

PHD THESIS SUMMARY:
What is Owed to the Losers of the Energy Transition?
The Case of Fossil Fuel Reserve Owners

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Avoiding the dangerous and irreversible effects of climate change requires a rapid transition to low-carbon economies. This transition imposes significant transitional losses on some agents given the benefits they can no longer realize or, in other words, it leads to the stranding of their assets.¹ This gives rise to the question of what is owed to these transitional losers, the agents who are disadvantaged by the transition succeeding, and whether transitional measures such as transitional support, exemptions from new rules, or financial compensations are justified.² I contribute to the state of the art by analyzing the existing theories on just transitions, mainly by focusing on the concept of legitimate expectations. I develop an account about the normative relevance of expectations and clarify the role they play in a general theory of just transitions. I apply this to the case of fossil fuels owners—states and companies—whose reserves may not be used to generate energy for domestic use or as a source of revenue and represent a large and clearly defined category of potentially stranded assets.

Before discussing possible justifications for transitional measures, chapter 2 indicates whose fossil fuels should stay in the ground according to principles of inter- and intragenerational justice and to whom transitional measures may therefore apply. Given that a just target requires that we at least avoid global warming of more than 2°C, about two thirds of the world's proven fossil fuel reserves should stay in the ground. The distribution of the remaining permissible production benefits should be based on countries' number of inhabitants, developmental needs, how

¹ Stranded assets are assets (anything of value) that suffered from *unanticipated* (unexpected) or *premature* (earlier than expected) devaluations (Caldecott 2017, 2).

² I discuss the question of what is owed to transitional losers independently of whether or not they have compensatory duties themselves.

much they produced in the past, and the carbon intensity of their reserves. Most fossil fuels should, therefore, stay in the ground in regions that are wealthy or that have a lot of carbon intensive reserves such as the United States, the former Soviet Union countries, the Middle East, Canada, Europe, Australia, and Latin America. In chapter 3, I rebut arguments for protecting reserves from stranding that rely on libertarian values, distributing mitigation burdens instead of the remaining benefits, the intrinsic value of conservatism, or feasibility.

In chapter 4, I explain how authors, in the context of just transitions, have argued for the relevance of promises by invoking a Rawlsian understanding of legitimate expectations.³ According to the rights-transfer view, promissory entitlements arise when the promisor transfers the right to decide on whether she will perform the action mentioned in the promise to the promisee, through the communicated intent to do so (Shiffrin 2011, 157). Promises towards fossil fuel owners, however, only have limited relevance. First, few promises exist about future permissions to produce fossil fuels because promises about following and enforcing laws only exist on the domestic level (there is no strong, centralized regulatory body on the international level that could ground similar claims for states that own fossil fuels) and since these promises typically do not concern the future. Contracts between states and companies usually concern only the near future as well. A second limitation to the relevance of promises towards fossil fuel owners is that before promises could lead to entitlements, they should be just. Otherwise, there could be no valid rights-transfer: one could not transfer the right to decide on whether one will perform an unjust action to the promisee because one does not have the right to perform unjust actions. States, thus, could not create promissory entitlements about production permissions that are inconsistent with their remaining permissible budgets.

However, when promises are lacking or unjust, expectations may still lead to normative claims. The Humean interpretation of legitimate expectations refers to actual expectations that are normatively relevant. According to the Humean (as opposed to the Rawlsian) understanding, thus, expectations give rise to entitlements, they are foundational: the right to X follows from expecting X and not the other way around (Moore

³ See, for example, Matravers (2017), Meyer and Sanklecha (2011, 467-468; 2014), and Rawls (1971, 275-276). Green (2020) also interprets legitimate expectations in a Rawlsian way, but argues against its relevance in this context.

2017, 235). In chapter 5, I investigate how and under what conditions existing expectations create rights. Expectations play an important role in making and executing plans. Based on the expectation of regulatory stability, fossil fuel owners made considerable investments in fossil fuel explorations and extractive infrastructures. Forward-looking views, then, ground duties to fulfill expectations by referring to people's capacities to do so and the interest of the expecting agents to have their expectations fulfilled. Many authors adopt such a view by contending that fossil fuel owners who are dependent on their productions should receive more of the remaining permissible budget because they can create more production benefits than those who are less dependent.⁴ Others argue that expectations about future production benefits create a special interest to produce and that this affects the just distribution of the remaining production benefits.⁵ However, these forward-looking views only ground positive duties of charity. If merely expecting things would lead to duties of justice, moreover, this would have counterintuitive implications and fossil fuel owners would be incentivized to keep producing or to postpone mitigation efforts to create entitlements to produce more.

Instead, the backward-looking account I propose derives the normative relevance or legitimacy of expectations from the principle that one should not harm others and that one should compensate the harms for which one is morally responsible (Feinberg 1987, 34–35; Denaro 2012, 150). I argue that states should compensate fossil fuel companies if they are responsible for the harm they caused by inducing false expectations about regulatory stability, which is the case if doing so was avoidable and foreseeable.⁶ By not taking climate action and by continuing to issue licenses and subsidies to explore and extract fossil fuels when the need for mitigation was already known, I contend, states foreseeably and avoidably created the expectation in companies that they will be able to keep producing fossil fuels in the future, at least until 2015, when they pledged to mitigate climate change under the Paris Agreement and communicated their Nationally Determined Contributions. However, this only justifies compensation for companies' reliance costs, that is to say the costs of

⁴ See, for example, Knight (2013, 2014), Peterson (1999, 178–179), Muttitt and Kartha (2020, 1024), and Singer (2010).

⁵ See, among others, Gosseries and Hungerbühler (2006, 106), Meyer and Truccone-Borogno (2022), and Moore (2017, 235–236).

⁶ Brown (2017, 73) also focuses on responsibility for causing expectations, but considers causality as sufficient for grounding moral responsibility and therefore attributes legitimate expectation claims too easily.

relying on the expectation of regulatory stability in terms of investments, and not for their opportunity costs, that is the costs of not being able to realize the benefits of producing their fossil fuels as they expected, since only the former costs are a result of having false expectations.

While chapter 5 focuses on the relevance of existing expectations which follows from the duty not to create false expectations, chapter 6 investigates the duties of states to actively create correct expectations about future fossil fuel production permissions.⁷ I argue that fossil fuel owners have an interest to be informed about future regulations and that this leads to positive duties on the part of states. While Green (2019) contends that companies are responsible for managing change because this is the existing practice and because they indeed possess some capacities to do so, in my view, states are in a much better position to provide expectations about future regulations since they create these regulations. These positive duties, moreover, are special duties of justice given the relationship of states with the fossil fuel companies that operate in their territory and over whom they exercise a right to rule. In investigating how states should create correct expectations, I contend that they should inform fossil fuel owners about future regulations, the probability of change, the factors on which this depends, and how they could adjust their investments. To be able to create more correct expectations about future regulations, I argue that they should create coherent, clear, open, public, transparent, prospective, and stable laws and that introducing an element of stability in future regulations requires them to sacrifice some flexibility to adjust regulations when new information arises.

According to my account, therefore, states should provide limited compensations for some fossil fuel owners' expectation-related harms and they should actively create correct expectations about future regulations. In my view, less is owed to the losers of just transitions than in most competing accounts, since I argue against both the relevance of promises and the forward-looking relevance of existing expectations, since I argue that states should only compensate expectation-related harm if they caused it in a foreseeable and avoidable way, and since I argue that they should only compensate reliance costs and no opportunity costs. Although the claims of fossil fuel owners are limited, it is important to take them into account. Striving towards a just transition

⁷ This part of my theory corresponds with Green's (2019) Adaptive Responsibility Theory. Although he argues against the relevance of expectations, his focus on who is responsible for managing the risk of legal change largely comes down to focusing on who is responsible for forming correct expectations about legal change.

that is grounded in a clear normative framework not only matters for the sake of justice itself: it also facilitates perceived fairness and the likelihood that the energy transition will succeed.

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