is that issues affecting tribes cannot move forward without tribal government approval, which, in and of itself, requires governmental consultation.<sup>34</sup> Environmental justice is typically understood to include a substantive component (i.e., an insistence upon equitable outcomes), as well as a procedural component (i.e., an insistence upon meaningful procedural inclusion).<sup>35</sup> An environmental injustice therefore occurs if the tribal government is not given a meaningful and robust opportunity to be consulted and provide feedback on any given development, including energy projects.<sup>36</sup> For example, in the case of the Dakota Access pipeline, the tribes involved claimed that the federal government failed to engage in meaningful and robust engagement.<sup>37</sup> Although the federal government provided notice to the tribes of the proposed permit (which eventually gave way to the pipeline being constructed), the tribes were notified in the same manner as other non-sovereign stakeholders in the region, and no special outreach occurred in recognition of the government-to-government relationship between the tribes and federal government.<sup>38</sup> Lack meaningful engagement, of course, also means that should a tribe decline to participate, the relevant project should be halted or stopped entirely. Accordingly, to both promote tribal sovereignty and to ensure meaningful participation of tribal governments, clean and renewable energy projects should be developed by tribal governments themselves within tribal territories whenever possible.

In addition to promoting tribal sovereignty through the inclusion of tribal governments in the development of clean and alternative energy projects, such development may be done in a way that is consistent with tribal environmental ethics, as many (but not all) Native cultures and traditions are tied to the envi-

---

31. Sarah Krakoff, *Tribal Sovereignty and Environmental Justice*, in JUSTICE AND NATURAL RESOURCES: CONCEPTS, STRATEGIES, AND APPLICATIONS 161, 163 (Kathryn M. Mutz et al. eds., 2002).

32. Additionally, individual American Indians have a political relationship with their tribal governments. See Rebecca Tsosie, *Negotiating Economic Survival: The Consent Principle and Tribal-State Compacts Under the Indian Gaming Regulatory Act*, 29 ARIZ. ST. L.J. 25, 27-28 (1997).

33. Rebecca Tsosie, *Indigenous Peoples and Environmental Justice: The Impact of Climate Change*, 78 U. COLO. L. REV. 1625, 1652 (2007) (“Such a notion of justice must incorporate an indigenous right to environmental self-determination that allows indigenous peoples to protect their traditional, land-based cultural practices regardless of whether they also possess the sovereign right to govern those lands or, in the case of climate change, prevent the practices that are jeopardizing those environments”).

34. See Elizabeth Kronk Warner et al., *Changing Consultation*, 54 U.C. DAVIS L. REV. 1127, 1178-83 (2020) (discussing the legal and moral requirements for effective tribal consultation and what such consultation should look like).

35. *Id.* at 1145, 1162, 1172, 1179.

36. *Id.* at 1153-56, 1180-83.

37. *Id.* at 1174.

38. Warner, *supra* note 34, at 1137, 1167, 1174, 1176.

ronment and land in a manner that traditionally differs from that of the dominant society.<sup>39</sup> That being said, however, each tribal nation has a different relationship with its environment, and we are hesitant to stereotype a common “Native experience,” recognizing that there is a broad diversity of thought and experience related to one’s relationship with the land and the environment.<sup>40</sup> With this caveat in mind, because of spiritual, medicinal, and cultural connections that many tribal communities have with their land, the relationship that these communities have may differ from the relationship of other environmental justice communities with their land.<sup>41</sup> Beyond a means of subsistence, land “is the source or spiritual origin and sustaining myth which in turn provides a landscape of cultural and emotional [means],” and “[t]he land often determines the values of the human landscape.”<sup>42</sup> Many “[t]ribal communities

Continue to have a deep relationship with ancestral homelands for sustenance, religious communion and comfort, and to maintain the strength of personal and inter-familial identities. Through language, songs, and ceremonies, tribal people continue to honor sacred springs, ancestral burial places, and other places where ancestral communities remain alive.<sup>43</sup>

Accordingly, in addition to the political sovereignty of tribal governments, their cultural and spiritual sovereignty is also typically impacted by energy development, and this in turn supports the call for increased tribal renewable and clean development, assuming the development is done in a way that does not negatively impact the environmental ethics of the tribal community.

### *B. Clean and Renewable Energy Development in Indian Country*

With this brief introduction into how environmental justice differs in Indian country (e.g., it includes considerations of tribal sovereignty and the environmental ethics of the tribal communities involved), we can now turn to an examination of how these principles are being applied. Historically, a wide array of obstacles made it incredibly difficult for tribes to own renewable and clean ener-

39. Frank Pommersheim, *The Reservation as Place: A South Dakota Essay*, 34 S.D. L. Rev. 246, 249, 255, 258, 263, 266, 268 (1989). We would like to avoid traditional stereotypes of American Indians as “Noble Savages” or “Bloodthirsty Savages.” See Rebecca Tsosie, *Tribal Environmental Policy in an Era of Self-Determination: The Role of Ethics, Economics, and Traditional Ecological Knowledge*, 21 VT. L. REV. 225, 270 (1996) (“The problems of cross-cultural interpretation and the attempt to define ‘traditional’ indigenous beliefs raise a common issue: the tendency of non-Indians to glorify Native Americans as existing in ‘perfect harmony’ with nature (the ‘Noble Savage’ resurrected) or, on the other hand, denounce them as being as rapacious to the environment as Europeans (the ‘Bloodthirsty Savage’ resurrected).”); see also Ezra Rosser, *Ahistorical Indians and Reservation Resources*, 40 ENVTL. L. 437, 465-468 (2010) (explaining the stereotype of Natives as environmental stewards and its likely origins). Both stereotypes are a form of mythology, although they are widely perpetuated by much of the literature on American Indian belief systems. *Id.* at 467-68.

40. Pommersheim, *supra* note 39, at 268-70.

41. *Id.* at 250; see also NAT’L CONG. AM. INDIANS, RESOLUTION NO. EWS-06-004, SUPPORTING A NATIONAL MANDATORY PROGRAM TO REDUCE CLIMATE CHANGE POLLUTION AND PROMOTE RENEWABLE ENERGY 2 (2006) (“climate-related changes to the weather, food sources, and local landscapes undermine the social identity and cultural survival of American Indians and Alaskan Natives . . .”).

42. Pommersheim, *supra* note 39, at 250.

43. Mary Christina Wood et al., *Tribes as Trustees Again (Part I): The Emerging Tribal Role in the Conservation Trust Movement*, 32 HARV. ENVTL. L. REV. 373, 381 (2008).

gy projects within Indian country. For example, because they are governments, tribes cannot take advantage of the tax incentives that made many renewable and clean energy development projects financially feasible.<sup>44</sup> Also, because many tribes with ample renewable energy resources are in geographically remote parts of the country, energy infrastructure does not exist to transport energy to more populous areas, and the development of such infrastructure is prohibitively expensive.<sup>45</sup>

Yet, despite these obstacles, tribal governments and outside investors are increasingly looking to Indian country to develop clean and renewable energy projects.<sup>46</sup> The increased interest in clean and renewable energy development in Indian country may, in some instances, be motivated by the factors examined above – tribal sovereignty and the unique connections many tribal communities have with their territories. But, increased interest may also come due to the Biden Administration’s attention to this type of development. For example, President Biden announced a “new target for the United States to achieve a 50-52 percent reduction from 2005 levels in economy-wide net greenhouse gas pollution in 2030” and also established a goal of reaching net zero emissions across the U.S. economy by 2050.<sup>47</sup> The Biden Administration apparently intends to accomplish both goals in a manner that is consistent with environmental justice.<sup>48</sup> President Biden hopes these initiatives can be accomplished through the production and deployment of clean energy, which includes “100 percent carbon pollution-free electricity by 2035,” “cut[ting] emissions and energy costs for families by supporting efficiency upgrades and electrification in buildings,” “reduc[ing] carbon pollution from the transportation sector,” “address[ing] carbon pollution from industrial processes,” and “invest[ing] in innovation.”<sup>49</sup> As an example of how the Administration will support these initiatives, the United States Department of Energy announced a \$100 million investment in “transformative clean energy solutions.”<sup>50</sup> The focus on both environmental justice and clean energy in these announcements suggests the possibility that implementation could be done in a way that is consistent with both environmental justice

---

44. Douglas C. MacCourt, Report No. NREL/SR-7A4-48078, *Renewable Energy Development in Indian Country: A Handbook for Tribes* 75 (June 2010), <https://www.nrel.gov/docs/fy10osti/48078.pdf>.

45. For a discussion of the obstacles facing renewable energy development in Indian country, see Elizabeth Ann Kronk, *Alternative Energy Development in Indian Country: Lighting the Way for the Seventh Generation*, 46 IDAHO L. REV. 449, 467-68 (2010); Elizabeth Ann Kronk Warner, *Renewable Energy Depends on Tribal Sovereignty*, 69 U. KAN. L. REV. 809, 840-41, 843 (2021).

<sup>46</sup> Kronk Warner, *supra* note 45, at 823-26.

47. WHITE HOUSE BRIEFING ROOM, FACT SHEET: PRESIDENT BIDEN SETS 2030 GREENHOUSE GAS POLLUTION REDUCTION TARGET AIMED AT CREATING GOOD-PAYING JOBS AND SECURING U.S. LEADERSHIP ON CLEAN ENERGY TECHNOLOGIES (Apr. 22, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/>.

48. *Id.*

49. *Id.*

50. DEP’T OF ENERGY, DOE ANNOUNCES \$100 MILLION FOR TRANSFORMATIVE CLEAN ENERGY SOLUTIONS (Feb. 11, 2021), <https://www.energy.gov/articles/doe-announces-100-million-transformative-clean-energy-solutions>.

and energy justice principles. But, as of the time of writing, it is uncertain whether the interest being shown by the Biden Administration will translate into actions to promote energy and environmental justice within Indian country.

The targets announced by President Biden are reflected in the commitments made by the United States in its Nationally Determined Contribution (NDC) submitted in April 2021.<sup>51</sup> Because the United States has re-entered the Paris Agreement, it submitted a revised NDC. The NDC announces the major new goal of reducing greenhouse gas emissions by 50-52 percent below 2005 emissions across the United States economy by 2030.<sup>52</sup> The new NDC goes on to recognize that environmental justice and prioritizing investment to benefit communities of color and lower socio-economic communities will go a long way toward ensuring that the energy burden does not continue to negatively impact these groups.<sup>53</sup> Again, this suggests the possibility that implementation could be done in a way that is consistent with environmental justice and energy justice. The NDC identifies pathways through various sectors, such as electricity, transportation, buildings, industry, and agriculture and lands, to meet its major goal of reductions by 2030, reiterating the goal of “100 percent carbon-pollution free electricity by 2035.”<sup>54</sup>

In addition to the Biden Administration’s commitment to increased clean and renewable energy production, the cost of such development has also substantially decreased recently.<sup>55</sup> These price reductions are making such development much more affordable and accessible.

Ultimately, whatever motivations may exist between tribes and the federal government, numerous tribes are engaged in renewable and clean energy development across the United States.<sup>56</sup> Having tribes play a significant role in clean and alternative energy development in ways that promote tribal sovereignty and tribal environmental ethics will advance such development in a way that is consistent with energy and environmental justice principles applicable in Indian country. According to the US Department of Energy, wind and solar energy represent economic potential of “more than \$75 billion in project investment.”<sup>57</sup>

---

51. U.N. CLIMATE CHANGE, THE UNITED STATES OF AMERICA, NATIONALLY DETERMINED CONTRIBUTION: REDUCED GREENHOUSE GASES IN THE UNITED STATES: A 2030 EMISSIONS TARGET, UNFCCC N.D.C. REGISTRY (INTERIM) 1 (Apr. 22, 2021), <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/United%20States%20of%20America%20First/United%20States%20NDC%20April%202021%202021%20Final.pdf>.

52. *Id.*

53. *Id.* at 2.

54. *Id.* at 3.

55. Zak Podmore, *Navajo Nation solar project to boost San Juan County’s position as energy exporter*, Salt Lake Tribune A5 (Apr. 18, 2021) (“Industrial-scale renewable projects have plummeted in price during the past decade. A 2019 report found that wind energy prices fell 70% between 2009 and 2019, and solar photovoltaics have plunged by 89% on average.”).

56. See Elizabeth Ann Kronk Warner, *Renewable Energy Depends on Tribal Sovereignty*, 69 KANSAS L. REV. 809, 836-42 (2021).

57. Anelia Milbrandt et al., *TECHNO-ECONOMIC RENEWABLE ENERGY POTENTIAL ON TRIBAL LANDS* 39 (National Renewable Energy Laboratory, 2018).

With dedicated federal and private sector support and collaboration, tribes can play a significant role in the clean energy transition.

Tribes are making significant progress in switching to and investing in clean energy.<sup>58</sup> For example, the Standing Rock Sioux Tribe built a solar farm that produces enough energy to power two large community buildings.<sup>59</sup> The Winnebago Tribe installed solar panels on every building it could within its reservation and developed 720kW capacity.<sup>60</sup> Similarly, the Navajo Nation is actively engaged in renewable energy development, as it is currently in the process of developing several solar projects.<sup>61</sup> For example, in April 2021, Nation officials signed leases that will result in a 70-megawatt solar project that will provide power to cities in Utah and generate funds for the Tribe.<sup>62</sup> Beyond solar power, the Tribe is looking at other sources of clean and renewable energy development, such as the proposed \$3.6 million Navajo Energy Storage Station that would use solar energy to pump water through hydroelectric turbines (“and not permanently divert water from the Colorado River”).<sup>63</sup>

In sum, the stage has been set for the possibility of energy and environmental justice to both emerge within Indian country. But, as detailed above, tribes themselves (as opposed to third party investors) are taking up the mantle and engaging in clean energy development. Further, the Biden Administration has indicated its willingness to acknowledge and work toward environmental justice in Indian country, and also work toward energy justice through the promotion of clean energy. The combination of these two developments suggests that justice is possible in Indian country. It remains to be seen, however, whether energy and environmental justice in Indian country will be realized. We look forward to future articles exploring whether actualization occurs.

### III. JUST TRANSITIONS AND RURAL REVITALIZATION

Having examined environmental justice and energy justice considerations within Indian country, the discussion now shifts to an examination of related developments within coal-reliant rural communities and rural America more broadly.<sup>64</sup> The past several years have brought attention to rural economic stagnation

---

58. For a discussion of other types of renewable energy development happening in Indian country, *see* Warner, *supra* note 56.

59. ENERGY INFO. ADMIN., *State Profile and Energy Estimates: South Dakota* (May 20, 2021), <https://www.eia.gov/state/analysis.php?sid=SD>.

60. CLIMATE REALITY PROJECT, *3 Native American Tribes Leading the Way on Clean Energy* (Aug. 8, 2019), <https://www.climaterealityproject.org/blog/3-native-american-tribes-leading-way-clean-energy>; *See generally* Warner, *supra* note 58.

<sup>61</sup> SANDIA NAT'L LABS., *NAVAJO RESIDENTIAL SOLAR ENERGY ACCESS AS A GLOB. MODEL 5, 8* (Sandra A. Begay et al. eds., 2018).

62. Zak Podmore, *Navajo Nation solar project will cement San Juan County's position as exporter of renewable energy*, THE SALT LAKE TRIBUNE (Apr. 19, 2021), <https://www.sltrib.com/news/environment/2021/04/19/navajo-nation-solar/>.

63. *Id.* If the Navajo Energy Storage Station is completed, it will produce more power than all the solar and wind energy projects currently in Utah.

64. *See generally* Adele Morris et. al., *THE RISK OF FISCAL COLLAPSE IN COAL-RELIANT COMMUNITIES* (Columbia Center on Global Energy Policy 2019), <https://www.energypolicy.columbia.edu/sites/default/files/fil>

and associated social problems.<sup>65</sup> While scholars of law and rurality, rural sociology, and related fields have long put forth ideas for better treatment of rural communities in law and policy,<sup>66</sup> other fields and media commentary have often taken a more pessimistic stance on the prospect of addressing rural marginalization and the so-called urban/rural divide.<sup>67</sup>

Similarly, commentary on the subset of rural communities that depend economically on fossil fuels has often not been particularly hopeful either. This issue overlaps with the one described above. For a time, the face of rural America was a coal miner, chanting at a political rally in resistance to any effort to end the dominance of the coal sector<sup>68</sup>—despite ample evidence that the future of energy does not revolve around coal, if coal is to be included in our energy mix at all.<sup>69</sup> This politicization of economic dependency on fossil fuels has created yet another wrinkle of complexity for the prospect of addressing this form of rural economic hardship.<sup>70</sup>

Today, the landscape of narratives and policies for both of these overlapping topics seems to have shifted. Until recently, advocating for rural revitalization initiatives or related efforts to help ease fossil fuel communities' burdens seemed like uphill battles to win mainstream hearts and minds.<sup>71</sup> As of this writ-

e-uploads/RiskofFiscalCollapseinCoalReliantCommunities-CGEP\_Report\_080619.pdf (discussing various forms of labor involved in coal industry).

65. Cf. Eduardo Porter, *The Hard Truths of Trying to 'Save' the Rural Economy*, N.Y. TIMES (Dec. 14, 2018), <https://www.nytimes.com/interactive/2018/12/14/opinion/rural-america-trump-decline.html>; Thomas Kaplan, *This Is Trump Country*, N.Y. TIMES (March 4, 2016), <https://www.nytimes.com/interactive/2016/03/04/us/politics/donald-trump-voters.html>.

66. See generally Lisa R. Pruitt et al., *Law Stretched Thin: Access to Justice in Rural America*, 59 S.D. L. REV. 466 (2014); Lisa R. Pruitt, *Spatial Inequality As Constitutional Infirmary: Equal Protection, Child Poverty and Place*, 71 MONT. L. REV. 1 (2010); Thomas W. Mitchell, *Destabilizing the Normalization of Rural Black Land Loss: A Critical Role for Legal Empiricism*, 2005 WIS. L. REV. 557 (2005); Katherine Porter, *Going Broke the Hard Way: The Economics of Rural Failure*, 2005 WIS. L. REV. 969 (2005); Geoffrey D. Strommer & Stephen D. Osborne, "Indian Country" and the Nature and Scope of Tribal Self-Government in Alaska, 22 ALASKA L. REV. 1, 1 (2005); Craig Anthony (Tony) Arnold, *Ignoring the Rural Underclass: The Biases of Federal Housing Policy*, 2 STAN. L. & POL'Y REV. 191 (1990).

67. See, e.g., David Swenson, *Most of America's rural areas are doomed to decline*, THE CONVERSATION (May 7, 2019), <https://theconversation.com/most-of-americas-rural-areas-are-doomed-to-decline-115343>.

68. Marc Fisher, *In West Virginia coal country, voters are 'thrilled' about Donald Trump*, THE WASH. POST (Dec. 6, 2016), [https://www.washingtonpost.com/politics/in-west-virginia-coal-country-voters-are-thrilled-about-donald-trump/2016/12/06/8eb0b0ca-b8c2-11e6-b994-f45a208f7a73\\_story.html](https://www.washingtonpost.com/politics/in-west-virginia-coal-country-voters-are-thrilled-about-donald-trump/2016/12/06/8eb0b0ca-b8c2-11e6-b994-f45a208f7a73_story.html).

69. Claire Jarrell, Comment, *Mine Reclamation's Reliance on King Coal: Meeting Legacy Environmental Obligations with A Declining Industry*, 90 U. COLO. L. REV. 901, 927-28 (2019) (discussing the decline of the coal sector).

70. Although weaning off of economic dependency on fossil fuels is a massive undertaking that will affect diverse demographics and sectors of the economy, it is true that white men are overrepresented in energy sector employment in general. Shelley Welton & Joel Eisen, *Clean Energy Justice: Charting an Emerging Agenda*, 43 HARV. ENVTL. L. REV. 307, 336-37 (2019). Rural communities are also disproportionately white, although regions have wide variations in their demographic makeup. *Rural America at a Glance*, USDA (2018), <https://www.ers.usda.gov/webdocs/publications/90556/eib-200.pdf> ("Whites make up nearly 80 percent of rural population" nationally).

71. Cf. Nathan Arnosti and Amy Liu, *Why rural America needs cities*, BROOKINGS (Nov. 30, 2018), <https://www.brookings.edu/research/why-rural-america-needs-cities/>.

ing, these two needs appear to have been embraced by mainstream public commentary and scholarship, in part due to more nuanced discussion and understanding of the issues.<sup>72</sup> These shifts in public sentiment are driving evolutions in law and policy, and, on the other side of the coin, changes in law and policy are helping shape the collective sense of what is possible.

This Essay now turns to the relationship between fossil fuel production and rural socioeconomic marginalization. Specifically, this section provides an overview of recent developments in federal assistance for and interventions into rural communities more broadly, alongside evolving changes in state approaches to just transitions for communities seeking to end their economic dependence on fossil fuels and pursue a more sustainable future. The discussion highlights a gap between the former (federal rural revitalization efforts) and the latter (state initiatives to wean off fossil fuels), as just transitions advocates continue to call for strengthened federal leadership on the massive task of restructuring an economy that has for so long been reliant on fossil fuels.<sup>73</sup>

#### *A. Federal Rural Revitalization Initiatives*

On the rural revitalization front, the American Rescue Plan Act of 2021 (ARPA) has reflected the most ambitious federal effort to help rural communities in decades. Former Montana Governor Steve Bullock argues that ARPA is, in fact, “one of the biggest investments in rural America in our history.”<sup>74</sup> A 1.9 trillion dollar rescue plan, President Biden signed ARPA into law on March 11, 2021, one day after Congress passed it.<sup>75</sup>

Rural revitalization was not an inevitable part of ARPA. The main drivers for ARPA were the COVID-19 pandemic, the related economic fallout, including massive unemployment and widespread worries about evictions, and the drive to vaccinate as many people as possible.<sup>76</sup> ARPA expanded the protections and aid included in a series of legislative initiatives passed at the beginning of the pandemic.<sup>77</sup> ARPA’s highlights included provisions to give roughly 85% of

---

72. See, e.g., Hannah Love and Tracy Hadden Loh, *The ‘rural-urban divide’ furthers myths about race and poverty—concealing effective policy solutions*, BROOKINGS (Dec. 8, 2020), <https://www.brookings.edu/blog/the-avenue/2020/12/08/the-rural-urban-divide-furthers-myths-about-race-and-poverty-concealing-effective-policy-solutions/>; Jeff Turrentine, *We Need a Just Transition—Because We Should Abandon Coal, Not Coal Workers*, NRDC (Oct. 18, 2019), <https://www.nrdc.org/onearth/we-need-just-transition-because-we-should-abandon-coal-not-coal-workers>.

73. Liz Crampton, *America’s rural crisis triggers calls for Biden to name rural czar*, POLITICO (Jan. 25, 2021), <https://www.politico.com/news/2021/01/25/america-rural-economy-health-biden-czar-461326>.

74. Steve Bullock, *Commentary: Biden’s American Rescue Plan Keeps Promise to Rural America*, THE DAILY YONDER (March 23, 2021), <https://dailyyonder.com/commentary-bidens-american-rescue-plan-keeps-promise-to-rural-america/2021/03/23/>.

75. *President Biden Signs the American Rescue Plan, Boosts Funds to Secure and Modernize Technology*, U.S. GEN. SERV. ADMIN. (March 11, 2021), <https://www.gsa.gov/about-us/newsroom/news-releases/president-biden-signs-the-american-rescue-plan-boosts-funds-to-secure-and-modernize-technology-03112021>.

76. *Id.*

77. *Congress Passes ARPA with Many COVID-19 Payroll-Related Provisions*, THOMPSON REUTERS (March 10, 2021), <https://tax.thomsonreuters.com/blog/congress-passes-arpa-with-many-covid-19-payroll->

U.S. households a direct payment of \$1,400 per person, extending unemployment insurance benefits and eligibility, expanding food aid eligibility, providing expanded assistance for child care, and providing emergency assistance to cover unpaid rent.<sup>78</sup>

ARPA also took broad strides to pursue the sort of revitalization that rural scholars and advocates have long insisted were necessary to address rural socio-economic challenges. Specifically, ARPA took steps to address longstanding problems in rural healthcare, food access, agricultural production issues, and access to high-speed internet. Notable appropriations include \$8.5 billion directed to rural healthcare providers, “\$10 billion to expand rural broadband,” “\$3.6 billion to the U.S. Department of Agriculture” (USDA) to enhance local food access, “\$300 million to the USDA for animal monitoring and testing,” “\$5 billion to support farmers of color,” and “\$750 million to support Indian Housing and Indian Community Development Block Grant programs.”<sup>79</sup> ARPA stands to provide a “potential historic economic boost . . . for small towns and rural communities,” in part because, as rural advocate Matthew Hildreth suggests, the policy embraces “trusting local governments and local people to solve local problems” while appreciating “the richness and diversity of small towns and rural communities.”<sup>80</sup>

While ARPA’s financial commitments signal the political will to act, challenges remain. Many rural appropriations dollars end up in the hands of large-scale agricultural producers that offer little benefit to local communities.<sup>81</sup> The communities that need the resources the most often have the least capacity to prepare complex materials to access and leverage funding opportunities.<sup>82</sup> Whether ARPA can live up to its potential for rural communities remains to be seen.<sup>83</sup> Hildreth insists that rural communities must receive technical assistance to apply for federal programs and must have a seat at the table in decision-making processes to inform successful and equitable implementation.<sup>84</sup>

### *B. State Approaches to Renewable Energy Transitions and Coal Reliance*

Transitions away from fossil fuels raise a set of concerns that reflect the broader challenges facing rural America, with a particularly acute set of conditions. Fossil fuels comprise 60.3% of today’s energy mix for electricity genera-

related-provisions/. Prior pandemic relief provisions were found in the Families First Coronavirus Relief Act, the Coronavirus Aid, Relief and Economic Security Act, and the Consolidated Appropriations Act, 2021.

78. *American Rescue Plan Fact Sheet*, WHITEHOUSE.GOV, <https://www.whitehouse.gov/wp-content/uploads/2021/03/American-Rescue-Plan-Fact-Sheet.pdf>.

79. Bullock, *supra* note 74; Matt Hildreth, *Comment: Covid aid promised to rural areas; now get it there*, THE HERALD (May 30, 2021), <https://www.heraldnet.com/opinion/comment-covid-aid-promised-to-rural-areas-now-get-it-there/>.

80. Hildreth, *supra* note 79.

81. *Id.*

82. Hildreth, *supra* note 79.

83. *Cf.* Gillian E. Metzger, *Taking Appropriations Seriously*, 121 COLUM. L. REV. 1075, 1086 (2021) (noting importance of appropriations for advancing policy agendas).

84. Hildreth, *supra* note 79.

tion.<sup>85</sup> Coal alone accounts for 19.3% of that supply as of 2020, while it accounts for a disproportionately high 60% of carbon dioxide emissions, making it one of the worst fuel sources for exacerbating climate change.<sup>86</sup> As of 2000, coal accounted for 51.4% of electricity generation.<sup>87</sup> These trends illustrate that coal has already been declining, and with pushes to decarbonize the economy, the sector stands to contract more. Thus, many coal-reliant livelihoods have already been lost, and many more are likely to be lost.

Losing coal jobs is particularly challenging for rural regions that lack diversified economies. As of 2019, 53,000 workers were employed in the coal power sector, and 26 U.S. counties were formally classified as “coal-mining dependent.”<sup>88</sup> With the past decline of jobs in coal mining and coal-fired power plants, regions have already seen the ripple effects of population loss, infrastructure decline, and a shrinking tax base that makes local and state governments less equipped to stop or reverse the downward socioeconomic cycle.<sup>89</sup> With decarbonization policies likely to strengthen in the coming years, the risk of further decline—what some have even called “fiscal collapse”—seems high without aggressive action to mitigate the risks.<sup>90</sup> Although Congress has taken some initiative to help fossil fuel-reliant communities, most activity on this front today is at the state level.<sup>91</sup>

State efforts to transition away from coal are proliferating around the country. Yet, the most promising just transition policies emerging are doing more than seeking to create new employment opportunities for displaced fossil fuel workers. One potential inequity of such an approach is that high-quality jobs in the fossil fuel sector are disproportionately occupied by white men.<sup>92</sup> Indeed, the energy sector altogether, including jobs in renewable energy fields, underrepresents women and people of color.<sup>93</sup> Meanwhile, while low-income communities of color have received fewer benefits from the fossil fuel economy, they have borne many of the costs.<sup>94</sup>

New Mexico and Colorado have been at the forefront of tackling the task of restructuring their economies to transition away from fossil fuels. Both states

---

85. *What Is U.S. Electricity Generation by Energy Source*, U.S. ENERGY INFO. ADMIN., <https://www.eia.gov/tools/faqs/faq.php?id=427&t=3> (last updated Mar. 5, 2021).

86. *Id.*; David Cherney, *Coal’s Unstoppable Decline Means Carbon Emissions Will Keep Dropping for Years to Come*, FORBES (Jan. 13, 2021), <https://www.forbes.com/sites/davidcherney/2021/01/13/coal-producers-affirm-us-carbon-emissions-from-electricity-will-keep-declining/?sh=64d1611a2ba1>.

87. FRED FREME, U.S. ENERGY INFO. ADMIN., U.S. COAL SUPPLY AND DEMAND: 2000 REVIEW (2001), <https://www.eia.gov/coal/review/pdf/feature00.pdf>.

88. Morris, Kaufman & Doshi, *supra* note 64, at 6.

89. *Id.* at 6-7.

90. *Id.*

91. Ann M. Eisenberg, *Transitions in Energy Communities*, 12 GEO. WASH. J. ENERGY & ENVTL. L. 103, 106-07 (Summer 2021) (describing the Obama administration’s POWER and POWER Plus Plans and prior, mostly failed federal efforts to assist declining coal communities).

92. *Id.* at 105-06.

93. *Id.*

94. Jeanne Marie Zokovitch Paben, *Green Power & Environmental Justice—Does Green Discriminate?*, 46 TEX. TECH. L. REV. 1067, 1071 (Summer 2014).

have pursued this aim with a view not just to finding new jobs for displaced workers, but also to restructuring their economies alongside efforts to pursue environmental justice. Their approaches will likely serve as models for others that are just beginning their just transition efforts.

Colorado House Bill 19-1314 created Colorado's Office of Just Transition along with the state's Just Transition Advisory Committee, which was tasked with developing a just transition plan by the end of 2020.<sup>95</sup> The 20-page document describes the process of creating the plan, which included "a year of extensive study and deliberation by the Colorado Just Transition Advisory Committee . . . [a]nd [which] reflects input from a wide range of stakeholders, issue experts, state agencies, and members of the public."<sup>96</sup> The plan's overarching goals are to "help each community end up with more family-sustaining jobs, a broader property tax base, and measurably more economic diversity than when this process began in 2019."<sup>97</sup>

The Colorado Plan recognizes that the task of dealing with the fallout of coal is ultimately a question of rural revitalization. It notes that

[t]he transition away from coal to generate electricity . . . is a predictable result of a fundamental shift in the energy economy. We can see it coming long in advance. . . . Transitions like this have happened in rural Colorado throughout our state's history, and it is due in part to inadequate (or nonexistent) government response that they too often have perpetuated boom-bust cycles that have devastated families and communities."<sup>98</sup>

Strategically, the Colorado Plan focuses on "early and relatively low-cost actions we can take now to prepare," in light of many anticipated costs being both substantial and unclear in a process it expects to take "a decade or longer."<sup>99</sup> Substantively, the Colorado Plan focuses on efforts to facilitate communities' economic diversification, attraction of quality jobs, and promotion of broader property tax bases, pursuing diverse funding strategies and keeping the plan up to date as conditions evolve.<sup>100</sup> Colorado legislators have also pursued energy justice for ratepayers at risk of being saddled with the costs of retiring coal-fired power plants by securitizing debts associated with the plants.<sup>101</sup>

95. Eisenberg, *supra* note 91, at 107. *See also*, Colorado, *United States: State-Level Planning for a Just Transition from Coal*, WORLD RES. INST. <https://www.wri.org/just-transitions/colorado> (last visited Oct. 5, 2021).

96. COLO. DEP'T OF LABOR AND EMP'T, COLO. JUST TRANSITION ACTION PLAN 1 (2020) [hereinafter Just Transition Action Plan].

97. *Id.* (emphasis omitted).

98. *Id.* at 2.

99. *Id.* at 3. The Plan states, "This is not a dodge. It is an honest and responsible reflection of the times we are in." *Id.*

100. Just Transition Action Plan, *supra* note 96, at 4, 5, 17.

101. 2019 Colo. Sess. Laws 3290 (SB19-236). This type of securitization has been employed by other states to mitigate the impact of other costs, including ameliorating wildfires and failed nuclear plants. *See e.g.*, *Financing Order Authorizing the Issuance of Recovery Bonds Pursuant to Assembly Bill 1054*, California Pub. Util. Comm'n, Application 20-07-008 (Nov. 5, 2020); Order No. PSC-2019-0012-CFO-EI, *Order Granting Duke Energy Florida, LLC's Second Request for Extension of Confidential Classification*, Fla. Pub. Serv. Comm'n, No. 20150148-EI (Jan. 2, 2019).

New Mexico's Energy Transition Act of 2019 (Senate Bill 489) shares some overlapping themes with the Colorado initiative. Although it has received ample attention for committing New Mexico to a 50-percent renewable energy standard by 2030, the Act also includes substantial workforce training and economic transition assistance for impacted communities.<sup>102</sup> The Act creates a workforce solutions department to direct assistance to displaced workers, creates an economic development department to assist with diversifying affected communities' economies, and establishes apprenticeship programs to encourage diversity among participants in new energy sector jobs.<sup>103</sup> Like Colorado's law, the Act provides for enhanced planning processes for communities transitioning away from fossil fuels.

Although these approaches are certainly promising, they raise the question of whether Congress or the Executive branch should be tackling these issues directly rather than leaving it to the states. In fact, Colorado's Plan includes the measure that Colorado will "[e]ncourage the federal government to lead with a national strategy for energy transition workers."<sup>104</sup> Similarly, just transition advocates have called for Congress to create an Office of Economic Transition to handle the overwhelming task of restructuring the economy—including the economies if many coal-reliant communities—as we transition away from fossil fuels.<sup>105</sup>

Ultimately, ARPA on the one hand—reflecting a variety of historic, much-needed interventions to address rural poverty, infrastructure, and economic development—and state just transition efforts on the other hand—reflecting a diversity of approaches to locally and regionally driven economic transformation—raises the question of whether the country needs an ARPA-like intervention specific to coal or other fossil fuels. Such an intervention is in fact what just transitions advocates want from Congress.<sup>106</sup> Such an intervention could also come in the form of the much-discussed, but as-yet-realized, Green New Deal. A consistent call among activists is for a unified, centralized, well-supported national approach—maybe legislation resembling ARPA, but specific to coal—to help coal-reliant regions transform their economies. Whether Congress will heed their call remains to be seen.

#### IV. CONCLUSION

As the two case studies examined above demonstrate, Indian country and coal-reliant rural communities have long experienced energy injustice and environmental injustice. Yet, both case studies also demonstrate that justice in both

---

102. Press Release, Office of the Governor Michelle Lujan Grisham, Governor Signs Landmark Energy Legislation, Establishing New Mexico as a National Leader in Renewable Transition Efforts (Mar. 22, 2019), <https://www.governor.state.nm.us/2019/03/22/governor-signs-landmark-energy-legislation-establishing-new-mexico-as-a-national-leader-in-renewable-transition-efforts>.

103. S.B. 489, 54th Leg., 1st Sess. (NM. 2019).

104. Just Transition Action Plan, *supra* note 96, at 2.

105. See e.g., Eisenberg, *supra* note 91, at 108 (discussing, for example, call from philanthropic Just Transition Fund to establish federal Office of Economic Transition).

106. *Id.*

communities is possible. Although environmental justice in these communities looks different, as environmental justice in Indian country must include considerations of tribal sovereignty, opportunities exist to achieve environmental justice in both types of communities.

The Biden Administration's general focus on environmental justice and its intersection with clean energy development has the potential to benefit both of these communities. Further, developments specific to both communities suggest that justice is possible. In Indian country, tribes are increasingly becoming much more involved and even owning clean energy development projects. This development is consistent with environmental justice as explored above and also promotes the development of clean and renewable energy, which is consistent with energy justice. Although it is the states taking the lead in rural communities, rather than tribes, the outcome is similar. States, such as Colorado and New Mexico, are developing policy initiatives that will help promote the development of clean energy and shift the economies of coal-dependent counties. These initiatives are consistent with energy justice principles calling for increased development of clean energy, and also environmental justice as these vulnerable communities will be less likely to shoulder the burden of environmental pollution related to coal extraction.

Accordingly, while the vehicles of change differ between Indian country and rural communities dependent on coal production, the result is the same – we are on the precipice of environmental justice and energy justice in both communities. Although these communities' circumstances are unique, the emerging pathways to justice have broad relevance to other environmental justice communities. The most promising steps discussed above involve devolved decision-making, localized control, public infrastructure investments, and explicit considerations of racial and geographic equity in the push toward clean energy. These factors are pieces of the puzzle in moving toward a justice-based energy system rather than a system that repeats or reifies the mistakes of the past. We look forward to future articles in the Journal exploring whether energy and environmental justice progress.