Justice in Climate-Induced Migration and Displacement

PhD Politics (Political Theory)

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Declaration of Original Authorship

I confirm that this is my own work and the use of all material from other sources has been properly and fully acknowledged.

Section 2 of Chapter VII draws on material in my "Responsibility and Climate-induced Displacement," *Global Justice: Theory, Practice, Rhetoric* 11, no. 2 (2019): 59–80.

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Abstract

This thesis sets out a theory of justice in climate-induced migration and displacement. The impacts of climate change are reshaping patterns of migration and displacement around the world. Extreme weather-events destroy homes, environmental degradation undercuts the viability of livelihoods, sea-level rise and coastal erosion force communities to relocate, and risks to food and resource security magnify the sources of political instability. The anthropogenic nature of climate change raises questions about our responsibilities towards those affected by climate-induced migration and displacement, and about the institutions we need to discharge those responsibilities. This thesis responds to these questions by critically examining the institutions that structure our response to climate-induced migration and displacement and by articulating an account of the duties that we owe to those affected by it. The account that I set out, which I call the *ecological* approach, conceives of a just response to climate-induced migration and displacement as consisting in a network of institutions and practices for governing different forms of climate-induced migration and displacement, united by a principle of cost-sharing at the international level.

Chapter I introduces the phenomenon of climate-induced migration, surveying the empirical and normative literatures on the topic. Chapter II sets out the methodological approach that I take, which I call the *interpretive* approach. Chapter III argues against a prominent approach to climate-induced displacement, which I call the *unitary* approach. Chapters IV, V and VI examine three different domains in which climate-induced migration and displacement arises: climate change adaptation, the refugee regime, and the governance of internal displacement. Chapter VII examines how the costs of tackling climate-induced migration and displacement should be shared between states. Chapter VIII concludes by reviewing the overall argument, reflecting on its limitations and posing some questions for future research.

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Contents

I. Climate-Induced Migration and Displacement: An Introduction

1. Introduction

In the Sahel region of Africa, drought and desertification are increasing as a result of the impacts of climate change.[1] Drought and desertification have long featured in the lives of farmers in the Sahel, but as they increase in frequency and severity the livelihoods of many who depend on the land are being put under significant pressure. Historically, those affected have turned to migration as a strategy for mitigating the impact of drought, by seeking work in cities and sending remittances to their families and kin, or by moving to areas more conducive to the agricultural practices upon which they rely.[2] Today, this pattern is intensifying. In Chad, Hindu Oumarou Ibrahim from the pastoralist Peul Mbororo community recounts this experience:

> [C]limate change is not a new phenomenon for my community. For several years now, we all have observed and noticed the gradual changes in the environment, rainfall patterns, natural resources and biodiversity. But recently, the pace of change has quickened and now more than ever our activities are disrupted and we are no longer in control of our environment…. We are now forced to migrate over long distances and to areas where we never used to venture.… This is our form of adaptation. We have always mastered it, but if nothing is done to ensure the safety of our space and activities, we risk, one day, being forced to abandon our way of life and join the swelling ranks of the unemployed in the city.[3]

As the impacts of climate change unfold, we can expect the impacts of environmental degradation such as this to become even more severe.

On the other side of the world, and the other side of the temperature scale, native Alaskan communities are also facing the impacts of climate change. Shishmaref is an Iñupiaq community in the North-Western reaches of Alaska, which is facing the prospect of being relocated due to shoreline erosion, reductions in sea ice and storm surges relating to climate change. The community is at the centre of a complex food distribution network and is "a cornerstone for Iñupiaq traditions, foods, livelihood, and culture."[4] Renee Kuzuguk's account of the situation is as follows:

> We are about to lose our homes -- from erosion…. The ocean takes away land from our Island…. We moved some of our homes from the west side of Shishmaref to the east side. We moved some of our

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[1] Aiguo Dai, "Drought under Global Warming: A Review," *Wiley Interdisciplinary Reviews: Climate Change* 2, no. 1 (2011): 45–65.
[2] See Jon Pedersen, "Drought, Migration and Population Growth in the Sahel: The Case of the Malian Gourma: 1900–1991," *Population Studies* 49, no. 1 (1995): 111–26.
[3] Cited in IOM, *International Dialogue on Migration Vol. 18 – Climate Change, Environmental Degradation and Migration* (IOM, 2012), 52–53.
[4] Elizabeth Marino, "The Long History of Environmental Migration: Assessing Vulnerability Construction and Obstacles to Successful Relocation in Shishmaref, Alaska," *Global Environmental Change* 22, no. 2 (2012): 377.

> homes because we live in them and if we hadn't moved they would've fallen into the ocean…. [W]orkers put out a huge seawall along the beach. They put a huge seawall because the ocean was eating too much land, and they tried to stop it…. There was an old seawall, but it sank into the ocean…. I think everybody in Shishmaref is a family. And I don't want to lose them.[5]

As climate change renders more areas uninhabitable, we can expect relocation projects such as these to become more frequent.

In other cases, the impacts of climate change manifest in more abrupt ways:

> The rains came in the middle of the night, whilst most people were sleeping. When we woke up, there was water of about 2-3 feet and we did not know how to escape, because our village is far from the main road…. I was very pregnant at the time, and our livestock are our livelihood so we didn't want to leave them to die, so we did not know what to do. We were rescued in boats by the army and NGOs. We are thankful to be alive, but we lost our livestock and now we are trying to rebuild our livelihood by starting from the beginning.[6]

These are the words of Fatay and Zulaikar, a husband and wife from the Badin district of Sindh, Pakistan, recounting their experience of the floods that hit their home. In July 2010, Pakistan was hit by severe flooding in the Indus River basin associated with heavy monsoon rains, which resulted in an estimated 10 million people being displaced.[7] The following year, flooding struck again, and destroyed an estimated 1.7 million homes.[8] We cannot say with much confidence that any specific extreme-weather event is a result of the impacts of climate change, but we do know that events such as these are predicted to become more frequent and more intense as climate change unfolds.[9]

At around the same time, a crisis of climate and conflict was unfolding in the Horn of Africa. In 2010, a strong La Niña event, intensified by warming in the Indian Ocean associated with climate change, precipitated a food security crisis in a region embattled by persistent political conflict.[10] According to CARE International, which provides services in the Dadaab Refugee Camp in Kenya (where many fleeing violence in the Horn of Africa go), the 2010 food crisis hit Somalia especially hard because of the

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[5] Renee Kuzuguk, "Homeless? Many Strong Voices: Portraits of Resilience" (Many Strong Voices, n.d.), available at http://www.manystrongvoices.org/portraits/stories.aspx?id=4022&t=136.
[6] Cited in Amiera Sawas, "Disaster-Proofing Your Village before the Floods – the Case of Sindh, Pakistan," *Climate and Development Knowledge Network* (blog), July 31, 2012, available at https://cdkn.org/2012/07/disaster-proofing-your-village-before-the-floods-%e2%80%93-the-case-of-sindh-pakistan/.
[7] Asia Development Bank, *Addressing Climate Change and Migration in Asia and the Pacific* (Asia Development Bank, 2012), 5.
[8] OCHA, "Pakistan Media Factsheet" (OCHA, 2011), available at https://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_51.pdf.
[9] Clare M. Goodess, "How Is the Frequency, Location and Severity of Extreme Events Likely to Change up to 2060?," *Environmental Science & Policy* 27, Supplement 1 (2013): S4–14.
[10] Chris Funk, "We Thought Trouble Was Coming," *Nature* 476, no. 7358 (2011): 7–7.

persistent conflict in the region.[11] A Somali farmer speaking in another camp, the Nakiavale settlement in Uganda, explains:

> We had droughts in the 1970s and 1980s. However, the government supported us at that time, which allowed us to survive…. [S]ince there was the war, we did not receive any support from the government. Therefore, there are combined factors that made us suffer: droughts and war. If war did not exist, then we might have been able to stay, but now that the land is looted, there is no way for us to claim it.[12]

As climate change unfolds, we can expect the interactions between political fragility, food security, conflict, and displacement to be magnified.

In all these cases and more, climate change is reshaping the ways in which migration and displacement take place. Although migration in response to changes in one's environment is not a new phenomenon, it is one which merits critical attention in the context of the increasing severity of the impacts of anthropogenic climate change. The phenomenon of climate-induced migration and displacement comes into view as a matter of serious moral and political concern against the backdrop of our continued failure to meaningfully mitigate the impacts of climate change. Since the early 1990s, there has been a concerted international effort to address climate change, but that effort has been stymied by, amongst other things, political inertia and short-termism, intransigence amongst political actors and the public, active campaigns of disinformation, and geo-political rivalries.[13] As a result, our collective ability to meaningfully tackle climate change is in serious question, and the extent to which we can expect the impacts of climate change upon migration and displacement to be mitigated is unclear.

The anthropogenic nature of climate change raises questions about our responsibilities towards those affected by climate-induced migration and displacement, and about the institutions we need to discharge those responsibilities. This thesis is an attempt to examine climate-induced migration and displacement from the standpoint of justice. It seeks to critically examine the institutions and practices that structure our response to migration and displacement relating to climate change, and to provide an account of the duties that we owe to those affected by it.

As can be seen from the examples above, 'climate-induced migration and displacement' is not a simple or unified phenomenon. Unfortunately, in the public imagination, the phenomenon of climate-induced migration and displacement has become both amplified and simplified. Slews of articles about "climate

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[11] CARE International, "Dadaab Refugee Camps, Kenya," *CARE* (blog), September 23, 2013, available at https://www.care.org/emergencies/dadaab-refugee-camp-kenya.
[12] Cited in Tamer Afifi et al., *Climate Change, Vulnerability and Human Mobility: Perspectives of Refugees from the East and Horn of Africa* (UNU-EHS, 2012), 47.
[13] For a good overview of the stunted development of the international climate policy regime, see Dale Jamieson, *Reason in a Dark Time: Why the Struggle Against Climate Change Failed — and What It Means for Our Future* (Oxford University Press, 2014), 11–60. See also the discussion in this thesis at Chapter VII, sec. 3.

refugees" have filtered into public discourse and have promoted misconceptions about climate-induced migration and displacement.[14] As critics have pointed out, this term has been used to evoke images of waves of migrants from the global South descending upon Northern states, and has been deployed strategically in order to make climate-related migration and displacement seem primarily a matter of national security.[15] For example, a widely circulated 2003 military intelligence report outlining the challenges of climate change for U.S. national security predicted that "borders will be strengthened around the country to hold back unwanted starving immigrants from the Caribbean Islands (an especially severe problem), Mexico and South America."[16] This 'securitised' perspective on climate-induced migration and displacement paints it as, in the words of Sir David King, the former Chief Scientific Advisor to the U.K., "an existential threat to our civilisation."[17] This perspective removes all considerations of justice from discussions about climate-induced migration and displacement, but it also wildly misunderstands and exaggerates our knowledge about the links between climate change, migration and displacement. As we will see, the empirical literature on climate-induced migration and displacement paints a more complicated picture, in which there are significant uncertainties about the way in which climate change, migration and displacement interact.

Another popular misconception about climate-induced migration and displacement is that it exclusively concerns movement from small-island states such as the Maldives, Kiribati, Tuvalu, Vanuatu, the Solomon Islands and the Marshall Islands. These states are networks of low-lying islands, many of which are coral atolls, and are particularly vulnerable to sea level rise and coral bleaching relating to climate change. In advance of the 15th meeting of the Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) in Copenhagen in 2009, then-President of the Maldives, Mohamed Nasheed, held an under-water cabinet meeting in order to raise awareness of the impacts that climate change is likely to have on his country.[18] Later, speaking at COP15, Nasheed said:

> The threats posed to the Maldives from climate change are well-known; weather events will make it harder and harder to govern our country, until a point reaches where we must consider abandoning our

[14] See, for example, Matthew Taylor, "Climate Change 'Will Create World's Biggest Refugee Crisis,'" *The Guardian*, November 2, 2017; Damian Carrington, "Climate Change Will Stir 'Unimaginable' Refugee Crisis, Says Military," *The Guardian*, December 1, 2016; Ben Spencer, "UK Warned of 'Climate Change Flood of Refugees': Droughts and Heatwaves Could Force Millions to Flee their Country," *The Daily Mail*, April 1 2014; Jonathan Leake, "Climate Change 'Could Create 200m Refugees,'" *The Sunday Times*, April 1, 2007.
[15] Giovanni Bettini, "Climate Barbarians at the Gate? A Critique of Apocalyptic Narratives on 'Climate Refugees,'" *Geoforum* 45 (2013): 63–72; Betsy Hartmann, "Rethinking Climate Refugees and Climate Conflict: Rhetoric, Reality and the Politics of Policy Discourse," *Journal of International Development* 22, no. 2 (2010): 233–46.
[16] Peter Schwartz and Doug Randall, "An Abrupt Climate Change Scenario and Its Implications for United States National Security," October 2003, 18, available at https://apps.dtic.mil/docs/citations/ADA469325.
[17] David King, quoted in Taylor, "Climate Change 'Will Create World's Biggest Refugee Crisis.'"
[18] BBC, "Maldives Cabinet Makes a Splash," October 17, 2009.

> homeland. We in the Maldives desperately want to believe that one day our words will have an effect, and so we continue to shout them, even though, deep down, we know that you're not really listening.[19]

The image of 'sinking' island states has captured the public imagination, and citizens of small-island states have become the flagship example of climate-induced migration and displacement.[20] As critical geographers have identified, the discourse that has emerged around small-island states has represented them as a "canary in the coalmine" for climate change.[21] Numerically, small-islanders make up a small portion of those affected by climate-induced migration and displacement, but they have come to be emblematic of the wider climate crisis. The apparent inevitability of the 'disappearance' of small-island states obscures the fact that there is much that can be done to prevent their disappearance in the first place.[22] Sea level rise undoubtedly presents a crucial and pressing challenge for small-island states. But it is important to realise that small-islanders are not the only people affected by climate-induced migration and displacement, even if they figure most prominently in headlines and television programmes.

These misconceptions, which in fact contradict each other (if climate-induced migration and displacement is a large-scale national security threat, then it cannot exclusively concern a relatively small number of small-islanders, and *vice versa*), are widespread in the public discourse surrounding climate-induced migration and displacement. It is crucial to get a better understanding of the relationship between climate change, migration and displacement and if our analysis is to move beyond engaging with the simplistic picture painted in the public discourse on 'climate refugees.' In the next section of this introductory chapter, I outline the state of our empirical knowledge of climate-induced migration and displacement, which I take to be a necessary prelude engaging with the normative questions that it raises. This clears the ground for introducing the idea of an account of *justice* in climate-induced migration and displacement. In the second part of the chapter, I explain what I mean by 'justice.' I review the ways in which political theorists have begun to engage with climate-induced migration and displacement as a matter of justice and situate my own approach in relation to this existing literature. Finally, I outline a road map of the thesis.

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[19] Mohamed Nasheed, in Jon Shenk, *The Island President*, Documentary, 2012.
[20] See, for example, Leslie Allen, "Will Tuvalu Disappear Beneath the Sea?," *Smithsonian Magazine*, August 2004; Daniel Williams, "That Sinking Feeling," *Time Magazine*, August 20, 2001.
[21] Carol Farbotko, "Wishful Sinking: Disappearing Islands, Climate Refugees and Cosmopolitan Experimentation," *Asia Pacific Viewpoint* 51, no. 1 (2010): 47–60.
[22] Jon Barnett, "Titanic States? Impacts and Responses to Climate Change in the Pacific Islands," *Journal of International Affairs* 59, no. 1 (2005): 203–19.

2. Empirical Research on Climate-Induced Migration and Displacement

Getting a clear understanding of the empirical literature surrounding climate-induced migration and displacement is not a straightforward task. There are competing views on both the predicted scale of the phenomenon and on the causal mechanisms by which it occurs. It is important, as such, to get a sense of the primary points of debate and consensus in the empirical literature.

2.1 The 'Maximalist School' and its Critics

It is useful, first of all, to give a sense of the intellectual backdrop against which the empirical controversies about climate-induced migration and displacement have occurred. As Etienne Piguet charts in his reconstruction of the place of the natural environment in migration studies, early work in the late 19th and early 20th centuries by geographers such as Ernst Ravenstein and Ellsworth Huntington emphasised the role of the natural environment as a causal factor in migration.[23] In this classical literature, the natural environment was a central feature of explanations of migration, and we can find early instances of something like empirical claims about 'climate-induced' movement. Huntington argued that the 'barbarian' invasions of Europe in the late era of the Western Roman Empire were a direct result of environmental changes. According to Huntington, the "untold hordes of nomads" on the Central Asian plains, driven by shortages of rainfall, migrated to Europe, where climatic conditions were becoming warm and habitable.[24] They arrived "horde by horde" and "Rome fell before the wanderers."[25] Huntington believed that the environment was the engine of history, and that "the strongest nations of the world live where the climatic conditions are most propitious."[26]

This early and deterministic view of the role of the natural environment in human migration, however, fell out of favour. Piguet puts the "disappearance" of the natural environment in migration studies down to a combination of factors: the idea that progress was liberating humans from the constraints of nature, the association of environmental determinism with racist conceptions of natural hierarchy, the rise of economic explanations of migration, and the rise of a distinct discipline of refugee and forced migration

[23] Etienne Piguet, "From 'Primitive Migration' to 'Climate Refugees': The Curious Fate of the Natural Environment in Migration Studies," *Annals of the Association of American Geographers* 103, no. 1 (2013): 148–62.
[24] Ellsworth Huntington, *The Pulse of Asia, a Journey in Central Asia Illustrating the Geographic Basis of History* (Houghton, Mifflin and Company, 1907), 382.
[25] Huntington, 383.
[26] Huntington, 384.

studies.[27] By the 1970s, "environmental determinism became anathema"[28] to geographers, and the natural environment had been side-lined in theoretical attempts to explain the causes of migration.[29]

It is against this background that a resurgence of interest in the interaction between the natural environment and migration has taken place, primarily because of the increased international concern over the impacts of anthropogenic climate change. For some, such as Piguet, the developments that have taken place in this literature can be seen as a "reappearance" of early environmental determinist work.[30] In the face of growing concern over global warming, a 1985 report for the United Nations Environment Programme (UNEP) introduced the concept of an "environmental refugee" into policy circles:

> [P]eople who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected their quality of life.[31]

This publication popularised the term, and a new academic literature (primarily situated within environmental science, rather than migration studies) developed which attempted to predict and quantify environmental movement. This literature developed a *maximalist* account of the impact of environmental change on migration, and is typified by the work of environmental scientist Norman Myers. Myers infamously predicted that there would be 150 million "environmental refugees" by 2050,[32] and updated this figure to 200 million in 2002.[33] Such figures were picked up both in the Stern Review[34] and in 'grey' literature such as the policy briefs and reports put out by non-governmental organisations.[35] The maximalist view undoubtedly dominates policy circles and the popular imagination, and has painted 'climate refugees' as "the human face of climate change."[36]

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[27] Piguet, "From 'Primitive Migration' to 'Climate Refugees,'" 151–52.
[28] Andrew Sluyter, "Neo-Environmental Determinism, Intellectual Damage Control, and Nature/Society Science," *Antipode* 35, no. 4 (2003): 816. As Sluyter points out, something like this 'environmental determinist' view is still popular with laypeople, and is popularised through by works such as Jared Diamond's *Guns, Germs, and Steel: The Fates of Human Societies* (W. W. Norton & Company, [1997] 2017).
[29] See, for example, the conspicuous absence of the environment as a causal factor in P. Neal Ritchey, "Explanations of Migration," *Annual Review of Sociology* 2, no. 1 (1976): 363–404.
[30] Piguet, 153.
[31] Essam El-Hinnawi, *Environmental Refugees* (UNEP, 1985), 4.
[32] Norman Myers, *Ultimate Security: The Environmental Basis of Political Stability* (W.W. Norton, 1993), 191; See also, Norman Myers and Jennifer Kent, *Environmental Exodus: An Emergent Crisis in the Global Arena* (Climate Institute, 1995).
[33] Norman Myers, "Environmental Refugees: A Growing Phenomenon of the 21st Century," *Philosophical Transactions of the Royal Society B: Biological Sciences* 357, no. 1420 (2002): 609–13.
[34] Nicholas Stern, *The Economics of Climate Change: The Stern Review* (Cambridge University Press, 2007), 77.
[35] See, for example, Jane Lewis, Rachel Baird, and Angela Burton, *Human Tide: The Real Migration Crisis* (Christian Aid, 2007).
[36] François Gemenne, "How They Became the Human Face of Climate Change: Research and Policy Interactions in the Birth of the 'Environmental Migration' Concept," in *Migration and Climate Change*, ed. Etienne Piguet, Antoine Pecoud, and Paul De Guchteneire (Cambridge University Press, 2011).

An important line of criticism has emerged in response to the maximalist view: that is depends on untenable mono-causal assumptions about the relationship between climate change and migration. For example, Steven Castles challenges Myers' "dubious" figures and his assumption that "anyone living in an area affected by sea level rise would become an 'environmental refugee'."[37] An influential paper by Gaim Kibreab similarly sought to "de-mythologise" the emerging literature on 'environmental refugees,' and argued that attempts to single out the natural environment as a cause of migration were "methodologically daunting and analytically sterile."[38] The mono-causal relationship between environmental change and migration in maximalist accounts was challenged by geographer Richard Black in a research paper for the United Nations High Commissioner for Refugees (UNHCR) in 2001, who argued that it is a problem which "strike[s] to the core of the literature on environmental refugees."[39] Black argued the generation of statistics such as those given by Myers are "critically dependent on the definition of 'environmental refugees,' a process which might well be seen as impossible given the multiple and overlapping causes of most migration streams."[40]

Castles' own, more tempered, account of the state of this debate is as follows:

> [T]he notion of the 'environmental refugee' is misleading and does little to help us understand the complex processes at work in specific situations of impoverishment, conflict and displacement. This does not mean, however, that environmental factors are unimportant in such situations. Rather they are part of complex patterns of multiple causality, in which natural and environmental factors are closely linked to economic, social and political ones. This is where we need much more research and better understanding, if we are to address the root causes of forced migration.[41]

As a result of this criticism, the most recent Intergovernmental Panel on Climate Change (IPCC) report points out that "there is low confidence in quantitative projections of changes in mobility due to its complex, multi-causal nature."[42] This now represents the consensus view, and the blowback against the maximalist school has won out. In the years since this debate reached its peak, further research has been carried out in an attempt to provide a more nuanced account of the place of environmental change in the dynamics of migration and displacement.

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[37] Stephen Castles, "Concluding Remarks on the Climate Change-Migration Nexus," in *Migration and Climate Change*, ed. Etienne Piguet, Antoine Pecoud, and De Guchteneire (Cambridge University Press, 2011), 416.
[38] Gaim Kibreab, "Environmental Causes and Impact of Refugee Movements: A Critique of the Current Debate," *Disasters* 21, no. 1 (1997): 22.
[39] Richard Black, "Environmental Refugees: Myth or Reality?" *Working Paper: New Issues in Refugee Research* (UNHCR, 2001), 3.
[40] Black, 3.
[41] Stephen Castles, "Environmental Change and Forced Migration: Making Sense of the Debate," *Working Paper: New Issues in Refugee Research* (UNHCR, 2002), 5.
[42] IPCC, "Summary for Policymakers," in *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, ed. C.B. Field et al. (Cambridge University Press, 2014), 20.

Before turning to this research, however, it is useful to examine another line of criticism which has been raised against maximalist accounts and the associated terminology of the 'environmental refugee' or 'climate refugee.' This criticism does not seek to contest the methodological assumptions or empirical validity of the maximalist view, but rather seeks to expose the ideological uses to which it is put. In the 1990s, the idea of 'environmental conflict' became popular thanks to the work of scholars like Thomas Homer-Dixon, whose work theorised a close association between resource scarcity, social breakdown and violent conflict.[43] Despite important criticisms being raised against Homer-Dixon's work, such as its dependence on discredited Malthusian assumptions about demography and its ignorance of the economic and political aspects of conflict, it has been influential, especially in foreign policy circles.[44] Robert Kaplan's influential article 'The Coming Anarchy,' which Bill Clinton described as "stunning" and circulated amongst his staff,[45] cited Homer-Dixon and named the environment as "the national security issue of the early twenty-first century."[46] Against this backdrop, maximalist views of the climate/migration nexus have been used to promote the idea that 'environmental migration' is a threat to national security or the welfare state. Indeed, the usage of the figure of the 'climate refugee' as a tool in security and humanitarian politics has recently been the subject of book-length treatments.[47]

The term 'climate refugee' does, however, at least highlight the fact that some movement is forced by human (in)action on climate change. As François Gemenne notes, himself a critic of the maximalist school and of its associated terminology, critics of the maximalist school have themselves risked ignoring the anthropogenic nature of climate-induced migration and displacement:

> We had used environmental change to de-politicise migration and, in our quest to make research policy-relevant, we had let policies take over politics. In our attempt to stress the agency of the migrants, we had forgotten the responsibility that we had towards them, because we humans have become the main agents of transformation of the Earth.[48]

Moreover, as Giovanni Bettini and his co-authors point out, competing counter-narratives, such as the increasingly popular 'migration as adaptation' framing (elaborated below), face their own problems: they

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[43] Thomas F. Homer-Dixon, "On the Threshold: Environmental Changes as Causes of Acute Conflict," *International Security* 16, no. 2 (1991): 76–116; "Environmental Scarcities and Violent Conflict: Evidence from Cases," *International Security* 19, no. 1 (1994): 5–40.
[44] See Betsy Hartmann, "Population, Environment and Security: A New Trinity," *Environment and Urbanization* 10, no. 2 (1998): 113–28.
[45] Paul Kennedy, "Doomsterism," *The New York Review of Books*, September 19, 1996.
[46] Robert D. Kaplan, "The Coming Anarchy," *The Atlantic*, February 1, 1994.
[47] Ingrid Boas, *Climate Migration and Security: Securitisation as a Strategy in Climate Change Politics* (Routledge, 2015); Benoît Mayer, *The Concept of Climate Migration: Advocacy and Its Prospects* (Edward Elgar Publishing, 2016).
[48] François Gemenne, "One Good Reason to Speak of 'Climate Refugees,'" *Forced Migration Review* 49 (2015): 71.

may, for example, serve to depoliticise climate-induced migration and displacement or make it amenable to technocratic or managerial forms of control.[49]

2.2 New Research Directions in the Climate/Migration Nexus

The critiques that been levied against the maximalist school have played an important role in putting it under scrutiny, but migration scholars have also made positive contributions to the study of the relationship between the migration and anthropogenic climate change. As Castles notes, the initial response to the maximalist school was to highlight its questionable methodological assumptions, but there was also a need for migration scholars to engage with the new context of anthropogenic climate change:

> Environmentalists may have been misguided in using exaggerated and threatening images of mass displacement to raise public awareness of [climate] change, but the defensive postures adopted by refugee and migration scholars have also held back scientific analysis and thus probably the development of appropriate strategies to respond to the challenges of climate-induced displacement….Migration scholars must recognize the potential of climate change to bring fundamental changes in the nature of human mobility, just as environmentalists need to recognize the complex factors that lead some people to adopt migration as part of their survival strategies.[50]

The backlash against the maximalist school has prompted migration researchers to renew their efforts to locate the proper place of the natural environment in causal explanations of migration.

Migration scholars have increasingly tried to use micro-level studies in order to get a more fine-grained understanding of the role that climate change plays in different instances of migration.[51] Partly as result of these more fine-grained studies, new conceptual frameworks have also been proposed, which stress the complex ways in which the impacts of climate change interact with existing drivers of migration. Robert McLeman and Lori Hunter, for example, have emphasised the ways in which the impacts of climate change are mediated through social structures.[52] In their emphasis on the social mediation of the impacts of climate change, they pursue a similar line to that taken by Amartya Sen in his celebrated argument that famines are not simply a matter of absolute food shortages, but are rather mediated by political institutions.[53] In other work, co-authored with Barry Smit, McLeman has conceptualised migration as an

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[49] Giovanni Bettini, Sarah Louise Nash, and Giovanna Gioli, "One Step Forward, Two Steps Back? The Fading Contours of (in)Justice in Competing Discourses on Climate Migration," *The Geographical Journal* 183, no. 4 (2017): 348–58. See also the discussion in this thesis at Chapter IV, sec. 5.
[50] Castles, "Concluding Remarks on the Climate Change-Migration Nexus," 419.
[51] This strategy is advocated in Etienne Piguet, "Linking Climate Change, Environmental Degradation, and Migration: A Methodological Overview," *Wiley Interdisciplinary Reviews: Climate Change* 1, no. 4 (2010): 517–24.
[52] Robert McLeman and Lori M. Hunter, "Migration in the Context of Vulnerability and Adaptation to Climate Change: Insights from Analogues," *Wiley Interdisciplinary Reviews: Climate Change* 1, no. 3 (2010): 450–61.
[53] Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford University Press, 1981).

adaptive response to the impacts of climate change, which depends at least in part on *vulnerability*, understood as a function of both *exposure* (the extent to which a system is susceptible to the impacts of climate change), and *adaptive capacity* (the ability of the affected system to 'cope' with changes).[54] Some of the most developed work in the literature has come from the research group associated with Richard Black, which has sought to formalise the multi-causality stressed by many migration scholars in their reactions to the maximalist school. Black's work has also framed migration as one kind of adaptive response to the impacts of climate change.[55] His research team's most important contribution has come in the form of a report for the U.K. government, which elaborates a framework for understanding how climatic changes interact with a constellation of already-existing social, economic, environmental, political and demographic drivers of migration.[56] This framework stresses that in most cases, rather than straightforwardly *causing* migration or displacement, the impacts of climate change function so as to *exacerbate* the influence of existing drivers of migration or displacement. An emerging literature, still in its early stages, has also sought to develop more fine-grained quantitative projections of migration and displacement relating to climate change which incorporate the insights of these conceptual frameworks.[57]

For our purposes, one important upshot of the recent work that has developed out of the debates over the place of the environment in migration studies is that it is incredibly difficult to identify climate change as *the* cause of any particular instance of movement. Crucially, this makes it incredibly difficult to identify *particular individuals* as being displaced by the impacts of climate change, as opposed to by other factors. Migration and displacement relating to climate change is causally complex, and mono-causal explanations have been clearly shown to be unsatisfactory. This does not mean, however, that climate change is unimportant in migration and displacement. Environmental factors do play a role, albeit a complicated one, in driving migration and displacement.

2.3 Some Helpful Distinctions

Whilst it may not be possible to identify particular individuals as being displaced by climate change, it is possible to create typologies of ways in which climate change interacts with migration and displacement. Doing so can better equip us to engage with the different normative questions which arise in different contexts of climate-induced migration and displacement. Attempts have been made to identify 'hotspots' for climate-induced migration, and to characterise the mechanisms through which displacement and

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[54] Robert McLeman and Barry Smit, "Migration as an Adaptation to Climate Change," *Climatic Change* 76, no. 1–2 (2006): 34.
[55] Richard Black et al., "Climate Change: Migration as Adaptation," *Nature* 478, no. 7370 (2011): 447–49.
[56] Richard Black et al., "Foresight: Migration and Global Environmental Change," *Foresight Reports* (The Government Office for Science, 2011). See also Richard Black et al., "The Effect of Environmental Change on Human Migration," *Global Environmental Change* 21, Supplement 1 (2011): S3–11.
[57] Robert McLeman, "Developments in Modelling of Climate Change-Related Migration," *Climatic Change* 117, no. 3 (2013): 599–611; Dominic Kniveton et al., *Climate Change and Migration: Improving Methodologies to Estimate Flows* (IOM, 2008).

migration occurs.[58] Martine Rebetez, for example, has sought to outline the climatic parameters which are likely, subject to their mediation by socio-political arrangements, to influence human displacement.[59] A helpful typology for our purposes comes from Walter Kälin, who seeks to organise climate-induced migration in terms of the mechanisms by which it occurs.[60] This typology is especially useful here, as it enables us to group instances of climate-induced migration and displacement together in ways that help us to identify the salient normative features of different cases. Kälin identifies five mechanisms through which climate-induced migration and displacement takes place, which I summarise here.

The first mechanism is *sudden-onset disasters*.[61] Sudden-onset disasters such as flooding, typhoons, hurricanes, wildfires and mudslides, can trigger displacement. We know that climate change is likely to increase both the frequency and severity of extreme weather events, though individual events are difficult to predict, and it is difficult to determine whether an individual event is the result of climate change. Most of those displaced are likely to remain within their country's borders, but in some cases, people may cross borders, either because the capacity for assistance in their own country is exhausted, or because they hope for better protection in another country. In most cases of sudden-onset disasters, displacement will be temporary, although whether or not return is possible may depend on whether sufficient recovery work is done. Rates of return, however, may depend again on social vulnerability.

The second mechanism is *slow-onset environmental degradation*.[62] In these cases, climatic impacts such as thawing permafrost, rising sea levels, salination of ground water, desertification, and recurring floods or droughts gradually erode the background conditions upon which people depend. Often, this involves the degradation of ecosystems upon which so-called "ecosystem people" (who rely heavily on local natural resources for their livelihoods or subsistence) rely.[63] Migration in these cases is likely to take the form of an adaptive response to climate change. Much of this migration is likely to be seasonal or temporary and labour-related, but slow-onset environmental degradation may also render areas entirely uninhabitable, as in the case of permanently inundated coastal areas. In cases of slow-onset environmental degradation, migration is more likely to take place within the borders of the state, but some international migration is also likely to occur. This kind of slow-onset change is also sometimes linked to an increase in violent conflict, which is examined below.

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[58] This strategy is also advocated in Piguet, "Linking Climate Change, Environmental Degradation, and Migration."
[59] Martine Rebetez, "The Main Climate Change Forecasts That Might Cause Human Displacements," in *Migration and Climate Change*, ed. Etienne Piguet, Antoine Pecoud, and De Guchteneire (Cambridge University Press, 2011).
[60] Walter Kälin, "Conceptualising Climate-Induced Displacement," in *Climate Change and Displacement: Multidisciplinary Perspectives*, ed. Jane McAdam (Bloomsbury Publishing, 2010).
[61] Kälin, 86–89.
[62] Kälin, 89–90.
[63] For the idea of "ecosystem people," see Ramachandra Guha and Joan Martínez Alier, *Varieties of Environmentalism: Essays North and South* (Routledge, 2013), 12.

The third mechanism is *displacement from small-island states*.[64] Though movement from small-island states is a subset of migration stemming from slow-onset environmental degradation, it is worth considering it separately from other cases because of its distinctive features. In these cases, there is a foreseeable risk that entire states will be rendered uninhabitable, resulting in the permanent movement of the entire population. This case is distinctive both in that return is likely to be impossible and because it concerns the entire political community. Important questions arise here concerning the state's continued legal existence, and of the possible statelessness of its inhabitants. This kind of state dissolution is without precedent in international law, and it is unclear at what point the state would cease to exist and what the status of its citizens would be.[65] Though some of the traditional criteria of statehood as outlined in the *Montevideo Convention on the Rights and Duties of States*, such as a permanent population and a defined territory, are threatened in the case of small-island states,[66] it is also worth noting that there is a strong presumption in international law against the extinction of states.[67]

The fourth mechanism is the *designation of areas unsuitable for human habitation*.[68] This is where governments designate areas as being too dangerous for human habitation, for example due to increased risks of recurrent flooding or mudslides, and communities are relocated. Relocation in such cases is generally undertaken at the community level, where resettlement is undertaken in advance of climatic effects becoming so severe that staying in place is impossible. Such relocation is likely to be permanent, and raises questions about both the substantive outcomes and the decision-making processes in resettlement.[69] These cases differ from the case of small-island states in that they do not raise issues about state sovereignty and generally do not affect entire political communities.

Finally, the fifth mechanism is *displacement due to climate change-induced unrest*.[70] This mechanism is perhaps the most controversial. Environmental degradation and resource scarcity may exacerbate social tensions and contribute to breakdowns of social order and armed conflict. This, in turn, may lead to displacement as people flee conflict. According to Kälin, this is most likely to occur in areas where access to essential resources such as water or arable land becomes limited. The extent to which displacement occurring in these contexts can be linked to climate change is often unclear, and we should be careful not to take an environmentally determinist view of conflict. Whilst it is important to recognise that resource scarcity

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[64] Kälin, "Conceptualising Climate-Induced Displacement," 90–91.
[65] Jane McAdam, "'Disappearing States', Statelessness and the Boundaries of International Law," in *Climate Change and Displacement: Multidisciplinary Perspectives*, ed. Jane McAdam (Bloomsbury Publishing, 2010).
[66] *Montevideo Convention on the Rights and Duties of States* (1933), Pub. L. No. 165 LNTS 19.
[67] James Crawford, *The Creation of States in International Law*, (Clarendon Press, [1979] 2006), 715.
[68] Kälin, "Conceptualising Climate-Induced Displacement," 91.
[69] See Jamie Draper and Catriona McKinnon, "The Ethics of Climate-Induced Community Displacement and Resettlement," *Wiley Interdisciplinary Reviews: Climate Change* 9, no. 3 (2018): e519.
[70] Kälin, "Conceptualising Climate-Induced Displacement," 92.

linked to climate change may indeed exacerbate social tensions, there are almost always existing sources of conflict at play in these cases.

These mechanisms of migration and displacement in the context of climate change are unlikely to be exhaustive, given the unpredictable nature of the impacts of climate change. But they are useful in that they provide a better understanding of the kinds of migration and displacement that are likely to ensue in the context of climate change. Distinguishing between these different kinds of migration and displacement relating to climate change lays bare some of the important differences between different cases, and clears the ground for a clear-eyed examination of the moral issues at stake in different contexts.

In this thesis, I also distinguish between what I call *anticipatory migration* and *reactive displacement*. It is worth briefly introducing this distinction here, and relating it to Kälin's typology. In drawing this distinction, I borrow from Anthony Richmond's distinction between proactive and reactive forms of migration.[71] Drawing on Anthony Giddens' theory of structuration, Richmond argues that migration is never *only* a matter of the agency of would-be migrants, nor *only* a matter of the circumstances in which would-be migrants find themselves. Rather, would-be migrants depend on the background structures in which they are situated, and that political, economic, environmental, social and bio-psychological "structural constraints" and "enabling circumstances," can alter the range of options available to them.[72] Depending on these structural constraints and enabling circumstances, movement is may be more reactive or more proactive. Purely proactive and purely reactive migration are ideal types, and most movement takes place on a continuum between them.

I use the term 'anticipatory migration' (or simply 'migration') to refer to movement undertaken proactively rather than reactively. In the climate change context, anticipatory migration is that which takes place in advance of, and is oriented in terms of, avoiding the harmfulness of the impacts of climate change. It is planned, rather than being a reaction to the already-harmful impacts of climate change. It uses migration as a way of mitigating the harmfulness of the impacts of climate change, either by avoiding those impacts or by rendering them less harmful. Many cases of what Kälin identifies as migration stemming from slow-onset environmental degradation, displacement from small-island states, and the designation of areas unsuitable for human habitation will involve what I call anticipatory migration. 'Reactive displacement' (or simply 'displacement'), by contrast, is movement which is undertaken reactively rather than proactively. In the climate change context, reactive displacement takes place when the impacts of climate change manifest and individuals or groups move in order to seek refuge from those impacts. It is not planned, but is rather a coping response demanded of those who undertake it by

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[71] Anthony H. Richmond, "Reactive Migration: Sociological Perspectives On Refugee Movements," *Journal of Refugee Studies* 6, no. 1 (1993): 7–24.
[72] Richmond, 15–17. For Giddens' theory of structuration, see Anthony Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (John Wiley & Sons, [1984] 2013).

the impacts of climate change. It uses movement as a way of escaping from the harmful impacts of climate change. Many cases of what Kälin identifies as displacement from sudden-onset disasters and climate change-induced unrest will involve what I call reactive displacement.

This distinction helps us move past a different distinction which is often simplistically employed in discussions of migration and displacement – the distinction between *forced* and *voluntary* movement. Often, this distinction is used to distinguish between 'economic migrants' and forced migrants. David Miller, for example, characterises economic migrants as those who "are not driven out by a fear of persecution or some other immediate threat to their human rights, but drawn in by the advantages that their new society has to offer."[73] It is tempting to think that the distinction between reactive displacement and anticipatory migration maps onto the distinction between forced and voluntary (or economic) movement, but this would be a mistake. Many cases of anticipatory migration will not be voluntary. Migration may be an attractive strategy precisely because the migrant's options are constrained. According to Joseph Raz, the genuine exercise of autonomy requires having an "adequate range of valuable options" between which to choose.[74] As Raz points out, determining what counts an adequate range of valuable options is "an enormously difficult problem."[75] For our purposes, it suffices to note that in many cases of anticipatory migration – let alone reactive displacement – those on the move will not have an adequate range of valuable options available to them. Rather, they may choose to migrate in anticipation of the impacts of climate change, but that choice may not be taken from within an adequate range of valuable options, and so their movement will not be voluntary in this sense. The distinction between anticipatory and reactive forms of movement is productive because it highlights a salient moral difference between different cases, even though it may be implausible to think of either form of movement as genuinely voluntary, at least in many cases.

3. Justice in Climate-induced Migration and Displacement

Now that we have examined some of the important empirical features of phenomenon of climate-induced migration and displacement, we are in a position to examine the idea of addressing climate-induced migration and displacement as a matter of *justice*. In this section, I discuss what I mean when I say that I am giving an account of justice in climate-induced migration and displacement, and I highlight some existing work in political theory which attempts to treat climate-induced migration and displacement as a matter of justice. I situate my own approach in relation to this work and show how trends in the existing literature motivate my attempt to develop a theory of justice in climate-induced migration and displacement.

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[73] David Miller, *Strangers in Our Midst: The Political Philosophy of Immigration* (Harvard University Press, 2016), 94.
[74] Joseph Raz, *The Morality of Freedom* (Clarendon Press, 1988), 373–77.
[75] Raz, 373.

3.1 What do I mean by 'Justice'?

This thesis seeks to develop an account of *justice* in climate-induced displacement. The concept of justice is central to our moral vocabulary and has significant purchase amongst philosophers and non-philosophers alike. It is employed in a wide range of contexts, to a variety of ends, and attempting to provide a final, non-controversial account of the concept of justice is likely to be a fruitless endeavour (let alone in the space available to me here). Nonetheless, it is important to give a sense of what I mean when I take myself to be setting out an account of justice in climate-induced migration and displacement.

To that end, it is useful to turn to the work of John Rawls, whose *A Theory of Justice* is often taken as a shared reference point amongst political philosophers. The account that I set out in this thesis is not straightforwardly Rawlsian, but Rawls' work can help us to illuminate the concept of justice for the purpose of exposition. Rawls describes justice as "the first virtue of social institutions, as truth is of systems of thought."[76] This is to say that principles of justice carry the same normative force in relation to our social institutions as truth does in its relationship to our beliefs: "[a] theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust."[77] The claim that justice is the *first* virtue of social institutions is not uncontroversial – others, for example, have argued that something like order or stability carries this weight.[78] But justice clearly has significant weight when it comes to thinking about how we should organise our shared lives.

For Rawls, the proper subject of justice is our social institutions. Again, this is not uncontroversial – Aristotle, for example, spoke of justice as applying to individual behaviour.[79] In Rawls' theory of justice, principles of justice apply to the "basic structure of society" – the major social institutions that "distribute fundamental rights and duties and determine the division of advantages from social cooperation."[80] Importantly, though, Rawls' theory has a particular and circumscribed scope: it is a theory of justice for a liberal constitutional democracy. He does not take his principles of justice to apply to all possible contexts in which claims of justice might be made: "[t]here is no reason to suppose ahead of time that the principles satisfactory for the basic structure hold in all cases."[81]

We can roughly follow Rawls in taking assessments of justice to apply to our social institutions. In our case, however, we are not interested in the principles of justice for a liberal constitutional democracy.

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[76] John Rawls, *A Theory of Justice* (Belknap Press, [1971] 1999), 3.
[77] Rawls, 3.
[78] See Bernard Williams, "Realism and Moralism in Political Theory," in *In the Beginning Was the Deed: Realism and Moralism in Political Argument* (Princeton University Press, 2005).
[79] Aristotle, *The Nicomachean Ethics*, ed. Hugh Tredennick, trans. J. A. K. Thomson (Penguin Classics, 2004).
[80] Rawls, *A Theory of Justice*, 6.
[81] Rawls, *A Theory of Justice*, 7.

Rather, we are interested in the principles of justice for the institutions and practices governing climate-induced migration and displacement. So, assessments of justice in our case will be apt when they are directed at the rules which structure the institutions and practices which govern climate-induced migration and displacement. A theory of justice in climate-induced migration and displacement will articulate principles for governing those institutions and practices.

This does not yet tell us what principles of justice are supposed to do, however. Justice, as I understand it, is a concept which is employed in the service of *practical reason*. That is, it is employed in the service of directing action in the world according to reason. The next chapter elaborates on this view of justice, but for now we can note that justice is a *normative* concept – that is, it gives us reasons for action – and that the reasons it gives us are of a particular kind – they are not merely instrumental reasons which tell us what to do *if* we want to achieve some stipulated end, rather they are reasons which tell us which end we *ought* to pursue. The concept of justice is supposed to tell us what our social institutions *ought* to look like from a moral point of view. So, an account of justice in climate-induced migration and displacement is supposed to tell us what the institutions and practices which govern climate-induced migration and displacement ought to look like from a moral point of view.

An important feature of principles of justice is that they should regulate our shared behaviour in light of the fact that people disagree about what we ought to do. Different people have competing ideas of what is required by morality, and in any given context will make claims about what they, or others, are owed. Such disagreement is not merely an epistemic challenge for figuring out the best principles of justice, it is a constitutive feature of the political contexts in which principles of justice apply.[82] One useful way of understanding the function of principles of justice, then, is by seeing them as the principles to which we should appeal in order to adjudicate between competing claims. Principles of justice should help us to determine public rules which can adjudicate fairly between these competing claims. Rainer Forst has usefully set out the notion of a "context of justice" as "a context of political and/or social relations of cooperation as well as conflict, which calls for a just order, the establishment of which the members of that order owe one another."[83] In a context of justice, principles of justice can help us to articulate publicly and mutually justifiable rules for adjudicating between competing claims. In adjudicating between competing claims in this way, justice is opposed to arbitrariness. Principles of justice make distinctions between particular individuals' claims only on grounds which can be publicly and mutually justified and not on the basis of arbitrary distinctions. As Rawls puts it, "institutions are just when no arbitrary

[82] See the discussion of disagreement as a "constitutive assertability condition" of principles of justice in Christian List and Laura Valentini, "The Methodology of Political Theory," in *The Oxford Handbook of Philosophical Methodology*, ed. Herman Cappelen, Tamar Szabó, and John Hawthorne (Oxford University Press, 2016).
[83] Rainer Forst, "Social Justice, Justification and Power," in *The Right to Justification: Elements of a Constructivist Theory of Justice* (Columbia University Press, 2011), 188.

distinctions are made and when the rules determine a proper balance between competing claims to the advantages of social life."[84]

This brief and abstract exposition of the idea of justice should help to explain what I take myself to be doing in developing an account justice in climate-induced migration and displacement. I take myself to be giving an account of the morally justifiable principles for the institutions and practices that govern climate-induced migration and displacement. In the next chapter, I engage more substantively with the methodological question of how we should justify our principles of justice. For now, though, it is useful to turn to the existing literature on climate-induced migration and displacement that has treated it as a matter of justice.

3.2 Existing Literature on Justice in Climate-induced Migration and Displacement

The literature in political theory that has examined climate-induced migration and displacement as a matter of justice is in its early stages. Various important contributions have been made, but most authors have not addressed the topic holistically or in a sustained way. There is an important exception to this tendency, which is a literature that has developed in recent years which has focused on setting out proposals for legal institutions designed to address climate-induced migration and displacement in its entirety. My contention, which I defend in Chapter III, is that this literature has got off on the wrong foot by not taking seriously enough the empirical features of climate-induced migration and displacement canvassed above.

Before digging into this literature, however, it is first worth briefly considering the broader fields within which climate-induced migration and displacement sits. The topic of justice in climate-induced migration and displacement can be thought to sit at the intersection of existing work in the fields of *climate justice* and *justice in migration*.[85] These fields are relatively young but have both blossomed in recent years. It is surprising, then, that an issue which sits at the intersection of the two has not had more uptake. In the case of climate justice, migration and displacement ordinarily only figure as examples of the kinds of costs that climate change may create.[86] Similarly, in the literature on justice in migration, climate change often figures as an example of an emerging cause of migration or displacement, but specific engagement with climate-induced migration and displacement has been limited.[87]

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[84] Rawls, *A Theory of Justice*, 5.
[85] For good overviews, see Darrel Moellendorf, "Climate Change Justice," *Philosophy Compass* 10, no. 3 (2015): 173–86; Sarah Fine, "The Ethics of Immigration: Self-Determination and the Right to Exclude," *Philosophy Compass* 8, no. 3 (2013): 254–68; Matthew J. Gibney, "The Ethics of Refugees," *Philosophy Compass* 13, no. 10 (2018): e12521.
[86] See, for example, Henry Shue, "Deadly Delays, Saving Opportunities: Creating a More Dangerous World?" in *Climate Justice: Vulnerability and Protection* (Oxford University Press, 2014), 269.
[87] Amongst recent prominent accounts, one short discussion does take place in Margaret Moore, *A Political Theory of Territory* (Oxford University Press, 2015), 210–11.

There are, however, important exceptions to these general trends. One important exception is relatively well-developed literature that has focused on the case of displacement from small-island states. As we have seen, there are distinctive normative concerns which arise in the case of small-island states pertaining to state sovereignty and the continued existence of the political community. The phenomenon of what Milla Vaha has called "state extinction" in small-island states has presented an interesting puzzle for theorists of territorial rights.[88] Political theorists have sought to set out normative accounts which respond to these distinctive aspects of the case of small-island states.[89] The central puzzle here has concerned the possibility of continuing statehood in the absence of territory. Theorists have proposed a number of remedies, including models of "deterritorialized" statehood[90] and arguments that other states are obliged to surrender territory to those displaced from small-island states.[91] Other approaches have argued that those displaced from small-island states have a right to relocation elsewhere, but have not necessarily tied this to an entitlement to continuing statehood.[92]

This literature has a narrow focus. It does not attempt to provide a systematic examination of climate-induced migration and displacement. This restriction may be well justified, since there are distinctive moral issues which arise in the case of small-island states which do not arise in other cases of climate-induced migration and displacement. However, insofar as these accounts are restricted in their focus, they leave open space for a broader account of justice in climate-induced migration and displacement.

In this thesis, I have taken the decision to exclude the consideration of the case of small-island states. The reason for this is twofold. First, the path down which the consideration of small-island states would take me is by now well-trodden. The main positions in the debate have been staked out and there is comparatively little to be gained from engaging in these debates, as compared to the new ground that can

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[88] Milla Emilia Vaha, "Drowning under: Small Island States and the Right to Exist," *Journal of International Political Theory* 11, no. 2 (2015): 207.

[89] For example: Joachim Wündisch, "Towards a Non-Ideal Theory of Climate Migration," *Critical Review of International Social and Political Philosophy* (2019) [online first]; Milla Emilia Vaha, "Hosting the Small Island Developing States: Two Scenarios," *International Journal of Climate Change Strategies and Management* 10, no. 2 (2018): 229–44; Katrina M. Wyman, "Are We Morally Obligated to Assist Climate Change Migrants?," *The Law & Ethics of Human Rights* 7, no. 2 (2013): 185–212; Susannah Willcox, "Climate Change Inundation, Self-Determination, and Atoll Island States," *Human Rights Quarterly* 38, no. 4 (2016): 1022–37.

[90] For example: Jörgen Ödalen, "Underwater Self-Determination: Sea-Level Rise and Deterritorialized Small Island States," *Ethics, Policy & Environment* 17, no. 2 (2014): 225–37; Rosemary G. Rayfuse, "International Law and Disappearing States: Utilising Maritime Entitlements to Overcome the Statehood Dilemma," *UNSW Law Research Paper* No. 2010-52 (2010).

[91] For example: Anna Stilz, *Territorial Sovereignty: A Philosophical Exploration* (Oxford University Press, 2019), 178–82; Cara Nine, "Ecological Refugees, States Borders, and the Lockean Proviso," *Journal of Applied Philosophy* 27, no. 4 (2010): 359–75; Frank Dietrich and Joachim Wündisch, "Territory Lost - Climate Change and the Violation of Self-Determination Rights," *Moral Philosophy and Politics* 2 (2015): 83–105; Avery Kolers, "Floating Provisos and Sinking Islands," *Journal of Applied Philosophy* 29, no. 4 (2012): 333–43.

[92] For example: Clare Heyward and Jörgen Ödalen, "A Passport for the Territorially Dispossessed," in *Climate Justice in a Non-Ideal World*, ed. Clare Heyward and Dominic Roser (Oxford University Press, 2016); Robyn Eckersley, "The Common but Differentiated Responsibilities of States to Assist and Receive 'Climate Refugees,'" *European Journal of Political Theory* 14, no. 4 (2015): 481–500; Mathias Risse, "The Right to Relocation: Disappearing Island Nations and Common Ownership of the Earth," *Ethics & International Affairs* 23, no. 03 (2009): 281–300.

be broken in a broader discussion of climate-induced migration and displacement. Second, as we have seen, there is a popular misconception that climate-induced migration and displacement centrally concerns the case of small-island states. In excluding this case from consideration here, I hope to combat that misconception and to shine a light on the cases of climate-induced migration and displacement which are less obvious but more numerous. My account can be complemented by the existing literature which focuses on the specific normative considerations arising in the case of small-island states.

A second important exception is the work in political theory that has sought to highlight the importance of identity or culture in climate-induced migration and displacement. The idea of attachment to a 'home' or a 'sense of place' is often stressed in the empirical literature engaging with climate-induced migration and displacement,[93] and this has been picked up as normatively salient by some political theorists. For example, Derek Bell has sought to argue that neither Rawlsian nor Beitzian accounts of international justice can adequately accommodate the importance of 'home' for those leaving small-island states.[94] Avner De Shalit has focused on the loss of a 'sense of place' which arises in cases where climate change renders one's home uninhabitable, arguing that there can be no adequate compensation for such a loss.[95] Alexa Zellentin has argued that the cultural aspects of climate-induced resettlement means that institutions which actively facilitate equal membership are necessary to protect the social bases of self-respect for those who are resettled.[96]

This shift in focus highlights important aspects of climate-induced displacement which have been neglected elsewhere. Again, however, this literature is restricted in its focus. It does not purport to engage with the phenomenon of climate-induced migration and displacement in its entirety, only to highlight some important and neglected aspects of climate-induced migration and displacement. It too leaves open space for a broader account of justice in climate-induced migration and displacement.

A final exception is the literature which does seek to address climate-induced migration and displacement holistically, and to outline overarching principles for governing it. These accounts often propose something like a 'treaty for the climate-displaced.' Frank Biermann and Ingrid Boas, for example, have set out the case for a global protocol for the recognition, protection and resettlement of "climate refugees,"

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[93] Helen Adams, "Why Populations Persist: Mobility, Place Attachment and Climate Change," *Population and Environment* 37, no. 4 (2015): 429–48; John Campbell, "Climate-Induced Community Relocation in the Pacific: The Meaning and Importance of Land," in *Climate Change and Displacement: Multidisciplinary Perspectives*, ed. Jane McAdam (Bloomsbury Publishing, 2010); W. Neil Adger et al., "This Must Be the Place: Underrepresentation of Identity and Meaning in Climate Change Decision-Making," *Global Environmental Politics* 11, no. 2 (2011): 1–25.
[94] Derek R. Bell, "Environmental Refugees: What Rights? Which Duties?," *Res Publica* 10, no. 2 (2004): 135–52.
[95] Avner De Shalit, "Climate Change Refugees, Compensation, and Rectification," *The Monist* 94, no. 3 (2011): 310–28.
[96] Alexa Zellentin, "Climate Migration. Cultural Aspects of Climate Change," *Analyse & Kritik* 32, no. 1 (2010): 63–86.

which they envisage as being situated within the UNFCCC.[97] Angela Williams has called for regional agreements of a similar kind under the UNFCCC architecture.[98] Bonnie Docherty and Tyler Gianni have also called for a *sui generis* legal convention for "climate change refugees."[99] Sujatha Byravan and Sudhir Chella Rajan have also set out an account of free movement rights for those they term "climate exiles," with the costs of this policy being shared according to historic contribution to the problem of climate change.[100]

This literature is an important starting point for my project. Proponents of these accounts do generally purport to be setting out an account which addresses climate-induced migration and displacement holistically. In Chapter III, I contend that proposals of this kind – which I call *unitary* approaches – share an important flaw. In short, they fail to take seriously the empirical dynamics of climate-induced migration and displacement, and, because of this, they fail to provide workable or just principles for climate-induced migration and displacement. Demonstrating the error that these approaches share lays the ground for setting out my own alternative approach.

Beyond these general trends in the emerging literature, two recent monographs are worth noting. Fanny Thornton's *Climate Change and People on the Move: International Law and Justice* and Johannes Graf Keyserlingk's *Immigration Control in a Warming World: Realizing the Moral Challenges of Climate Migration* both present a sustained analysis of climate-induced migration and displacement.[101] To their credit, they both also recognise the empirical complexity of climate-induced migration and displacement and allow it to inform their approaches. However, whilst both are concerned with questions of justice, neither occupies the same conceptual space as my own approach. Thornton's book focuses on the prospects for using international law for addressing 'corrective' and 'distributive' aspects of justice in climate-induced migration and displacement. Keyserlingk's book is to a greater extent a study in normative political philosophy, but its focus is narrower. It examines how the context of climate change affects existing debates about immigration policy and the state's presumptive right to exclude would-be immigrants. My approach seeks to be more comprehensive than either approach, by examining the various different contexts in which climate-induced migration and displacement arise and looking beyond the role of

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[97] Frank Biermann and Ingrid Boas, "Protecting Climate Refugees: The Case for a Global Protocol," *Environment: Science and Policy for Sustainable Development* 50, no. 6 (2008): 8–17; Frank Biermann and Ingrid Boas, "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees," *Global Environmental Politics* 10, no. 1 (2010): 60–88.
[98] Angela Williams, "Turning the Tide: Recognizing Climate Change Refugees in International Law," *Law & Policy* 30, no. 4 (2008): 502–29.
[99] Bonnie Docherty and Tyler Giannini, "Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees," *Harvard Environmental Law Review* 33, no. 2 (2009): 349–403.
[100] Sujatha Byravan and Sudhir Chella Rajan, "The Ethical Implications of Sea-Level Rise Due to Climate Change," *Ethics & International Affairs* 24, no. 03 (2010): 239–260.
[101] Fanny Thornton, *Climate Change and People on the Move: International Law and Justice* (Oxford University Press, 2018); Johannes Graf Keyserlingk, *Immigration Control in a Warming World: Realizing the Moral Challenges of Climate Migration* (Andrews UK Limited, 2018).

international law in addressing climate-induced migration and displacement. At various points, however, I draw upon the insights of these authors in developing my own approach.

4. The Plan of this Thesis

The thesis proceeds in the following way. In Chapter II, I set out an account of the methodological approach that I take in developing my account. I defend what I call an *interpretivist* method in developing principles of justice, which begins with the normative reconstruction of the relevant institutions and practices. I argue that we should develop principles of justice by setting out conceptions of institutions and practices which are the 'best interpretations' of the practices or institutions in question. In order to constitute the best interpretation of an institution or practice, a normative reconstruction should both display *descriptive fidelity* to the institution or practice, and should be *normatively defensible*, where normative defensibility is understood as requiring that the practice be mutually justifiable from the perspective of participants in an institution or practice considered as free and equal moral persons. In this way, my account draws on insights from moral and political constructivism and on the recent work in so-called 'practice-dependent' political theory. There has been a methodological turn in political theory in recent years, and situating my account in relation to these debates enables me to contribute both to this on-going theoretical discussion and also to provide an example of an interpretivist approach in action.

In Chapter III, I clear the ground for setting out my own account. I characterise what I take to be the dominant approach in the emerging literature on justice in climate-induced migration and displacement, the *unitary* approach. Then, I raise some problems for this approach. I argue that because this approach crucially depends on identifying and operationalizing some category of 'climate-displaced persons,' it is irreconcilable with the empirical dynamics of climate-induced migration and displacement. This is its fatal flaw, and it generates a suite of practical problems, which means that it would not work, and a suite of moral problems, which mean that it would not be just. After having elaborated these problems, I sketch my own alternative approach, which I call the *ecological* approach. This approach, which I contend does not suffer from the same flaw, conceives of a just response to climate-induced migration and displacement as consisting in a network of institutions and practices operating across multiple domains, connected by a principle of cost-sharing at the international level. This approach is elaborated over the rest of the thesis.

In Chapter IV, I begin setting out my account by focusing on the domain of climate change adaptation. I examine the practices of climate change adaptation, reconstructing their normative rationale. In light of this reconstruction, I argue that much anticipatory migration can be productively thought of as a form of climate change adaptation, and can be governed by principles of justice appropriate to that domain. Here, I focus on procedural justice, and I defend what I call a *collective-democratic* approach to climate change adaptation, against what I call a *hyper-liberal* approach. Although something like the collective-democratic

approach has been defended before, I defend it on new grounds and demonstrate why a popular defence of it is mistaken. Finally, I examine the implications of the collective-democratic approach for two central kinds of anticipatory migration. The collective-democratic approach has radical implications for cases of migration stemming from *slow-onset environmental degradation*. Its implications are less radical in cases of the *designation of zones too dangerous for human habitation*, but it nonetheless provides us with useful critical tool for addressing this kind of migration.

In Chapter V, I begin examining reactive displacement, and I focus on the domain of the refugee regime. I examine the practices of the refugee regime, reconstructing its normative rationale and adjudicating between competing interpretations of it. I examine the kinds of climate-induced displacement that might fall under the auspices of the refugee regime, which include cases of displacement due to *sudden-onset disasters* and displacement due to *climate change-induced unrest*. I examine some problems in the in the refugee regime, which are exacerbated in the context of climate change – the anachronistic definition of the refugee, the maldistribution of the costs of refugee protection between states and the persistent encampment of refugees – and I propose some reforms which seek to address these problems.

In Chapter VI, I continue examining reactive displacement, and I focus on the domain of internal displacement. I examine the practices of internal displacement governance, and present a novel reconstruction of its normative rationale. Internal displacement has not been adequately theorised by political theorists, and here I develop an account which meaningfully distinguishes internally displaced persons from refugees, explains the wrong of displacement, and shows why internal displacement is a matter of international concern. Next, I examine the kinds of climate-induced displacement that fall under the auspices of the internal displacement governance regime, which include cases of displacement due to *sudden-onset disasters*. Then, I examine some problems in the regime, which are exacerbated in the context of climate change – the treatment of internal displacement as a matter of charity rather than justice, and failure to account for transboundary causes of internal displacement – and propose some reforms which seek to address these problems.

By Chapter VII, we have completed our examination of the different domains in which climate-induced migration and displacement arises. In order to bring them together, I examine the second-order question of how the costs of addressing climate-induced migration and displacement, arising in these different domains, should be shared between states. I argue for a principle of responsibility, according to which the costs of climate-induced displacement should be borne in proportion to states' failures to discharge their existing climate-related obligations. This requires a prior account of states' obligations to take climate action, and so in this chapter I reconstruct the idea of a fair climate treaty, considering the parameters of fairness under such a treaty and their implications for sharing the costs of climate-induced migration and displacement. I examine the boundaries of reasonable disagreement over fairness in a climate treaty and

discuss how we might identify a legitimate treaty and hold states responsible for meeting their climate-related obligations in the face of persistent disagreement about fairness in international climate policy.

Finally, in Chapter VIII, I offer some concluding reflections on the argument that I have set out. I review the argument, considering its distinctive contributions, its limitations, and highlighting some possible avenues for future research. By the end of the thesis, my aim is to have set out a defensible account of justice in climate-induced migration and displacement, which takes seriously both the diversity and complexity of climate-induced migration and displacement and provides normative guidance for addressing it.

5. Conclusion

The aim of this introductory chapter has been to give the reader a sense of the phenomenon of climate-induced migration and displacement, and of what it means to consider it from the standpoint of justice. I first examined the empirical literature on the dynamics of climate-induced migration and displacement, charting the way in which the state of knowledge on the topic has developed, the points of consensus and debate that have emerged, and drew some distinctions which will be informative in our normative analysis. I then explained what I mean when I say that I am giving a theory of justice in climate-induced migration and displacement. I examined some of the existing literature in political theory which has attempted to engage with climate-induced migration and displacement as a matter of justice. Finally, I set out an overview of how I intend to go about constructing such an account. In the next chapter, I take the first step along this path, by setting out the methodological approach that I adopt in constructing my own account.

II. Methodology

1. Introduction

Jorge Luis Borges' short story 'Tlön, Uqbar, Orbis Tersius' describes a fictional world governed by rules derived from Berkeleyan idealism.[1] In the fictional world of Tlön, there is no external material reality, only immediate perception. Language, geometry, mathematics, science and metaphysics take on entirely different meanings. The rules of this world are described by a benevolent secret society in a never-ending encyclopaedia. Soon enough, a volume of this encyclopaedia is discovered on planet Earth. Borges' tale comes to an end as artefacts from Tlön begin to surface, and a mania comes over the inhabitants of planet Earth, who begin to devote themselves to reforming planet Earth to resemble Tlön. The unreality of Tlön begins to bleed into the reality of planet Earth, and in the end, it is unclear if Earth is being reshaped in accordance with an ideal, or if the inhabitants of planet Earth themselves are lost in this ideal and are losing their grip on reality.

Aside from the paradoxes of Berkeleyan idealism that Tlön enables Borges to explore, an important theme in this work is the dangers of a different kind of idealism. Borges writes:

> Almost immediately reality yielded on more than one account. The truth is that is longed to yield … How could one do other than to submit to Tlön, to the minute and vast evidence of an orderly planet? … The contact and habit of Tlön have disintegrated this world. Enchanted by its rigour, humanity forgets over and again that it is a rigour of chess masters, not of angels.[2]

Borges' tale highlights the tensions and ambiguities of relating an abstracted model world to the world we actually inhabit, where the realities of human experience come apart from that model. Normative political theory faces similar tensions and ambiguities.

Normative political theory seeks at once to make sense of the world and to reshape it. One task of a theory of the methodology of normative political theory is to explain how political theorists should navigate the tensions between political practice and normative ideals. Often, the relationship between political practice and normative ideals in political theory is left unclear, and this chapter seeks to combat this tendency by setting out the methodological approach that I take in this thesis. The aim is not to settle debates about methodology once and for all, but rather to articulate my methodological approach and to explain the rationale behind it. I do not defend one view about how normative political theory should be done in all circumstances. Indeed, it seems reasonable to suggest that there are different ways to do

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[1] Jorge Luis Borges, "Tlön, Uqbar, Orbitus Tertius," in *Labyrinths*, ed. Donald Yeats A. and James E. Irby, trans. James E. Irby (Penguin Books, 1961).
[2] Borges, 42.

normative political theory, and that the most appropriate way to do normative political theory depends on the nature of the project at hand.[3]

The basic question with which I am concerned in this chapter is the question of how the principles which compose my theory of justice in climate-induced migration and displacement should be justified. I defend an approach to the justification of principles of justice that I call *interpretivism*. Interpretivists develop principles of justice by normatively reconstructing the institutions and practices that constitute a particular domain. They develop conceptions of those institutions and practices which contain normative principles which tell us how they should be governed. A successful project of normative reconstruction will provide us with the 'best interpretation' of the practices and institutions that constitute a given domain. The sense in which a reconstruction is the 'best interpretation' of an institution or practice is two-fold: first, the reconstruction should display *descriptive fidelity* to the institution or practice in question; second, the reconstruction should be a *normatively justifiable* reconstruction of the institution or practice. The process of normatively reconstructing an institution or practice is not merely a descriptive one, but is also a process which involves moral argumentation.

Interpretivism, as I articulate it, draws on two major sources. First, it draws on the tradition in political philosophy that sees its role as being to constructively interpret the practices of our shared political life. Most recently, this tradition has been articulated in the form of the "practice-dependent" approach to political theory developed by Andrea Sangiovanni.[4] Second, the form of interpretivism that I defend also draws on insights from constructivist, contractualist and discourse-theoretical approaches to moral and political philosophy.[5] In determining whether a reconstruction of an institution or practice is normatively justifiable, it appeals to the idea that participants in a practice should be treated as free and equal moral agents.

Before setting out and defending this approach, however, it is worth reflecting briefly on the aims of this project. What are the desiderata for a theory of justice in climate-induced migration and displacement? Here, I want to suggest that there are two basic desiderata: first, our theory should be *action-guiding*; second, our theory should have *moral force*. These desiderata are more stipulated than defended, but the rationale behind them should be briefly explained.

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[3] Patrick Tomlin, "Should We Be Utopophobes about Democracy in Particular?," *Political Studies Review* 10, no. 1 (2012): 37; see also Laura Valentini, "Ideal vs. Non-Ideal Theory: A Conceptual Map," *Philosophy Compass* 7, no. 9 (2012): 660; Joseph H. Carens, "Realistic and Idealistic Approaches to the Ethics of Migration," *The International Migration Review* 30, no. 1 (1996): 157.

[4] Andrea Sangiovanni, "Justice and the Priority of Politics to Morality," *Journal of Political Philosophy* 16, no. 2 (2008): 137-64; "How Practices Matter," *Journal of Political Philosophy* 24, no. 1 (2016): 3–23.

[5] As I articulate it, I believe that my approach has ecumenical appeal amongst partisans of various constructivist, contractualist and discourse-theoretical approaches.

The desideratum of action-guidingness comes from seeing the project that is undertaken in this thesis as a project of practical reason. Practical reason is broadly concerned with determining what one ought to do through the use of reason. As R. Jay Wallace puts it, practical reason is "distinctively normative" in its standpoint and is concerned with assessing "reasons for action, the considerations that speak for and against alternative courses of action."[6] To say that our theory should be action-guiding is just to say that it should provide us with reasons for action. If we conceive of our project as one of practical reason, then it must be action-guiding in this sense.

Clearly, this alone does not tell us much about action-guidingness. One important question about action-guidingness concerns the specificity of the actions that it should recommend. Should our account, for instance, tell us about what we should do in the immediate circumstances in which we find ourselves, or should it articulate a broader goal towards which we should orient our actions? The notion of 'action-guidingness' itself is neutral with respect to this question. Both the instruction, 'Go the gym this afternoon,' and the instruction, 'Work towards having the body of an Olympic weightlifter,' are action-guiding, although one is much more specific in its prescriptions than the other. As Onora O'Neill points out, all practical reasoning depends on some level of abstraction, which itself need not be problematic.[7] A theory which did not abstract at all would be much like the map with a scale of "a mile to a mile" described by Lewis Carroll in *Sylvie and Bruno*, which, of course, loses any functionality it has as a map.[8]

How specific our theory should be in its prescriptions will depend on the nature of the practical problem that we are addressing. In the case at hand, the need for a theory of justice in climate-induced migration and displacement arises in a particular context. Climate-induced migration and displacement as a phenomenon has arisen against certain background conditions. Amongst other things, these background conditions include human action and inaction which drives anthropogenic climate change, the existence of an international order composed of sovereign states, and regimes of border control which regulate movement of people between those states. If a theory of justice in climate-induced migration and displacement which provides practical guidance is to be useful, then it should begin from these conditions, and tell us something about the actions that we should take in light of the fact that we find ourselves in a world characterised by them. This is not the same as saying that our account should be rigidly constrained by these conditions – it might be the case that practical reason dictates that we work to alter them – but our theory should at least take them as its starting point.

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[6] R. Jay Wallace, "Practical Reason," in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Spring 2018 edition, available at https://plato.stanford.edu/archives/spr2018/entries/practical-reason/.
[7] Onora O'Neill, "Abstraction, Idealization and Ideology in Ethics," *Royal Institute of Philosophy Supplements* 22 (1987): 57–58. See also O'Neill, *Towards Justice and Virtue: A Constructive Account of Practical Reasoning* (Cambridge University Press, 1996), 38-44.
[8] Lewis Carroll, *Sylvie and Bruno Concluded*, ed. Harry Furniss (Macmillan and Co., 1893), 169. See also Umberto Eco, "On the Impossibility of Drawing a Map with a Scale of 1 to 1," in *How to Travel With a Salmon and Other Essays*, trans. William Weaver (Harvest, 1994).

Another important question about action-guidingness brings us to the second desideratum. Will any kind of action do, or are we looking for some specific class of actions to be recommended? Given that we are setting out an account of *justice* in climate-induced migration and displacement, our theory should not merely provide reasons for action, whatever they may be, but should rather provide reasons for actions which appeal to morality, and in particular to the concept of justice. As we saw in the introduction, justice is an important concept in our moral vocabulary. If an institution or practice is just, then it is structured in such a way that its constitutive rules are justified by moral reasons. This consideration provides us with the second desideratum: that our account should have moral force. The instruction to go to the gym may be required by practical rationality if one is to achieve the end of looking like an Olympic weightlifter. But this prescription does not itself have moral force because seeking the end of looking like an Olympic weightlifter is not required as a matter of justice.

This desideratum specifies what we expect practical reason to do in an account of justice in climate-induced migration and displacement. Practical reason has as its "formal end" an answer to the question: 'What should one do?'[9] There are various kinds of reasons to which we might appeal in answering this question, but in our case we should appeal to moral reasons, because what we want is a theory of justice, which tells us what we should do from a moral point of view. This is not to say that *only* moral reasons, or considerations of justice, should be employed in practical reason. For example, it might be the case that other reasons – say, reasons to do with stability or feasibility – should be employed in an all-things-considered assessment of what we ought to do. And other projects in political theory might seek to be normative, in the sense of providing reasons for action, but non-moral. They might simply specify what actions are required by practical rationality *if* some end is to be achieved, without passing comment on the end in question – actions which are "rationally grounded" but not "reasonably justified," in Rainer Forst's terms.[10] Or, they might specify what actions are required by epistemic rationality, by aesthetic sensibility, by political prudence or by the values upheld by a particular ethical community.[11] And it is certainly likely that these reasons are related in various ways – what is practically possible may bear significantly on what the moral thing to do is, for example. In our case, however, the aim is to produce an account of justice in climate-induced migration and displacement with moral force, and appeals to other kinds of reasons are relevant only insofar as they bear on the requirements of justice.

It is also worth noting that a project in political theory need not be normative, in the sense of providing reasons for action, even if is to have moral force. A purely 'evaluative' approach to political theory may

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[9] See J. David Velleman, "The Possibility of Practical Reason," *Ethics* 106, no. 4 (1996): 701–2. See also Derek Parfit, *Reasons and Persons* (Oxford University Press, 1984), 3.
[10] Rainer Forst, "Practical Reason and Justifying Reasons: On the Foundations of Morality," in *The Right to Justification: Elements of a Constructivist Theory of Justice* (Columbia University Press, 2011), 14–15.
[11] This distinction between the 'moral' and 'ethical' use of practical reason used here roughly follows Jürgen Habermas, *Justification and Application: Remarks on Discourse Ethics* (MIT Press, 1993).

say nothing about how we should behave, but nonetheless may have critical potential.[12] Judith Shklar wrote in her discussion of the classical utopias of Thomas More and Jean-Jacques Rousseau, for example, that "both used imaginary societies to expose the faults of the actual world, and neither one expected to change or improve it."[13] If this is right, then these projects might be better understood as projects in the domain of theoretical, rather than practical, reason.

These two desiderata – that our theory should be action-guiding and should have moral force – have implications for methodological approach that I set out in the next section. Like the encyclopaedia of Tlön, our theory should appeal to an external, critical standpoint from which we can address our current predicament (in our case, the standpoint of justice). But unlike the encyclopaedia of Tlön, the principles that it articulates must remain relevant as prescriptions upon which we can act in our world, rather than amounting to a flight from it.

2. Interpretivism

With these introductory considerations about the purpose of this thesis in mind, we can turn towards the task of setting out the methodological approach that I take out in this thesis. In this section, I set out the interpretivist approach, explain its attraction in light of the desiderata specified above, and defend it against some criticisms.

Interpretivists take it to be the case that in developing principles of justice for a particular context or domain, we must constructively interpret the social practices or institutions that constitute that domain. The task of the theorist is to develop principles of justice by normatively reconstructing the institutions and practices that those principles are supposed to govern. The principles that are appropriate for a particular institution or practice, according to the interpretivist, depend on the nature of the practice in question. This claim has been set out as the "practice-dependence thesis" by Sangiovanni:

> The content, scope and justification of a conception of justice depends on the structure and form of the practices that the conception is intended to govern.[14]

The method of 'practice-dependence' that Sangiovanni advocates has come to acquire a certain popularity in debates about justice, but the method has a longer history, and I take it to be a particularly recent expression of a broader tradition of thought which can be broadly understood to be interpretive.[15] The

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[12] See, for example, Anca Gheaus, "The Feasibility Constraint on The Concept of Justice," *The Philosophical Quarterly* 63, no. 252 (2013): 445–64. For a critical view of this project, see David Wiens, "'Going Evaluative' to Save Justice from Feasibility—a Pyrrhic Victory," *The Philosophical Quarterly* 64, no. 255 (2014): 301–7.
[13] Judith N. Shklar, "What Is the Use of Utopia?," in *Political Thought and Political Thinkers* (University of Chicago Press, 1998), 179.
[14] Andrea Sangiovanni, "Justice and the Priority of Politics to Morality," 138.
[15] Robert Jubb, "Recover It From the Facts as We Know Them," *Journal of Moral Philosophy* 13, no. 1 (2016): 77–99.

interpretive approach is distinguished by how it understands the relation between principles and practices. Crudely, the idea is that the principles that we articulate through an interpretive approach should shaped by the function or role that a practice or institution has for its participants. As Gopal Sreenivasan puts it, "[t]he direction of fit… between any such account [of the goods which inform practices] and the community's ethical practices and institutions, favors the latter."[16]

The interpretive approach begins by characterising the institution or practice in question. The aim of this step is to "fix the basic contours of the practices we seek to interpret and in this way to provide a shared platform for further discussion."[17] Of course, what exactly counts as a practice or institution, and the specific contours of any given practice or institution, will not always be uncontroversial. One characterisation of a practice comes from John Rawls, who understands a practice as having constitutive and public rules which specify different offices, actions appropriate to offices, penalties for breaches of rules, and so on.[18] These rules are constitutive in the sense that they make the actions that fall under the scope of the practice the kind of actions that they are. For example, the action of 'claiming asylum' is constituted by the rules of the refugee regime in the same way as the constitutive rules of baseball make it possible to describe an action as 'stealing a base' or 'striking out.'[19] Rawls' conception of a practice is fairly formalised, whereas others have a broader understanding of what counts as a practice. Nicholas Southwood, for example, describes a practice as a "regularity in behaviour among the members of a group that is explained, in part, by the presence in the group of pro-attitudes (or beliefs about the presence of pro-attitudes) towards the relevant behaviour which are a matter of common knowledge."[20] Fortunately, for our purposes we need not adjudicate between these competing views of what counts as a practice, because the practices and institutions that are examined in this thesis (those of climate change adaptation, the refugee regime, internal displacement governance and international climate change treaties) are relatively formalised, and so are captured by both broader and more restricted understandings of social practices.

The second step in the interpretive approach is the properly 'interpretive' step where, as Sangiovanni puts it, "the interpreter seeks to understand the institution (or set of institutions) as an integral whole, whose parts work together in realizing a unique point and purpose."[21] In doing this, the interpreter seeks to understand the aims of a particular practice or institution and to reconstruct the reasons that participants in the practice have for endorsing it.[22] The interpreter should not straightforwardly 'read off' principles

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[16] Gopal Sreenivasan, "Interpretation and Reason," *Philosophy & Public Affairs* 27, no. 2 (1998): 145. Sreenivasan's emphasis on the 'community' and its 'ethical' practices is explained by the fact that he endorses what is below called a 'cultural conventionalist' approach.
[17] Sangiovanni, "Justice and the Priority of Politics to Morality," 148.
[18] John Rawls, "Two Concepts of Rules," *The Philosophical Review* 64, no. 1 (1955): 3–32.
[19] Rawls, 25.
[20] Nicholas Southwood, "The Moral/Conventional Distinction," *Mind* 120, no. 479 (2011): 774–75.
[21] Sangiovanni, "Justice and the Priority of Politics to Morality," 149.
[22] Sangiovanni, 148–49.

from institutions and practices. The aim is not merely to give a description of a practice, but is rather to provide a normative reconstruction of a practice. When investigating a practice, then, the theorist should take what Ronald Dworkin calls the 'interpretive attitude' towards it. Using the example of the practice of courtesy, Dworkin outlines the two assumptions which make up the interpretive attitude:

> The first is the assumption that the practice of courtesy does not simply exist but has value, that it serves some interest or purpose or enforces some principle – in short, that it has some point – that can be stated independently of just describing the rules that make up the practice. The second is the further assumption that the requirements of courtesy – the behaviour it calls for or judgements it warrants – are not necessarily or exclusively what they have always been taken to be but are instead sensitive to its point, so that the strict rules must be understood or applied or extended or modified or qualified or limited by that point.[23]

We can call these two assumptions firstly the *assumption of purpose*, and secondly the *assumption of revision*. The assumption of purpose is that there is some 'point' of a practice – some good that it promotes, or purpose that it serves. The assumption of revision is that the existing rules that constitute a practice may not be the best way of serving that point. They may, for example, fail to properly realise the goods of the practice, or do so only in ways which cannot be normatively justified. Operating with these two assumptions allows the theorist to set out a normative reconstruction of the practice or institution in question. This reconstruction should set out a normatively defensible version of the practice, which makes sense of its purpose and the reasons that participants have for endorsing it.

By examining the reasons that participants have for endorsing a practice, the theorist can formulate candidate principles for governing behaviour associated with a particular practice – principles which are sensitive to the constitutive aims of the practice. For example, if the goal of the practice of promising is to "set up and stabilize small-scale schemes of cooperation," and if each participant in the practice of promising has reason to endorse the goal of the practice, then we might formulate the principle "bona fide promises should be kept" as a principle for regulating the practice of promising.[24] This would be a good principle if it helps to realise the goals of the practice and coheres with the reasons that participants have for endorsing the goals of the practice.

Note here that in interpreting a given practice, the process of reasoning is abductive: the interpreter seeks to provide a reconstruction which *best explains* the practice in question, where the goals of the practice and the reasons that the participants have to endorse it constitute the explanation. This may involve what Sally Haslanger has called the "ameliorative" use of concepts that structure a practice – where we revise our concepts such that they better fit the purposes that they are supposed to serve in a particular

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[23] Ronald Dworkin, *Law's Empire* (Harvard University Press, 1986), 47.
[24] This interpretation of the practice of promising is set out in John Rawls, *A Theory of Justice*, 2nd ed. (Belknap, [1971] 1999), 303–5. It is not uncontroversial; for a prominent alternative account, see T. M. Scanlon, *What We Owe to Each Other* (Harvard University Press, 1998), 295–327.

institution or practice.[25] This helps to explain why our reconstructions of practices can sometimes appear revisionary: often, the normative reconstruction that best explains a practice is latent within it, but the practice as we find it is deficient in realising that ideal.

2.1 Two Kinds of Interpretivism

At this point, it is worth distinguishing between two approaches to interpretivism. Following Sangiovanni, we can distinguish between two kinds of interpretivist approaches: *cultural conventionalist* approaches, where culturally contingent social meanings of practices give content to principles of justice, and *institutionalist* approaches, where the ways in which institutions mediate the relations between persons gives content to principles of justice.[26] The cultural conventionalist approach is typified by Michael Walzer's *Spheres of Justice*, which develops principles of justice by interpreting the social meanings of different goods and practices which, taken together, form what Hegelians might term the *Sittlichkeit*, or the intersubjective 'ethical ordering,' of a community.[27] Walzer describes his interpretivist approach as follows:

> I don't claim to have achieved any great distance from the social world in which I live…. Another way of doing philosophy is to interpret to one's fellow citizens the *world of meanings* that we share. Justice and equality can conceivably be worked out as philosophical artifacts, but a just or egalitarian society cannot be. If such a society isn't already here – hidden, as it were, in our concepts and categories – we will never know it concretely or realize it in fact.[28]

On this view, the 'point' of a practice is determined by the shared social meanings, beliefs and attitudes of a particular community.

On the institutionalist approach, by contrast, the 'point' of the practice is to be determined by the *reasons* that participants in that practice might have for endorsing it. The relations in which people stand, mediated through institutions and practices, "shape the reasons we might have for endorsing (or rejecting) a given set of principles."[29] The institutionalist approach need not appeal to the actual beliefs or self-understandings of the participants of the practice. This distinction is not sharp: it may well be the case that some institutions and practices, and the forms that they take, do in fact depend upon the shared social meanings which help to explain why an institution or practice has a particular structure. But for the

[25] Sally Haslanger, "What Are We Talking About?: The Semantics and Politics of Social Kinds," in *Resisting Reality: Social Construction and Social Critique* (Oxford University Press, 2012), 367.
[26] Sangiovanni, "Justice and the Priority of Politics to Morality," 138.
[27] Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality* (Robertson, 1983).
[28] Walzer, xiv. Emphasis added.
[29] Sangiovanni, "Justice and the Priority of Politics to Morality," 147.

institutionalist, the 'point' of a practice or institution is not *reducible* to the shared social meanings, beliefs, or attitudes of a particular community.[30]

This thesis follows an institutionalist approach, rather than a cultural conventionalist one. There are three reasons for this choice, which should be briefly explained. One reason for this is that the cultural conventionalist approach is based on an idea of a world divided into distinct moral cultures or traditions which have a more or less internally consistent underlying ethical outlook.[31] This idea strikes me as untenable. We inhabit many overlapping identities, our cultures are constantly in flux, and the social meaning of our practices are contested and cannot be fully understood in isolation from the social, economic and political conditions in which they are produced and reproduced.[32] Given conflict in our self-understandings, identities and comprehensive ethical conceptions, the cultural conventionalist approach faces a dilemma: either it produces a multitude of conflicting principles and fails to provide guidance, or it arbitrarily selects one version of a community's 'ethical ordering' over another.

Another reason to reject the cultural conventionalist approach is that even where it does produce uncontroversial and determinate principles, it only provides *ethical* and not properly *moral* standards.[33] It provides reasons for action which only apply to those who accept a particular community's scheme of value or world of social meanings. As such, it falls afoul of our desideratum that the principles to which we should appeal should have moral force. T. M. Scanlon, who views Walzer's approach as a "benign" (rather than debunking) form of relativism, elucidates this criticism: "[t]he fact that an action is required by standards that are part of a way of life may give those who value that way of life reason to perform it, but it does not guarantee that others…have reason to accept the result."[34] Insofar as we want our principles of justice to provide reasons for action that every participant in a given practice or institution can accept, and not only those who accept some comprehensive scheme of value or world of social meanings, then we have good reason to reject the cultural conventionalist approach.

A final reason for rejecting the cultural conventionalist approach is that it is particularly poorly suited to the nature of this project. For the cultural conventionalist, the requirements of justice are conditioned by the societal culture in which they apply. In much of this thesis, however, we are considering the requirements of justice that arise at the international level. Whilst there may be norms of behaviour amongst states, it is unclear that anything like a societal culture which involves shared social meanings obtains. It is clear, however, that there are practices and institutions in the international order mediate the relationships between persons (and other agents like states). Institutionalist approaches are able to

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[30] Sangiovanni, "Justice and the Priority of Politics to Morality," 146.
[31] On this, see the exchange in Ronald Dworkin and Michael Walzer, "'Spheres of Justice': An Exchange," *The New York Review of Books*, July 21, 1983.
[32] See Adam Kuper, *Culture: The Anthropologists' Account* (Harvard University Press, 2009).
[33] Again, I follow Habermas' distinction between the ethical and the moral in *Justification and Application*.
[34] Scanlon, *What We Owe to Each Other*, 333, 337.

interpret the institutions and practices of the international order in order to formulate principles of justice suited to them. But it is difficult to formulate principles of justice for the international order based on the shared social meanings of international practices, given the lack of a shared societal culture in the international order.[35]

2.2 The 'Best Interpretation' of an Institution or Practice

As noted above, the aim of the interpretivist approach is to develop principles of justice by normatively reconstructing an institution or practice. The process of reconstruction has as its end a conception of an institution or practice which provides its 'best interpretation.' However, any object of social interpretation is likely to permit multiple plausible interpretations, with different accounts of the point of the practice and the reasons that participants have for endorsing it. These different interpretations will produce different normative principles for governing the institution or practice in question. Indeed, much disagreement about particular principles is likely to reduce to differing conceptions of the social practices and institutions those principles are supposed to regulate. Adjudicating between competing interpretations of a particular institution or practice is not straightforward.[36] In order to help us to adjudicate between competing conceptions of an institution or practice, it is useful to distinguish between two different senses in which a normative reconstruction of a practice should be its 'best interpretation.' First, it should display *descriptive fidelity* to the practice. Second, it should be *normatively justifiable*.

First: *descriptive fidelity*. The idea here is that the reconstruction that we provide of a practice must provide a plausible reading of the practice in question. One way of determining whether a reconstruction of a practice displays descriptive fidelity is by asking whether it would be recognisable to participants as a conception of the practice in question. If it would not, then it is not clear that the principles that we develop from it will be suited to governing that practice in the first place. Reconstructions may be more or less plausible in terms of their descriptive fidelity to the practice in question, according to the aspects of the practice that they are able to explain. The better the reconstruction is able to explain the features of a given practice, the better it performs in terms of descriptive fidelity.

A good test of whether or not an interpretation is plausible is by comparing it to other interpretations of the same practice and asking whether or not the disagreement between these interpretations is merely verbal.[37] If we can replace the interpretation of the practice with another name and the disagreement

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[35] Though, for an approach which can be plausibly understood as trying to do something like this, see Mervyn Frost, *Ethics in International Relations: A Constitutive Theory* (Cambridge University Press, 1996).
[36] See, for example, Laura Valentini's example of three interpretations of the practice of High Table dining at an Oxbridge College in her "Global Justice and Practice-Dependence: Conventionalism, Institutionalism, Functionalism," *Journal of Political Philosophy* 19, no. 4 (2011): 399–418.
[37] Ronald Dworkin, *Justice for Hedgehogs* (Belnkap Press, 2011), 159; David J. Chalmers, "Verbal Disputes," *The Philosophical Review* 120, no. 4 (2011): 515–66.

disappears, then the interpretation was not properly describing the practice in the first place. If, for example, two people disagree about whether or not burning a flag is a violation of the norms of patriotism, and one speaker reveals that she understands patriotism to be centrally concerned with devotion to one's class, then it is clear that she has misinterpreted the practice of patriotism. The disagreement is merely verbal, which indicates that the speaker's interpretation of the practice of patriotism is impoverished. A genuine disagreement between the speakers, for example where they disagree about whether burning a flag violates the norms of patriotism, but both understand patriotism to be about devotion to one's country, indicates at least that they both share the same concept of patriotism, even if they have different conceptions of it.[38]

Of course, there may be some fuzziness around the contours of the practice in question, and we will often need to apply some 'interpretive charity,' where we presume some coherence in a practice during our investigation of it, in order to establish its point.[39] To uncover a plausible interpretation of the point of a practice, it will often also be necessary to examine not only the public rules and official aims that structure it, but also to what Haslanger calls the "operative" concepts in a practice – those which are "hidden, implicit and yet practiced."[40] Crucially, it is also a feature of the practices of our political life that they are subject to disagreement and contestation. They are structured by what Dworkin calls "interpretive concepts," which by their nature leave open space for disagreement about how they are best understood, and the values they have.[41] We should expect, then, for our reconstructions of institutions and practices to leave open space for disagreement.

This space for disagreement leads to a second criterion for the 'best interpretation' of a practice: *normative justifiability*. The idea is that in providing an interpretation of an institution or practice, we are not merely providing a description of that practice, but are providing a normative reconstruction of that practice. In order to be successful, the normative reconstruction that we provide should not only be sensitive to the point or purpose of a practice, but must articulate a conception of it that is normatively justifiable.

There are a number of different ways in which we might come to think that our normative reconstruction of a practice, and the principles for its regulation, are justified. In this thesis, I employ one particular approach, which draws on insights from moral and political constructivism. My suggestion is that a good way of justifying a principle is by appealing to the idea that it could form the basis of agreement between participants in a given practice considered as free and equal moral agents. The idea that principles should

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[38] For this distinction between a concept and a conception, see Rawls, *A Theory of Justice*, 5 and H.L.A Hart, *The Concept of Law*, 3rd ed. (Clarendon Press, [1961] 2012), 155–59.
[39] Donald Davidson has elaborated a similar proposal for the interpretation of speech acts in terms of speakers' propositional attitudes and intentions. See Donald Davidson, "Radical Interpretation," in *Inquiries into Truth and Interpretation* (Oxford University Press, 2001).
[40] Haslanger, "What Are We Talking About?: The Semantics and Politics of Social Kinds," 370.
[41] Dworkin, *Justice for Hedgehogs*, 160–63.

be dialogically endorsable by free and equal moral agents is, I take it, is an idea that is shared by a variety of contractualist, constructivist and discourse-theoretical approaches, despite the important differences in the way that these approaches understand this project. Following Jonathan Quong, I think that we can helpfully understand these approaches as a "model or framework for organizing our moral ideas."[42] The models that they provide help us to adduce the reasons that we have, as a community of agents engaged what Robert Brandom has called "the game of giving and asking for reasons," for endorsing a principle to govern a particular practice.[43]

In this approach to justification, we need not seek to identify the grounds or 'right-making feature' of a principle which 'explains why' it is true or valid.[44] Rather, we aim to identify the reasons that we have for endorsing a principle. To see the import of this distinction, consider the distinction between our common-sense idea of the 'truth' of a proposition and the idea, introduced by John Dewey, of the "warranted assertability" of a proposition.[45] At least according to common-sense or folk understandings of truth, for a proposition to be true, there must be some feature of the world to which 'explains why' it is true.[46] We may be warranted in asserting a proposition because we know that the truth-making feature of that proposition obtains. But there may be other reasons why we are warranted in asserting a proposition. We may, for example, base our assertion of a proposition on reliable testimony. That reliable testimony, however, does not 'explain why' the proposition in question is true. In the same way, the justification of a moral principle may appeal to the ground of the principle, but it need not necessarily do so. Constructivist approaches need not appeal to the ground of a principle. Rather, they argue that the fact that a principle could form the basis of an agreement between free and equal moral agents gives us a justifying reason to endorse it. They do not (or at least, need not) deny that there may be grounds which 'explain why' some principle holds, but they do not seek to access those grounds in the course of justification.[47] This view of justification is, I believe, continuous with prominent approaches in political philosophy, such as Rawls' attempt to set out political conception of justice which "does without the

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[42] Jonathan Quong, "Contractualism," in *Methods in Analytical Political Theory*, ed. Adrian Blau (Cambridge University Press, 2017), 89.
[43] Robert Brandom, *Making It Explicit: Reasoning, Representing, and Discursive Commitment* (Harvard University Press, 1998).
[44] For this distinction between grounding and justification, see Sangiovanni, "How Practices Matter," 11. See also Kit Fine, "Guide to Ground," in *Metaphysical Grounding*, ed. Fabrice Correia and Benjamin Schneider (Cambridge University Press, 2012).
[45] John Dewey, "Propositions, Warranted Assertibility, and Truth," *Journal of Philosophy* 38, no. 7 (1941): 169–86.
[46] Clearly, this view of truth depends on something like a 'correspondence theory' of truth, and my discussion here skirts a large controversy over theories of truth. But we need not endorse the correspondence theory of truth for the analogy between truth-makers of propositions and the grounds of moral principles to be useful.
[47] Some constructivists may claim that the fact that a principle could form the basis of an agreement between free and equal moral agents *is* the ground of a principle. That option is available to constructivists, but they need not take it, and I neither endorse nor reject that view here.

concept of truth," and Jürgen Habermas' approach of reconstructing valid moral norms for a "postmetaphysical" age.[48]

The idea that our principles should reflect the universalisable will of free and equal rational moral agents goes back at least to Immanuel Kant, whose categorical imperative, in its classic formulation, articulates the idea that we should "act only in accordance with that maxim through which you can at the same time will that it become a universal law" (though this was, for Kant, a distinctly metaphysical claim).[49] Contemporary philosophers influenced by Kant have developed accounts of how we should justify moral and political principles which take inspiration from this approach. Rawls' constructivist approach, for example, uses the "original position" in order to model the principles of justice to which "free and equal persons would assent to under circumstances that are fair."[50] Rawls explicitly sees the original position, at least in his earlier work, as an attempt to interpret Kant's idea that "moral legislation is to be agreed to under conditions that characterize men as free and equal rational beings."[51] Rainer Forst takes valid moral norms to be those which "can be upheld *reciprocally* (i.e., without some of the addressees claiming certain privileges over others and without one's own needs or interests being projected onto others) and *generally* (i.e., without excluding the objections of anyone affected)." He takes reciprocity and generality, understood in these ways, to be "the decisive criteria of justification in the moral context."[52] Scanlon's contractualist formula, that "[a]n act is wrong if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behaviour that no one could reasonably reject as a basis for informed, unforced, general agreement," similarly seeks to model the relations between free and equal moral persons.[53]

There are important differences between these approaches which I cannot examine here. Rather, I want to emphasise what they have in common: they model an exchange of reasons in which each individual can take the reasons given in favour of a principle as reasons for action. That exchange of reasons produces a principle with moral force by making some idealising assumptions about the constructive procedure through which valid principles must go. For example, the Rawlsian original position and "veil of ignorance,"[54] the Scanlonian assumption that parties are motivated to justify themselves to others,[55] and the Forstian ideas of 'reciprocity' and 'generality,' which disallow reasons which exclude some from

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[48] John Rawls, *Political Liberalism* (Columbia University Press, [1993] 2005), 94; Jürgen Habermas, "Themes in Postmetaphysical Thinking," in *Postmetaphysical Thinking: Philosophical Essays* (MIT Press, 1992). See also the discussion in Christian List and Laura Valentini, "The Methodology of Political Theory," in *The Oxford Handbook of Philosophical Methodology*, ed. Herman Cappelen, Tamar Szabó Gendler, and John Hawthorne (Oxford University Press, 2016), 546-549.
[49] Immanuel Kant, *Groundwork of the Metaphysics of Morals* (Cambridge University Press, [1785] 1998), 31 (AK 4:421).
[50] Rawls, *A Theory of Justice*, 12.
[51] Rawls, 221.
[52] Forst, "Practical Reason and Justifying Reasons: On the Foundations of Morality," 20.
[53] Scanlon, *What We Owe to Each Other*, 153.
[54] Rawls, *A Theory of Justice*, 118–23.
[55] Scanlon, *What We Owe to Each Other*, 191–206.

consideration or allow some to claim privileges over others, all operate as idealising assumptions which model what the 'freedom' and 'equality' of moral agents in a community of justification requires. They produce principles with moral force because they address each person as a free and equal moral agent.

I take the idea that treating each person as a free and equal moral agent in the process of justification produces a principle with moral force as an axiom in my approach. Sophisticated attempts to defend this axiom have been made, but examining these would take us too far afield from the task at hand, and I make no attempt to defend this axiom here.[56] In any case, justification has to begin somewhere, and the axiom that each person has standing to demand that she be treated in ways that are consistent with her status as a free and equal moral agent seems a relatively uncontroversial place to start.

Importantly, my approach may differ from some constructivist approaches in that it sees the addressees of justification as *participants in a practice*, and not simply as moral persons detached from any particular practical or institutional background. The idea is that when we consider which principles are justified, we must ask whether participants in a given practice, treating each other as free and equal moral agents, could agree to those principles. The community of justification is the community of participants in a practice, and not a community of unencumbered Kantian selves. There is some disagreement about whether prominent constructivists such as Rawls should be understood as operating in this way, but we need not settle these disputes here.[57] The reason that we should see the addressees of justification as participants in a practice is that doing so ensures that the criterion of normative justifiability remains appropriately connected to the criterion of descriptive fidelity. A reconstruction which displays descriptive fidelity to a practice provides us with reasons based on the point of that practice. If we treat the addressees of our justifications as agents detached from any particular institutional or practical background, rather than as participants, then these reasons no longer have any privileged role. Our construction (rather than reconstruction) would no longer need to be an interpretation of a practice or institution at all.

While I pursue a broadly constructivist approach to justification in this thesis, I do not have a formal constructive model akin to those set out by Rawls or Scanlon that I use consistently throughout the thesis. Rather, my approach is to proceed more informally, by reconstructing the different claims that differently situated parties might raise in a particular context, and to propose principles that I contend could be mutually agreed upon by a community of agents who treat each other as free and equal moral

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[56] The attempts which arguably have the greatest 'fit' with the reconstructive methodology outlined in this chapter are those which argue that the idea of treating each other as moral equals is already implicit in our moral concepts, our use of practical reason, or the pragmatic structure of argumentation about moral norms. See, for example, Stephen L. Darwall, *The Second-Person Standpoint: Morality, Respect, and Accountability* (Harvard University Press, 2006); Forst, "Practical Reason and Justifying Reasons: On the Foundations of Morality"; Jürgen Habermas, *Moral Consciousness and Communicative Action*, trans. Christian Lenhardt and Shierry Weber Nicholsen (MIT Press, 1990).
[57] See, for example, Aaron James, "Constructing Justice for Existing Practice: Rawls and the Status Quo," *Philosophy and Public Affairs* 33, no. 3 (2005): 281–316.

agents. In doing so, I pursue the interpretive method outlined above of reconstructing the reasons that participants have for endorsing practices and institutions, and the goals the institutions serve. The idea is to use a reconstruction of the reasons that participants have for endorsing a practice to propose principles, and to see whether those principles could form the basis of an agreement between free and equal moral persons.

We might naturally wonder what we should do when these two criteria for a reconstruction, of descriptive fidelity and normative justifiability, are in tension with each other. How should we adjudicate between a conception of a practice which is a better description of it, and a conception of a practice which is more defensible from the standpoint of justice? The first thing to note here is that, as indicated previously, practices themselves are almost always subject to disagreement, and so if two conceptions of a practice are plausible, it will rarely be clear that one displays greater descriptive fidelity than the other. Part of the reason of appealing to the criterion of normative defensibility is to settle disputes between competing plausible redescriptions of a practice. Second, it is not always possible to specify in the abstract when descriptive fidelity or normative justifiability will bear greater weight. We may be more or less willing to tolerate greater departures from political practice, depending on the theoretical payoffs of doing so. As Sangiovanni puts it, "the success of the interpretation must be judged in light of the theory as a whole (including the principle of justice derived from it)."[58] As Dworkin puts it, "[w]e defend a conception of justice by placing the practices and paradigms of that concept in a larger network of *other* values that sustains our conception."[59] Insofar as we take coherence to be an ideal towards which we should aspire in building theories, then this is, I take it, relatively uncontroversial.

2.3 Why be an Interpretivist?

What is the attraction of formulating principles of justice by reconstructing the practices and institutions that we find out there in the world, rather than, say, by proceeding at the level of *a priori* reflection? For many interpretivists, approaches which do not take seriously the social practices that they seek to govern are like Borges' *Tlön* in that they elaborate rich pictures of justice, but are fundamentally detached from the realities of human experience. Rather, interpretivists claim that we should see the point of our moral principles as being to guide our behaviour in particular contexts. Consider, for example, the pragmatist conception of moral concepts taken by Dewey:

> *Moral* goods and ends exist only when something has to be done…. Morals is not a catalogue of acts nor a set of rules to be applied like drugstore prescriptions or cook-book recipes. The need in morals is for

[58] Sangiovanni, "Justice and the Priority of Politics to Morality," 149 n.28.
[59] Dworkin, *Justice for Hedgehogs*, 162. For Dworkin, the justification of this approach comes from a broader background view of the unity of value. But we need not endorse the unity of value in order to think that an interpretation is more successful if it coheres better with our background theories and judgements.

> specific methods of inquiry and of contrivance: Methods of inquiry to locate difficulties and evils; methods of contrivance to form plans to be used as working hypotheses in dealing with them. And the pragmatic import of the logic of individualized situations, each having its own irreplaceable good and principle, is to transfer the attention of theory from preoccupation with general conceptions to the problem of developing effective methods of inquiry.[60]

For Dewey, the point of moral concepts like justice is precisely to guide our behaviour in practical contexts ('moral goods and ends exist only when something has to be done'). Each situation in which we find ourselves in need of guidance has its own specific features, including goods that can be promoted and evils avoided. The upshot of this, for Dewey, is that the primary task of the theorist is to develop 'effective methods of inquiry' which help us to navigate particular problems – rather than to elaborate 'general conceptions' and to apply them to particular cases.

This, I want to suggest, provides an attractive account of at least one role that political theory can legitimately play. The point, or at least one point, of political theory is to help us to work through the ways in which our existing institutions and practices are failing to live up to the normative ideals which animate them. If political theory is to be employed in the service of practical reason, as I suggested above, then it should help us to make sense of our social world, to recover what is of worth within it, and to guide action on that basis. Aaron James articulates this role for political theory:

> We are after principles that address demands of justice to social life as we know it, to the political world as we find it and as it is likely to be for the foreseeable future, given how things look from where we now are.[61]

This view of political theory implies a certain self-consciousness about its provisional nature. The principles that we should expect from our political theories, on this view, should not be view as universal prescriptions for all contexts across all of space-time. Rather, they should be view as provisional and open to change, in light of the changing circumstances of our shared political lives. In my view, the appropriate stance to take regarding this implication is one of acceptance and not one of disappointment. It would be unreasonable, and perhaps hubristic, to expect our political theories to be universal in this grand sense. This more modest view of the role of political theory, in my view, better reflects the limits of human understanding.

If our theories of justice fail to direct our actions in such a way that makes sense of our practices and our commitment to the goods that they realise, then it is not clear that they are appropriate as practical guidance for *us*, in the world that we inhabit. An example of the regulation of a practice that is normative

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[60] John Dewey, *Reconstruction in Philosophy* (Cosimo, [1920] 2008), 169–70.
[61] Aaron James, "Why Practices?" *Raisons Politiques* no. 51 (2013): 57.

but non-moral is illustrative here. The French Revolutionary Calendar was introduced in France in 1793 and included the introduction of decimal time as part of a series of decimalisation reforms.[62] The day was divided into 10 hours, each composed of 100 minutes, each composed of 100 seconds. The rationale for this was that it would make calculations easier, especially compared to the 'arbitrary' divisions of the usual approach. The Revolutionary Calendar was also a "symbolic transformation" which marked a "total discontinuity" from the old order.[63] Decimalisation succeeded in the case of currency and in the case of the metric system, but it never caught on in the case of time. The reason for this seems to have been that one of the functions of time measurement is that it enables us to coordinate our social practices (mealtimes, for example) and decimalised time failed to fulfil this function. The proposed principle for governing the system of time did not take account of this function: ease of calculation was not a convincing reason for most people, given the function of time in their lives. Continuity with the previous approach to measuring time would have been important because it would have recognised the important function that time plays in our social practices. As the astronomer Pierre Jules, an advocate for decimal time, put it, "if we failed at the time of the Revolution, it is because we put forward a reform which was not limited to the domain of science, but which did violence to the habits of daily life."[64] Astronomy itself was an exception to the failure of decimal time. The astronomer Pierre-Simon Laplace used decimal time in his work, and astronomers still use decimalised 'universal time' in systems of measurement today.[65] The reason for this is that ease of calculation *is* a convincing reason to decimalise time for astronomers, because astronomy is centrally concerned with calculating time.

The lesson of this example is that the reasons that people have for endorsing a principle for governing a practice are centrally related to the function that practice plays in their experience of the world. Interpretivist approaches embed this concern into their method by beginning with a reconstruction of the reasons that participants have for endorsing a practice. They begin with the world in which we find ourselves, and so are well-suited to formulating principles which can direct our action in the world in which we find ourselves. We can see, then, that there is good reason to think that interpretivism is particularly suited to political theory which seeks to be action-guiding.

However, an important objection has been raised against interpretivist approaches, which argues that they fail to meet the other desideratum. We might worry that interpretivist approaches will fail to have moral force, because they begin with the presumption that existing practices and institutions do in fact serve some purpose. Now, this criticism cannot be that the interpretive approach provides *no* scope for critical assessment of existing practices, because, as we have seen, the *assumption of purpose* is coupled with the

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[62] Eviatar Zerubavel, "The French Republican Calendar: A Case Study in the Sociology of Time," *American Sociological Review* 42, no. 6 (1977): 868–77.
[63] Zerubavel, 871.
[64] Pierre Jules, quoted in Hector Vera, "Decimal Time: Misadventures of a Revolutionary Idea, 1793–2008," *KronoScope* 9, no. 1–2 (2009): 40.
[65] Pierre-Simon Laplace, *Traité de Mécanique Céleste: Tome Cinquième* (Paris, 1823).

assumption of revision, which means that the 'point' of the practice can provide grounds for reform. Rather, the point must be that, by starting with social interpretation, we exhibit a bias towards the *status quo* which will render our principles of justice unnecessarily conservative.[66]

We can distinguish between two versions of this objection. The first version comes from those I will call *universalists*. For universalists, justice is "the self-same thing across, and independently of, history."[67] On G. A. Cohen's view, for example, justice is an ultimate value which can be contrasted with what he calls "rules of regulation."[68] The role of justice, according to universalists, is not to guide action in a particular context, as I have suggested above. Rather, justice is an ideal which, when combined with the context of its application, can usefully guide action, but it is not dependent on the context of its application for its content. As Cohen puts it:

> It is not the purpose of fundamental principles to guide practice, any more than it is the purpose of arithmetic to reach by calculation truths about the empirical world…. fundamental principles indeed serve the purpose that (when combined with the facts) they tell us what to do, but their standing, too, lies upstream from their serving practical purposes.[69]

According to universalists, interpretivists illicitly constrain the content of principles of justice by making them dependent on contingent facts about existing political practice.

Importantly, however, universalists do not deny that social facts matter when it comes to determining what we ought to do. For universalists, determining what we ought to do – the project of practical reason – is a matter of the *application* of the right principles to a particular context.[70] David Miller has called this view the "Starship Enterprise" view of political philosophy, according to which political philosophy proper involves the analysis of political concepts and principles (like justice), and applied political philosophy takes those concepts and principles and applies them to particular cases.[71]

Often, the universalist objection is conflated with Cohen's "fact/principle thesis."[72] Cohen argued that *all* principles (aside from foundational, fact-independent ones), even if they are shaped and constrained by

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[66] Sangiovanni, "Justice and the Priority of Politics to Morality," 161.
[67] G. A. Cohen, *Rescuing Justice and Equality* (Harvard University Press, 2008), 291.
[68] Cohen, 253.
[69] Cohen, 267.
[70] Jonathan Wolff, "Method in Philosophy and Public Policy: Applied Philosophy Versus Engaged Philosophy," in *The Routledge Handbook of Ethics and Public Policy*, ed. Annabelle Lever and Andrei Poama (Routledge, 2018).
[71] David Miller, "Political Philosophy for Earthlings," in *Justice for Earthlings: Essays in Political Philosophy* (Cambridge University Press, 2013). For a critical view of Miller's assessment of the implications of Cohen's views, see Kasper Lippert-Rasmussen, "What Mr. Spock Told the Earthlings: The Aims of Political Philosophy, Action-Guidingness and Fact-Dependency," *Critical Review of International Social and Political Philosophy* 22, no. 1 (2019): 71–86.
[72] Cohen himself does not argue that the fact/principle thesis gives us reason to reject the interpretivist view: he explicitly claims that his argument only shows a "purely logical" priority for fact-independent principles, and not an epistemic one. G. A. Cohen, "Facts and Principles," *Philosophy & Public Affairs* 31, no. 3 (2003): 227.

facts, are dependent on further, fact-independent principles. According to Cohen, all normative principles which reflect facts "must, in order to reflect facts, reflect principles that don't reflect facts."[73] This is to say that behind any normative principle which appears to depend upon facts, there lies a further, fact-independent principle. Thus, if the principle 'You should not kill animals in order to eat them' depends on the fact 'Killing animals in order to eat them causes them unnecessary pain,' then the further fact-independent principle, 'You should not cause unnecessary pain' is doing the real normative work.

This fact/principle thesis, however, does not give us a good reason to reject the interpretivist approach. A range of arguments have been made about the relevance of the fact/principle thesis to theorising about justice, and we need not engage with the details of all of these arguments here.[74] For our purposes, it suffices to point that the fact/principle thesis is a claim about the logical relationship between facts and principles, rather than about how principles ought to be justified. Even if it is true, then it does not demonstrate that the right 'direction of travel' in the course of justification is from fact-independent principle to fact-dependent principle.

Once we recognise that the fact/principle thesis does not support the universalist objection, we can see that the universalist objection simply reduces to a disagreement about the nature of justice and the role of political theory. Where universalists see justice as an ultimate value, which stands upstream from any particular practice, interpretivists see justice as a virtue of institutions and practices, which tells us when they are justified from a moral point of view. For universalists, the proper role of political theory is to describe what values like justice require, and practices should be seen as instruments for realising those values. As Cohen puts it, "the question for political philosophy is not what we should do but what we should think, even when what we should think makes no practical difference."[75] For interpretivists, by contrast, the proper role of political theory is to critically examine our institutions and practices, and to determine what we ought to do in light of the fact that we find ourselves in a world characterised by their existence. If this is all there is to this objection, then this disagreement need not trouble us. So long as we accept that there are multiple legitimate ways to do political philosophy, and so long as we are clear about the kind of project that we are engaging in, then this criticism is deflated. Universalists are undertaking an evaluative project, which does not seek to tell us what to do, at least not directly. Interpretivists are undertaking a normative project, which does seek to tell us what to do.

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[73] Cohen, 214.
[74] See, for example, Enzo Rossi, "Facts, Principles, and (Real) Politics," *Ethical Theory and Moral Practice* 19, no. 2 (2016): 505–20; Robert Jubb, "Logical and Epistemic Foundationalism About Grounding: The Triviality of Facts and Principles," *Res Publica* 15, no. 4 (2009): 337–353; Miriam Ronzoni and Laura Valentini, "On the Meta-Ethical Status of Constructivism: Reflections on G.A. Cohen's 'Facts and Principles'," *Politics, Philosophy & Economics* 7, no. 4 (2008): 403–22; Thomas Pogge, "Cohen to the Rescue!," *Ratio* 21, no. 4 (2008): 454–75.
[75] Cohen, "Facts and Principles," 243.

A second version of the *status quo* objection is that which comes from critical theorists. It is worth saying something about this criticism and the relation between interpretivism and critical theory. In its critical theory guise, the criticism of *status quo* bias is that by lending plausibility to a practice, we fail to unmask the ideologies that sustain it. The *assumption of purpose* "reproduces its [the institutional scheme's] distortions" and "makes it impossible to acquire an undistorted picture of our institutional system."[76] Rather, for critical theorists, the aim of interpretation is to debunk and demystify accepted social practices, especially by showing that they are not natural or given. What Seyla Benhabib terms "defetishizing critique" seeks "to demystify the apparent objectivity of social processes by showing them to be constituted by the praxis of knowing and acting subjects."[77] The demystification of ideologies and the social practices sustained by them is crucial to the critical theory's aim of emancipation. Max Horkheimer's formulation of the role of critical theory expresses this:

> The real situations which are the starting-point of science are not regarded simply as data to be verified and to be predicted according to the laws of probability. Every datum depends not on nature alone but also on the power man has over it…the theory never aims simply at an increase of knowledge as such. Its goal is man's emancipation from slavery.[78]

So, the objection from critical theory is that by taking the aims and objectives or social practices as given, we carry over their distortions. If so, then our principles of justice will not serve, but will rather fetter, the process of emancipation from injustice and oppression.

In response to this criticism, it is worth raising three points. First, the principles that the interpretivist theorist develops are developed by reconstructing the reasons that participants do *in fact* have for endorsing the institution – and crucially, these need not be the reasons that participants (perhaps subject to false consciousness or adaptive preferences) *think* that they have for endorsing the practice. The theorist reconstructs these reasons by considering how the institution or practice in question structures the relations between persons, and what reasons for action those relations give each participant. If the theorist has done this job right, then she sheds the ideologies that sustain unjust institutions. Second, note that the interpretivist method builds in the idea that the reconstruction should be mutually justifiable in broadly constructivist terms. Presumably, the institutions and practices that critical theorists object to will not be justifiable in this way. Consider, for example, the institution of slavery in Ancient Greece. Arguably, part of the function of slavery in Ancient Greek city-states was to promote the good of a flourishing civic life unencumbered by the necessities of day-to-day life.[79] We seek to might develop

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[76] Sangiovanni, "Justice and the Priority of Politics to Morality," 161.
[77] Seyla Benhabib, *Critique, Norm and Utopia: A Study of the Foundations of Critical Theory* (Columbia University Press, 1986), 9. Emphasis suppressed.
[78] Max Horkheimer, "Postscript," in *Critical Theory: Selected Essays* (Continuum, [1972] 2002), 244–46.
[79] See, for example, Hannah Arendt's reading of Aristotle's defence of slavery in her *The Human Condition* (University of Chicago Press, [1958] 2018), 83–85.

principles for the regulation of slavery such that they promote this good. But these principles would be manifestly unjustifiable to participants in the practice considered as free and equal moral agents. Such an arrangement would subordinate the would-be slaves, would enable the exercise of arbitrary power over them, would unduly burden them, would express a form of disrespect inconsistent with their status as equals, and so on. Practices like slavery, which by their nature preclude the possibility of their being mutually justified by free and equal moral agents, cannot be normatively reconstructed in the way that the interpretivist approach requires. Finally, the note that the force of the *status quo* bias objection is depends on how far the reader agrees with the substantive conclusions of an argument based on interpretation. In some cases, we need a close examination of a practice in order to reveal is deficiencies and to present forceful challenges to the *status quo*. In such cases, as Walzer puts it, "critical distance is measured in inches."[80]

It is also worth noting that critical theory and the interpretivist approach are not so far apart as this criticism might suggest. Critical theory does not seek to 'stand outside' of practices, and has long viewed universalist normative theories with suspicion, viewing them as dogmatic in helping to uphold and propagate ideologies.[81] What Benhabib calls the "Hegelian legacy" of critical theory is precisely to "avoid the naivety of openly evaluative and prescriptive enquiries"[82] through the method of *immanent critique*. Immanent critique is itself a form of interpretation – though a debunking one, where the interpreter seeks to reveal the pathologies and contradictions within a social practice or institution. And so critical theory's objection is not to the 'internal' nature of interpretivism, but to the fact that it employs interpretation in order to build constructive and prescriptive theories, rather than to expose ideological justifications for existing institutions and practices.

Once we recognise this, we can see that both approaches can be legitimate ways of pursuing political theory which need not stand in opposition to each other. David Owen suggests that 'analytic' and 'continental' forms of political philosophy are oriented around what he calls different "structural problematics."[83] Analytic political philosophy's structural problematic is the "guidance problem" (which concerns "the relation in which political philosophy stands to, and serves (or fails to serve) as a guide to, political practice") and continental political philosophy's structural problematic is the "critique problem" (which concerns "the way in which social and political philosophy stands as a form of critical reflection on our practices of social and political reasoning").[84] Certain forms of political philosophy, according to Owen, bridge the divide between these approaches by pursuing what Lea Ypi has called "activist political

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[80] Michael Walzer, "Interpretation and Social Criticism," in *The Tanner Lectures on Human Values* (Cambridge University Press, 1985), 53.
[81] Sangiovanni, "Justice and the Priority of Politics to Morality," 162.
[82] Benhabib, *Critique, Norm and Utopia*, 9.
[83] David Owen, "Reasons and Practices of Reasoning: On the Analytic/Continental Distinction in Political Philosophy," *European Journal of Political Theory* 15, no. 2 (2016): 172–88.
[84] Owen, 173–74.

theory."[85] Sangiovanni speculates that one way of thinking about progress in political theory is in terms of a dialectic between prescriptive and critical approaches to our practices.[86] In the end, critical theory and interpretivist normative political theory may not lie so far apart, and a dose of debunking interpretation alongside constructive interpretation may be a good tonic for the health of the discipline as a whole.

3. Conclusion

We saw from Borges' tale some of the tensions of using an abstract model of an idealised world in order to guide action in the world we inhabit. We saw that whilst such a model can provide us with a powerful critical standpoint from which to assess our current predicament, it can also be a flight from reality. In setting out a theory of justice in climate-induced migration and displacement, we face these same tensions. We seek at once to use the concept of justice to provide us with a critical vantage point from which to assess our current practices and institutions, and to guide action in the here and now.

This chapter has examined the question of how we should justify the principles of justice that compose our theory of justice in climate-induced migration and displacement. I sought to set out an account of how we can navigate the tensions raised by two desiderata for normative political inquiry, that our theory should be *action-guiding*, and that it should have *moral force*. I set out the interpretive method, where we interpret the practices and institutions in question in order to develop a normative reconstruction that best explains those institutions and practices. From that reconstruction, we can then develop principles of justice for the particular context that we are examining, by appealing to the constitutive goals of an institution or practice and the reasons that participants have for endorsing this practice. Normative reconstructions of institutions and practices, we saw, should display two characteristics in order to be successful. First, they should display *descriptive fidelity* to the practices that they represent. Second, they should be *normatively justifiable*, understood in broadly constructivist terms. They should be justifiable to the participants in the practice considered as free and equal moral agents. This approach, we saw, is promising because it provides an attractive account of the role of political theory. It recognises the practical function that concepts like justice can play in regulating our practices and institutions.

Taken together, these aspects of my methodological approach enable us to navigate the tensions raised by Borges' tale. They take seriously the twin tasks of the concept of justice: providing us with an external critical vantage point, and providing us with practical guidance in the here and now. With these methodological tools in hand, we can turn our attention to constructing an account of justice in climate-induced migration and displacement.

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[85] Owen, 184–86. Owen cites James Tully and Iris Marion Young as exemplars of this approach. For the idea of 'activist political theory,' see Lea Ypi, *Global Justice and Avant-Garde Political Agency* (Oxford University Press, 2012).
[86] Sangiovanni, "Justice and the Priority of Politics to Morality," 163.

III. A Treaty for the Climate-Displaced?

1. Introduction

On September 19th 2016, the United Nations General Assembly (UNGA) adopted resolution 71/1, *The New York Declaration for Refugees and Migrants*, which recognised that people move "in response to the adverse effects of climate change, natural disasters (some of which may be linked to climate change), or other environmental factors."[1] In 2010, the Cancún Agreements adopted at the 16th Conference of the Parties (COP16) to the United Nations Framework Convention on Climate Change (UNFCCC) encouraged states to pursue "coordination and cooperation with regard to climate change induced displacement, migration and planned relocation."[2] The need for a response on the part of the international community to this emerging phenomenon of climate-induced migration and displacement has now become clear.

This chapter takes a first step towards setting out a theory of justice in climate-induced migration and displacement by critically assessing proposals for what I call the *unitary approach*. The unitary approach treats climate-induced migration and displacement as one, unified phenomenon. It singles out the climatic features of migration and displacement as being the salient features for determining how such migration and displacement should be governed. Proposals for unitary approaches seek to identify a category of 'climate-displaced' persons, and propose institutional mechanisms for governing their migration or displacement. In the nascent literature on climate-induced migration and displacement, the unitary approach has been a popular approach to addressing the challenge of climate-induced migration and displacement. In this chapter, I seek to demonstrate that unitary approach has some important flaws, which undermine its ability to function as either an effective or a just response to climate-induced migration and displacement. By highlighting these flaws, I aim to clear the ground for elaborating my own alternative, which disaggregates climate-induced migration and displacement rather than treating it as one, unified phenomenon. I call my alternative the *ecological approach*.

The chapter proceeds as follows: first, I outline the idea of the unitary approach and review some proposals for unitary approaches that have been set out in the literature. I explain two *prima facie* attractive features of the unitary approach: first, that it fills a legal 'gap,' and, second, that it enables us to address questions of responsibility arising from the anthropogenic nature of climate change, which I call the *responsibility rationale*. Then, I point out an important flaw in the unitary approach. I point to the mismatch between the idealisations upon which the unitary approach depends and the empirical dynamics and complexities of climate-induced migration and displacement. This mismatch, I argue, leads to practical

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[1] UNGA, *New York Declaration on Refugees and Migrants*, A/RES/71/1 § (2016), article I.1.
[2] UNFCCC, "Report of the Conference of the Parties on Its Sixteenth Session. Part Two: Actions Taken by the Conference of the Parties at the Sixteenth Session," FCCC/CP/2010/7/Add.1 § (2011), sec. 13(f).

problems for the unitary approach. Next, I argue that, even if it works, the unitary approach has two important failings when examined from the standpoint of justice. First, it fails to treat relevantly like cases alike, and in doing so it arbitrarily privileges those who it counts as 'climate displaced' over those who it does not count as 'climate-displaced.' Second, it fails to treat relevantly different cases differently, and in doing so it fails to appropriately respond to different kinds of migration and displacement. Finally, I sketch the outlines of my alternative, the ecological approach, which conceives of a just response to climate-induced migration and displacement as consisting in a network of institutions across different domains, united by a principle of international cost-sharing. The sketch that I outline towards the end of the chapter is developed over the rest of the thesis.

2. The Idea of the Unitary Approach

In the emerging literature on climate-induced migration and displacement, one popular proposal has been the creation of a new institution designed specifically to address climate-induced migration and displacement. I call such accounts *unitary* approaches because they treat climate-induced migration and displacement as one, unified phenomenon, which can be addressed through one institution. The institution that they propose is most often something like a 'treaty for the climate-displaced.' It is useful to look at some examples of these approaches to get a clearer idea of what they look like.

The most influential example comes from Frank Biermann and Ingrid Boas, who have outlined a proposal for a new legal instrument, which would be constituted as a Protocol to the UNFCCC, called the "Protocol for the Recognition, Protection and Resettlement of Climate Refugees."[3] Biermann and Boas argue that such an institution should identify a group of "climate refugees," whose treatment should be regulated by five core principles of governance: (i) the principle of planned relocation and resettlement; (ii) the principle of resettlement instead of temporary asylum; (iii) the principle of collective rights for local populations; (iv) the principle of international assistance for domestic measures; and (v) the principle of international burden-sharing.[4] Together, they take these principles to articulate an account of a just response to climate-induced migration and displacement on the part of the international community. As part of the proposal, Biermann and Boas also outline a funding mechanism, which operates according to a grant system where developed countries contribute proportionally to funding to a shared pool according to their moral responsibility for the plight of climate refugees.[5]

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[3] Frank Biermann and Ingrid Boas, "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees," *Global Environmental Politics* 10, no. 1 (2010): 60–88. See also Frank Biermann and Ingrid Boas, "Protecting Climate Refugees: The Case for a Global Protocol," *Environment: Science and Policy for Sustainable Development* 50, no. 6 (2008): 8–17.
[4] Biermann and Boas, "Preparing for a Warmer World," 75–76.
[5] Biermann and Boas, 75, 79–82.

Other similar approaches have also been put forward. For example, Angela Williams has called for regional agreements of a similar kind under the UNFCCC architecture.[6] Like Biermann and Boas, Williams seeks to identify a distinct category of "climate change refugees." On her proposal, such a category would include a form of "graduating recognition whereby the notion of climate change refugees, and the correlating levels of protection guaranteed, occurs along a sliding scale."[7] Unlike Biermann and Boas, however, Williams refrains from advocating specific protection responses for those identified within this category. Sujatha Byravan and Sudhir Chella Rajan have argued for a special right to free movement for those they consider "climate exiles."[8] On their view, historically high-emitting states would have primary responsibility for "providing immigration rights" which enable climate exiles to move in advance of the impacts of climate change.[9] Bonnie Docherty and Tyler Gianni have also called for a *sui generis* legal convention for "climate change refugees."[10] This convention, they argue, should guarantee climate change refugees access to a range of rights, including rights specifically related to movement (such *non-refoulment* and not penalising unlawful entry), civil and political rights, and social, cultural and economic rights.[11] They argue that the international community should support such a scheme through "obligatory in-kind, or more often, financial assistance proportional to states' contributions to climate change and capacity to pay."[12]

Calls for a unitary approach have not been limited to academia. Non-governmental organisations such as the Environmental Justice Foundation (EJF) have also made similar proposals. The EJF have argued for a new legal framework, which "must be capable of responding to a multiplicity of climate-induced displacement scenarios and incorporate mechanisms to provide for the adaptation and risk-reduction needs of multiple populations of concern."[13] Though they do not provide a blueprint for such a framework, they are clear that existing institutional structures are not the appropriate target, arguing that "it is vital that existing instruments are not amended or opened up for renegotiation."[14] In the case of the EJF proposal, part of the rationale behind not reforming existing institutions is to prevent the risk that hard-won gains in existing institutions such as the refugee regime will be lost.

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[6] Angela Williams, "Turning the Tide: Recognizing Climate Change Refugees in International Law," *Law & Policy* 30, no. 4 (2008): 502–29.
[7] Williams, 522.
[8] Sujatha Byravan and Sudhir Chella Rajan, "The Ethical Implications of Sea-Level Rise Due to Climate Change," *Ethics & International Affairs* 24, no. 03 (2010): 239–260; Sujatha Byravan and Sudhir Chella Rajan, "Sea Level Rise and Climate Change Exiles: A Possible Solution," *Bulletin of the Atomic Scientists* 71, no. 2 (2015): 21–28.
[9] Byravan and Rajan, "The Ethical Implications of Sea-Level Rise Due to Climate Change," 253.
[10] Bonnie Docherty and Tyler Giannini, "Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees," *Harvard Environmental Law Review* 33, no. 2 (2009): 349–403.
[11] Docherty and Giannini, 376–78.
[12] Docherty and Giannini, 379.
[13] Environmental Justice Foundation, *Beyond Borders: Our Changing Climate - Its Role in Conflict and Displacement* (EJF, 2017), 38.
[14] Environmental Justice Foundation, 41.

These proposals differ significantly in their details, but they share an important feature. Unitary approaches all take a similar strategy for addressing climate-induced migration and displacement: they identify 'climate change displacement' as a distinct category (variously identifying climate 'migrants,' climate 'refugees,' and climate 'exiles') and propose a new institution which responds to (what they take to be) its distinctive features. According to unitary approaches, this new institution will appropriately respond to the distinctive challenges facing (those they identify) as climate-displaced by, for example, offering plans for resettlement or free movement rights. In the next section, I argue that this strategy is likely to face serious problems.

First, however, it is worth noting the ways in which the unitary approach seems attractive. One initially attractive feature of it is that it identifies a legal 'gap' for the case of climate-induced migration and displacement and seek to propose a new legal instrument in order to fill that gap. For many of the climate-displaced, there is indeed a legal 'gap.' For example, the refugee regime takes "a well-founded fear of persecution" on the basis of protected characteristics to be the central criterion of refugee status.[15] UNHCR maintains that "while environmental factors can contribute to prompting cross-border displacements, they are not grounds, in and of themselves, for the grant of refugee status under international refugee law."[16] As such, those in refugee-like situations who are moving at least in part as a result of the impacts of climate change do not have the same legal rights as refugees. It is a virtue of an account for it to be able to address the legal blind spots of existing institutions when it comes to climate-induced migration and displacement. The unitary approach maintains that this should be done by the creation of a new institution designed to specifically address climate-induced migration and displacement.

A second *prima facie* attractive feature of the unitary approach is that it is well-suited to distributing its costs in a way which is sensitive to the anthropogenic nature of climate change. As a new, tailor-made institution, a unitary institution could be funded and managed in such a way as to reflect appropriate principles of cost-sharing for climate-induced migration and displacement. It could distribute its costs according, for example, different states' contribution to climate change, the extent to which they benefit from climate change, or their capacity to address climate change.[17] For example, Biermann and Boas suggest that their "principle of international burden-sharing" could mean distributing costs according to a principle of "common but differentiated responsibility," with richer states bearing higher costs.[18] And Byravan and Rajan argue that although humanity shares an obligation to the climate-displaced, high-

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[15] *Convention and Protocol Relating to the Status of Refugees* (1951), article 1. See also the discussion in this thesis in Chapter V.
[16] UNHCR, "Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective" (UNHCR, 2009), 9.
[17] These principles correspond to the 'Polluter Pays Principle' (PPP), the 'Beneficiary Pays Principle' (BPP) and the 'Ability to Pay Principle' (APP), which are popular principles for distributing the costs of tackling climate change. For a discussion of these principles, see Chapter VII sec. 3.3.
[18] Biermann and Boas, "Preparing for a Warmer World," 76.

emitting states ought to bear the lion's share of costs due to their historic involvement in the production of greenhouse gas (GHG) emissions.[19]

This is not a constitutive feature of the unitary approach, which could simply leave the question of cost-sharing unspecified (as, for example, the EJF proposal does). However, we might think that the unitary approach is particularly well-suited to distributing its costs in a way that is sensitive to the anthropogenic nature of climate change. We would expect that a new institution focused on climate-induced migration and displacement would be funded in such a way that reflects the way in which climate-induced migration and displacement arises. By comparison, we might think that if climate-induced migration and displacement were assimilated into existing institutions, then the questions of responsibility that it raises would be ignored. We can call the idea that an institution or set of institutions for governing climate-induced migration and displacement should distribute its costs in a way which is sensitive to the anthropogenic nature of climate change the *responsibility rationale*. The responsibility rationale is a compelling in that it recognises that in climate-induced migration and displacement is produced by human activity. It is not simply a natural misfortune or a 'negative windfall.' The responsibility rationale provides an initial reason to favour a unitary approach. As we will see, however, it is a mistake to think that only the unitary approach could meet the responsibility rationale.

3. Would it Work?

Despite its apparent advantages, the unitary approach faces an important problem, which is that it depends on the clear identification of a group of 'climate-displaced' persons, which is irreconcilable with what we know about the empirical dynamics of climate-induced migration and displacement. This leads to a suite of practical problems for implementing the unitary approach. This section explains why this problem arises, and outlines some practical problems that follow from it for implementing the unitary approach.

3.1 The Category of the 'Climate-Displaced'

The critical problem which faces the unitary approach is that it depends on identifying a group of 'climate-displaced' persons, which is not possible given the empirical dynamics of climate-induced migration and displacement. As such, it faces a problem in defining its scope. Each of the proposals for a unitary approach needs to draw a distinction between those who fall under its scope and those who do not. Such a distinction, however, is not tenable.

Some proposals focus on specific climatic parameters in setting out who counts as a 'climate migrant/refugee/exile.' Biermann and Boas take their proposal to apply to "climate refugees" understood

[19] Byravan and Rajan, "The Ethical Implications of Sea-Level Rise Due to Climate Change," 242–53.

as those who are fleeing from the impacts of sea-level rise, extreme weather events, drought and water scarcity.[20] Byravan and Rajan's proposal addresses those facing permanent displacement due to the loss of habitable land.[21] Neither of these accounts satisfactorily captures the variety of ways in which climate change impacts upon migration and displacement.

In Chapter I, I set out an overview of the empirical dynamics of climate-induced migration and displacement. A quick look back at that overview demonstrates that neither Biermann and Boas' nor Byravan and Rajan's accounts capture the full range of ways in which climate change impacts upon migration and displacement. Recall the five main mechanisms by which climate-induced displacement occurs, as outlined by Walter Kälin:

(i) *Sudden-onset disasters* (e.g. flooding, windstorms and mudslides).
(ii) *Slow-onset environmental degradation* (e.g. sea-level rise, salinisation of groundwater, recurrent flooding, drought and desertification).
(iii) *'Sinking' small-island states* (e.g. sea-level rise in Kiribati, Vanuatu, the Maldives and Tuvalu).
(iv) *Designation of high-risk areas* (e.g. along rivers, coastal plains and mountain regions).
(v) *Civil unrest due to resource scarcity* (e.g. reduced availability of water, arable land and grazing grounds).[22]

Biermann and Boas' account is under-inclusive in that it only accounts for *some* (but not all) of those falling under mechanisms (i), (ii) and (iii), and not for those under (iv) and (v). Byravan and Rajan's account focuses only on one case of (ii). Clearly, the categories defined by these unitary approaches do not capture the range of impacts that climate change is has upon migration and displacement. As such, they are under-inclusive in their attempt to create a legally protected category of 'climate refugees/exiles/migrants' which is sensitive to the actual features of climate-induced migration and displacement.

We may simply think that these are bad definitions, and that an adequate definition of the 'climate-displaced' would be able to capture all those displaced by the impacts of climate change can escape the problem of under-inclusivity. More capacious definitions of the 'climate-displaced' have been proposed, which do not focus on specific impacts, but rather refer to climate- or environment-related disruption in general. Consider, for example, Docherty and Gianni's definition of a 'climate refugee,' which seeks to

[20] Biermann and Boas, "Preparing for a Warmer World," 67.
[21] Byravan and Rajan, "The Ethical Implications of Sea-Level Rise Due to Climate Change," 252.
[22] Adapted from Walter Kälin, "Conceptualising Climate-Induced Displacement," in *Climate Change and Displacement: Multidisciplinary Perspectives*, ed. Jane McAdam (Bloomsbury Publishing, 2010), 85–86.

"address the shortcomings" of Biermann and Boas' proposal but to retain its legal applicability.[23] They define a 'climate refugee' as:

> an individual who is forced to flee his or her home and to relocate temporarily or permanently across a national boundary as the result of sudden or gradual environmental disruption that is consistent with climate change and to which humans more likely than not contributed.[24]

This definition is less restricted than those examined above, since it identifies displacement as a result of 'environmental disruption that is consistent with climate change' as specifying the boundaries of the category of the 'climate-displaced' (though, it is still restricted to cases of cross-border displacement). Another capacious definition comes from the EJF, who define 'climate refugees' as:

> persons or groups of persons who, for reasons of sudden or progressive climate-related change in the environment that adversely effects their lives or living conditions, are obliged to leave their habitual homes either temporarily or permanently, and who move either within their country or abroad.[25]

This captures perhaps the broadest range of those who leave their homes who are affected by the impacts of climate change.

However, even these more expansive definitions face an important problem, which is more basic than under-inclusivity. As Mike Hulme has pointed out in his response to Biermann and Boas, unitary approaches operate with the implausible assumption that there is a mono-causal relationship between climate change and migration.[26] The problem is that they depend on identifying climate change as *the* cause of migration or displacement, whilst in most cases it is not possible to draw a firm distinction between climate change and other causes of migration or displacement.

In many cases, climate change does have some kind of causal role in migration or displacement. Most often, however, it interacts with other existing causes. Consider, for example, the case of out-migration from Mexico to the USA. At the aggregate level, statistical analyses show that reductions in crop yields relating to climate change do have an important causal role in driving migration from Mexico to the USA.[27] Importantly, though, other factors also have also been identified as having a causal influence on emigration from Mexico to the USA at the aggregate level, including the relative growth in labour supply

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[23] Docherty and Giannini, "Confronting a Rising Tide," 368.
[24] Docherty and Giannini, 361.
[25] Environmental Justice Foundation, *Beyond Borders*, 6.
[26] M. Hulme, "Climate Refugees: Cause for a New Agreement? Commentary on 'Climate Refugees: Protecting the Future Victims of Global Warming' by Biermann, F. and Boas, I.," *Environment* 50, no. 6 (2008): 50–54.
[27] See Shuaizhang Feng, Alan B. Krueger, and Michael Oppenheimer, "Linkages among Climate Change, Crop Yields and Mexico–US Cross-Border Migration," *Proceedings of the National Academy of Sciences* 107, no. 32 (2010): 14257–62.

over labour demand in Mexico,[28] the importation of cheap corn from the USA to Mexico under the North American Free Trade Agreement (NAFTA),[29] and US immigration policy.[30] In most cases, migration will be related to a number of causes and, importantly, the migrant's own agency will play a significant role. In any given case, it will be unclear what causal role climate change has played, and it is arbitrary to identify climate change as *the* cause of migration. This point generalises: as we have seen, the most plausible conceptual frameworks for understanding the relation between climate change and migration or displacement see climate change as interacting with existing demographic, political, socio-economic or environmental drivers.[31] The upshot of such research is that it will rarely be possible to distinguish when an individual's migration is 'caused' by climate change, even though the impacts of climate change may be a contributing factor.

This problem has both an epistemic and an ontological aspect. Under the epistemic aspect, the problem is that we may not be able to *know* when climate change is appropriately singled out as the cause of displacement, because of the complexities of the causal chain which leads to migration or displacement. Under the ontological aspect, the problem is that it simply may not be meaningful to identify climate change as a cause of migration or displacement which is isolable from other causes, at least in many cases. The links between climate change and other drivers of migration are complex and non-linear, and it is not clear that combined causes in these cases can simply be broken down into their constituent parts. There is no obvious, non-arbitrary threshold after which the impacts of climate change should be taken to count as *the* cause which defines the status of those displaced, as opposed to other causes such as labour market pressures, conflict, resource scarcity, and so on. Johannes Graf Keyserlingk elucidates this point: "the empirical problem of identifying climate change as the cause of a particular migration-triggering environmental event or process grounds an important conceptual problem: it appears to be dubious whether one can speak in meaningful ways of 'climate' migrants."[32] The multicausality of migration and displacement relating to climate change makes the category of the 'climate-displaced' unstable.

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[28] Gordon H. Hanson and Craig McIntosh, "The Demography of Mexican Migration to the United States," *The American Economic Review* 99, no. 2 (2009): 22–27.
[29] Alejandro Nadal, "The Environmental and Social Impacts of Economic Liberalization on Corn Production in Mexico" (Oxfam; WWF, 2000).
[30] Belinda I. Reyes, "Changes in Trip Duration for Mexican Immigrants to the United States," *Population Research and Policy Review* 23, no. 3 (2004): 235–57.
[31] Richard Black et al., "Foresight: Migration and Global Environmental Change," *Foresight Reports* (The Government Office for Science, 2011). See the discussion in this thesis at Chapter I, sec. 2.2.
[32] Johannes Graf Keyserlingk, *Immigration Control in a Warming World: Realizing the Moral Challenges of Climate Migration* (Andrews UK Limited, 2018), 146.

3.2 Practical Problems

The instability of the category of the 'climate-displaced' generates a suite of practical problems. It gives us good reason to think that attempts to identify particular people as 'climate-displaced' are likely to be counterproductive and marred by disagreement. These practical problems mean that the unitary approach is unlikely to be able to achieve the ends that it sets for itself.[33]

One problem is that the wide scope for disagreement means that judgements about particular cases of migration or displacement are likely to reflects political agendas rather than the state of the scientific knowledge on climate-induced migration and displacement. As Alexander Betts and Angela Pilath have pointed out, micro-level causal claims about climate-induced migration and displacement can be, and have been, deployed strategically in order to advance specific interests or legitimate specific political positions.[34] Identifying who counts as 'climate-displaced' for the purposes of a unitary institution is unlikely to be simply a matter of settling good faith scientific disagreements.

Even if a workable definition of who counts as 'climate-displaced' for the purposes of a unitary institution could be agreed upon, operationalising the category would present practical hurdles for any unitary approach. Given the multi-causality of climate-induced migration and displacement, any procedure that depends essentially on identifying climate change as the cause of an individual's migration or displacement is likely to face serious problems. Jane McAdam identifies some assessments that would need to be made to capture the 'climate-displaced' under a unitary approach:

> First, the decision maker would need to assess the nature of the alleged harm feared, for example, lack of food due to salt-water intrusion on agricultural land. Secondly, the decision maker would need to determine whether the source of that harm (salt-water intrusion from king tides or sea-level rise) is attributable to climate change. This would necessarily seem to require some degree of latitude, since it may take decades before scientists can verify 'climate change' as a cause of an event or process, as opposed to natural causes. Thirdly, the decision maker would need to assess whether that harm amounts to a violation of a human right for which a protection response is forthcoming.[35]

Clearly, making these kinds of assessments would be difficult in practice. It is likely that decision-makers would need to rely on simplifying assumptions and heuristics in order to make the would-be 'climate-

[33] For now, I remain silent about whether those ends are morally valuable ones (though I take up this question in the next section).
[34] Alexander Betts and Angela Pilath, "The Politics of Causal Claims: The Case of Environmental Migration," *Journal of International Relations and Development* 20, no. 4 (2017): 782–804.
[35] Jane McAdam, "Swimming against the Tide: Why a Climate Change Displacement Treaty Is Not the Answer," *International Journal of Refugee Law* 23, no. 1 (2011): 14–15.

displaced' person "legible" to the decision-maker.[36] Such simplifications are inevitably "far more static and schematic than the social phenomena they presume to typify."[37]

Although this phenomenon is not unique to case of operationalising the category of the 'climate-displaced,' it is significant in that it would likely mean including many of those *without* valid claims under the unitary approach (for example, for example, those whose displacement is a result of non-climate-related environmental degradation) and excluding many of those *with* valid claims (for example, those for whom climate impacts are intertwined with existing labour market pressures). It is also likely that there would be inconsistency in the ways in which standards were applied. The standard of 'persecution' in the refugee regime, required by the 1951 Refugee Convention, is instructive here – there is wide latitude in the ways in which states interpret the notion of persecution, and so large discrepancies in the treatment of different individuals with similar claims.[38] We should expect something similar to happen in the case of climate-induced displacement, given the scope for doubt over the climate credentials of any particular case.

The creation of an operational category of for the 'climate-displaced' presents further practical problems. Once the indicators that decision-makers rely on had been set, an incentive is generated to frame one's story in such a way as to meet the criteria. As Roger Zetter recalls in his study of the usage of the refugee label in Cyprus, "inclusion, being labelled a refugee, required conformity; circumstances of 'story' had to be relinquished to the bureaucratic dictates of 'case'."[39] The fact that the beneficiaries of a unitary institution would need to frame their circumstances in such a way as to emphasise the climatic component, an understandable reaction to such 'bureaucratic dictates of 'case',' may undermine the credibility of the unitary approach.

These problems give us serious reason to doubt the workability of the unitary approach. A proponent of the unitary approach, however, might object that in some cases it is relatively straightforward to identify a group of 'climate-displaced' persons. For example, the relative linearity of sea-level rise's relation to greenhouse gas emissions may give us good reason to think that movement away from small-island states such as Kiribati, Tuvalu and the Maldives can be straightforwardly understood as cases of climate-induced displacement. Or, proponents might point to the new science of probabilistic event attribution, which means that it is now more possible than ever for scientists to assert with some confidence that a given extreme weather event is more or less likely to have occurred as a result of anthropogenic climate

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[36] For the idea of legibility, see James C. Scott, *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed* (Yale University Press, 1998).
[37] Scott, 46.
[38] For a survey of the ways in which the standard of 'persecution' has been interpreted and applied in international law, see Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (Oxford University Press, 2007), 90–131.
[39] Roger Zetter, "Labelling Refugees: Forming and Transforming a Bureaucratic Identity," *Journal of Refugee Studies* 4, no. 1 (1991): 47.

change.[40] If we are able to ascribe accurate probabilities to the likelihood that particular events can be attributed to climate change, then we might think that we can reasonably categorise those displaced by events that score above some probability threshold as 'climate-displaced.'

Even these cases, however, are not as straightforward as we might suppose. The economies of small-island states, for example, are in a large part based on tourism, and their food security on subsistence-fishing, both of which are threatened by rising sea levels and which may affect migration.[41] Many of those migrating from small-island states such as Tuvalu cite economic opportunities as their reasons for leaving, rather than environmental changes.[42] Policy interventions in the economy and the food security of small-island states will also have an important impact on migration. As such, in many cases it will be difficult to identify whether people are moving because of climate change, or for other intertwined reasons. In the case of probabilistic event attribution, even if the *event* itself can be identified as the result of climate change, displacement that occurs in response to it will still be mediated through social structures which affect the adaptive capacity and resilience of those affected.[43] This means that even if we can identify a particular weather event as being caused by climate change, displacement itself is not necessarily a result of that event – displacement might be more accurately described as a result of a failure of adaptive capacity or resilience, for which some other actor may bear responsibility.

These considerations give us reason to doubt that we can clearly identify the 'climate-displaced' in even apparently more obvious cases. But there is a more fundamental problem with appealing to either of these ideas in order to save the unitary approach. This problem is that even if we *can* identify a group of 'climate-displaced' persons in these cases, this group is does not cover all of those affected by the impact of climate change upon migration and displacement more broadly. If we appeal only to the 'climate-displaced' as identified in either of these cases, then the unitary approach will be radically incomplete as a response to climate-induced migration and displacement.

The proponent of a unitary approach might simply accept that their project does not cover all cases of climate-induced migration and displacement. But note that if they do so, their project is no longer a unitary one in the sense identified above. It no longer seeks to identify a unified category of the 'climate-displaced,' the members of which all share some normatively salient characteristics, and to argue that their

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[40] For an overview of the recent developments in the scientific literature, see Friederike E. L. Otto et al., "The Attribution Question," *Nature Climate Change* 6 (2016): 813–16.
[41] UNFCCC, "Climate Change, Small Island Developing States" (UNFCCC, 2005), 19–23.
[42] Colette Mortreux and Jon Barnett, "Climate Change, Migration and Adaptation in Funafuti, Tuvalu," *Global Environmental Change* 19, no. 1 (2009): 105–12.
[43] Richard Black et al., "Migration, Immobility and Displacement Outcomes Following Extreme Events," *Environmental Science & Policy*, 27, Supplement 1 (2013): S32–43.

movement can be governed by an institution which takes the salient features of climate displacement as its starting point.

Overall, then, we have good reason to doubt that a unitary approach would be able to work in the way envisaged by its proponents. The difficulties faced by the unitary approach stem from the difficulties in identify a stable category of persons as 'climate-displaced.'

4. Would it be just?

The problems that I have raised for the unitary approach so far have concerned its practicability: that is, they concern whether or not the ends set by the unitary approach can be achieved. But there are also important moral questions to be raised for the unitary approach. These questions concern whether the ends set by the unitary approach are morally valuable in the first place. In this section, I raise some moral objections to the unitary approach.

4.1 Treating Like Cases Alike, or 'Justice for Misfits'

The first moral objection to be raised to the unitary approach is that it would involve public authorities advantaging some and disadvantaging others on morally arbitrary grounds. The idea that public institutions should treat like cases alike (and relevantly different cases differently) is part of the concept of justice. A characteristic expression of this idea can be found in John Rawls' claim that "institutions are just when no arbitrary distinctions are made between persons in the assigning of basic rights and duties and when the rules determine a proper balance between competing claims to the advantages of social life."[44] The idea of treating like cases alike is important because it realises the ideal that public institutions should be able to justify their exercises of power to those subject to them considered as free and equal agents. If two cases have no normatively relevant difference between them, then public institutions treating them differently fail to realise the ideal of equal treatment built into the concept of justice. The unitary approach falls afoul of this prescription.

To see this, let us stipulate that there is one group of people whose involuntary displacement can be clearly linked causally to climate change, the *climate-displaced*, and another group whose involuntary displacement cannot be clearly linked to climate change, the *misfits*. In the case of the misfits, perhaps the link is simply unclear, or perhaps their involuntary displacement has nothing to do with climate change – it might be, for example, the result of a non-climate related disaster such as an earthquake or volcano. Both groups find themselves in the same circumstances: let us stipulate that they both need to escape the

[44] John Rawls, *A Theory of Justice*, 2nd ed. (Belknap Press, [1971] 1999), 5. See also, H. L. A. Hart, *The Concept of Law*, 3rd ed. (Clarendon, [1961] 2012), 159–60 and, for the idea of treating like cases alike as a matter of "the virtue of political integrity," Ronald Dworkin, *Law's Empire* (Harvard University Press, 1986), 164–67.

rapid-onset breakdown of the background conditions of stability against which they live their lives. Under the unitary approach, the climate-displaced would be afforded some kind of benefit (say, international protection and permission to cross state borders). The misfits, however, face the same circumstances as those categorised as the climate-displaced, but would be unable to access the same benefit for which they have the same presumptive need.

If a unitary approach were to be put in place, then a public institution would be using its authority to provide a benefit to the climate-displaced that would be denied to the misfits. But there is no obvious reason for denying this benefit to the misfits, because their circumstances and needs are the same. True enough, one group is climate-displaced, and another is not – but this is not a good reason for denying one group access to an important good that the other receives. The misfits and the climate-displaced both face involuntary displacement and both find themselves in need of accessing the good that is to be provided by the institution.[45] As such, the unitary approach would fail to treat like cases alike, and in doing so would fail to realise the ideal of exercising power in a way that is justifiable to those it addresses considered as free and equal moral agents.

Now, the proponent of the unitary approach might reply that the unitary institution need not exhaust the set of institutions that govern migration and displacement. The misfits, they might argue, could be afforded the good to which they are entitled to under the auspices of another institution. The rationale for doing this might be that this neatly separates those who are responsible for providing the benefit in the climate case (for example, high-emitting states) and those who are responsible for providing the benefit in the misfit's case (for example, the international community as a whole). This reply, however, is unlikely to save the unitary approach from the objection that it would arbitrarily privilege one group over another.

To see why this is the case, consider the relations that could obtain between entitlement-bearers under the two different institutions, one for the climate displaced, and one for the misfits. One would be the unitary institution and the other would be a suitably well-reformed global migration regime which excludes cases of climate-induced migration and displacement. It seems likely that the two different schemes would have different levels of functional success, depending on a range of factors including the amount of buy-in on the part of states sustaining the schemes, the operational effectiveness of the organisation(s) charged with the day-to-day operation of the schemes, the amount of resources

[45] I specify that both groups are *involuntarily* displaced because, unlike the cause of displacement, whether or not movement is voluntary may well provide a non-arbitrary reason to treat groups differently. For one account of why this is the case, see T.M. Scanlon's argument that the exercise of choice generally provides a normatively relevant reason for permitting differential outcomes, T.M. Scanlon, *What We Owe to Each Other* (Harvard University Press, 1998), 251–67.

apportioned to the schemes, and so on. It is unlikely that both schemes would be equally effective, if only due to contingencies in the ways in which they were set up.

No matter which scheme were more effective, the entitlement-bearers under the less effective scheme would likely feel justifiably resentful of the entitlement-bearers under the more effective scheme, even if both received the goods to which they were entitled. They would have a complaint against those who were categorised under the more effective scheme. We might additionally worry about there being cases where *neither* institution takes responsibility for a particular individual, with each asserting that it is the responsibility of the other. Even where no individual 'falls through the gaps,' however, a problem remains: that it is morally arbitrary to treat two individuals differently on the basis of the cause of their displacement. After all, why should a person be treated differently by a public institution simply because her situation was brought about by, say, her state's unwillingness or incapacity to protect her against displacement, rather than by climate change? Or, vice-versa, why should a person be treated differently by a public institution because her situation was brought about by climate change, rather than her state's unwillingness or incapacity? Given that neither person has contributed to their situation, the discrepancy is arbitrary. This arbitrariness is important because public institutions need to be able to justify the ways in which they treat those with whom they interact.

A thought-experiment should illustrate the worrisome nature of this arbitrariness:

> Those with bronchitis are treated at one of two specialist hospitals. The first hospital, the *Aneurin Bevan Centre for Pulmonary Medicine*, is funded through a state-wide scheme of progressive taxation. The second, the *Philip Morris Centre for Pulmonary Medicine*, is funded through a taxation scheme intended to capture the negative externalities of the tobacco industry. The *Philip Morris Centre* is required to treat all cases of bronchitis which can be traced to smoking and the *Aneurin Bevan Centre* is prohibited from treating cases of bronchitis which can be traced to smoking. The *Philip Morris Centre* generally operates more effectively, but both meet their basic obligations to their patients.
>
> Rosie, our bronchitis-suffering exemplar, has been determined to have bronchitis as a result of second-hand smoke. She attends the *Philip Morris Centre*, where she is treated by staff with a wealth of experience, who treat her efficiently and with a soothing bedside manner. Meanwhile, her neighbour, Jim, has developed bronchitis, but it has no relation to smoking. He attends the *Aneurin Bevan Centre*. Here, the staff are all new and inexperienced. He receives adequate care, but his stay is riddled with bureaucratic inefficiencies and minor treatment mishaps.

This example, like the two-scheme set-up considered above, captures the responsibility element at stake. However, it appears objectionable in terms of the entitlement to have one's bronchitis treated.[46] Even if

[46] One might think that the victim of second-hand smoke has a claim for compensation against those who caused her bronchitis, and not merely an entitlement to have her bronchitis treated. If this is so, however, this would still

the adequacy of the two hospitals were reversed, and the *Aneurin Bevan Centre* operated more effectively, we would still find the disparity between the two objectionable. After all, when we think about which principles ought to regulate access to medical care, we tend to think that the cause of the illness is irrelevant.[47] Rather, access to healthcare ought to be organised around the needs of those affected, and the ability of the society to provide it equitably.

Displacement also calls for a response which is organised around the needs of those displaced, rather than the cause of their displacement. A system organised around the cause of displacement which led to patterns of advantage and disadvantage, even if such patterns merely arose accidentally, would be morally arbitrary and would not be justifiable on the part of a public institutions. If a unitary approach were in place, we would risk such a morally arbitrary pattern arising, and would as such risk our public institutions unjustifiably advantaging and disadvantaging different individuals on the basis of the cause of their displacement. In spelling out principles which govern the distribution of responses to those displaced, as Joseph Carens puts it, "what is most important is the severity of the threat to basic human rights and the degree of risk rather than the source or character of the threat."[48]

4.2 Treating (Relevantly) Different Cases Differently

As well as treating like cases alike, another important part of the concept of justice lies in treating relevantly different cases differently. A second important objection to the unitary approach is that it fails to do this.

Aside from the voluntary or involuntary nature of movement, there are other important differences between different cases of climate-induced displacement which may well warrant differential treatment at the hands of public institutions. Because unitary approach treats the 'climate-displaced' as a unified group of people who are owed the same entitlements, it fails to recognise the relevant differences between different 'climate-displaced' persons. Consider, for example, the group identified by Biermann and Boas in their version of the unitary approach: "people who have to leave their habitats, immediately or in the near future, because of sudden or gradual alterations in their natural environment related to at least one of

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not justify her receiving better treatment at the hands of the *Philip Morris Centre*. After all, it is not the role of public healthcare institutions to be metering out compensation in the form of more efficient treatment plans.

[47] Some particularly hard-line luck egalitarians might object that if one of our exemplars had developed bronchitis as a result of a conscious decision to smoke, or had the choice to purchase health insurance but chose not to, this might give us reason to treat him or her differentially. See, for example, Eric Rakowski, *Equal Justice* (Oxford University Press, 1993), esp. 88-106. As Elizabeth Anderson has pointed out, one response to this line of argument is 'so much the worse for luck egalitarianism,' given the implausible moral implications it appears to have. See Elizabeth Anderson, "What Is the Point of Equality?" *Ethics* 109, no. 2, 287-337, esp. 295-302. In any case, in the case at hand neither of our exemplars, and neither the climate-displaced nor the misfits, are responsible for the situation in which they find themselves.

[48] Joseph H. Carens, *The Ethics of Immigration* (Oxford University Press, 2013), 201.

three impacts of climate change: sea-level rise, extreme weather events, and drought and water scarcity."[49] They propose that those in this group, who they identify as the 'climate-displaced' (or "climate refugees" in their terminology), should have access to planned and voluntary (permanent) resettlement.[50]

It is not at all clear, however, why all of those who fit within their category of the climate-displaced should have access to the same good. There are important differences between those facing displacement due to sea-level rise, extreme weather events and drought and water scarcity. Consider those facing the impacts of recurring drought, which makes their existing livelihoods difficult to sustain. People in these circumstances may well be better served by a programme of circular or seasonal labour migration which allows them to diversify their income, rather than by a programme of resettlement. Or, consider those facing disaster displacement. They may benefit more from a scheme of disaster risk reduction which seeks to alter the built infrastructure around them and allows them to remain in place, rather than a programme of resettlement. Something similar can be said of other unitary approaches, insofar as they seek to provide a unified approach to climate-induced migration and displacement.

It is unclear why advocates of the unitary approach think that there is an appropriate 'one-size-fits-all' response to climate-induced migration and displacement, which takes many different forms. As McAdam points out, "a *universal* treaty may be inappropriate in addressing the concerns of particular communities."[51] Rather, what is needed is a system of governance and protection which is sensitive to the normatively relevant differences in different cases – which "take[s] into account the particular features of the affected population, in determining who should move, when, in what fashion, and with what outcome."[52]

It should be appreciated that this is a moral, and not merely a practical objection. It is a moral objection because it is a complaint about the wrongful distribution of different kinds of goods. Consider someone whose community is predictably threatened by a climatic impact, and who is seeking relocation within their state. She may be offered some good which is not warranted by or appropriate for her circumstances (for example, permission to move freely across borders), and this good may be denied to others who are in a relevantly similar position (for example, those who wish to cross borders to pursue economic opportunity). At the same time, she is being denied a good that may well be warranted by her circumstances (for example, the opportunity to relocate to a safe environment with their community) which may be offered to others who are in a relevantly similar position (for example, those living in the shadow of an active volcano). The unitary approach, then, appears to be troubling not only practically,

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[49] Biermann and Boas, "Preparing for a Warmer World," 67.
[50] Biermann and Boas, 75.
[51] McAdam, "Swimming against the Tide," 4.
[52] McAdam, 4.

but morally. Because of its arbitrary focus on the cause of displacement, it is at once guilty of failing to treat relevantly like cases alike, and of failing to treat relevantly different cases differently.

5. An Alternative: The Ecological Approach

At this point, I hope to have given the reader reasons to doubt both the viability and the desirability of a unitary approach to climate-induced migration and displacement. If we take seriously the impact of climate change on migration and displacement, however, we do need institutions which are able to govern migration and displacement in the context of climate change. What might such institutions look like? In this section, I briefly sketch an alternative to the unitary approach. This approach argues that instead of identifying a group of people as 'climate-displaced' and proposing a response to their situation, we should reform a set of institutions that operate in the different domains in which climate-induced migration and displacement arises. I call this approach the *ecological approach*. I borrow this term from Allen Buchanan's characterisation of the legitimacy of international human rights institutions, and use it to indicate that the overall success of the project of governing climate-induced migration and displacement depends on the success of a network of institutions, rather than on one single institution.[53]

In brief, the idea of the ecological approach is that climate-induced migration and displacement should be integrated into a set of institutions which, together, provide a normative architecture for governing it. These institutions also govern other, non-climate related instances of migration and displacement, and indeed non-migratory forms of climate change adaptation. Assimilating climate-induced migration and displacement into these institutions has the advantage of being able to offer different responses to those who face different challenges as a result of their migration or displacement. It also does not depend on the identification of particular individuals as being 'climate-displaced.' The proposal is that rather than focusing on the *causes* of migration and displacement, our approach should be responsive to the particular *needs* of migrants and displaced people in differing circumstances. Even if the cause is climate change, cases of migration and displacement vary considerably in the institutional responses that they warrant. My proposal is that different institutions, with different competencies, be charged with these different projects.

Such an approach is not unprecedented. It has been advocated, for example, by a state-led process outside of the UN called the Nansen Initiative, which sought to address cross-border displacement resulting from natural disasters (including those linked to climate change).[54] Ultimately the process concluded that a standalone legal instrument was not the best response:

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[53] See Allen Buchanan, *The Heart of Human Rights* (Oxford University Press, 2017), 218–19.
[54] https://www.nanseninitiative.org/

> Rather than calling for a new binding international convention on cross-border disaster-displacement, this agenda supports an approach that focuses on the integration of effective practices by States and (sub-) regional organizations into their own normative frameworks in accordance with their specific situations and challenges.[55]

The Nansen Initiative focused specifically on cross-border disaster displacement, rather than on the broader phenomenon of climate-induced migration and displacement, and the recommendations that they set out are relatively unspecific. The approach that I set out over the rest of the thesis can be understood as one interpretation of what the 'integration of effective practices by States and (sub-) regional organizations into their own normative frameworks in accordance with their specific situations and challenges' might require, not only for cross-border disaster displacement, but for climate-induced migration and displacement more broadly.

The institutional architecture that I defend in this thesis involves reforms to existing institutions in three domains which, together, cover the range of cases of migration and displacement upon which climate change impacts (excepting cases of displacement from small-island states, as was noted in Chapter I). These domains are: (i) climate change adaptation, (ii) the refugee regime, and (iii) internal displacement. Suitably reconceived and reformed, the institutions in these three domains can be put to use in productively addressing migration and displacement relating to climate change. My contention is that the domain of climate change adaptation is suited to addressing what I am calling *anticipatory migration*, including both migration stemming calls *slow-onset environmental degradation* and the *designation of zones too dangerous for human habitation*. The domains of the refugee regime and internal displacement are suited to addressing what I am calling *reactive displacement*. The refugee regime is suited to both displacement from *climate change-induced unrest* and some cases of *sudden-onset disasters*. Internal displacement governance is suited to displacement from some other cases of *sudden-onset disasters*.

The ecological approach has two important advantages as compared to the unitary approach. First, it does not require identifying particular individuals as being 'climate-displaced' in the way that the unitary approach does. As such, it side-steps the practical problems facing the unitary approach. Second, it recognises that the impacts of climate change intersect with migration and displacement in diverse ways, which warrant different kinds of responses. Unlike the unitary approach, it is able to propose different responses to those in different circumstances, according to their needs rather than the cause of their displacement. It treats relevantly like cases alike, and relevantly different cases differently.

One of the original motivations for the unitary approach, however, was that it could distribute its costs in such a way as to reflect the responsibility element of climate-induced migration and displacement. This

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[55] The Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change: Volume I* (The Nansen Initiative, 2015), 7.

was the *responsibility rationale*. By assimilating climate-induced migration and displacement into broader institutions, we might worry that the ecological approach will be insensitive to the distinctive questions of responsibility raised by the anthropogenic nature of climate change.

This worry is misplaced. We can capture the responsibility element of climate-induced migration and displacement by conceiving of the reconceived and reformed institutions above as discharging our 'first-order' obligations to those migrating and displaced, and by recognising that the context of climate change requires us to put in place a 'second-order' mechanism which redistributes the costs that climate change imposes on these first-order responses according to a principle of responsibility for climate change.

The idea is this: our first-order responses to migration and displacement are becoming costlier as a result of the risks and burdens that climate change is imposing upon the institutions that govern them. As such, we ought to redistribute those extra costs in line with responsibility-sensitive considerations for climate change. Rather than working according to a "tort-like" logic which seeks to identify particular individuals as 'climate-displaced,' as the unitary approach does, the ecological approach works according to an "insurance logic," where the greater the amount of risk that one party imposes upon the system as a whole, the more they are required to pay for its maintenance.[56] This approach, which operates at the macro- rather the micro-level, is not entirely unprecedented: Fanny Thornton, for example, has recently argued that "fault-based" approaches to corrective justice for the climate-displaced in international law face important problems because of the causal complexity of such movement, and has argued instead for "insurance" models of corrective justice.[57] The approach that I develop in this thesis is, however, the first comprehensive attempt to specify what this might look like, by articulating an account of what we owe to those displaced by the impacts of climate change that takes seriously both the empirical diversity and complexity of climate-induced movement, and the pressing questions of responsibility that it raises.

It is worth highlighting that this approach is much more epistemically modest than the unitary approach. It only requires us to know the aggregate effects of the impacts of climate change upon migration and displacement (or even simply to have reasonable estimates) and does not require us to know the identity of particular 'climate-displaced' individuals. This fits much better with the empirical research on climate-induced migration. In Chapter VII, I defend this claim more thoroughly and set out my account of cost-sharing. With this second-order principle of cost-sharing in place, we need not worry that integrating climate change into the existing institutions that govern migration and displacement will mean ignoring the questions of responsibility that it raises.

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[56] For the idea of 'tort-like thinking,' see Eric A. Posner and David Weisbach, *Climate Change Justice* (Princeton University Press, 2010). For the idea of an 'insurance logic,' Idil Boran, "Risk-Sharing: A Normative Framework for International Climate Negotiations," *Philosophy & Public Policy Quarterly* 32, no. 2 (2014): 4–13.
[57] Fanny Thornton, *Climate Change and People on the Move: International Law and Justice* (Oxford University Press, 2018), 97–127.

6. Conclusion

In this chapter, we first characterised the unitary approach, which is a prominent approach taken in the nascent literature on climate-induced migration and displacement, and then saw that it faces some important problems. We saw that it is unlikely to work, because of its dependence on identifying a category of 'climate displaced' persons and the associated practical problems that this brings. We also saw that the unitary approach faces important moral objections, in that it fails to treat like cases alike and fails to treat relevantly different cases differently. We have good reason, then to turn towards an alternative approach. I proposed the ecological approach as an alternative which does not suffer these problems. It does not require us to identify a group of people as 'climate-displaced,' and so avoids the practical problems facing the unitary approach. It also allows us to treat relevantly alike cases alike and relevantly different cases differently, because it focuses on the needs of the displaced rather than the causes of displacement. Finally, we saw that endorsing the ecological approach need not come at the cost of ignoring the distinctive questions of responsibility raised by the phenomenon of climate-induced migration and displacement.

Over the course of the rest of this thesis, I specify in greater detail the approach that I have sketched here. In the next chapter, we begin this project by examining the domain of climate change adaptation, and the anticipatory form of climate-induced migration that it is suited to governing.

IV. Climate Change Adaptation and Anticipatory Migration

1. Introduction

This chapter begins the project of setting out my account of justice in climate-induced migration and displacement, the *ecological* approach, by focusing on what I call *anticipatory migration*. Anticipatory migration is that which takes place in advance of, and is oriented in terms of, avoiding the harmful impacts of climate change. This chapter examines climate change adaptation policy as a domain for governing this kind of migration. I seek to shed light on the way that anticipatory migration, as a form of climate change adaptation, should be governed. This process has several steps.

First, I introduce the practices of climate change adaptation and characterise their point. In light of that characterisation, I show how anticipatory migration relating to climate change can be understood as a form of climate change adaptation. I examine two kinds of anticipatory migration: anticipatory migration associated with *slow-onset environmental degradation* and anticipatory migration associated with the *designation of zones too dangerous for human habitation*. Both can be understood as practices of climate change adaptation.

Next, I turn towards the ways in which climate change adaptation in general and anticipatory migration in particular should be governed. I examine questions of *procedural* justice in decision-making in climate change adaptation. I begin by examining two ideal-typical approaches to decision-making in adaptation: the *hyper-liberal* approach and the *collective-democratic* approach. I argue that the hyper-liberal approach faces an important problem: it tends to undersupply the kinds of collective goods that are characteristically necessary for successful adaptation in general and anticipatory migration in particular. I argue that the collective-democratic approach is a more defensible approach to decision-making in adaptation. David Schlosberg has defended a similar approach to justice in adaptation, but I argue that his defence of the collective-democratic approach faces some important problems. Rather than drawing on controversial commitments about the value of community, as Schlosberg does, I defend the collective-democratic approach in a more ecumenical way, by appealing to what I call the *circumstances of adaptation*. Then, I articulate a standard for a demarcating the *demos* of adaptation decisions, which differs from the standard implied by Schlosberg's account.

Finally, I return to anticipatory migration, and examine some of the implications of the account of procedural justice in adaptation that I have set out for anticipatory migration associated with slow-onset environmental degradation and the designation of zones too dangerous for human habitation. In the case of the former, I argue that the account has fairly radical implications that challenge existing practice. In the case of the latter, I argue that the account does not fundamentally challenge the way in which relocation is governed, but highlights the ways in which existing practice fails to live up to the normative ideals that supposedly animate it.

2. The Climate Change Adaptation Regime

The umbrella term of 'climate change adaptation' covers a significant variety of institutions and practices which operate at a variety of scales, ranging from individual- and community-level practices to coordinated international action. Just as the impacts of climate change vary significantly according to the particular context in which they arise, so too do the adaptive measures that are taken in response to them. What unifies this diverse set of institutions and practices is a shared aim: the aim of avoiding the harmfulness of the impacts of climate change.

The most widely used definition of adaptation comes from the IPCC, which defines it as "the process of adjustment to actual or expected climate and its effects."[1] As a response to climate change, adaptation is an alternative (and complementary) strategy to the mitigation of climate change through the reduction of greenhouse gas emissions. Article 4.1(e) of the original UNFCCC agreement states that all parties shall "cooperate in preparing for adaptation to the impacts of climate change,"[2] and this cooperation includes both financial support and capacity-building. Under the Paris Agreement, adaptation is understood to be a key 'pillar' of the international climate regime.[3]

Like much of the climate policy regime, the governance of climate change adaptation is highly "fragmented," in that it's institutions and practices are "marked by a patchwork of international institutions that are different in their character (organizations, regimes, and implicit norms), their constituencies (public and private), their spatial scope (from bilateral to global), and their subject matter (from specific policy fields to universal concerns)."[4] Given the nature of climate change, such fragmentation is unsurprising. Very different adaptation strategies will be appropriate in particular contexts, depending on the kinds of climatic impacts predicted and the kinds of human systems and communities under threat from those impacts. As such, the actions that might be taken as part of an adaptation programme will vary significantly. For example, adaptation could involve building levees and sea walls to protect communities against tidal flooding, subsidising flood insurance, or encouraging diversification in agricultural communities in order to reduce the severity of crop failures. Adaptation practices also vary significantly across different scales, ranging from so-called "autonomous adaptation" at

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[1] IPCC, "Summary for Policymakers," in *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, ed. C.B. Field et al. (Cambridge University Press, 2014), 5.
[2] UNFCCC, *United Nations Framework Convention on Climate Change* (1992), article 4.1(e).
[3] Alexandra Lesnikowski et al., "What Does the Paris Agreement Mean for Adaptation?," *Climate Policy* 17, no. 7 (2017): 825–31.
[4] Frank Biermann et al., "The Fragmentation of Global Governance Architectures: A Framework for Analysis," *Global Environmental Politics* 9, no. 4 (2009): 16. See also Andrew J. Jordan et al., "Emergence of Polycentric Climate Governance and Its Future Prospects," *Nature Climate Change* 5, no. 11 (2015): 977–82.

the individual level,[5] through actions undertaken through social networks and informal communities[6] and action undertaken at the level of cities and municipalities,[7] to coordinated national and international action.[8] Adaptation governance also takes place through networks across these different levels which bypass traditional structures of governance, such as through the *C40 Cities* network.[9]

Planning for adaptation tends to be organised around the risks and uncertainties inherent in climate change.[10] Because it is rarely possible to predict the precise nature of the impacts of climate change with any confidence, adaptation policies often instead seek to plan in the light of broad trends of climate impacts. They aim at promoting communities' *resilience* and removing their *vulnerabilities* to the impacts associated with those trends, rather than attempting to protect against specific climatic events. Individuals and communities are differentially affected by the impacts of climate change, which are mediated through social, economic and physical infrastructures. An individual or community's vulnerability is a function of their exposure to climatic impacts, their sensitivity to those impacts, and their capacity to respond to them, including the social, economic and physical resources at their disposal.[11] Conversely, an individual or community is resilient to the impacts of climate change to the extent that it is able to protect itself against the harmfulness of those impacts.[12] Vulnerability and resilience are not quite two sides of the same coin: one can be less vulnerable to the impacts of climate change not because one is resilient to them, but because one is simply unexposed to those impacts. 'Resilience' does not simply denote those who are not vulnerable to climate impacts, but more specifically denotes those who are exposed to climatic risk but are nonetheless not vulnerable to its impacts. This way of understanding resilience and vulnerability, and the relation between them, is not universal. Mark Pelling, for example, has sought to

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[5] Samuel Fankhauser, Joel B. Smith, and Richard S. J. Tol, "Weathering Climate Change: Some Simple Rules to Guide Adaptation Decisions," *Ecological Economics* 30, no. 1 (1999): 69–70.
[6] W. Neil Adger, "Social Capital, Collective Action, and Adaptation to Climate Change," *Economic Geography* 79, no. 4 (2003): 387–404.
[7] Harriet Bulkeley and Michele M. Betsill, "Revisiting the Urban Politics of Climate Change," *Environmental Politics* 22, no. 1 (2013): 136–54.
[8] W. Neil Adger, Nigel W. Arnell, and Emma L. Tompkins, "Successful Adaptation to Climate Change across Scales," *Global Environmental Change* 15, no. 2 (2005): 77–86.
[9] See https://www.c40.org/
[10] The standard distinction between risk and uncertainty in adaptation policy understands risk as measurable and uncertainty as involving probabilities that cannot be quantified. See the IPCC's definition of risk in IPCC, "Summary for Policymakers," in *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, ed. C.B. Field et al. (Cambridge University Press, 2014), 5, and Frank H. Knight, *Risk, Uncertainty, and Profit: Chapter 1: The Place of Profit and Uncertainty in Economic Theory* (Houghton, Mifflin and Company, 1921).
[11] The best way of conceptualising vulnerability is subject to debate in the social-scientific literature. This broad characterisation of vulnerability has ecumenical appeal, and we need not engage with the specifics of these debates here. See, Jouni Paavola and W. Neil Adger, "Fair Adaptation to Climate Change," *Ecological Economics* 56, no. 4 (2006): 594–609; Susan L. Cutter, "Vulnerability to Environmental Hazards," *Progress in Human Geography* 20, no. 4 (1996): 529–39; P. M. Kelly and W. N. Adger, "Theory and Practice in Assessing Vulnerability to Climate Change And Facilitating Adaptation," *Climatic Change* 47, no. 4 (2000): 325–52.
[12] For an overview of the development of the concept of resilience as it figures in discussions of climate change adaptation, see Carl Folke, "Resilience: The Emergence of a Perspective for Social–Ecological Systems Analyses," *Global Environmental Change* 16, no. 3 (2006): 253–67.

typologise approaches to adaptation by distinguishing between approaches which promote resilience (in his terms, preserving the *status quo*), transition (the promotion of incremental change) and transformation (promoting radical change).[13] Although these distinctions may be helpful for examining different adaptation strategies, all three of these strategies promote resilience in the broader sense of protecting against the harmfulness of the impacts of climate change and this broad understanding of resilience will suffice for our purposes. Often, those least resilient and most vulnerable to the impacts of climate are so because they are disadvantaged along other vectors. Many of those threatened by the impacts of climate change face poverty, precarious livelihoods, or live in underdeveloped regions. As such, strategies for reducing these groups' vulnerabilities may overlap with other human development goals, and adaptation plans often become enmeshed with other policy domains, such as the implementation of the sustainable development goals.[14]

We can see from this brief characterisation of climate change adaptation that the domain covers a wide variety of institutions and practices which share the aim of avoiding the harmfulness of the impacts of climate change. A variety of actors pursue this shared aim in diverse ways and contexts, under conditions of risk and uncertainty, and the concepts of vulnerability and resilience can help us to make sense of the actions that they take given those conditions.

3. Anticipatory Migration as Adaptation

My contention is that anticipatory migration relating to climate change is helpfully understood as a form of climate change adaptation. Anticipatory migration is that which takes place in advance of, and is oriented in terms of, avoiding the harmfulness of the impacts of climate change. It is planned, rather than being a reaction to the already-harmful impacts of climate change. It uses migration as a way of mitigating the harmfulness of the impacts of climate change, either by avoiding those impacts or by rendering them less harmful. It is worth recalling that anticipatory migration is not, simply by virtue of being anticipatory, *voluntary* migration. As we saw Chapter I, having one's options curtailed such that migration becomes the only reasonable option, even if one is able to anticipate that migration, cannot be reasonably understood to be a case of voluntary migration.[15]

As we have seen, adaptation is a lot broader than only migration. However, much climate-related migration can be usefully understood as an adaptive strategy. Researchers in the social sciences have begun to understand migration as an adaptive strategy for avoiding the harmfulness of the impacts of

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[13] Mark Pelling, *Adaptation to Climate Change: From Resilience to Transformation* (Routledge, 2010), 50–51.
[14] Farhana Yamin and Joanna Depledge, *The International Climate Change Regime: A Guide to Rules, Institutions and Procedures* (Cambridge University Press, 2004), 221–22.
[15] That is, it is not a choice made from a set of options that constitutes what Raz calls an "adequate range of valuable options." See, Joseph Raz, *The Morality of Freedom* (Clarendon Press, 1988), 373–77.

climate change.[16] As this research identifies, migration relating to climate change is often oriented in terms of promoting resilience to climatic impacts and thereby avoiding the harmfulness of the impacts of climate change. A range of migration patterns could come under the auspices of climate change adaptation policy. Two kinds of anticipatory migration are particularly relevant: migration stemming from slow-onset environmental degradation and migration stemming from the designation of zones too dangerous for human habitation.

First: migration stemming from *slow-onset environmental degradation*. In cases of slow-onset environmental degradation, migration is often a strategy for promoting resilience in the face of climate impacts. In many of these cases, environmental changes interact with existing drivers of migration, including pressures on livelihoods. Consider the example with which this thesis began: that of adaptation to drought in the Sahel. Farmers in the Sahel have developed methods of resisting the impacts of drought, such as through practices of 'agrodiversity' (maintaining a variety of staple crops), in contrast to the received wisdom of maximising yields by intensively cultivating a single crop.[17] Traditional risk-sharing mechanisms exist amongst farmers, where cash, livestock and food are loaned in order to absorb the shock of droughts.[18] In the language used to describe adaptation above, farmers seek to make themselves more *resilient* to the impacts of climate change through these practices. The impacts of climate change, however, are stretching traditional risk-management strategies and are encouraging farmers to turn to alternatives to manage the increased risk to which they are exposed by the impacts of climate change.[19] One such alternative strategy is labour-related migration, where members of a household migrate in order to take up waged labour, reducing household consumption and generating remittances.[20] Here, vulnerability to drought is decreased, and resilience increased, by a diversification of income which makes the impacts of drought-related crop failures less catastrophic. In the rural highlands of Ethiopia, labour-related migration amongst men has more than doubled under conditions of severe drought, with migration is used as an adaptive strategy more amongst those most vulnerable to drought-related shocks.[21] Migration in response to increased climatic stresses is not straightforwardly linear, however. Amongst women, mobility *decreased* under conditions of drought, as women's migration was primarily associated with marriage and

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[16] Robert McLeman and Barry Smit, "Migration as an Adaptation to Climate Change," *Climatic Change* 76, no. 1–2 (2006): 31–53; Cecilia Tacoli, "Crisis or Adaptation? Migration and Climate Change in a Context of High Mobility," *Environment and Urbanization* 21, no. 2 (2009): 513–25; Richard Black et al., "Climate Change: Migration as Adaptation," *Nature* 478, no. 7370 (2011): 447–49.

[17] Michael Mortimore, "Adapting to Drought in the Sahel: Lessons for Climate Change," *Wiley Interdisciplinary Reviews: Climate Change* 1, no. 1 (2010): 137. The rationality of practices of agrodiversity in contrast to the received wisdom of scientific agriculture is discussed in James C. Scott, *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed* (Yale University Press, 1998), 273–86.

[18] Peter D. Little et al., "'Moving in Place': Drought and Poverty Dynamics in South Wollo, Ethiopia," *The Journal of Development Studies* 42, no. 2 (2006): 220.

[19] Clark Gray and Valerie Mueller, "Drought and Population Mobility in Rural Ethiopia," *World Development* 40, no. 1 (2012): 135.

[20] The canonical statement of the economic logic of such migration can be found in Oded Stark and David Bloom, "The New Economics of Labor Migration," *American Economic Review* 75, no. 2 (1985): 173–78.

[21] Gray and Mueller, "Drought and Population Mobility in Rural Ethiopia."

household-formation, which became expensive to finance under conditions of drought.[22] Labour-related migration in response to the impacts of drought is generally autonomous, in the sense that it is a decision taken at the level of the individual or household, rather than being organised through collective decision-making procedures. This pattern of migration, in which it is often used as a way of diversifying income streams, can be seen as an adaptive response to the impacts of climate change.

Second: migration stemming from the *designation of zones too dangerous for human habitation*. In cases where the impacts of climate change render areas too dangerous to inhabit, migration is a way of avoiding the harmfulness of climate impacts. In these cases, migration often takes the form of community relocation. Another case from the beginning of this thesis is illustrative: that of community relocation in Alaska.[23] In coastal Alaska, the villages of Shishmaref, Newtok, and Kivalina have been at risk of coastal erosion since the 1950s, but this risk has been exacerbated in by thinning ice, shoreline erosion, severe storms and permafrost exposure relating to climate change. The ancestors of the current residents of Shishmaref, Newtok, and Kivalina had been traditionally mobile in response to fluctuations in their local environment, until they were settled by colonial 'civilising' programmes. All three communities are federally recognised tribes, whose daily practices are intimately bound up with the land they inhabit. Indeed, the Iñupiaq use the same words for the seasons and for their hunting and gathering cycles.[24] These communities have all voted to relocate on multiple occasions, but the relocation process in all three communities has stalled. Funding has been an important problem: the Stafford Act, which governs the activities of the Federal Emergency Management Agency (FEMA), provides only for post-disaster rebuilding of homes in their original location after a presidential declaration of a disaster.[25] As such, funding for relocation projects has had to be topped up through the Alaskan State Legislature and through community fundraising efforts. Notably, one strategy pursued by Kivalina was filing a lawsuit against ExxonMobil seeking monetary damages, which was ultimately dismissed on the basis that the regulation of greenhouse gases fell out of the jurisdiction of the court.[26] In cases such as these, relocation is being pursued as an adaptive strategy by communities seeking to avoid the harmfulness of the impacts of climate change.

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[22] Gray and Mueller, 142–43.
[23] My description of this case draws on the following articles: Elizabeth Marino, "The Long History of Environmental Migration: Assessing Vulnerability Construction and Obstacles to Successful Relocation in Shishmaref, Alaska," *Global Environmental Change* 22, no. 2 (2012): 374–81; Robin Bronen and F. Stuart Chapin, "Adaptive Governance and Institutional Strategies for Climate-Induced Community Relocations in Alaska," *Proceedings of the National Academy of Sciences* 110, no. 23 (2013): 9320–25; Julie Koppel Maldonado et al., "The Impact of Climate Change on Tribal Communities in the US: Displacement, Relocation, and Human Rights," *Climatic Change* 120, no. 3 (2013): 601–14; Christine Shearer, "The Political Ecology of Climate Adaptation Assistance: Alaska Natives, Displacement, and Relocation," *Journal of Political Ecology* 19 (2012): 174–183.
[24] Shearer, "The Political Ecology of Climate Adaptation Assistance," 176.
[25] Bronen and Chapin, "Adaptive Governance and Institutional Strategies for Climate-Induced Community Relocations in Alaska," 9321.
[26] Felicity Carus, "Alaskan Community Revives Legal Bid for Global Warming Damages," *The Guardian*, November 30, 2011.

In some cases of anticipatory migration, slow-onset environmental degradation is combined with the designation of zones too dangerous for human habitation. This happens in cases where environmental degradation that precipitates migration is *also* what makes remaining in a particular place unviable in the long term. A study conducted as part of the Environmental Change and Forced Migration Scenarios (EACH-FOR) project in the Mekong Delta region of Vietnam illustrates this relationship.[27] Increased flooding in the Mekong Delta and the potential of riverbank collapse is putting the livelihoods of rice farmers, and the subsistence practices of those who fish and collect water plants and vegetables, at risk.[28] Many depend on remittances from those who have migrated either within the region or out of the country, but those in flood-prone areas are increasingly vulnerable. In order to avoid the risk of riverbank collapse, and in order to ease demand for remittances, the government in the An Giang province has marked out 19,690 households for relocation as part of a broad "living with floods" programme, though this process of relocation is also driven in part by other objectives, including the construction of reservoirs and roads.[29] This example demonstrates how one form of migratory adaptation to climate change – migration used to promote resilience through diversification of livelihoods – can become intertwined with another – relocation away from environmental degradation.

These examples illustrate how anticipatory migration, whether stemming from slow-onset environmental degradation or from the designation of zones too dangerous for human habitation, can be understood as a form of adaptation to climate change. Policies designed relating to anticipatory migration can helpfully be understood as adaptation policies. For example, providing the financial capital required to help those who would otherwise be 'trapped' to migrate, planning in collaboration with communities seeking to relocate away from rising seas, or negotiating labour migration agreements can all be understood as 'adaptation practices,' given that they are oriented in terms of avoiding the harmfulness of the impacts of climate change. With a clearer understanding of how anticipatory migration can be helpfully understood as a form of adaptation to climate change, we can now turn towards an examination of the question of what just adaptation policies might look like.

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[27] For a range of examples of the complex relationships between environmental change and migration, see the EACH-FOR synthesis report, Jill Jäger et al., "Environmental Change and Forced Migration Scenarios (EACH-FOR) Synthesis Report," 2009, available at http://rosamartinez.org/wp-content/uploads/2015/11/Migraciones-y-Cambio-Climatico_EACHFOR.pdf. See also Tamer Afifi and Koko Warner (ed.) "Environmentally Induced Migration in the Context of Social Vulnerability," [special issue] *International Migration* 49, no. 1 (2011): e1–e242.
[28] My description of this case draws on the following articles: Olivia Dun, "Migration and Displacement Triggered by Floods in the Mekong Delta," *International Migration* 49 (2011): e200–223; W. Neil Adger et al., "Migration, Remittances, Livelihood Trajectories, and Social Resilience," *AMBIO: A Journal of the Human Environment* 31, no. 4 (2002): 358–66.
[29] Dun, "Migration and Displacement Triggered by Floods in the Mekong Delta," e206.

4. Procedural Justice in Climate Change Adaptation

If adaptation policies and practices, including those relating to anticipatory migration, are to be endorsed from the standpoint of justice, then they must not only be oriented towards achieving their aim of avoiding the harmfulness of the impacts of climate change, but must also do so in ways which are justifiable from the perspective of their participants considered as free and equal moral agents. Here, two questions of justice, relating to the ways in which adaptation might be governed, can be raised: first, we might ask how decisions about adaptation can be taken in way which is fair to all (a question of *procedural* justice), and second, we might ask how the benefits and burdens of adaptation should be distributed (a question of *distributive* justice).[30]

Here I focus on the question of *procedural* justice in adaptation, including in anticipatory migration. There are two reasons for this choice. First, given that adaptation practices are hugely varied in their form, giving a specific answer to how the benefits and burdens of adaptation practices should be distributed is a tall order. The context-specific, individualised logics of different adaptation practices make it hard to specify an answer to this question in general terms. Second, questions of procedural justice are particularly live for anticipatory migration. Anticipatory migration is planned, and so decisions can be taken proactively, unlike in cases of reactive displacement. This makes questions concerning how decisions should be taken comparatively more pressing for anticipatory migration.

In this section, I defend one view of what procedural justice in adaptation requires, and then in the final section of the chapter I examine the implications of this view for the two kinds of anticipatory migration that we have examined above. It is important to recognise that the standards of procedural justice articulated here are not the only criterion by which we might assess practices of adaptation (including anticipatory migration). A practice of adaptation may meet the standards of procedural justice articulated here and still be objectionable by the lights of distributive justice. I take it that adaptation is not an instance of what Rawls called "pure procedural justice," where the only criterion for assessing the substantive justice of an outcome is it having gone through a just procedure.[31] Similarly, a practice of adaptation may meet independently justifiable standards of distributive justice and still be objectionable by the lights of procedural justice. We tend to care, I take it, about *how* decisions are taken, and not only about *which* decisions are taken.

In order to begin our inquiry into procedural justice in adaptation, is useful first of all to distinguish between the two ideal-typical approaches to decision-making in adaptation. First, we might opt for a

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[30] See W. Neil Adger, Jouni Paavola, and Saleemul Huq, "Toward Justice in Adaptation to Climate Change," in *Fairness in Adaptation to Climate Change*, ed. W. Neil Adger, Jouni Paavola, M. J. Mace and Saleemul Huq (MIT Press, 2006).
[31] John Rawls, *A Theory of Justice*, 2nd ed. (Belknap Press, [1971] 1999), 75.

collective-democratic approach, where resources for adaptation are held by the community, and decisions concerning adaptation policies at the community level through democratic mechanisms. Second, we might opt for a *hyper-liberal* approach, where resources for adaptation are held by the individual, and each individual decides for herself how to adapt to the impacts of climate change.[32] It is unlikely that any decision-making procedure in climate change adaptation will be a pure case of either of these alternatives; most are likely to be some kind of hybrid of these approaches. Nonetheless, it is useful to distinguish them analytically in order to clarify and assess the role that each might play in a fully justified account of procedural justice in adaptation. Here, I argue that the hyper-liberal approach faces an important problem and is unable to achieve some of the central goals of adaptation. If it is to be part of a just system of decision-making in adaptation, then its scope must be limited. The collective-democratic approach, I argue, can both overcome some of the problems facing the hyper-liberal approach and has important virtues of its own.

Few explicitly advocate the hyper-liberal approach to climate change adaptation. There are, however, two important reasons to address it here. First, the value of individual liberty which it aims to realise has an important pedigree in political theory. If we value individual liberty, then the hyper-liberal approach appears to be a good candidate for a decision-making method in adaptation. Second, important currents in the practices of climate change adaptation can be understood in terms of the hyper-liberal approach. Autonomous approaches to climate change adaptation have been defended as being the most efficient way of approaching climate change adaptation,[33] and some have argued that collective decision-making is necessary in adaptation only to the extent that individual-level responses to the impacts of climate change are insufficient. The *Stern Review*, for example, claims that "[t]he extent to which society can rely on autonomous adaptation to reduce the costs of climate change essentially defines the need for further policy."[34] Various market-based mechanisms, such as tradeable development permits in low flood-risk areas, are also often seen as efficient ways of promoting adaptation which do not require collective decision-making.[35] Although not pure cases of the hyper-liberal approach, such methods are often seen as valuable because they facilitate individual-level decision making in adaptation.

The collective-democratic approach to climate change adaptation, on the other hand, is often advocated in relation to climate change, but its normative rationale is rarely made explicit.[36] When it has been, as in the work of David Schlosberg, I contend that it has been misidentified.[37] If the collective-democratic

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[32] I thank Darrel Moellendorf for suggesting this alternative to me, and for proposing this term.
[33] Robert Mendelsohn, "Efficient Adaptation to Climate Change," *Climatic Change* 45, no. 3 (2000): 583–600.
[34] Nicholas Stern, *The Economics of Climate Change: The Stern Review* (Cambridge University Press, 2007), 406.
[35] Tatiana Filatova, "Market-Based Instruments for Flood Risk Management: A Review of Theory, Practice and Perspectives for Climate Adaptation Policy," *Environmental Science & Policy* 37 (2014): 227–42.
[36] See, for example, Paavola and Adger, "Fair Adaptation to Climate Change"; Pelling, *Adaptation to Climate Change*.
[37] David Schlosberg, "Climate Justice and Capabilities: A Framework for Adaptation Policy," *Ethics & International Affairs* 26, no. 4 (2012): 445–61; David Schlosberg, "Justice, Ecological Integrity and Climate Change," in *Ethical*

approach is to be vindicated, then we need a clear account of why it is normatively defensible and preferable to the hyper-liberal approach.

The collective-democratic and hyper-liberal approaches are not exhaustive. A third ideal-typical approach to decision-making is the *epistocratic* approach, in which experts hold adaptation resources in trust and take decisions on behalf of those affected in a way which seeks to track their interests. I do not consider the epistocratic approach in any detail here. Though epistocratic approaches have recently gained some traction in the literature on democratic theory[38] and are at least taken seriously as a rival theory which democratic theorists must address,[39] a full engagement with epistocracy would require more space than I can reasonably give to it in this chapter. More importantly for our purposes, however, epistocracy is also rarely advocated as a way of governing climate change adaptation. Although there is clearly a need for scientific and technical knowledge in adaptation, few explicitly advocate that experts ought to take decisions concerning matters of value on the behalf of those engaging in climate change adaptation. More often, "expert-driven" adaptation is often criticised on the basis that it purports to represent the interests of those affected but fails to do so and rather produces results which align with pre-established goals of other actors.[40]

Importantly, both the collective-democratic approach and the hyper-liberal approach also share a commitment to the attractive moral principle that those subject to a decision should be able to shape its content. This commitment is attractive since it treats each individual as a free and equal. Under the collective-democratic approach, this principle is realised through collective processes of deliberation, will-formation and decision-making, whereas under the hyper-liberal approach it is realised by enabling each individual to take decisions for herself. This commitment is not upheld by the epistocratic approach. As such, we have good reason to, at least provisionally, exclude the epistocratic approach from our consideration, and instead focus the discussion on the relative preferability of the hyper-liberal and collective-democratic approaches.

4.1 The Hyper-Liberal Approach

The basic idea behind the hyper-liberal approach to adaptation is that individual-level decision-making in adaptation should be maximised. In order to maximise individual-level decision-making, the hyper-liberal approach directs us to distribute resources earmarked for adaptation directly to those facing climatic impacts and allow those individuals to decide for themselves how best to use those resources. Individuals

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Adaptation to Climate Change: Human Virtues of the Future, ed. Allen Thompson and Jeremy Benedik-Keymer (MIT Press, 2012).

[38] See, for example, Jason Brennan, *Against Democracy* (Princeton University Press, 2017).

[39] David M. Estlund, *Democratic Authority: A Philosophical Framework* (Princeton University Press, 2008).

[40] See, for example, Roger Few, Katrina Brown, and Emma L. Tompkins, "Public Participation and Climate Change Adaptation: Avoiding the Illusion of Inclusion," *Climate Policy* 7, no. 1 (2007): 46–59.

with different risk appetites may decide to use the resources allocated to them in different ways. For example, the more risk-averse might use their resources to relocate to a less disaster-prone area, whilst risk-takers or those who place a high value on staying in their local community might use their resources to make their housing more resilient to anticipated climate impacts. Individuals might also seek to collectively pool their resources in order to harness gains from scale. For example, they might use their resources to construct a fortified sea wall to protect themselves from flooding, which would provide greater defence than any individual would have been able to achieve on her own.

Different individuals are differentially vulnerable to the impacts of climate change, and so providing each affected individual with the same resources would leave some with a greater capacity to adapt than others. As such, the most defensible version of the hyper-liberal approach would be one which renders each individual equally able to adapt by adjusting the provision of resources to account for differences in vulnerability. Under an idealised hyper-liberal approach, each individual would receive the same 'vulnerability-adjusted' bundle of resources, which would leave them equally able to adapt to the impacts of climate change. Ronald Dworkin, in his theory of equality, distinguished between "option luck" and "brute luck," where option luck concerns "deliberate and calculated gambles" and brute luck concerns luck which is not an outcome of choice.[41] We can understand the differential extent to which people are vulnerable as a form of bad brute luck, which would be neutralised through the provision of a vulnerability-adjusted bundle of resources under the hyper-liberal approach.

Dworkin argues that we should neutralise the effects of brute luck but allow for inequalities which are the result of option luck. This, he argued, reflects the value of liberty, since allowing inequalities which develop from option luck instantiates what he calls that "principle of special responsibility," which insists that "so far as choices are to be made about the kind of life a person lives…he is responsible for making those choices himself."[42] Those who are attracted to this view may also be attracted to the hyper-liberal approach to adaptation, at least as an ideal type, since it is also sensitive to individuals' choices in this way. Each individual would have the same capacity and opportunity to adapt to the impacts of climate change and would be responsible for the choices that she makes. Individuals might choose to purchase flood insurance, to relocate, to construct sea walls, and so on, according to their own tastes and preferences. This is the principal attraction of the hyper-liberal approach: that it maximises the liberty of each individual to make decisions on her own behalf. No individual is required to contribute her share of adaptation resources to any project to which she does not wish to contribute, and each may choose her own preferred strategy for protecting herself against the impacts of climate change. Insofar as we value individual liberty, then this seems to count in favour of the hyper-liberal approach.

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[41] Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Harvard University Press, 2000), 73.
[42] Dworkin, *Sovereign Virtue*, 6.

As an approach to adaptation, however, the hyper-liberal approach has a critical flaw, which we can call the *problem of the provision of collective goods*. Adaptation, because of the kind of practice that it is and the kind of goods that it seeks to realise, necessitates cooperation and the provision of collective goods. The hyper-liberal approach creates a collective action problem, which means that it will tend to undersupply the goods that are characteristically necessary for successful adaptation.

Adaptation typically requires interventions that provide or protect goods that are in some way collective. Some of these goods are known as *public goods*.[43] The characteristic features of public goods are that they are non-rivalrous (their enjoyment by one person does not reduce the amount of the good available to another) and non-excludable (if the good is provided, non-contributing individuals cannot be prevented from enjoying it). A clear example of a public good in adaptation would be an early warning system which uses radio broadcasts to warn of extreme weather events such as flash flooding, typhoons and hurricanes, heatwaves, and so on. Mechanisms such as these have been put in place to warn of landslides associated with heavy rainfall in mountainous regions of Colombia and Peru.[44] If goods such as these to be provided, then their benefits are available to members of the community indiscriminately, and their consumption by one individual does not reduce the amount of the good available to others.

It is rare that goods exhibit all the features of public goods, however, and the broader category of "collective goods" better captures the range of goods that are often instrumental in adapting to climate change.[45] Often, goods are to some degree excludable, or to some degree rivalrous. Consider, for example, a sea wall which benefits all members of a coastal village by protecting publicly accessible roads and parks (creating a non-excludable good), but also benefits particular individuals by protecting private property on the coastline (creating an excludable good). In the Maldives, a project along these lines supported by the United Nations Development Programme (UNDP) sought to build sea defences and to reclaim habitable land from the sea.[46] Here, sea walls and reclaimed land are collective goods which form part of an effort to adapt to the impacts of climate change.

The provision of collective goods is especially important for successful attempts to use anticipatory migration as a strategy of climate change adaptation. We can see this most clearly in cases of community relocation, where entire communities need to relocate because of the impacts of climate change. Goods such as schools, airstrips, roads and barge-landings have been identified as crucial prerequisites for the

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[43] Classic discussions of public goods can be found in Paul A. Samuelson, "The Pure Theory of Public Expenditure," *The Review of Economics and Statistics* 36, no. 4 (1954): 387–89 and James M. Buchanan, *The Demand and Supply of Public Goods* (Liberty Fund, [1968] 1999). See also Rawls, *A Theory of Justice*, 235.
[44] Christian Huggel et al., "Early Warning Systems: The 'Last Mile' of Adaptation," *Eos, Transactions American Geophysical Union* 93, no. 22 (2012): 209–10.
[45] Russell Hardin, *Collective Action* (Routledge, [1982] 2015), 17–20.
[46] UNDP Climate Change Adaptation, "Integrating Climate Change Risks into Resilient Island Planning in the Maldives," accessed November 11, 2019, available at https://www.adaptation-undp.org/projects/ldcf-resilient-island-planning-maldives.

relocation of native Alaskan communities threatened by shoreline erosion relating to climate change.[47] However, collective goods are also of central importance for anticipatory migration in less obvious ways, as in the case of labour migration in rural Ethiopia. Here, the established collective good of risk-sharing within the community is being undermined by approaches to adaptation which promote rural-urban migration as a response to crop failure.[48] Seasonal or circular labour migration may benefit particular individuals, but at the aggregate level it can undermine the viability of established risk-sharing mechanisms or reduce the human capital in a region by encouraging those with desired skills to leave.[49] This demonstrates that collective goods are often at stake even in cases of anticipatory migration which appear, at first glance, only to involve individual-level decision-making.

Some collective goods may not be strictly *required* for adaptation to achieve its end of avoiding the harm of dangerous climate change, but may the preferred way of achieving that end for all or many of those affected. We can call these kinds of goods, following George Klosko, "discretionary" goods.[50] Klosko has in mind collective goods that might be provided by the state, but which are not strictly necessary to uphold conditions of justice. In the context of adaptation, we might think of collective goods which *could* be realised by an adaptation policy, but which may not be strictly required in order to achieve the aim of avoiding the harmfulness of the impacts of climate change. For example, in Shishmaref, shared cultural practices which enjoy broad support amongst members of a community may require collective relocation if they are to remain viable. Shishmaref, as well as other native villages at risk in Alaska such as Kivalina and Newtok, have sought to relocate collectively to tribal lands in order to be able to uphold their traditions and cultural practices.[51] Even if upholding shared practices associated with traditional livelihoods and culture is not strictly *required* in order to achieve the aims of adaptation, it can be helpfully understood as a way of seeking to maintain a discretionary collective good which enjoys broad support amongst members of the community affected.

The standard view of collective goods is that they will tend to be undersupplied when their provision is left to the market. In the case of 'pure' public goods, the benefits of the good cannot be denied to non-payers, and so each individual has an incentive to free-ride on the contributions of others, since she will

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[47] Bronen and Chapin, "Adaptive Governance and Institutional Strategies for Climate-Induced Community Relocations in Alaska," 9323.
[48] Little et al., "'Moving in Place'."
[49] Michael Webber and Jon Barnett, *Accommodating Migration To Promote Adaptation To Climate Change* (The World Bank, 2010), 31. This has parallels with the so-called 'brain drain' phenomenon in migration ethics. On 'brain-drain,' see the Gillian Brock and Michael Blake, *Debating Brain Drain* (Oxford University Press, 2015) and Eszter Kollar (ed.) "Brain Drain and Emigration," [special issue] *Moral Philosophy and Politics* 3, no.1 (2016): 1– 117.
[50] George Klosko, "The Obligation to Contribute to Discretionary Public Goods," *Political Studies* 38, no. 2 (1990): 196–214.
[51] Shearer, "The Political Ecology of Climate Adaptation Assistance," 177.

enjoy the benefits regardless of whether or not she contributes. This is known, in orthodox economic theory, as the problem of the "free-rider":

> The reason for this [the under-supply of public goods] lies in the "free-rider" position in which each individual finds himself. While he may recognize that similar independent behavior on the part of everyone produces undesirable results, it is not to his own interest to enter voluntarily into an agreement since, for him, optimal results can be attained by allowing others to supply the public good to the maximum extent while he enjoys a "free ride"; that is, secures the benefits without contributing toward the costs.[52]

If each individual reasons this way, then public goods will not be provided. One part of the problem, which Rawls called the "isolation problem," is that the outcome of individuals deciding alone may be worse for everyone. Yet, even where people decide together, each individual needs to be sufficiently confident that others will in fact contribute in order to rationally contribute her share – Rawls calls this the "assurance problem."[53] Agreements to provide public goods must not only be public, but must also be binding, if they are to escape the isolation and assurance problems. This led Rawls to conclude that the provision of public goods "must be arranged for through the political process and not the market."[54]

Given that the success of adaptation will often depend on collective goods being established or maintained, we have good reason to expect the hyper-liberal approach to fail to successfully achieve the aims of adaptation.[55] This is likely to be especially true of "hard" measures of adaptation to climate change such as altering built infrastructure and the relocation of communities.[56] In this kind of adaptation, adaptation actions "only generate individual benefits if others collectively invest in these adaptations too."[57] For example, each individual may reason that others will contribute to the provision of essential collective goods such as roads and airstrips in relocation projects, and the overall result may be that the chronic under-funding of these goods. This is a serious problem for the hyper-liberal approach: it means that we can expect it to fail to achieve the end towards which the practice of adaptation is oriented.

Of course, this classic account of the undersupply of public goods in private markets depends upon a set of idealising assumptions, both about the nature of the goods and about the behaviour of the parties involved. As we have seen, not all collective goods exhibit the features of non-excludability and non-rivalry found in public goods, at least not fully. As such, the incentive structure may not be as clear as this

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[52] Buchanan, *The Demand and Supply of Public Goods*, 83.
[53] Rawls, *A Theory of Justice*, 237–38.
[54] Rawls, 236.
[55] For a good overview of the ways in which adaptation may depend on the provision of collective goods, see Daniel Osberghaus et al., "The Role of the Government in Adaptation to Climate Change," *Environment and Planning C: Government and Policy* 28, no. 5 (2010): 834–50.
[56] Benjamin K. Sovacool, "Hard and Soft Paths for Climate Change Adaptation," *Climate Policy* 11, no. 4 (2011): 1177–83.
[57] Adger, Arnell, and Tompkins, "Successful Adaptation to Climate Change across Scales," 79.

account suggests; at least in some cases, individuals may rationally expect that they will be denied access to collective goods if they do not contribute, or that their enjoyment of it will be degraded by over-use by others if they do not contribute their share to their maintenance. And the individuals making decisions about how to best use the resources at their disposal may well not be responsive to the incentive structure in the way that orthodox economists, operating with an idealising assumption of rational self-interest, predict. As such, the proponent of the hyper-liberal approach might object that the hyper-liberal approach *can* in fact supply the kind of collective goods that are characteristically necessary for adaptation to achieve its end of avoiding the harmfulness of the impacts of climate change successfully, at least under some conditions.

Elinor Ostrom's work has challenged the orthodoxies of economic theory by suggesting that, under some conditions, 'common-pool resources' can be supplied without the need for formal institutions.[58] Common-pool resources, of which forests and fisheries are classic examples, are not the same as public goods, but they are a kind of collective good. They are rivalrous, in that they can be degraded by overuse, but remain non-excludable. Nonetheless, the governance of common-pool resources raises similar issues of assurance and isolation. When each individual acts in her own interest, stocks of common-pool resources are degraded such that all are worse off, and there is a need for agreement on rules for cooperating to preserve stocks and assurance that those rules will be binding. Ostrom's research suggests, however, that key variables such as the size of the relevant community, the level of trust and the ease of monitoring compliance with rules can greatly affect whether or not formal institutions are necessary for successful practices of cooperation in governing shared resources.[59] We might think that similarly, under some conditions, for example within highly solidaristic or homogenous small communities, forms of collective adaptation which produce or maintain collective goods will emerge even under the conditions put in place by the hyper-liberal approach. Indeed, Neil Adger has argued that 'social capital' can enable collective practices of adaptation in the absence of formal institutions, as in the case of the collective maintenance of coastal defences in the absence of state planning in 1990s Vietnam.[60]

Ostrom's work is useful in demonstrating the limits of the idealising assumptions made by orthodox economists when it comes to the provision of collective goods. It demonstrates that the inability of the hyper-liberal approach to provide the collective goods characteristically required for adaptation is not absolute, both because some of the relevant goods are not 'pure' public goods and because individuals do not always behave in the way that orthodox economists predict. It does not, however, redeem the hyper-liberal approach, for two reasons. First, it shows that we can only expect the hyper-liberal approach to function effectively under certain constrained conditions. This means that the scope of the hyper-liberal

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[58] Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge University Press, 1990).
[59] Ostrom, especially 182–216.
[60] Adger, "Social Capital, Collective Action, and Adaptation to Climate Change," 399–400.

approach will need to be limited to cases where the right conditions obtain for it to be able to provide the collective goods necessary for successful adaptation. Determining when those conditions obtain is itself likely to be controversial. Given that the hyper-liberal approach predictably creates collective action problems, and that we can only expect those collective action problems to be solved under certain constrained conditions (such as if individuals behave in ways which reflect the community's broader interest rather than in their own narrow self-interest), the hyper-liberal approach does not seem attractive as a way of achieving the ends of adaptation.

Second, and more importantly, recognising that successful adaptation requires collective goods saps the motivation from the hyper-liberal approach. The initial motivation of the hyper-liberal approach was that it gave individuals the ability to make meaningful choices about which adaptation options to pursue. But in failing to supply the kind of goods needed for adaptation, the hyper-liberal approach systematically frustrates the wills of the individuals whose liberty it purports to expand. This apparent virtue of freedom in the hyper-liberal approach rings hollow when individuals are frustrated in achieving their shared ends by problems of isolation and assurance. If we recognise that the provision of collective goods is characteristically necessary for adaptation to be successful, then the freedom that motivated the hyper-liberal approach appears illusory: is the freedom to either cooperate with others in adaptation or to fail to adapt successfully. Faced with these options, it is unclear why we should prefer the hyper-liberal approach to adaptation rather than one which establishes more robust mechanisms for cooperation. It might be *possible* for the hyper-liberal approach to provide these kinds of goods, under some constrained conditions, but it is unclear why it would be *desirable*. As we will see, the collective-democratic approach does not face these problems and so appears to be a preferable way of achieving the ends of adaptation.

The problem of the provision of collective goods gives us serious reason to doubt that the hyper-liberal approach is a promising approach to decision-making in adaptation. At the least, it gives us reason to think that the scope of the hyper-liberal approach should be highly constrained. The central problem with the hyper-liberal approach is that it presumes that individuals can make decisions regarding adaptation without affecting others' prospects for adaptation, when in fact adaptation characteristically requires the kind of collective action which inevitably affects others. To borrow a phrase from Jon Elster, the hyper-liberal approach "embodies a confusion between the kind of behaviour that is appropriate in the market place and that which is appropriate in the forum."[61]

[61] Jon Elster, "The Market and the Forum: Three Varieties of Political Theory," in *Deliberative Democracy: Essays on Reason and Politics*, ed. James Bohman and William Rehg (MIT Press, 1997), 10.

4.2 The Collective-Democratic Approach

An alternative approach to decision-making is the *collective-democratic* approach, where resources for adaptation are held by the community, and decisions concerning adaptation policies at the community level through democratic mechanisms. As an ideal type, the collective-democratic approach to adaptation involves groups taking collective and binding decisions about how best to use the resources allocated to them to adapt to the impacts of climate change. Clearly, a variety of models of democratic decision-making might be employed in adaptation, and I cannot examine all of these here.[62] Rather, I will specify three features of an ideal collective-democratic approach, which amount only to a 'thin' conception of democracy and leave a significant amount of space for disagreement over the proper form, and limits, of a democratic approach to adaptation. This is by design; the collective-democratic approach should have ecumenical appeal amongst partisans of different models of democracy. My aim here is not to settle disputes between parties in these debates, but to show rather why adaptation should be governed democratically, and to examine the implications of the democratic governance of adaptation for anticipatory migration. As we shall see, the justification of these three features stems from a close examination of the characteristics of the choice situation that emerges in adaptation, but I hope that each feature is at least *prima facie* attractive.

First, the collective-democratic approach should instantiate the ideal of *political equality*. As Thomas Christiano understands this principle, the idea is that "each citizen ought to have equal resources to affect the outcomes of the collective decision-making procedure."[63] In the context of adaptation, this is to say each participant should have an equal (and positive[64]) opportunity to shape decisions regarding adaptation.

Second, the collective-democratic approach should not be *merely aggregative*.[65] That is, the collective-democratic approach must not simply treat the existing preferences of participants as fixed inputs to be aggregated in the generation of outcomes. Whilst a collective-democratic approach may *use* aggregative mechanisms such as voting, it should treat *ex ante* preferences as open to change. There are at least two ways of doing this, between which I remain neutral here. First is by making possible the *deliberative justification* of adaptation choices. Theorists of deliberative democracy have proposed a range of accounts of what an ideal of deliberative justification consists in, including the idea that participants should "find

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[62] For an overview, see David Held, *Models of Democracy* (Polity, 1996).
[63] Thomas Christiano, *The Rule of the Many: Fundamental Issues in Democratic Theory* (Westview Press, 1996), 70.
[64] As Niko Kolodny points out, opportunity to shape decisions must be positive, since an approach which gives each participant *no* opportunity to shape decisions would satisfy the condition that each participant should have equal opportunity to shape the content of the decision. See Niko Kolodny, "Rule Over None I: What Justifies Democracy?," *Philosophy & Public Affairs* 42, no. 3 (2014): 198.
[65] The 'aggregative' view of democracy is discussed in David Miller, "Deliberative Democracy and Social Choice," *Political Studies* 40, no. 1 (1992), 54–67 and Jack Knight and James Johnson "Aggregation and Deliberation: On the Possibility of Democratic Legitimacy," *Political Theory* 22, no. 2 (1994), 277–96.

reasons that make the proposal acceptable to others who cannot be expected to regard my preferences as sufficient reasons for agreeing;"[66] the idea of an ethic of "*audi alteram partem*, always listen to the other side" which makes possible forms of public discussion which "free us from our own sedimented self-understanding[s];"[67] and the idea that the conditions of deliberation should make it such that "no force except that of the better argument is exercised."[68] Second is by appealing to a competitive or *agonist* view of the proper functioning of democratic mechanisms. Where proponents of deliberation argue that *ex ante* preferences should be open to change through rational persuasion and the exchange of justificatory reasons, agonists like Chantal Mouffe see changes in *ex ante* preferences as "a radical change in political identity" which "has more of a quality of a conversion than of rational persuasion."[69] Agonists take the consensus to which deliberative theorists aspire to be naïve, and see conflict or plurality to be an ineliminable aspect of democratic politics, arguing that it should be channelled productively through democratic institutions.[70] Rather than rational consensus, agonists see the aim of democratic politics as arriving at a "provisional hegemony" which is open to further contestation.[71] It should also be noted that we might think that deliberative justification or agonist competition *each* play an important role in democratic politics, or that each have their own proper domains. The crucial point is that neither, unlike merely aggregative conceptions of democracy, treats *ex ante* preferences as fixed points.

Third, decision-making procedures should have some mechanism for issuing *binding collective decisions* about which adaptation policies to pursue. In order for this to be achieved, there needs to be some institution vested with the legitimate authority to enact adaptation policy. Most commonly, this will mean that the process of collective-democratic decision-making for adaptation is nested within the broader architecture of a state with legitimate authority. Various democratic mechanisms may be used to produce binding collective decisions, which may be more or less representative in form. Most commonly, these will be forms of majoritarian decision-making, but in some conditions, it may be possible to produce binding decisions in other ways, such as through consensus decision-making. Moreover, the proper *scope* of the binding collective decisions may be open to debate. Some sphere of personal liberty will presumably

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[66] Joshua Cohen, "Deliberation and Democratic Legitimacy," in *Deliberative Democracy: Essays on Reason and Politics*, ed. James Bohman and William Rehg (MIT Press, 1997), 76.
[67] James Tully, *Public Philosophy in a New Key: Volume 2, Imperialism and Civic Freedom* (Cambridge University Press, 2008), 85. Tully, it should be noted, is more often associated with the agonist tradition than the deliberative tradition, because of his understanding of public dialogues as "negotiations" rather than "consensus" which "are an exercise of practical, not theoretical, reason" and "have an 'agonistic' character." He does, however, stress the role of practices of deliberation. See James Tully, *Public Philosophy in a New Key: Volume 1, Democracy and Civic Freedom* (Cambridge University Press, 2008), 163; Mark Wenman, *Agonistic Democracy: Constituent Power in an Era of Globalisation* (Cambridge University Press, 2013), 137–79.
[68] Jürgen Habermas, *Legitimation Crisis*, trans. Thomas McCarthy (Beacon, 1975), 108.
[69] Chantal Mouffe, "Deliberative Democracy or Agonistic Pluralism?" *Social Research* 66, no. 3 (1999): 755.
[70] See, for example, Mouffe, "Deliberative Democracy or Agonistic Pluralism?"; Bonnie Honig, *Political Theory and the Displacement of Politics* (Cornell University Press, 1993).
[71] Mouffe, "Deliberative Democracy or Agonistic Pluralism?," 756.

delineate the proper scope of democratically made adaptation decisions, but different theorists (and citizens) will take different views the precise limits of that sphere of liberty.

These three features, taken together, describe a 'thin' and ideal-typical form of collective-democratic decision-making for adaptation. Clearly, actual processes of decision-making not always instantiate all three features perfectly, but they provide a critical standard against which procedures for decision-making can be assessed. Something like the collective-democratic approach is often defended as an approach to decision-making in adaptation, but its normative foundations are often left unspecified. Why might we think that the collective-democratic approach to climate change adaptation is normatively justified?

One answer to this question has recently been defended by David Schlosberg.[72] Schlosberg argues that a collective-democratic approach to decision-making in adaptation can be justified by appeal to both an ideal of *recognition* and a *capabilities* approach to justice. Schlosberg draws on the work of Iris Marion Young and Nancy Fraser to elaborate the ideal of recognition,[73] which he takes to be a matter of a person or group's status, and which he takes to enable us to think about matters of identity and cultural practices as issues of justice.[74] Where an individual faces an injustice of misrecognition, she is subordinated in a social, economic, or political relationship, through practices of cultural domination, non-recognition (i.e. being rendered 'invisible'), or disrespect. For Schlosberg, an emphasis on recognition requires us to advance the participation of those involved in climate change adaptation policies. It does so both as a matter of achieving just distributive outcomes, since he takes it to be the case that injustices of misrecognition underlie distributive injustices, and because practices of political participation are themselves important for advancing the recognition-related dimension of justice.[75]

Schlosberg also seeks to justify the collective-democratic approach by appealing to a capabilities approach to justice, drawing on the work of Amartya Sen and Martha Nussbaum.[76] According to Schlosberg, participation is a central component of adaptation policies which realise the demands of a capabilities theory of justice. He draws on Nussbaum's argument that the capability of "control over one's

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[72] Schlosberg, "Climate Justice and Capabilities."
[73] Schlosberg, 449–52; Iris Marion Young, *Justice and the Politics of Difference* (Princeton University Press, [1990] 2011); Nancy Fraser, *Justice Interruptus: Critical Reflections on the "Postsocialist" Condition* (Psychology Press, 1997). There are important differences between Young and Fraser, especially with respect to the relationship between recognition and distributive justice, which are elided here as in Schlosberg's discussion. See, Nancy Fraser, "Recognition or Redistribution? A Critical Reading of Iris Young's Justice and the Politics of Difference," *Journal of Political Philosophy* 3, no. 2 (1995): 166–80.
[74] Schlosberg accepts that recognition can also have a *psychological* element, with misrecognition consisting in a distinct type of psychological harm but focuses primarily on the status-based conception. See, Schlosberg, "Climate Justice and Capabilities," 450-1. For the psychological view of recognition, see Axel Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts* (MIT Press, 1996) and Charles Taylor, *Multiculturalism* (Princeton University Press, 1994).
[75] Schlosberg, "Climate Justice and Capabilities," 452.
[76] Schlosberg, 452–57; Amartya Sen, *Development as Freedom*, (Anchor, 2000); Martha C. Nussbaum, *Women and Human Development: The Capabilities Approach* (Kali for Women, 2000).

environment" is a "central capability"[77] and Sen's argument that public reason and deliberation are essential to specifying to the capabilities appropriate to different context and projects[78] in order to demonstrate that the capabilities approach demands forms of participation in climate change adaptation.[79] Similarly, Breena Holland has sought to specify the capability of having control over one's environment as "having the power to shape adaptation decisions."[80] In the context of climate-related relocation, Craig Johnson has also drawn on the Sen's formulation of the capabilities approach to argue that "local populations have a right to decide whether and how they relocate" and that "these decisions must be rooted in an open and participatory discourse."[81] For Schlosberg, democratic participation is "central to the understanding of a capabilities approach to justice" and political inclusion "satisfies both recognition and participatory capabilities."[82]

Schlosberg is keen to stress that capabilities and recognition do not apply only to individual, but "are community-level concerns."[83] He criticises Nussbaum's and Edward Page's formulations of the capabilities approach as remaining "squarely within the individualist frame."[84] Schlosberg, by contrast, concerns himself with "the ability of communities to function and to preserve their group identity."[85] He argues that his avowedly non-individualistic version of the capabilities approach and the ideal of recognition demand that communities are involved in the mapping of their own vulnerabilities and in the design of adaptation policies.[86]

On their own, however, neither the ideal of recognition nor Schlosberg's interpretation of the capabilities approach provide a satisfactory justification for the collective-democratic approach to decision-making in adaptation. To see this, we can first notice that nothing in the notion of recognition precludes the hyper-liberal approach to decision-making in adaptation. Recognition, as Schlosberg understands it, is a matter of ensuring that individuals who are members of particular social groups do not face status-based injustices. It is unclear, however, why this requires processes of collective decision-making. So long as the hyper-liberal approach does not institute status-based injustices, then it does not seem to require a collective approach to decision-making in adaptation. Certainly, *if* there is to be a collective decision-

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[77] Martha C. Nussbaum, *Creating Capabilities* (Harvard University Press, 2011), 34.
[78] Amartya Sen, "Human Rights and Capabilities," *Journal of Human Development* 6, no. 2 (2005): 151–66.
[79] Schlosberg, "Climate Justice and Capabilities," 453.
[80] Breena Holland, "Procedural Justice in Local Climate Adaptation: Political Capabilities and Transformational Change," *Environmental Politics* 26, no. 3 (2017): 397.
[81] Craig A. Johnson, "Governing Climate Displacement: The Ethics and Politics of Human Resettlement," *Environmental Politics* 21, no. 2 (2012): 317.
[82] Schlosberg, "Climate Justice and Capabilities," 458.
[83] Schlosberg, 455.
[84] Schlosberg, "Climate Justice and Capabilities," 455. For Nussbaum's rejection of community-level capabilities, see Nussbaum, *Women and Human Development*, 74. For Page's capabilities approach to climate justice, see Edward Page, "Intergenerational Justice of What: Welfare, Resources or Capabilities?," *Environmental Politics* 16, no. 3 (2007): 453–69.
[85] Schlosberg, "Climate Justice and Capabilities," 455.
[86] Schlosberg, 458.

making approach to adaptation, then ensuring that each individual is able to participate on equal terms – in other words, ensuring participatory *parity* – is likely necessary to ensure that no individual faces injustices of misrecognition. This alone, however, says nothing about why collective decision-making is required in the first instance.

The capabilities approach may well require collective decision-making, and Schlosberg's specific interpretation of it as a community-level concern may appear to make it well-suited to ruling out the hyper-liberal approach. The hyper-liberal approach takes the individual to be ultimate unit of moral concern, who should be empowered in decision-making, rather than the community. On Schlosberg's view, by contrast, participation is rather necessary in order to empower the community *itself*.

There are other problems with this community-oriented version of the capability approach, however. One problem with this approach is that it is not clear that collective decision-making is strictly necessary even to advance the community's collective interests or will. An alternative approach, for example, might be to charge one authoritative individual or a small group of authoritative individuals, such as a community leader or local council, with making decisions on behalf of the community. If the individual or group charged with taking this decision really does represent the interests or will of the community, then we might think that collective processes of decision-making are unnecessary for advancing those interests or that will. Of course, we might think that it is unlikely that any particular individual or group will *in fact* properly represent the community's will or interests, and so we might appeal to collective decision-making in order to ensure that the community's will or interests are in fact represented in the adaptation policy that is pursued. This makes clear, however, that on Schlosberg's account, the only function of the collective-democratic is to elucidate already-existing community-level concerns where they were unclear, and it would have no role in settling disputes *within* communities.

This points to a second way in which Schlosberg's account is unsatisfactory. On Schlosberg's view, participation is necessary in order to elucidate the concerns of the community itself, which is taken to have some unified will that it can advance through the participation of its members. The problem that this view faces is that is insufficiently attentive to the diversity of interests, ideas and identities within communities. It is certainly true that many communities do see themselves as having shared commitments and identities that are of value to them, and Schlosberg's account seeks to be attentive to the demands of indigenous activists and organisations that make claims on the basis of their shared identity and culture.[87] But it is important to recognise that even communities which appear to express strong sentiments of group identity are internally diverse. Given this internal diversity, an approach like Schlosberg's faces a dilemma. Either it appeals only to a very thin set of commitments which are in fact

[87] Schlosberg, 451. See also David Schlosberg and David Carruthers, "Indigenous Struggles, Environmental Justice, and Community Capabilities," *Global Environmental Politics* 10, no. 4 (2010): 12–35.

shared by all members of a community, which is by itself unlikely to be sufficient to settle substantive disagreements about which adaptation options to pursue, or it appeals to a thicker set of commitments, which may rides roughshod over the community's internal diversity and excludes the interests, idea and identities of some individuals within that community.

We can justify the collective-democratic approach in a more straightforward way, without the need for the controversial commitments upon which Schlosberg depends. Here, I want to provide a contextual defence of the collective-democratic approach by appealing to the characteristic features of the problem of climate change adaptation, which we can call the *circumstances of adaptation*. The circumstances of adaptation are the features of adaptation which characteristically make it both empirically possible and normatively necessary for adaptation decisions to be taken collectively. In appealing to the circumstances of adaptation, we might naturally think of Rawls' and Hume's discussions of the "circumstances of justice."[88] More recently, however, Rainer Bauböck has elaborated what he calls the "circumstances of democracy," the conditions under which he takes democracy to be both empirically possible and normatively necessary, which are a more approximate model for the circumstances of adaptation.[89] For Bauböck, democracy is a "set of institutions, the goal of which is to realise government of, for and by the people," and its primary purpose is "to provide legitimacy to coercive political rule through popular self-government."[90] Certain conditions are presupposed if the ideal of popular self-government is to be realised, and certain empirical conditions are required in order for democracy to function as a way of realising it. The conditions Bauböck takes to be the circumstances of democracy include the existence of a diversity of interests, identities and ideas; the existence of political and jurisdictional boundaries; and what he terms the "relative sedentariness" of a population.[91]

The circumstances of adaptation are in some ways similar to the circumstances of democracy, but there are important differences, given the different aims of democracy (establishing legitimate coercive political rule characterised by popular self-government, at least on Bauböck's view) and adaptation policy (governing our shared behaviour in avoiding the harmfulness of the impacts of climate change). Unlike in the case of democracy, territorial jurisdiction and a relatively sedentary population are not conditions which must obtain for adaptation to be possible. Territorial jurisdiction and a relatively sedentary population are plausibly empirically necessary conditions for democracies to function as stable sets of self-replicating institutions over time. Adaptation policy, however, does not need to function stably as a set of self-replicating institutions over time in the same way as democracies do. It consists, rather, in taking a decision or set of decisions in a specific domain in response to an emergent shared problem.

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[88] Rawls, *A Theory of Justice*, 109–10; David Hume, *A Treatise of Human Nature* (The Floating Press, [1740] 2009), 725–65.
[89] Rainer Bauböck, "A Pluralist Theory of Citizenship," in *Democratic Inclusion: Rainer Bauböck in Dialogue* (Manchester University Press, 2018), 7.
[90] Bauböck, 10.
[91] Bauböck, 7–18.

There are, however, similar features of the circumstances of adaptation to the circumstances of democracy.

First, adaptation decisions are similarly characterised by the existence of a diversity of interests, identities and ideas. This is true even though those adapting to the impacts of climate change share an interest in avoiding its harmfulness. Different individuals are likely to have different preferences when it comes to adaptation and are likely to appeal to different values in justifying their preferences for adaptation policies. Second, adaptation decisions are characterised by the need for cooperation. As we have seen, the successful adaptation characteristically requires the provision of collective goods, and when it is conducted in ways which are preferable from the perspective of those involved, it will also require the provision of discretionary public goods.

These two features of the circumstances of adaptation help us to explain why the collective-democratic approach to decision-making in adaptation is appropriate. The need for cooperation in adaptation means that collective decisions are practically necessary for adaptation to be successful. We have seen that individual-level adaptation is structurally limited in its ability to supply the goods that adaptation typically requires. The problems of isolation and assurance mean that we cannot reasonably expect the provision of the collective goods that successful adaptation requires without formal mechanisms of cooperation. The diversity of interests, identities and ideas amongst those affected makes democratic mechanisms normatively necessary for settling disputes between competing visions of a shared adaptation project. In the absence of a diversity of interests, collective decisions could all be taken unanimously. All that would be required would be an authority to enforce cooperation and remove the problems of isolation and assurance. As Bauböck points out, in such circumstances, democratic mechanisms would be "pointless."[92]

Diversity mandates collective decision-making because collective decision-making provides a way of settling disputes between those advancing different visions of adaptation in a way which respects each participant. Any given individual may well 'lose out' in collective decision-making, but the collective-democratic approach treats each individual as an equal in decision-making, and privileges no-one's interests above another's. When individuals lose out, they can see themselves as having participated as an equal in a fair process of decision-making which has produced a legitimate outcome. As such, democratic mechanisms are a way of providing the collective goods which are characteristically required for successful adaptation in a way which takes the diversity of interests, identities and ideas as an ineliminable fact about the circumstances under which adaptation decisions are taken.

If the aims of adaptation are to be realised under these conditions, then processes of collective decision-making which are binding must be established, in order for the collective action which is necessary for

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[92] Bauböck, 8.

successful adaptation to be undertaken. If those processes of collective decision-making are to be normatively defensible, then they need to be conducted on terms which are mutually justifiable to those involved. This, fundamentally, is the justification for the collective-democratic approach, rather than substantive theoretical commitments to an ideal of recognition or a capabilities approach to justice.

This justification explains each feature of the ideal collective-democratic approach. The justification for the principle of *political equality* stems from the recognition of the diverse interests, identities and ideas that characterise adaptation decisions. Collective decision-making which realises the ideal of political equality recognises that each individual has an interest in advancing her own claims about how decisions relating to adaptation should be made and privileges no person's interests over another's. Democratic mechanisms which are not *merely aggregative* are important because they allow for the fact that the diverse interests, identities and ideas of participants are not 'fixed points' in determining the outcome of a decision but may themselves be shaped by exposure to competing ideas and arguments. Adaptation requires the resolution of common problems, and if we were simply to take peoples' *ex ante* preferences as fixed, then internal minorities would have a justified complaint that there was never any realistic prospect of their own preferences playing a role in decision-making. If we treat preferences as open to change, either through processes of deliberation or through agonistic contest, however, then each individual has a chance of her preferred option winning out (and each individual's preferred option may even change in response to the reasons advanced by others). The need to issue *binding collective decisions* stems from the structure of the problem of adaptation. Decisions need to be binding and legitimate in order to be able to enable the kind of cooperation that adaptation requires in light of the diversity and the problems of isolation and assurance that characterise decisions about adaptation.

The content of the collective-democratic approach to decision-making in adaptation is not exactly novel, but it is important to specify it clearly in order to arrive at a critical standard for assessing decision-making processes in adaptation. The way in which we have arrived at this account is more novel. The literature on climate change adaptation often stresses participation, but its justification and content are often unspecified. Here, we have elaborated the justification of the collective-democratic approach in such a way that it does not depend on a commitment to 'thick' values of recognition or capabilities. Rather, it only depends on an understanding of the nature of the problem of adaptation and a commitment to address that problem on terms that are fair to all.

4.3 Demarcating the Demos for Adaptation Decision-Making

One final task in developing an account of procedural justice in adaptation concerns drawing the boundaries of the decision-making community – demarcating the *demos* of adaptation policy decisions. In democratic theory, this question has been referred to as the 'boundary problem' and has been a persistent thorn in the side of democratic theorists since the problem was articulated in the works of Frederick

Whelan and Robert Dahl.[93] A democratic 'people' is presupposed by theories of democracy but, as Whelan noted, cannot obviously be derived from democratic politics itself: "democracy, which is a method for group decision-making or self-governance, cannot be brought to bear on the logically prior matter of the constitution of the group itself."[94] Theorists have sought to defend different principles of democratic inclusion that attempt to identify the relevant decision-making community for constituting a demos, including the "all-affected" principle,[95] the "all subject to coercion" principle,[96] and the "stakeholder" principle.[97] In the case of climate change adaptation, demarcating the demos means identifying the relevant group for the purposes of an adaptation decision.

One initially attractive principle for determining the boundaries of the decision-making community for climate change adaptation is the 'all-affected' principle. A classic example of how this principle is specified in the context of democratic theory comes from Robert Dahl, who formulates it as follows: "Everyone who is affected by the decisions of a government should have the right to participate in that government."[98] Reformulated for climate change adaptation, the principle would run as follows: 'all those who are affected by a climate change adaptation decision have the right to participate in that decision.' The attraction of this principle is that it captures something central to our ideas about democracy: the idea that those whose interests are "interlinked" in a decision should have the opportunity to shape that decision.[99]

The principle, however, faces important problems. As Robert Goodin has argued, the all-affected principle can be interpreted in two ways: it could concern all those whose interests are *actually* affected by a decision, or all those whose interests could *possibly* be affected by a decision.[100] The first interpretation cannot answer the boundary problem because, as Goodin points out, the identity of those whose interests are affected is itself a *result of* the decision in question.[101] In the context of adaptation, for example, a decision to relocate a community would affect the interests of those living next to the relocation site. As

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[93] Frederick G. Whelan, "Prologue: Democratic Theory and the Boundary Problem," *Nomos* 25 (1983): 13–47; Robert Dahl, *Democracy and Its Critics* (Yale University Press, 1989).
[94] Whelan, "Prologue: Democratic Theory and the Boundary Problem," 40.
[95] See, for example, Ian Shapiro, *The Moral Foundations of Politics* (Yale University Press, 2003), 219–23; Robert E. Goodin, "Enfranchising All Affected Interests, and Its Alternatives," *Philosophy & Public Affairs* 35, no. 1 (2007): 40–68.
[96] For discussions of this principle, see, for example, Arash Abizadeh, "Cooperation, Pervasive Impact, and Coercion: On the Scope (Not Site) of Distributive Justice," *Philosophy & Public Affairs* 35, no. 4 (2007): 318–58; David Miller, "Democracy's Domain," *Philosophy & Public Affairs* 37, no. 3 (2009): 201–28; Claudio López-Guerra, "Should Expatriates Vote?," *Journal of Political Philosophy* 13, no. 2 (2005): 216–34.
[97] See Bauböck, "A Pluralist Theory of Citizenship."
[98] Robert Dahl, *After the Revolution? Authority in a Good Society* (Yale University Press, 1990), 67.
[99] Goodin, "Enfranchising All Affected Interests, and Its Alternatives," 49. For a discussion of how the notion of 'interlinked interests' can help to make sense of the role of the all-affected principle in drawing legitimate boundaries for structures of governance, see David Owen, "Constituting the Polity, Constituting the Demos: On the Place of the All Affected Interests Principle in Democratic Theory and in Resolving the Democratic Boundary Problem," *Ethics and Global Politics* 5, no. 3 (2012): 136–40.
[100] Goodin, "Enfranchising All Affected Interests, and Its Alternatives," 52–55.
[101] Goodin, 52.

such, they would appear to have a claim to participate in the decision-making procedure. But if the decision taken was to *not* relocate, then their interests would be unaffected, and they would have no claim to participate. Clearly, this version of the principle cannot settle in advance the question of who should participate. It is, in Goodin's words, it is "like the winning lottery ticket being pulled out of the hat by whomever has won that selfsame lottery."[102]

Goodin goes on to claim that the only plausible version of the all-affected principle is the 'all-possibly-affected' version, which is expansive in its scope. He takes this expansiveness to be a justification for global democracy. Whether or not Goodin is right that the 'all-possibly-affected' principle serves to justify global democracy, it cannot play the role of determining the boundaries of the demos for decision-making in climate change adaptation. If it were to play this role, it would implausibly enfranchise vast numbers of people in decisions about climate change adaptation. Consider again the case of a decision to relocate. The 'all-possibly-affected' principle would enfranchise at least everyone living near every possible relocation site that might be chosen. Given that any decision will end up *not* affecting the vast majority of those picked out by the principle, it is hard to see what claim they really have to participate in the decision. The decision taken by those who intuitively appear to have the strongest claim to make decisions – those facing relocation – would be swamped by the comparatively minor concerns of those who would be, in all likelihood, unaffected.

I want to propose what I take to be a more plausible alternative principle for determining the demos in adaptation decisions, which draws on John Dewey's idea of a "public."[103] For Dewey, a public is a constituency which is defined by the fact that the actions of each individual within it affect the other peoples' prospects: a public is "call[ed] into being" by the fact that actions that each individual takes have consequences which "expand beyond those directly engaged in producing them."[104] The actions that people take have effects on others – they produce *externalities*. As Charles Sabel puts it, "[w]hen those subject to the externalities become aware that they were jointly constrained by decisions over which they as yet had no control, they form a public."[105] The actions of each shape and constrain the range of options available to others, and those whose actions affect each other together form a public for the regulation of their mutually affecting behaviour. A public does not exist prior to the problem that it faces, but is constituted by it, and the boundaries of the public are defined by the terrain of the shared problem its members face. As Dewey puts it: "[i]n no two ages or places is there the same public. Conditions make the consequences of associated action and the knowledge of them different."[106]

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[102] Goodin, 53.
[103] John Dewey, *The Public and Its Problems: An Essay in Political Inquiry* (Ohio University Press, [1927] 2016).
[104] Dewey, 78.
[105] Charles Sabel, "Dewey, Democracy, and Democratic Experimentalism," *Contemporary Pragmatism* 9, no. 2 (2012): 38.
[106] Dewey, *The Public and Its Problems*, 82.

In context of adaptation, the idea of a public can be put to good use in demarcating the demos for adaptation decision-making. We can begin by noting that the practice of adaptation presupposes a *shared problem* which is faced by a group of individuals. At first glance, we might simply say that those who face the same shared problem should form the demos for adaptation decision-making. The problem with this, however, is that it is hopelessly indeterminate. The reason for this is that the problems that people face from the impacts of climate change can be described at different scales. Most generically, the problem faced by those undertaking adaptation can be described as the problem of the harmfulness of the impact of climate change. In different contexts, however, this problem will manifest in different ways. In one context, it might manifest as the threat of the increased likelihood of crop failure. In another context, it might manifest as the threat of loss of land from coastal erosion and sea level rise. We can describe this threat in a more fine-grained way by 'zooming in' on its different manifestations (such as the increased likelihood of crop failure or loss of land from coastal erosion and sea level rise). Depending on how fine-grained our analysis, we might even pick out a threat to a *particular* farmer's crops, or a *particular* individual's property. This presents a problem for using the shared problem to demarcate the demos for adaptation decisions: we need to be able to determine the level of generality at which we should specify it.

The Deweyan idea that those whose actions affect each other form a public is useful in determining the level of specificity at which we should describe the problem faced by those adapting to climate change. Individuals who respond to a problem, in doing so, may affect each other's prospects in responding to that same problem. My contention is that when a group of individuals can be described as responding to the same shared problem, and when the actions that they take foreseeably affect each other's prospects in responding to that shared problem, they should form a decision-making group – a public – for adaptation. Those facing the same shared problem, and whose prospects for adaptation are foreseeably interlinked in responding to that problem, constitute the demos for decisions concerning climate change adaptation.

This, I take it, preserves the fundamental democratic ideal that motivated the all-affected principle in the first instance: that those whose interests are bound up together in a decision have a claim to participate in that decision. If one individual's adaptation prospects are shaped by the actions of another in responding to the same shared problem, then we have good reason to think that they should share the same demos in decisions regarding adapting to that problem. They have good reason to decide *together*, because their decisions concerning the same problem affect each other's prospects.

This formulation remains somewhat fuzzy, since it will not always be straightforward to know when an individual's prospects for adaptation are bound up with another's. Note, however, that this indeterminacy is markedly different from the indeterminacy of the 'all-actually-affected' principle. In the case of the 'all-actually-affected' principle, it is straightforwardly incoherent to specify the boundaries of the demos by reference to the principle, because the principle cannot identify any set of persons until the decision has

been taken. In the case at hand, by contrast, the principle does specify an identifiable group of people who can take decisions collectively. To know whether two individuals should participate in the same process of collective decision-making, we can ask (a) whether these individuals are facing the same problem (described at some level of generality) and (b) whether the actions of one in responding to that problem would foreseeably affect the prospects of the other in responding to the same problem. The fact that it may sometimes be difficult to know the answer to (b) means only that we may need to rely on heuristics and reasonable estimates for determining the decision-making community. For example, where farmers are share practices of risk management, decisions on how to address increasing crop failures will foreseeably affect all those who participate in the practice of risk management. Where communities face the prospect of their land becoming uninhabitable, the viability of relocating is affected by whether or not others will contribute to a collective effort to relocate. In these cases, it seems relatively straight-forward to identify the boundaries of the demos. Moreover, a ready-made standard for contesting cases of exclusion from the demos falls out of this approach: if an individual can demonstrate that her prospects for adapting to a problem are affected by the actions of others in adapting to that same problem, then she has a claim to inclusion in that demos.

Notice that, as with the broader defence of the collective-democratic approach, the principle for demarcating the demos of adaptation decision-making stems from an examination of the structure of the problem of adaptation. This strategy does not require us to endorse some comprehensive account of the good, or some controversial view of the requirements of justice, in order to justify its prescriptions. We can compare this to Schlosberg's account, which seems to imply a different principle when it comes to demarcating the demos. Although Schlosberg does not discuss the problem of demarcating the demos for adaptation, his approach has important implications for this question. Since Schlosberg takes recognition and the capabilities approach to be community-level concerns, the relevant unit of decision-making is presupposed in his approach – it must be some *already-existing* community that is threatened by the impacts of climate change. That already-existing community is not itself defined by reference to the shared challenge of climate change, but instead is given by established by reference to some network of shared practices or group identity.

This approach appears to assume that the threats of climate change will always neatly map on to existing communities. They may often do, in practice. The impacts of climate change tend to be localised and communities tend to share the same location, and so already-existing communities will often face shared problems from the impacts of climate change. But the boundaries of the shared problem and the boundaries of the already-existing community will not necessarily overlap, and when they do not, Schlosberg's account misidentifies the relevant decision-making group. Some climatic threats will affect multiple existing communities, whose prospects for adaptation may be bound up with each other. Or, some climatic threats may only affect part of some existing community. Under these conditions, Schlosberg's account appears to misidentify the normatively relevant collective for decision-making, in a

way which may be either over- or under-inclusive. This further demonstrates the comparative preferability of my approach over Schlosberg's.

Now that we have an account of how to demarcate the demos of adaptation decisions and an account of what procedural justice in adaptation requires – the collective-democratic approach – we are in a position to return to the topic of anticipatory migration. In the next section, I examine the implications of the collective-democratic approach for the two kinds of anticipatory migration we have already encountered: migration stemming from *slow-onset environmental degradation* and migration stemming from the *designation of zones too dangerous for human habitation.*

5. The Collective-Democratic Approach and Anticipatory Migration

The collective-democratic approach to adaptation has significant implications for existing practices of climate change adaptation. As we noted, the collective-democratic approach is a regulative ideal, and so we should not expect that adaptation decision-making will perfectly meet the standards of procedural justice that it prescribes. Nonetheless, the collective-democratic approach provides a useful standard for the critique and reform of existing practices of climate change adaptation. In this section, I focus on the implications of the collective-democratic approach for anticipatory stemming from *slow-onset environmental degradation* and from the *designation of zones too dangerous for human habitation*. It is worth recognising, though, that the collective-democratic approach will have broader implications than this. Since it is an approach to adaptation as a whole, and not only to anticipatory migration, it will have implications for other adaptation practices which do not involve migration. Our focus, however, is on examining the implications of the collective-democratic approach for anticipatory migration.

The collective-democratic approach has radical implications when it comes to migration stemming from slow-onset environmental degradation. At present, there is little established policy surrounding migration stemming from slow-onset environmental degradation, and it is pursued largely as an 'autonomous' strategy by individuals and households undertaking migration as an adaptive response to the impacts of climate change, amongst other drivers of migration. Those who undertake planned migration as an adaptive strategy rarely do so through under the auspices of any formal adaptation policy, but more often depend on taking advantage of the opportunities that their own social or economic capital makes available to them.[107]

The ways in which individuals pursue adaptive forms of migration are shaped by the options available to them. In different contexts, would-be migrants' options are open or constrained in different ways. For example, the most vulnerable may be the least able to migrate, as when those with little financial capital,

[107] Richard Black et al., "Foresight: Migration and Global Environmental Change," *Foresight Reports* (The Government Office for Science, 2011), 73.

become "trapped."[108] In other cases, opportunities to migrate are created by the social and political conditions in which those adapting to slow-onset environmental change find themselves. For example, the rights accorded to Nepalese people to live and work in India under the 1950 *Treaty of Peace and Friendship Between the Government of India and the Government of Nepal* has made labour migration in response to environmental degradation in mountainous regions of Nepal possible.[109] At the same time, however, social conditions affect the need for migration and individuals' prospects in undertaking it. A study of the Chitwan Valley in Nepal demonstrated that lower-caste Hindus were more likely to migrate over long distances than higher-caste Hindus, who were likely to be insulated against the economic impact of environmental degradation.[110]

Where there have been policy proposals put forward concerning this kind of migration, the idea has not generally been to subject process of migratory adaptation to collective and democratic control, but rather to 'facilitate' or 'manage' it strategically in ways which maximise the benefits that flow from it. International institutions have advocated this strategy. The Asia Development Bank, for example, has argued that "reducing the barriers to migration—both within and across countries—and facilitating regional mobility could greatly benefit the migrants as well as the origin and destination regions and countries."[111] Similarly, the headline policy recommendations from the World Bank are:

> ensure that migrants have the same rights and opportunities as their host communities; reduce the costs of moving money and people between areas of origin and destination; appreciate the benefits of migration; facilitate mutual understanding among migrants and host communities; clarify property rights (including informal and customary rights) where they are contested.[112]

This policy approach to migration stemming from slow-onset environmental degradation is expressed most clearly in the *Foresight* report, a report produced for the U.K. government with the aim of informing policy as climate change unfolds:

> As migration continues in the decades ahead, in the context of global environmental change, policy should be orientated towards ensuring that it occurs in a way that maximises benefits to the individual as well as to both source and destination communities.[113]

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[108] Black et al., 14.
[109] Black et al., 50.
[110] Douglas S. Massey, William G. Axinn, and Dirgha J. Ghimire, "Environmental Change and Out-Migration: Evidence from Nepal," *Population and Environment* 32, no. 2 (2010): 109–36.
[111] Asia Development Bank, "Facing the Challenge of Environmental Migration in Asia and the Pacific," *ADB Briefs*, (Asia Development Bank, 2011), 4.
[112] Webber and Barnett, *Accommodating Migration To Promote Adaptation To Climate Change*, 41.
[113] Black et al., "Migration and Global Environmental Change," 173.

This strategy, which often sees reforms designed to liberalise migration policy as a resource for economic growth, is popular as an approach to development.[114] This development mantra is taking shape as a policy response to migration stemming from slow-onset environmental degradation, and is increasingly associated with the idea of 'migration as adaptation' in policy circles.[115]

This approach represents a blend of the *hyper-liberal* and *epistocratic* approaches. It is epistocratic in the sense that it puts policy-makers in a position of authority to decide what is good for those affected by slow-onset environmental degradation. It is hyper-liberal in the sense that it makes individual agents, rather than communities facing shared problems, the agents of change and decision-making. Romain Felli sees it as part of the "neoliberalisation of adaptation to environmental change":

> No longer does adaptation refer to a collective, political, and social transformation of the external conditions; rather, it is a transformation of the individuals themselves to become more suitable to adaptation.[116]

The collective-democratic approach to adaptation, by contrast, would envisage a very different kind of adaptation policy for migration stemming from slow-onset environmental degradation. Rather than placing the responsibility onto each individual for their own success in adapting to climate change, the collective-democratic approach would subject the broader practice of adaptation to slow-onset environmental degradation to democratic control. The collective-democratic approach does not specify any *outcomes* of decision-making processes, but it would make possible a range of options that are precluded by approaches that leave adaptation decisions in the hands of individuals. It could mean, for example, negotiating employment contracts collectively for labour-related migration, on terms which are preferable for all. It could mean assuring that sufficient numbers of individuals will engage in labour migration to ease pressure on resources, or that sufficient numbers of individuals will remain to make collective goods such as risk-sharing practices viable. It could involve the creation of insurance schemes to protect against drought- or flood-related shocks. Clearly, subjecting the practice of adaptation to slow-onset environmental change to collective democratic control has radical implications, and would require a serious overhaul of adaptation policies which are emerging in response to the phenomenon of migration stemming from slow-onset environmental change.

In the case of migration stemming from the designation of zones too dangerous for human habitation, the implications of the collective-democratic approach are less radical. It does, however, provide an

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[114] Martin Geiger and Antoine Pécoud, "Migration, Development and the 'Migration and Development Nexus,'" *Population, Space and Place* 19, no. 4 (2013): 369–74. See, for example UNDP, *Overcoming Barriers: Human Mobility and Development* (Palgrave Macmillan, 2009).
[115] Giovanni Bettini and Giovanna Gioli, "Waltz with Development: Insights on the Developmentalization of Climate-Induced Migration," *Migration and Development* 5, no. 2 (2016): 171–89.
[116] Romain Felli, "Managing Climate Insecurity by Ensuring Continuous Capital Accumulation: 'Climate Refugees' and 'Climate Migrants,'" *New Political Economy* 18, no. 3 (2013): 350.

important standard for critique of the ways in which current projects of community relocation are failing to instantiate procedural justice. In relocation projects, which may be undertaken as a measure for adapting to the impacts of climate change rendering areas too dangerous for human habitation, some effort is ordinarily made to make sure that decisions are taken by the community facing the prospect of relocation. The lesson of the litany of development projects which have involved the relocation of communities, such as the construction of large-scale dams and mines, has been that communities affected are often disinvested, marginalised and silenced in processes of relocation.[117] Practitioners now at the least give lip service to the idea of putting communities affected at the centre of decision-making processes. The World Bank guidelines on relocation in development projects, for example, states that "[d]isplaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs."[118] In the context of climate change, policy proposals have similarly sought to foreground the participation of those affected. Robin Bronen, for example, has proposed a governance framework for "climigration" which includes a "collective right to relocate as a community, as well as the collective right to make decisions regarding where and how a community will relocate."[119]

In practice, however, relocation projects in the face of climatic impacts have often fallen short of the standards of procedural justice articulated in proposals and guidelines. In some cases, the history of resettlement projects gives us reason to be concerned about injustice in future, climate-related resettlement projects.[120] In cases where community relocation is already taking place, as in the case of community relocation in Alaska, for example, those affected face procedural injustices. Communities have struggled to have their own voices and reasons heard in planning. For example, the requirements for land being selected for relocation has been unclear, which has meant that tribal land chosen by community vote has later been found to be unfit according to ecological surveys carried out by private contractors. In Kivalina, community members felt that the private contractors were unaccountable, and that their survey conflicted both with responses that they had received from other agencies (such as data from the National Oceanic and Atmospheric Administration (NOAA)) and with their own local knowledge of the site.[121] Resentment of and distrust in state and federal authorities has also been exacerbated by the colonial legacies of the state in Alaska. The fact that there is no institution in United States with the authority or organisational capacity to relocate an entire community away from the

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[117] See Rob Nixon, *Slow Violence and the Environmentalism of the Poor* (Harvard University Press, 2011), 150–74.
[118] World Bank, "Operational Manual - OP 4.12 - Involuntary Resettlement" (The World Bank, 2001), sec. 2(b), available at https://policies.worldbank.org/sites/ppf3/PPFDocuments/090224b0822f89db.pdf.
[119] Robin Bronen, "Climate-Induced Community Relocations: Creating an Adaptive Governance Framework Based in Human Rights Doctrine," *New York University Review of Law & Social Change* 35 (2011): 396.
[120] Brooke Wilmsen and Sarah Rogers, "Planned Resettlement to Avoid Climatic Hazards: What Prospects for Just Outcomes in China?," *Asia Pacific Viewpoint* (2019) [online first].
[121] Shearer, "The Political Ecology of Climate Adaptation Assistance," 177.

impacts of climate change has meant that communities have been "caught in a maze of conflicting agency regulations," with relocation proceeding "in an uncoordinated and ad hoc manner."[122]

The collective-democratic approach gives us a way of diagnosing the procedural injustices of attempts to resettle communities which proceed along these lines. Unlike in the case of migration stemming from slow-onset environmental change, however, it does not call for a fundamental revision of the way in which migration is being governed. The collective-democratic approach gives us an account of why we should join with the theorists, activists and practitioners who are arguing for robust mechanisms of participation in decisions about relocation in the face of climate change. Current practices fail to live up to the ideal of the collective-democratic approach, but they are at least oriented towards realising it.

6. Conclusion

This chapter has examined the domain of climate change adaptation, and its relation to anticipatory migration. We saw in the first part of the chapter that anticipatory migration is a form of climate change adaptation, and the second part of the chapter defended an account of procedural justice in climate change adaptation: the collective-democratic approach. We saw why a possible alternative approach, the hyper-liberal approach, is poorly suited to decision-making in climate change adaptation, and we saw why a popular defence of the collective-democratic approach is mistaken. My defence of the collective-democratic approach, rather than relying on controversial views about capabilities and recognition, relies on the circumstances of adaptation. We examined a way of demarcating the demos of adaptation decision-making, which is essential in specifying the collective-democratic approach. Finally, we examined the implications of the collective-democratic approach for two kinds of anticipatory migration: migration stemming from slow-onset environmental degradation, and migration stemming from the designation of zones too dangerous for human habitation. In the case of the former, we saw that the collective-democratic approach has radical implications. In the case of the latter, we saw that requires the better realisation of the democratic ideals in current practices of relocation, but does not call for a radical overhaul of the way in which relocation is governed.

There is an important limitation of this chapter: it has only addressed the *procedural* aspects of justice in adaptation and not its *substantive* aspects. A decision in adaptation having been taken through the collective-democratic approach does not by itself render the outcome substantively just. As such, even if adaptation decisions are taken in a way which meets the standards of the collective-democratic approach as I have outlined them here, they might still be criticised on the basis of the substantive injustice of their outcomes. This being said, elaborating a normative standard for decision-making in adaptation is an

[122] Bronen and Chapin, "Adaptive Governance and Institutional Strategies for Climate-Induced Community Relocations in Alaska," 9324.

essential part of assessing the justice of adaptation decisions. In the next chapter, we begin our examination of another kind of movement relating to climate change – *reactive* displacement – through an examination of the refugee regime.

V. Climate Change and the Refugee Regime

1. Introduction

In the previous chapter, we saw that some migration relating to climate change can be governed under the auspices of climate change adaptation policy. We saw that anticipatory migration – that which takes place in advance of, and is oriented in terms of, avoiding the harmfulness of the impacts of climate change – is a form of climate change adaptation, and can be governed by principles appropriate to that domain. Not all movement relating to climate change, however, takes the form of anticipatory migration. Some forms of movement relating to climate change are likely to be *reactive* rather than anticipatory. Reactive movement relating to climate change takes place when the impacts of climate change manifest and individuals or groups move in order to seek refuge from those impacts. According to Anthony Richmond, reactive movement is precipitated by sudden events and changes, which "disrupt the normal functioning of the system [on which those affected depend]" and "destroys the capacity of a population to survive under the prevailing conditions."[1] In the climate context, it is not undertaken proactively as a strategy for dealing with the impacts of climate change, but is rather a coping response demanded of those who undertake it. I refer to this kind of movement as *reactive displacement*. In this chapter, we begin examining this kind of movement by examining the domain of the refugee regime.

Popular discourse and much of the literature in political philosophy on climate-induced displacement has focused on the plight of so-called 'climate refugees.' As we saw in Chapter I and Chapter III, however, this term is used vaguely and in various different ways, even within the academic literature. And as legal theorists like to point out, climate-induced displacement cannot be straightforwardly understood as refugee movement from a legal point of view.[2] There is, however, a role for the refugee regime in responding to climate-induced displacement. In order to understand the proper place of the refugee regime in responding to climate-induced displacement, we need to understand its normative rationale. This means normatively reconstructing the refugee regime and adjudicating between competing interpretations of it. This will also help us to get a clear understanding of the forms of displacement which do *not* fall under its scope, and will help us in our examination of other forms of displacement which are addressed in the following chapter. In the first part of this chapter, I examine the practices of the refugee regime in order to reconstruct its normative rationale and settle disputes between competing interpretations of it. I consider and reject both the *basic needs* and the *persecution* views, and defend the *membership* view. Vindicating this interpretation of the refugee regime requires us to take a short detour into an examination of the background norms of the international order.

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[1] Anthony H. Richmond, "Reactive Migration: Sociological Perspectives On Refugee Movements," *Journal of Refugee Studies* 6, no. 1 (1993): 16.
[2] See Jane McAdam, *Climate Change, Forced Migration and International Law* (Oxford University Press, 2012), 39–51.

Armed with an adequate conception of the refugee regime, we can examine how it can be brought to bear on climate-induced displacement, and we can examine the challenges that it faces in realising its normative rationale in the new context of climate change. In the second part of the chapter, I identify forms of climate-induced displacement that the refugee regime is well-equipped to address: displacement stemming from *climate-induced unrest* and some forms of displacement stemming from *sudden-onset disasters*. Then, I highlight some existing deficiencies in the practices of refugee protection, which I argue are exacerbated in the context of climate change. I focus on the anachronistic definition of the refugee in international law, the maldistribution of the costs of refugee protection between states, and the practice of refugee encampment. I propose principles for reform which target each of these deficiencies, with the aim of articulating a conception of the refugee regime that is equipped to deal with the phenomenon of climate-induced displacement and which lives up to its normative rationale.

2. The Principles and Practices of the Refugee Regime

According to the "conventional view" of the state's right to exclude would-be immigrants, "states are morally free to exercise considerable discretionary control over the admission and exclusion of immigrants."[3] As a matter of practice, this is an important background feature of the established norms of the international order. Linda Bosniak writes that "[t]he prevailing view is that states may draw limits, and that they may condition the entry of foreigners into their territory upon their consent."[4] This power is taken to be central to the state's power to control its domestic affairs free from outside interference. Sarah Fine writes that it is generally taken to be a "central, legitimate, undeniable aspect of sovereignty."[5]

The refugee regime is an important exception to this sovereign privilege. Where an individual is granted refugee status, she is empowered under international law to claim asylum in a state, and thereby to avoid the restrictions that states might have otherwise imposed upon her in gaining entry or staying. The central mechanism through which this occurs is through the principle of *non-refoulement*, which is the "cornerstone" of the refugee regime.[6] The principle prescribes that "no refugee should be returned to any country where he or she is likely to face persecution, other ill-treatment, or torture."[7] A strict reading of the principle is ambiguous. It could mean that those *already* admitted as refugees cannot be returned once their status had been determined, as was the argument of the Dutch delegation to the drafting meetings of the original Convention.[8] In practice, however, the predominant interpretation is that once an asylum

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[3] Joseph H. Carens, *The Ethics of Immigration* (Oxford University Press, 2013), 11.
[4] Linda S. Bosniak, "Human Rights, State Sovereignty and the Protection of Undocumented Migrants under the International Migrant Workers Convention," *The International Migration Review* 25, no. 4 (1991): 743.
[5] Sarah Fine, "The Ethics of Immigration: Self-Determination and the Right to Exclude," *Philosophy Compass* 8, no. 3 (2013): 254.
[6] Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (Oxford University Press, 2007), 50.
[7] Goodwin-Gill and McAdam, 201.
[8] Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, "Summary Record of the Thirty-Fifth Meeting." A/CONF.2/SR.35 (1951).

seeker has presented herself at a state's border, she cannot be returned unless it has been determined that she is *not* a refugee. Guy Goodwin-Gill and Jane McAdam write that "[s]tates in their practice and in their recorded views, have recognized that non-refoulement applies to the moment at which asylum seekers present themselves for entry."[9] This principle extends so as to prevent states from punishing asylum-seekers for gaining entry illegally: international law prescribes that states "shall not impose penalties, on account of their illegal entry or presence, on refugees."[10]

The norm of *non-refoulement* is firmly established in both international law and practice. To be sure, there are regressive currents in state practice, such as the use of "non-arrival measures," including interdiction at sea, carrier sanctions on airlines which transport asylum-seekers, and legal spaces of exception, through which states seek to avoid the obligations of *non-refoulement*.[11] But states do not generally question the binding nature of the *non-refoulement* or their obligations to refugees. As Matthew Gibney notes, even in the context of deterrence measures, "states continue publicly to acknowledge legal responsibilities to refugees and others in need of protection."[12] The norms of refugee protection are taken as authoritative in the international order: the principle of *non-refoulement* is a *jus cogens* principle of international law, meaning that there is broad recognition amongst states that they are prohibited from violating it.[13]

Beyond *non-refoulement*, refugees are entitled to various rights under international law which can be grouped under the heading of 'refugee protection.'[14] These include basic rights such as rights to freedom from detention, physical security, the necessities of life, property rights, family unity and judicial assistance, which are supposed to be guaranteed to all refugees.[15] More expansive rights are granted to those who are variously 'lawfully present,' 'lawfully staying,' or 'durably resident' in a state, with significant variation between states, including rights to work, to public relief and assistance, to housing, to international travel, and so on.[16] Importantly, refugee protection has also developed a more recent focus on the idea of "durable solutions" for refugees.[17] This main aim of this agenda is "to find a way to bring refugee status to an end – whether by means of return to the country of origin, resettlement elsewhere, or

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[9] Goodwin-Gill and McAdam, *The Refugee in International Law*, 208.
[10] *Convention Relating to the Status of Refugees* (1951), article 31.
[11] See Matthew J. Gibney, "A Thousand Little Guantanamos: Western States and Measures to Prevent the Arrival of Refugees," in *Displacement, Asylum, Migration: The Oxford Amnesty Lectures 2004*, ed. Kate E. Tunstall (Oxford University Press, 2006), 139–169; Ayelet Shachar, "The Shifting Border of Immigration Regulation," *Immigration and Nationality Law Review* 28 (2007): 387–418.
[12] Matthew J. Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees* (Cambridge University Press, 2004), 2.
[13] Jean Allain, "The Jus Cogens Nature of Non-refoulement," *International Journal of Refugee Law* 13, no. 4 (2001): 533–58.
[14] The most comprehensive study of the nature and extent of these rights under international law is James C. Hathaway, *The Rights of Refugees under International Law* (Cambridge University Press, 2005).
[15] Hathaway, 258–656.
[16] Hathaway, 657–912.
[17] See UNHCR, "Framework for Durable Solutions for Refugees and Persons of Concern" (UNHCR, 2003), available at https://www.unhcr.org/partners/partners/3f1408764/framework-durable-solutions-refugees-persons-concern.html.

naturalization in the host country."[18] The durable solutions for refugees are generally taken to be repatriation, resettlement, and local integration (although some distinguish between 'repatriation' and 'voluntary reestablishment'[19]).

The founding document of refugee law, the 1951 *Convention Relating to the Status of Refugees*, considers refugees to be anyone who:

> owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.[20]

Before its expansion through the 1967 *Protocol Relating to the Status of Refugees*, the convention could be limited geographically to those originating in Europe, according to state's preferences at the time of signing the convention.[21] According to a strict legalist reading of this definition, *convention refugees* can be identified by four necessary and jointly sufficient conditions: (i) alienage (being outside of one's country of nationality or habitual residence), (ii) inability or unwillingness to seek protection in their country of nationality or habitual residence, (iii) inability or unwillingness to do so on the basis of a well-founded fear of persecution, and (iv) fear of persecution on the basis of race, religion, nationality, membership of a particular social group or political opinion.[22]

Hathaway traces the origin of the Convention's emphasis on persecution from a "juridical" view of refugees informed by the experience of Russian and Armenian refugees in the inter-war period, through a "social" view of refugees informed by the experience of mass movements of German Jews in the 1930s and 1940s, to an "individualist" view which emerged in the late 1940s and early 1950s.[23] This 'individualist' view, instead of focusing on the forced displacement of particular groups, crystallised around the idea that refugee status is a matter of the "discord between the individual refugee applicant's personal characteristics and convictions and the tenets of the political system in his country."[24] This idea formed the basis of the persecution doctrine in international law, since one way an applicant could demonstrate that he had a "valid objection" to being involuntarily returned to his country of origin was if

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[18] Hathaway, *The Rights of Refugees under International Law*, 913.
[19] See Hathaway, 915–16.
[20] *Convention Relating to the Status of Refugees*, article 1.
[21] Goodwin-Gill and McAdam, *The Refugee in International Law*, 36. See also the *Protocol Relating to the Status of Refugees* (1967), article 1(2).
[22] Goodwin-Gill and McAdam, 37.
[23] James C. Hathaway, "The Evolution of Refugee Status in International Law: 1920-1950," *The International and Comparative Law Quarterly* 33, no. 2 (1984): 348-380.
[24] Hathaway, "The Evolution of Refugee Status in International Law," 377.

he could demonstrate that he "had been persecuted or feared persecution on reasonable grounds because of his race, religion, nationality or political opinion."[25]

As Hathaway points out, however, refugee status is "an extremely malleable legal concept" which "evolve[s] in response to changing social and political conditions."[26] As such, it is crucial to go beyond a strict legalist reading of the Convention and to look at the operative concepts in the refugee regime to understand the status of the refugee in the contemporary international order. Refugee status has been developed through the practices of states, international organisations such as the United Nations High Commissioner for Refugees (UNHCR), and courts. State practice has, in many places, "stretched" the refugee regime beyond the Convention.[27] The common practice of assigning refugee status to groups of people is itself an extension of the individualistic basis of the Convention.[28] Kenya's grant of refugee status for those fleeing Somalia has helped develop the idea that generalised violence and the breakdown of social order is a ground for refugee status.[29] Through multilateral instruments such as the European Union's 2004 and 2011 Qualification Directives, states have sought to develop "common criteria" for the determination of refugee status,[30] and transnational networks of judges have sought to create common standards for the interpretation of the Refugee Convention.[31] Importantly, UNHCR has itself noted in technical advice that the "vital need for international protection" – not persecution – "most clearly distinguishes refugees from other aliens."[32] Through jurisprudence, persecution by non-state actors has developed into a ground for the ascription of refugee status.[33] And courts have developed an influential and more expansive interpretation of persecution as "the sustained or systemic denial of basic human rights demonstrative of a lack of state protection."[34]

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[25] Hathaway, 375.
[26] Hathaway, 380.
[27] Alexander Betts, "Global Governance and Forced Migration," in *Routledge Handbook of Immigration and Refugee Studies*, ed. Anna Triandafyllidou (Routledge, 2015), 29–36.
[28] Goodwin-Gill and McAdam, *The Refugee in International Law*, 23–32.
[29] James Milner, *Refugees, the State and the Politics of Asylum in Africa* (Springer, 2009), 84–107.
[30] Directive 2004/83/EC, Pub. L. No. 32004L0083, OJ L 304 (2004), available at http://data.europa.eu/eli/dir/2004/83/oj/eng and Directive 2011/95/EU, Pub. L. No. 32011L0095, OJ L 337 (2011), available at http://data.europa.eu/eli/dir/2011/95/oj/eng. For analysis, see Goodwin-Gill and McAdam, *The Refugee in International Law*, 60–63.
[31] See James C. Hathaway, "A Forum for the Transnational Development of Refugee Law: The IARLJ's Advanced Refugee Law Workshop," *International Journal of Refugee Law* 15, no. 3 (2003): 418–21.
[32] UNHCR, "Note on International Protection," A/AC.96/830 (UNHCR, 1994), 6, available at https://www.unhcr.org/uk/excom/excomrep/3f0a935f2/note-international-protection-submitted-high-commissioner.html.
[33] Walter Kälin, "Non-State Agents of Persecution and the Inability of the State to Protect," *Georgetown Immigration Law Journal* 15 (2000): 415–31.
[34] James C. Hathaway and Michelle Foster, *The Law of Refugee Status* (Cambridge University Press, 2014), 185.

The 1951 Convention is also not the only document which seeks to define the refugee (though it is the authoritative definition in international law). A definition set out by the Organisation of African Unity (OAU) in a regional protocol takes a much more expansive view, taking the refugee to include:

> every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.[35]

This definition removes the focus on persecution as the reason for displacement, and instead takes the normatively relevant feature of the refugee to be her distinctive need for refuge outside of her country. In the preamble to this convention, the drafters recognise "the need for an essentially humanitarian approach towards solving the problem of refugees."[36] This stands in contrast to the 1951 Convention, which focuses on persecution as a particular kind of political harm.

3. Competing Interpretations of the Refugee Regime

In light of this brief characterisation of the practices of the refugee regime, how we ought to best understand its normative rationale? Several competing interpretations of the best normative justification of the refugee regime have been elaborated, which are worth examining here.

3.1 The Persecution View and the Basic Needs View

The first interpretation can be called the *persecution view*. This view has been set out most clearly by Matthew Price, though it also has other contemporary defenders, such as Max Cherem and Matthew Lister. The persecution view holds that persecution distinctively warrants the provision of asylum guaranteed by the legal status of refugeehood.[37] Price argues that providing asylum is an expressive political act, which serves to condemn persecutory regimes.[38] Restricting the provision of asylum to those facing persecution allows asylum to be an "arrow in the quiver of a human rights-oriented foreign policy" which signals to states that they cannot engage in persecution with impunity.[39] For Cherem and Lister, persecution distinctively warrants refugee status because it is a particular kind of political harm. Cherem claims that persecution is a "special harm" because the country of origin has "effectively *repudiated* their

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[35] OAU, *Convention Governing the Specific Aspects of Refugee Problems in Africa* (1969), article 2.
[36] OAU, preamble.
[37] Price uses the term 'refugee' in its "ordinary sense," but he divorces the concept of the refugee from the provision of asylum, and argues that "persecuted peoples" or "convention refugees" have justified claims to asylum. We, however, are interested in how to understand the concept of the 'refugee' in the light of its function in political practice, where it is tied to the provision of asylum. See Matthew E. Price, *Rethinking Asylum: History, Purpose, and Limits* (Cambridge University Press, 2009), 17.
[38] Price, 69–85.
[39] Price, 94.

[refugees'] membership and the protection it affords."[40] Similarly, Lister claims that persecution is special because "their [refugees'] state has not just failed to meet their needs but has actively turned against them."[41] On this view, those facing persecution of this kind are rightly termed refugees and granted asylum. Asylum, however, is just "one tool amongst many"; others facing deprivation and suffering may have justified claims to assistance, but not to asylum.[42]

A second interpretation can be called the *basic needs view*. Proponents of this view claim that the Convention definition is too limited in its scope, and that a satisfactory conception of the refugee would focus on those whose basic needs or rights are threatened. Andrew Shacknove challenges the relevance of both persecution and alienage for refugee status. He takes persecution to be a sufficient, but not a necessary condition for the ascription of refugee status, since it is only one manifestation of the more salient normative concern: the lack of protection of basic needs.[43] Likewise, alienage is not a necessary condition for refugee status for Shacknove. Being outside of one's country of origin is only relevant to the extent that it means that the international community is capable of lending assistance.[44] Conceptually, there is no need for an individual to be outside of her country of origin for refugee status to be appropriate. Rather, the account of the refugee which has the most claim to "moral validity" is as follows:

> refugees are, in essence, persons whose basic needs are unprotected by their country of origin, who have no remaining recourse other than to seek international restitution of their needs, and who are so situated that international assistance is possible.[45]

Both the persecution view and the basic needs view glimpse partial truths. However, they misidentify the relevant normative features which distinguish those rightly identified as refugees.

Consider first the persecution view. First, note that the persecution view is not *status quo*-preserving, but entails a radical revision of the established practices of refugee protection. As we have seen, state and UNHCR practice has extended beyond a strict reading of the Convention's definition of a refugee. For proponents of this view, the expansion of UNHCR's mandate and the liberalisation of judicial interpretations of refugee status are threats to the institution of asylum, which is rightfully reserved for those facing persecution by their own state. One criticism that can be raised against this view is that it does not provide a good fit with the contemporary practice of refugee protection. In particular, Price's view of asylum's role in expressing condemnation of persecutory regimes reflects an outdated view of the concerns of the international order. It is a hangover from earlier days of refugee protection, where

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[40] Max Cherem, "Refugee Rights: Against Expanding the Definition of a 'Refugee' and Unilateral Protection Elsewhere," *Journal of Political Philosophy* 24, no. 2 (2016): 191–92. Emphasis original.
[41] Matthew Lister, "Who Are Refugees?" *Law and Philosophy* 32, no. 5 (2013): 662.
[42] Price, *Rethinking Asylum*, 159.
[43] Andrew E. Shacknove, "Who Is a Refugee?" *Ethics* 95, no. 2 (1985): 277.
[44] Shacknove, 277.
[45] Shacknove, 277.

persecution at the hands of totalitarian regimes was the primary concern of the international order (at least in Europe). Today, though, as we have seen, the practices of refugee protection reflect much broader concerns, including persecution by non-state actors, as well as generalised violence and civil unrest.

More importantly, however, the persecution view fails to give us a compelling account of why persecution itself uniquely grounds a claim for refugee status. The persecution view takes refugees to be those in need of asylum, and asylum is defined by its role in contesting state persecution. On this view, then, refugees are those whose state's persecution we need to contest. This simply ignores the role of the refugee regime *for refugees*. It treats refugees merely as instruments of states' expressions of condemnation, and ignores the claims that refugees themselves have to protection by the international community. This is a significant problem, because we are looking for a normatively justifiable reconstruction of the role of the refugee regime. As David Owen points out, others apart from those who face state persecution appear to have an important claim to seek the protection of the international community. If they don't merit asylum (understood in Price's sense) because they are not victims of state persecution, then they may well merit something like 'refuge.'[46] But if we can merely replace 'asylum' with 'refuge' for these people, then it becomes unclear what work 'asylum' is doing in regulating our usage of the concept of the 'refugee' in the first instance.

Cherem and Lister's accounts get us closer. Cherem argues that asylum is distinctively warranted by persecution because "the form of remedy it supplies match[es] the type of injustice it addresses."[47] They follow Michael Walzer in noting that political membership is a "non-exportable good,"[48] unlike food or development aid, and argue that asylum is warranted when political membership itself is required to address the injustice that refugees face. This, as we will see, is the glimpse of truth in the persecution view. The problem this view faces is that, in singling out state persecution, they identify only a subset of cases where political membership is required to address injustice. Where regimes collapse or fail to effectively establish control over their territory, those affected have no recourse to protection which is supposed to be guaranteed to them as members of their state. Similarly, when non-state actors persecute and the state is unable to effectively respond, those affected are unable to appeal to their political membership to guarantee their protection. Neither of these are cases of persecution by the state, but they are cases where robust political membership is required to address the injustice that those affected face. This is not to say that persecution by the state does not have distinctive normative significance in the

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[46] David Owen, "In Loco Civitatis: On the Normative Basis of the Institution of Refugeehood and Responsibilities for Refugees," in *Migration in Political Theory: The Ethics of Movement and Membership*, ed. Sarah Fine and Lea Ypi (Oxford University Press, 2016), 278.
[47] Elizabeth S. Anderson, "What Is the Point of Equality?" *Ethics* 109, no. 2 (1999): 304. Cherem takes himself to be explicitly responding to this desideratum of egalitarian theory. See Cherem, "Refugee Rights," 195n77.
[48] Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality* (Robertson, 1983), 48.

context of *other* political questions, but only that there are cases apart from state persecution which appear to call for the effective fulfilment of political membership.[49]

Where the persecution view is under-inclusive in its understanding of the refugee, the basic needs view is over-inclusive. Shacknove's central claim is that when an individual's basic needs are under threat and the international community is situated such that it can help, that individual has a claim to refugee status. There is a glimpse of truth in this view as well. As we will see, it is correct in one sense to suggest that the refugee regime is centrally concerned with the protection of individuals' basic needs, at least as long as those are understood in terms of the structural protection of human rights. However, Shacknove's direct focus on basic needs ignores the distinctive nature of asylum as a response to the plight of refugees. As Chandran Kukathas has pointed out, the distinction between refugees and others who face threats to their basic needs becomes difficult to maintain on this interpretation of refugee status: "[t]here are many refugees whose plight is more serious than that of most economic migrants; yet there are also many would-be economic migrants who face greater threats to their well-being than do some refugees."[50] Shacknove's account sees refugee status as a mechanism for meeting an individual's basic needs. Yet there are many for whom threats to their basic needs could be addressed not by the provision of asylum, but through, for example, development aid.

Gibney recognises that the basic needs view, in this form, is over-inclusive. He seeks to ameliorate the basic needs view by defending alienage as a criterion for the provision of refugee status:

> In my account, refugeehood *is*, in one vital respect, conceptually related to migration; what distinguishes the refugee from other foreigners in need is that he or she is in need of the protection afforded by short or long-term asylum (i.e., residence in a new state) because there is no reasonable prospect of that person finding protection any other way.[51]

As Gibney points out, this view leaves scope for other kinds of assistance to be provided to needy foreigners who can be helped *in situ*, by exporting assistance such as clean water, building supplies or food.[52]

This account also gets us closer, in that it recognises that refugees face a distinctive problem in being unable to appeal to their own state for the protection of their own human rights. However, in making

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[49] For example, Judith Shklar argues that government criminality which coercively forces people to leave under the threat of harm "violates trust in a way which renders the very basis of public life unreliable and vitiates our chief reason for our obligation to obey the law." Judith N. Shklar, "Obligation, Loyalty, Exile," in *Political Thought and Political Thinkers* (University of Chicago Press, 1998), 48.
[50] Chandran Kukathas, "Are Refugees Special?" in *Migration in Political Theory: The Ethics of Movement and Membership*, ed. Sarah Fine and Lea Ypi (Oxford University Press, 2016), 258.
[51] Gibney, *The Ethics and Politics of Asylum*, 8.
[52] Gibney, 8.

alienage the defining characteristic of the refugee, Gibney misidentifies the morally basic criterion that justifies refugee protection. To see this, consider the role that UNHCR has taken in protecting those who are *within* their country of origin. Since the early 1990s, UNHCR's 'Comprehensive Refugee Policy' has seen it become increasingly operationally involved in states that are producing refugees, often by setting up 'safe havens' within conflict countries and providing protection designed to pre-empt the need for flight.[53] Those being protected by UNHCR in these situations would not count as refugees under Gibney's approach, since they do not meet the alienage criterion. But such people cannot appeal to their own state for protection, and we can expect that they would flee across borders (and thus have a claim to refugee status) were it not for UNHCR's provision of protection *in situ*. These people appear to have a compelling claim to international protection, and this gives us good reason to think that alienage cannot be the morally basic criterion used to distinguish refugees from other needy foreigners. Although refugees are *usually* outside of their country of origin, alienage is not conceptually required.

3.2 The Membership View

The interpretation of the refugee regime which I defend, which does not face the deficiencies of the basic needs or persecution views, can be called the *membership view*. The membership view claims that those who are rightfully granted refugee status are those who are unable to appeal the protection ordinarily afforded to them by their status as members of their political community, because their state has lost standing as the on-going guarantor of their human rights.[54] The provision of asylum (as a functional replacement for political membership) is the warranted response to the plight of refugees. In the literature, the closest account to this view is David Owen's "political legitimacy" account of the refugee regime.[55] For Owen, the refugee has an "*exceptional*" status in the international political order, because "refugees are entitled to the *protection of a state which is not their own*, in the context of a predominant norm of global governance that states are fundamentally responsible to, and for, their own citizens."[56] Owen's answer to the question 'Who is a refugee?' is as follows:

> one whose basic rights are unprotected by their state and can only be protected through recourse to the international society of states (via a political agency such as another state or international organization)

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[53] Astri Suhrke and Kathleen Newland, "UNHCR: Uphill into the Future," *The International Migration Review* 35, no. 1 (2001): 284–302.

[54] 'Membership' here need not mean *citizenship*. Members, in the sense that I understand them here, are those whose day-to-day life is structured by their participation in a state. Membership, as I understand it, is morally prior to legal citizenship. Long-term residents qualify as 'members' in the sense that I understand it here, but tourists do not.

[55] Owen, "In Loco Civitatis." Owen distinguishes his view from the "surrogate membership" view, because he takes that view to involve either the claim rejected above that asylum serves as a way of condemning persecutory states or the claim that asylum should only be provided to those from 'outlaw' (and not 'burdened') societies. Neither of these claims are essential to the 'membership view' as I describe it, however.

[56] Owen, 271. Emphasis original.

> acting *in loco civitatis*, where it can so act without breaching the constitutive norms of the regime of governance.[57]

It is important to note that, on this view, refugees are not simply those whose human rights are unprotected, but those for who the international community must act *in loco civitatis* in order to ensure the protection of their human rights. 'In loco civitatis' refers to the idea that the international community acts so as to *replace*, rather than to *supplement*, the country of origin.[58] According to the membership view, for the ascription of refugee status to be appropriate, it must be the case that the state has lost its standing as the on-going guarantor of an individual's human rights, which is supposed to be provided by the status of political membership, and so the international community must stand in its place. To see why this is the most plausible interpretation of the refugee regime, it is worth taking a step back and briefly examining the broader normative contours of the international order, and the refugee's place within it.

Two important normative commitments structure the contemporary international order: those of human rights and state sovereignty.[59] The concepts of 'human rights' and 'state sovereignty' clearly permit different interpretations, and the conceptions of them that we find in the international order have developed over time and reflexively shape each other through processes of contestation. Indeed, Seyla Benhabib sees them as constituting the central *conflict* of the international order.[60] These commitments become reconciled in the idea of political membership and the figure of the refugee.

First: state sovereignty. State sovereignty in the contemporary international order no longer resembles the early "absolutist" conception of sovereignty found in the works of figures such as Thomas Hobbes and Jean Bodin.[61] The absolutist conception figures in the idea of a 'Westphalian' international order, in which "the system of sovereign states was conceived of as one of discrete, mutually exclusive, comprehensive territorial jurisdictions."[62] On this picture, sovereignty is much like negative liberty at the inter-personal level: it implies freedom from interference by external agents. The proliferation of international law, networks of transnational governance, the existence supranational institutions such as the EU and the

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[57] Owen, 280.
[58] Owen, 279.
[59] I broadly follow Jean Cohen in my interpretation of the norms of the international order. See, Jean L. Cohen, *Globalization and Sovereignty: Rethinking Legality, Legitimacy, and Constitutionalism* (Cambridge University Press, 2012).
[60] Seyla Benhabib, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge University Press, 2004), 65.
[61] Thomas Hobbes, *Leviathan*, ed. John Charles Addison Gaskin (Oxford University Press, 1998); Jean Bodin, *On Sovereignty: Four Chapters from Six Books of the Commonwealth*, ed. Julian H. Franklin (Cambridge University Press, [1576] 1992). My reading here is informed largely by Quentin Skinner, "A Genealogy of the Modern State," in *Proceedings of the British Academy, Volume 162, 2008 Lectures* (Oxford University Press, 2009).
[62] Jean L. Cohen, "Whose Sovereignty? Empire Versus International Law," *Ethics & International Affairs* 18, no. 3 (2004): 15. The historical event of the Peace of Westphalia cannot be said to have actually brought about the so-called 'Westphalian' principles which characterise this conception of sovereignty. Rather, the Peace of Westphalia functions as an 'origin myth' which has lent credence to the idea of an international society based on the mutual recognition of equal sovereignty. On this, see Andreas Osiander, "Sovereignty, International Relations, and the Westphalian Myth," *International Organization* 55, no. 2 (2001): 251–87.

UN, increased economic interdependence, and flows of capital and labour across borders all put the give us good reason to think that the absolutist conception of sovereignty no longer has the explanatory power that it might have once had.[63] States can no longer expect to act with impunity and to be free from interference in domestic affairs. For one thing, their domestic affairs are inextricably tied up with international and transnational regimes of governance, and they need to cooperate with each other in international and transnational projects in order exercise genuine agency. They need international cooperation and institutions in order to achieve what has be called "positive" sovereignty, understood as "institutional self-mastery."[64] This means that structures which might have traditionally been seen to impinge upon state sovereignty allow the state to maintain its practical identity in the modern context. As Jean Cohen puts it:

> Today the "sovereign equality" of states is deemed compatible with limits on what were once considered their sovereign privileges. These limits, imposed by international institutions, articulate a new form of international society, based on increased cooperation among states and an altered conception of sovereignty, not a wholesale shift to a different principle of international order.[65]

The rise of international institutions and practices does not mean that state sovereignty is obsolete. It only means that its sovereignty is shaped and constrained by the evolving context in which it operates.

If this seems to stretch the concept of state sovereignty, consider by analogy the doctrine of the Papal Infallibility in the Catholic Church. This doctrine gives the Pope significant normative powers in enabling him to, for example, issue authoritative teachings on biblical interpretation. But the Pope is also constrained in the range of possible options that can be pursued by the context in which he operates. Although the Pope is nominally infallible in issuing teachings on Catholic doctrine or morals when he is speaking *ex cathedra*, he could hardly issue dictums which were contrary to the fundamental tenants of Catholicism or central aspects of how it is practiced today.[66] Yet, the range of options available Popes changes over time, and so the normative power held by the Pope through the doctrine of infallibility is shaped and constrained by the practices in which it plays a role.[67] In the same way, the powers and

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[63] For an overview of these developments, see David Held, "Regulating Globalization? The Reinvention of Politics," *International Sociology* 15, no. 2 (2000): 394–408.
[64] Miriam Ronzoni, "Two Conceptions of State Sovereignty and Their Implications for Global Institutional Design," *Critical Review of International Social and Political Philosophy* 15, no. 5 (2012): 577.
[65] Cohen, "Whose Sovereignty?," 13.
[66] Pope Francis appears to be testing the limits of his normative authority. See Andrew Brown, "The War against Pope Francis," *The Guardian*, October 27, 2017.
[67] I am indebted in this analogy to Mervyn Frost, who uses two similar examples, which pertain to Ayatollah Khomeini in the context of Iranian politics and Mikhail Gorbachev in Soviet politics, to demonstrate how moral ideas can shape the normative powers available to political actors. See Mervyn Frost, *Ethics in International Relations: A Constitutive Theory* (Cambridge University Press, 1996), 63.

responsibilities that states have because of their sovereignty, and the limits of those powers and responsibilities, have changed over time in the context of the evolving practices of the international order.

One of the ways in which the idea of sovereignty has been shaped and constrained in the modern context is through the development of human rights norms.[68] Human rights norms are central in the international order, and have generated expansive international legal and political practices since at least the Universal Declaration of Human Rights.[69] One way in which they shape and constrain sovereignty is by articulating standards for states' external legitimacy. These standards indicate the existence of a "new political culture regarding sovereignty that has shifted from one of impunity to one of accountability and responsibility."[70] Transgressions of human rights, in the international context, can be understood as "providing reasons for action and grounds of criticism."[71] Various ways of responding to human rights transgressions have been typologised by Charles Beitz under the headings of accountability, inducement, assistance, domestic contestation and engagement, compulsion (which includes humanitarian intervention), and external adaptation, and decisions between these options made by international actors are likely to be as much a matter of political judgement as of normative reasoning.[72]

The structure of human rights protection presumes that states are, in the first instance, those who are responsible for the protection of their own members' human rights. Where they fail to do so, human rights protection becomes, in Beitz's words, a matter of "international concern."[73] It is important to note here that the very *structure* of human rights protection is predicated on an idea of universal political membership, since it is through one's status a member of a political community that one has, in the first instance, a way of guaranteeing the on-going protection of one's human rights. Without that on-going guarantee, one is at the mercy of the international community's response to transgressions of one's human rights. This was the early insight of Hannah Arendt, who saw the right to belong to a political community as being "the right to have rights," without which human rights cease to be meaningful.[74] Those in what Arendt called the condition of "rightlessness" have no state to whom they can appeal to uphold their human rights; instead, "the prolongation of their lives is due to charity and not to right."[75]

Political membership is of central importance for reconciling the commitments of human rights and state sovereignty. Political membership explains how human rights and state sovereignty are compatible: each

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[68] Here, I skirt the considerable controversy over whether or not there is a pre-political moral 'core' of human rights. My central concern here is rather with human rights practices in the international order.
[69] *The Universal Declaration of Human Rights* (1948). For a compelling reconstruction of the practices of human rights in the international order, see Charles R. Beitz, *The Idea of Human Rights* (Oxford University Press, 2011).
[70] Cohen, *Globalization and Sovereignty*, 159.
[71] Beitz, *The Idea of Human Rights*, 42.
[72] Beitz, 33–40.
[73] Beitz, 114–15.
[74] Hannah Arendt, *The Origins of Totalitarianism* (Harcourt, [1951] 1979), 296–97.
[75] Arendt, 296.

state is charged with the protection of its own members' human rights, and it is only when states fail to live up to their responsibilities as the guarantors of their members' human rights that the international community can intervene in states' domestic affairs. This preserves the presumption of non-interference in the concept of sovereignty, whilst also preserving the universality of the moral commitment that all humans are entitled to the protection of their human rights.

This view of the international order helps us to explain why the category of the refugee is centrally concerned with political membership. In order to maintain the integrity of human rights, states are charged with the protection of their members' human rights. Where that relationship breaks down, the international order requires a mechanism by which the structure of human rights protection can be maintained. This mechanism is that of asylum, where the international community acts *in loco civitatis* – in the place of the state – as the guarantor of the individual's human rights. The refugee, on this picture, is one who is "between sovereigns."[76]

Importantly, it is not the case that any human rights transgression will justify the ascription of refugee status. For the ascription of refugee status to be warranted, the human rights-protecting *relation* between the member and the state must have broken down, such that the state loses its standing as the on-going guarantor of human rights. A useful way of illustrating this difference is to borrow a distinction used in a different context by Tamar Schapiro, who distinguishes between an 'offence' and a 'betrayal' against a moral relationship:

> An offense issues from the standpoint of one whose basic commitment to the relationship is not in question. As such it has a bearing on the degree of perfection of the relationship, but it does not undermine the relationship's basic integrity. A betrayal, by contrast, issues from the perspective of one who is legitimately subject to the demands of the relationship, but whose fundamental commitment to the relationship is in question. As such, betrayals throw the basic character of the relationship into question.[77]

Taking refugee status to be warranted by a *betrayal* of the member-state relation, rather than simply by an *offence* against it, stops us from inflating the concept of the refugee and subsuming every human rights violation within it. The offence/betrayal analogy is not perfect, since states can lose their standing as the guarantor of their members' human rights as a result of their inability as well as their unwillingness to provide protection. As such, I will refer instead to cases where the member-state relation is *broken* (where the member-state relationship is undermined) and cases where it is *frayed* (where the relationship is imperfect, but its basic character is not undermined).

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[76] Emma Haddad, *The Refugee in International Society: Between Sovereigns* (Cambridge University Press, 2008), 69.
[77] Tamar Schapiro, "Kantian Rigorism and Mitigating Circumstances," *Ethics* 117, no. 1 (2006): 54.

We can identify the difference between refugees and other victims of human rights violations by appealing to the distinction between cases where the member-state relation is broken and cases where it is frayed. Where the relation is frayed, the international community may act in another way, such as through aid, sanctions, public criticism, and so on, in an effort to recover the integrity of that relation. Where it is broken, the refugee regime comes into force, by providing a surrogate for the relation that has been undermined. Persecution, as we have seen, is the paradigm way in which the member-state relation is broken, but it is not the only way. Similarly, alienage is often indicative of the fact that the member-state relation is broken, but it is not conceptually required. As Emma Haddad puts it, "the swapping of responsibility between the national and the international does not necessarily take place at the border." Rather "[t]he 'refugee' is created when norms of good governance within a state fail."[78]

For Owen, the refugee regime is a matter of the *legitimacy* of the international order as a regime of governance and, derivatively, of the states which create and uphold that regime of governance. The refugee regime constitutes a "legitimacy-repair mechanism" for the relations of governance that exist in the international order.[79] States are the authors of the norms of the international order; they "recognize each other as co-participants and, through their actions, constitute and reconstitute the norms of the practice."[80] Since the practical identity of the modern state depends on wider relations of governance, states' domestic legitimacy is at least partially a matter of its upholding this international mechanism. In Owen's words, "the political legitimacy of modern states cannot be separated from the political legitimacy of these wider relations of governance."[81]

Viewing the refugee regime as a matter of the legitimacy of the international order, and derivatively of the states which uphold it, helps to explain the moral importance it is often taken to have. We saw in our examination of the practices of the refugee regime that its core components, such as the principle of *non-refoulement*, are heavily institutionalised. Even those theorists who think there are limits to the international community's responsibility to refugees take those limits to be trade-offs against the protection of conditions of domestic political order, and them as "morally excruciating."[82] Since the refugee regime protects membership, which makes the structural protection of human rights possible, it is more basic than the protection of particular human rights. It is also worth noting that the provision of asylum also does not require coercive interference abroad and can be conducted unilaterally or in cooperation with coalitions of the willing. Unlike in cases of humanitarian intervention, states cannot appeal to the countervailing norm of state sovereignty in order to excuse themselves of an obligation to intervene. The refugee regime is "compatible with the *grundnorm* of state sovereignty/non-intervention."[83] This also helps

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[78] Haddad, *The Refugee in International Society*, 43–44.
[79] Owen, "In Loco Civitatis," 257.
[80] Owen, 272.
[81] Owen, 272.
[82] David Miller, *Strangers in Our Midst: The Political Philosophy of Immigration* (Harvard University Press), 163.
[83] Owen, "In Loco Civitatis," 275.

to explain the moral importance that the refugee regime is taken to have in the contemporary international order.

These reflections should make it clear that the normative role of the refugee regime is to maintain the integrity of human rights protection through the provision of surrogate political membership, rather than being to address state persecution or meet basic needs. With this view of the refugee regime in mind, we can now readily identify cases of climate-induced displacement which are appropriately governed through the refugee regime.

4. Climate-Induced Displacement and the Refugee Regime

There are different ways in which reactive displacement relating to climate change might warrant the ascription of refugee status. The two main ways in which reactive displacement relating to climate change is likely to generate refugees are through displacement resulting from *sudden-onset disasters* and through displacement resulting from *climate-induced unrest*. It is worth briefly examining each of these mechanisms.

The first mechanism is through displacement which occurs in the aftermath of *sudden-onset disasters*. Such displacement can take place either across borders or within a state's territory. The form of displacement that arises as a result of sudden-onset disasters will vary and not all cases will be appropriately governed under the auspices of the refugee regime. In some cases, the state may be able to act effectively, either alone or with the cooperation of the international community, in order to maintain the integrity of the human rights protection of its members. In other cases, however, the state may no longer be able to act as the on-going guarantor of the displaced person's human rights. In such cases, she has a claim to refugee status. An example is illustrative here: following the drought crisis of 2011, an estimated 1.3 million Somalis were internally displaced, with a recorded 290,000 people crossing borders in search of protection, mostly into Kenya and Ethiopia.[84] To the extent that these displaced persons were unable to call on their state to act as the guarantor of their human rights, they warranted protection under the refugee regime. Many of those displaced were in fact received as refugees in Kenya, mainly being hosted in the Dadaab refugee camp.[85] Although we cannot say with any great confidence that the drought crisis of 2011 was caused by climate change, we do know that as climate change advances, droughts such as these, and other extreme weather events such as typhoons and hurricanes, will become more frequent and more intense.

The second form of climate-induced displacement is displacement stemming from *climate-induced unrest*, where the impacts of climate change have had some role to play fomenting conflict. The now classic,

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[84] The Nansen Initiative, "Annex II" in *The Nansen Initiative Global Consultation Conference Report* (The Nansen Initiative, 2015), 9.
[85] The Nansen Initiative, "Annex II," 9.

though still disputed,[86] example of this is the current crisis of displacement in Syria. Research suggests that the prolonged drought in Syria between 2007 and 2010, which caused widespread crop failure and large movements of farming families to urban centres, contributed to the tensions underlying the civil conflict which emerged in Syria in 2011.[87] Climate modelling shows that the drought was inconsistent with expected climatic trends in the absence of human influences on the climate, which suggests that climate change played a role in bringing about the drought.[88] The drought, in turn, played a role in large-scale rural-urban movement, and civil conflict erupted out of the tensions emerging in this context. Clearly, other factors also played an important role in the Syrian conflict, and we should be careful to avoid taking an environmentally deterministic view of it. At the same time, the influence of climate change on the development of the conflict should not be ignored, especially given that we can anticipate that these kinds of climatic drivers of movement are likely to become more frequent and intense as climate change unfolds. More recently, for example, it has been suggested that climate-related food insecurity is a driver of displacement, alongside gang violence and urban conflict, in the 'migrant caravans' moving from Central America towards the United States.[89]

It is also worth noting that future scenarios of climate-induced displacement depend significantly on the extent to which we succeed in mitigating and adapting to climate change. If worst-case scenarios of climate change come to pass, then the impacts of climate change may lead to crises of governance and state capacity, which may mean that some people cannot depend on their state for protection. We face serious epistemic limitations in understanding these future scenarios, given the uncertainty surrounding both humanity's future emissions pathway and the interaction between the impacts of climate change and our social and political institutions.[90] Critics of the "futurology" of climate change have tended to decry "alarmist" rhetoric about the potential for climate change to lead to such crises of governance and large-scale movement of peoples.[91] Those critiques, however, are best levied against those who use alarmist rhetoric disingenuously in order to manufacture support for securitised responses to displacement. For our purposes, it is important to recognise that the international community does not have a strong record on mitigating and adapting to climate change, and that there may be new and unpredictable ways in which

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[86] See, for example, Francesca De Châtel, "The Role of Drought and Climate Change in the Syrian Uprising: Untangling the Triggers of the Revolution," *Middle Eastern Studies* 50, no. 4 (2014): 521–35.
[87] Peter H. Gleick, "Water, Drought, Climate Change, and Conflict in Syria," *Weather, Climate, and Society* 6, no. 3 (2014): 331–40.
[88] Colin P. Kelley et al., "Climate Change in the Fertile Crescent and Implications of the Recent Syrian Drought," *Proceedings of the National Academy of Sciences* 112, no. 11 (2015): 3241–46.
[89] Oliver Milman, Emily Holden and David Agren, "The Unseen Driver behind the Migrant Caravan: Climate Change," *The Guardian*, October 30, 2018; World Food Programme, *Food Security and Emigration: Why People Flee and the Impact on Family Members Left Behind in El Salvador, Guatemala and Honduras* (World Food Programme, 2017).
[90] For a good discussion which avoids 'environmental determinism,' see Jon Barnett and W. Neil Adger, "Climate Change, Human Security and Violent Conflict," *Political Geography*, 26, no. 6 (2007): 639–55.
[91] See, for example, Andrew Baldwin, Chris Methmann, and Delf Rothe, "Securitizing 'Climate Refugees': The Futurology of Climate-Induced Migration," *Critical Studies on Security* 2, no. 2 (2014): 121–30; Giovanni Bettini, "Climate Barbarians at the Gate? A Critique of Apocalyptic Narratives on 'Climate Refugees,'" *Geoforum* 45 (2013): 63–72.

climate change impacts upon displacement for which the refugee regime proves to be an appropriate response. As we have seen, the normative ideal that animates the refugee regime is that it should maintain the integrity of human rights protection where the membership-state relation breaks down. Climate change may well be a part of the causal story of how that relationship breaks down, and to the extent that it is, it is right to say that the refugee regime can be brought to bear on cases of climate-induced displacement.

5. Reforming the Refugee Regime

Now that we have a clearer view of how climate change interacts with the refugee regime, we can turn our attention towards the project of reforming the refugee regime. This section identifies some problems with the refugee regime, which I argue are worsened in the context of climate change, and proposes some avenues for reform. There are three principal ways in which the refugee regime fails to live up to the normative ideals that animate it: the anachronistic definition of the refugee, the maldistribution of costs between states, and the persistent encampment of refugees. These problems are clearly not exhaustive, but we can expect that they will become even more important as the climate change unfolds.

5.1 The Refugee Definition

The first problem with the current practices of the refugee regime is most easily explained, as it featured prominently in our interpretation of the refugee regime. As we have seen, the Convention definition of the refugee is an artefact of an anxiety about the propensity of totalitarian governments to break the member-state relation through persecution. Although persecution undoubtedly remains an important way in which the membership link is broken, it is by no means the only way. Generalised violence and civil unrest, which governments may be willing to but incapable of halting, is another way in which the membership link may be broken, and the impacts of climate change may also create situations in which the relation breaks down. What is constitutive of refugee status, as we have seen, is the fact that the state has lost its standing as the on-going guarantor of the member's human rights itself.

The legal definition of the refugee focuses on persecution and does not include other ways in which the member-state relation breaks down, including through the impacts of climate change. This is in fact in tension with practice: UNHCR demonstrates through its practice that it considers cases of climate-induced displacement to be within its remit, by expanding its *de facto* mandate to engage with displacement resulting from the impacts of climate change.[92] Yet the definition's focus on persecution as a cause of displacement, rather than on the fact that refuges find themselves unable to avail themselves of the

[92] For an analysis of the UNHCR's expanding *de facto* mandate with respect to climate-induced displacement, see Nina Hall, *Displacement, Development, and Climate Change: International Organizations Moving Beyond Their Mandates* (Routledge, 2016).

protection that is supposed to be guaranteed to them by their state, means that the refugee regime as it is currently organised is ill-equipped to deal with climate-induced displacement.

The normative reconstruction of the refugee regime set out in this chapter has already given us an answer to the question of who counts as a refugee: refugees are those who are unable to avail themselves of the protection ordinarily afforded to them as members of a state, because their state has lost standing as the on-going guarantor of their human rights. What we are lacking, however, is an appropriate legal definition.

At first glance, an attractive way of addressing the deficits of the Convention definition is to broaden the range of possible causes of refugee status which figure in the legal definition. We might push for a move to explicitly recognise environmental drivers of displacement as grounds for refugee status. Molly Consibee and Andrew Simms, for example, have argued that legal status should be granted to the environmentally displaced under the Refugee Convention.[93] They make this argument on basis of the idea of "environmental persecution," arguing that the environment can be used "as an instrument of harm."[94] This argument depends on the viability of the notion of 'environmental persecution' and, importantly, it implicitly accepts the persecution view. There may be some limited range of cases of climate-induced displacement which can be plausibly interpreted as being cases of 'environmental persecution.'[95] But if such cases can be understood as cases of 'persecution,' then it is unclear what work the 'environmental' clause would be doing, aside from making an implicit part of the Convention explicit. Nina Höing and Jona Razzaque have made the case for a definition of "environmental refugees" with accompanying granting of refugee status, which does not depend on the notion of 'environmental persecution.'[96] They argue that there is a patchwork of legal commitments which might be built upon in order to give the grounds for a revision of the Refugee Convention. One problem with this approach is the same as the problem that we identified in the unitary approach in Chapter III: it requires us to be able to rule-in and rule-out particular individuals on the basis of the cause of their displacement, which is notoriously difficult in the case of climate change. More fundamentally however, neither a notion of 'environmental persecution' nor an expansion of the grounds in the Convention definition address the broader problem that the refugee regime should identify as refugees those who find themselves unable to avail themselves of the structural human rights protection that their political membership is supposed to afford them.

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[93] Molly Conisbee and Andrew Simms, *Environmental Refugees: The Case for Recognition* (New Economics Foundation, 2003), 33.
[94] Conisbee and Simms, 30.
[95] See Aurelie Lopez, "The Protection of Environmentally Displaced Persons in International Law," *Environmental Law* 37, no. 2 (2007): 378–86.
[96] Nina Höing and Jona Razzaque, "Unacknowledged and Unwanted? 'Environmental Refugees' in Search of Legal Status," *Journal of Global Ethics* 8, no. 1 (2012): 21.

The problems of these approaches indicate that a more promising avenue is to move away from a refugee definition based on *causes* of displacement at all. Some individual causes of displacement may be *indicative* of the non-fulfilment of effective political membership (for example, state persecution through targeted violence), but they are not *constitutive* of it. Insofar as causes figure in a definition, they should do so indicatively. Our legal definition should seek to capture all of those for whom the member-state relation has broken down. The causes of that relation breaking down should not be definitive of refugee status; the refugee should be defined by the fact her state is not the on-going guarantor of her human rights.

The breakdown of the member-state relation does not readily translate into the language of legal statutes, and it is crucial to consider the effects that a legal definition is likely to have in order to evaluate its appropriateness. If a principle of international law were to simply state: 'refugees are those whose states have lost standing as the on-going guarantor of their human rights,' then this would leave a wide space of interpretation and disagreement which would be likely to be abused by states seeking to further their own agendas. Designing legal codes is a complex process which requires us to think about the ways in which the language of that code may be (mis)interpreted in both bad and good faith.[97] It is beyond the scope of my expertise to specify the precise wording of any operationalizable legal definition of a refugee. But what we can say here is that the best legal definition will be the one which, when its practical effects are considered, best captures those identified as refugees by the normative reconstruction of the refugee regime set out above. This gives us a desideratum for a legal definition: it should in practice identify as closely as possible those picked out by the normative definition. Whilst this does not provide us with a precise blueprint for legal form, it does provide us with a critical standard for assessing possible legal definitions.

It is worth recognising that the difficulty of specifying the precise wording of a legal definition does not only face my own account. To see this, consider two alternative standards which have been articulated. First, Alex Aleinikoff and Leah Zamore have recently proposed the concept of "necessary flight" as a standard for determining those who are eligible for international protection (which, as they understand it, goes beyond refugee status).[98] Necessary flight is supposed to identify those "whose lives become so intolerable at home that flight is a reasonable and justifiable response."[99] The standard used to determine whether an individual is eligible for international protection is whether or not she can offer a "persuasive and reasonable justification" for her decision to flee, or if "the situation itself readily attests to her decision."[100] This standard lends itself to wide latitude in interpretation. What counts as a 'persuasive and reasonable' justification is likely to be subject to disagreement (and to depend both on the rhetorical abilities of the speaker and the susceptibility of the adjudicator to those rhetorical abilities). Similarly,

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[97] See Helen Xanthaki, *Drafting Legislation: Art and Technology of Rules for Regulation* (Bloomsbury Publishing, 2014).
[98] T. Alexander Aleinikoff and Leah Zamore, *The Arc of Protection* (Stanford University Press, 2019), 93.
[99] Aleinikoff and Zamore, 93.
[100] Aleinikoff and Zamore, 95.

when a situation 'readily attests' to a decision to flee is likely to be matter of significant disagreement. Even as a normative standard, we might worry that these interpretable features leave the concept greatly under-determined, but it certainly leaves a large space for interpretation as a legal one.

Second, Alexander Betts has proposed the concept of "survival migration" to identify those who fall outside of the scope of the legal definition of a refugee but who warrant international protection.[101] His own approach is more nuanced, but still demonstrates the inevitable interpretability of legal language. He deploys the concept as a "normative framework" for thinking about who should be entitled to asylum, which he takes to be "persons who are outside their country of origin because of an existential threat for which they have no access to a domestic remedy or resolution."[102] If this were used as a legal statute, there would clearly be space for interpretation as to what counts as an 'existential threat' and as to when asylum-seekers have 'no access to a domestic remedy or resolution.' Betts recognises this, and his suggestion for implementation is that the OAU definition of the refugee should be more thoroughly institutionalised, that UNHCR ought to supply wider guidance about how the Convention definition is to be interpreted, and that international human rights law and jurisprudence could be used to establish greater precedent for the international protection of those who fall outside of the Convention's scope.[103] Here, Betts takes seriously that there is an inevitable gap between our normative and legal concepts. My suggestion is that we should follow Betts in his recognition of the gap between legal and normative definitions of the refugee, and that we should recognise that the normatively defensible answer to the question of who counts as a refugee does not readily translate into the language of legal states. It does, however, provide us with a critical standard against which we can assess possible legal definitions.

5.2 Cost-Sharing in the Refugee Regime

The second problem in the current practices of the refugee regime is the unfairness in the distribution of the costs of refugee protection between states. The preamble to the 1951 Convention recognises that:

> the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation.[104]

Strong forms of international cooperation have not developed, however, and most international cooperation around the distribution of refugees has been *ad hoc* and based around politically expedient

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[101] Alexander Betts, *Survival Migration: Failed Governance and the Crisis of Displacement* (Cornell University Press, 2013).
[102] Betts, 23.
[103] Betts, 178–81.
[104] *Convention Relating to the Status of Refugees*, preamble.

trade-offs, rather than notions of fairness.[105] The norm of *non-refoulement*, because it requires asylum-seekers to be present in a state's territory, has pernicious effects when it is taken as a regulatory principle without supplementary international cooperation. As Gibney points out, the "tyranny of geography" means that it is much easier for asylum seekers to reach some states than others, resulting in large inequalities of distributions of refugees.[106] And as we have seen, some states also exploit the requirement of territorial presence by using non-arrival measures to keep refugees outside of their territory. At the end of 2018, Turkey, Pakistan and Uganda hosted the highest overall numbers of refugees, reflecting the fact that their neighbours, Syria, Afghanistan and South Sudan, were the states producing the highest numbers of refugees.[107] Generally, the burdens of refugee protection most heavily on the states that are already the least advantaged. The least developed states, including Bangladesh, Chad, the Democratic Republic of Congo (DRC), Ethiopia, Rwanda, Sudan, Tanzania, and Uganda, hosted 33% of the global refugee population, despite themselves accounting for only 13% of the global population and 1.25% of the global gross domestic product (GDP).[108] The tyranny of geography and territorial presence required by *non-refoulement* work to mitigate any incentive for change on the part of those states already most advantaged in the international order.

The maldistributive consequences of the lack of international coordination in the refugee regime are likely to be worsened by the impacts of climate change. By and large, there is a large discrepancy between those states who have contributed to the problem of climate change and those which are most vulnerable to its impacts.[109] Projections show that those most likely to be affected by future flooding, living in low-elevation coastal zones, are likely to be in South East Asia (China, India, Bangladesh, Indonesia and Vietnam), with the fastest growing coastal populations being in Western Africa (Nigeria, Benin, Côte D'Ivoire and Senegal).[110] All except two of the states which are already listed as 'high' or 'very high' alert in the Fragile States index (Yemen, Somalia, DRC, the Central African Republic, Chad, Sudan and Afghanistan[111]) are within the top fifteen states most vulnerable to the impacts of climate change, as measured by the Notre Dame Global Adaptation Initiative (ND-GAIN) index.[112] This is obviously a

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[105] Betts, for example, describes one of the more successful burden-sharing arrangements, the Indo-Chinese Comprehensive Action Plan (CPA) as being made possible through 'issue-linkage.' The United States' willingness to engage was "underpinned by structural interdependence between the refugee crisis and its strategic interests in the region", Alexander Betts, "International Cooperation in the Refugee Regime," in *Refugees in International Relations*, ed. Gil Loescher and Alexander Betts (Oxford University Press, 2011), 71.
[106] Gibney, *The Ethics and Politics of Asylum*, 195.
[107] UNHCR, "Global Trends: Forced Displacement in 2018" (UNHCR, 2019), 15–17, available at https://www.unhcr.org/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html.
[108] UNHCR, 17–18.
[109] Glenn Althor, James E. M. Watson, and Richard A. Fuller, "Global Mismatch between Greenhouse Gas Emissions and the Burden of Climate Change," *Scientific Reports* 6 (2016): 20281.
[110] Barbara Neumann et al., "Future Coastal Population Growth and Exposure to Sea-Level Rise and Coastal Flooding - A Global Assessment," *PLOS ONE* 10, no. 3 (2015): e0118571.
[111] The two states which are not within the top fifteen are South Sudan, for which data are not available in the ND-GAIN index, and Syria, which 139th most vulnerable (out of 181 states for which data are available).
[112] This is correct at the time of writing, but up-to-date information is available at https://gain.nd.edu/our-work/country-index/rankings (ND-GAIN index) and https://fragilestatesindex.org (Fragile States Index).

rather crude indicator of the likely impacts of climate change on refugee movement, and we should not expect vulnerability to climate change impacts and existing state fragility to translate straightforwardly to refugee movement. It does, however, serve to illustrate the fact that many of those states which have contributed the least to global emissions are amongst those most at risk from its impacts. Northern states which are able to insulate themselves from refugee flows through non-arrival measures are also most able to put in place adaptation measures which make them less vulnerable to the impacts of climate change. On any standard account of what makes a state more responsible for bearing costs associated with climate change, such as being historically responsible for, or a present beneficiary of, greenhouse gas emissions (GHGs), or being more capable of addressing climate change, its likely effects on the distribution of refugees serve to exacerbate the unfairness of this maldistribution.[113]

We can distinguish two related questions which should be answered by an account of justice in responsibility-sharing in the refugee regime:

(1) Where should (particular) refugees be hosted?
(2) Who should bear the costs of hosting refugees?

These questions are related in that our answer to (1) will affect (2), given that hosting refugees engenders costs (in infrastructure, public services, and so on).[114] If the distribution of obligations to host refugees is altered, so is the distribution of costs. However, it is important to recognise that they can also come apart, because we can *re*distribute resources between states to alter how costs associated with hosting refugees are distributed between states. This means that we can, at least in principle, treat the questions separately. We can determine what the distribution of costs should be and hold this constant, whilst determining separately where refugees should be hosted.[115] We can do this because we can know that costs can be redistributed so as to meet our criterion for cost-sharing. This is at least true for the economic costs of hosting refugees. Other kinds of 'costs' which are not straightforwardly fungible (for example, the perceived costs associated with changing demographic and cultural composition of a society as a result of refugee integration) are better thought of as moral claims, which can enter into a balance of competing

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[113] These principles for sharing the costs of climate change are examined in greater detail in Chapter VII, sec. 3.3.
[114] Assessing the overall economic impact of refugees on host states is not straightforward. Whether or not refugees are a 'burden' on national economies remains contested (and there are many confounding variables which may explain variation in assessments of refugees' impacts). What does seem comparatively clear, however, is that at least in the short-term, hosting refugees does make demands on states in terms of public expenditure. For good overviews of the debate surrounding the economic costs of hosting refugees, see Naohiko Omata and Nina Weaver, "Assessing Economic Impacts of Hosting Refugees," *Refugee Studies Centre Working Paper Series* (Refugee Studies Centre, 2015) and Roger Zetter and Elena Fiddian-Qasmiyeh, *Study on Impacts and Costs of Forced Displacement Volume II: State of the Art Literature Review* (The World Bank, 2011).
[115] This is somewhat of a simplification, since the total costs of refugee protection will vary according to how much different states spend on refugee protection, and how many refugees are hosted in higher cost states. Insofar as this is relevant, it is discussed in this section below.

claims (alongside, for example, the claims made by refugees to be hosted in a particular place) when it comes to (1).

It is worth noting that most existing approaches to the question of burden-sharing in the refugee regime run these questions together. There has been a significant philosophical debate over what exactly constitutes a state's "fair share" in accepting refugees, which has recognised that hosting refugees may mean imposing costs on states.[116] Partisans in these debates, however, tend not to distinguish between the *costs* of hosting refugees and the actual *hosting* of refugees. Even those who see refugees as having moral claims to particular loci of protection tend to assume that the costs associated with hosting refugees must travel with the obligation to host. Gibney, for example, writes that "distributive justice between states must be *balanced against* the legitimate interests of refugees in their destination country."[117] Distinguishing between these two questions by pointing out that the costs of protection need not travel with the locus of protection is an important contribution to the broader debate on burden-sharing in the refugee regime.

This chapter only addresses question (2). Having a good way of determining the answer to (1) is clearly a crucial task for a full account of justice in the refugee regime, but it is unfortunately one which cannot be achieved within the scope of this thesis. Climate change has particular relevance for (2), which is why I prioritise it here. In the remainder of this thesis, I simply assume that we can provide a normatively defensible account of (1), and that we can redistribute the costs of protection so that the distribution of costs meets the standards that I set out here in relation to (2).

According to the normative reconstruction of the refugee regime set out above, states have a duty to collectively establish and uphold a regime of refugee protection as a matter of the legitimacy of an international order structured by normative commitments to state sovereignty and human rights. They are also likely to wish to uphold a stable system of refugee protection in order to ensure that they benefit from the conditions of stability and security that a well-functioning regime is likely to create. States have both moral and prudential reasons to uphold a refugee protection regime. But each state also has an incentive to do so at the least cost to itself, because the benefits of a stable refugee regime (of stability, and of the overall legitimacy of the international order) accrue to states collectively and are not excludable. This description of the refugee regime enables us to see it as a global public good. Now, the refugee regime is not a *pure* public good, since it also creates goods which are excludable, such as the reputational benefits which may accrue to states taking the lead in hosting refugees.[118] Nonetheless, in

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[116] See, for example, Miller, *Strangers in Our Midst*, 86–88, 162–63; David Owen, "Refugees and Responsibilities of Justice," *Global Justice: Theory, Practice, Rhetoric* 11, no. 1 (2018): 23–44; Carens, *The Ethics of Immigration*, 206–17.
[117] Matthew Gibney, "Refugees and Justice Between States," *European Journal of Political Theory* 14, no. 4 (2015): 450.
[118] For good discussions of the 'public good' model of the refugee regime, see Eiko Thielemann, "Why Refugee Burden-Sharing Initiatives Fail: Public Goods, Free-Riding and Symbolic Solidarity in the EU," *JCMS: Journal of Common Market Studies* 56, no. 1 (2018): 63–82; Alexander Betts, "Public Goods Theory and the Provision of Refugee Protection: The Role of the Joint-Product Model in Burden-Sharing Theory," *Journal of Refugee Studies* 16

order to avoid the problem of some states free-riding on the efforts of others to uphold the refugee regime, and agreement on fair terms of cooperation is needed. Our task here can be understood as being to elaborate terms which are 'fair.'

My suggestion is that a fair distribution of costs between states is one which is equally burdensome for each state, with departures from the equality of burdens standing in need of further justification. The idea is that the provision of refugee protection, as a cooperative enterprise between states, should be by default equally burdensome for those states, but that there may be some special reasons why some states should bear greater burdens than others.

It is important to understand that 'equally burdensome' does not mean that each state should pay the same amount, or even that each state should pay the same percentage. Suppose that each state contributes a proportion of their Gross National Product (GNP) to a collective fund used to finance refugee protection. If each state were to pay the same amount into the pot, then this would be far more burdensome for some than for others, given the disparities in national wealth between states. Even if each state were to pay the same percentage of their GNP, the scheme would be more burdensome for some than for others, since there are diminishing marginal gains as GNP increases. A progressive scheme of contribution would be required to ensure that each state was being asked to bear the same relative burden. Much like the legal definition of the refugee, specifying precisely the rate of contribution for different states goes well beyond my expertise. For the moment, getting clear on the normative principles that underlie rates of contribution is task enough.

A principle of equal burdens by default is one which could not be reasonably rejected by states in a process of fair deliberation where all are considered as free and equal participants. The idea that participants in a cooperative enterprise ought to share costs in a way which is equally burdensome treats each state as an equal stakeholder in the scheme in which they are engaged. It treats each state as equally responsible for the collective provision of the refugee regime and privileges no particular state's interests over those of others.

In Rawls' argument for his "difference principle" for distributing the benefits of social cooperation within a liberal constitutional state, the equal distribution of benefits is a "benchmark" from which deviations must be justified.[119] According to Rawls, one departure from an equal distribution which withstands the test of mutual justification concerns inequalities which increase the amount of primary goods enjoyed by the worst-off in the cooperative scheme. The naturally talented are permitted to benefit from their talents

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(2003): 274–96; Astri Suhrke, "Burden-Sharing during Refugee Emergencies: The Logic of Collective versus National Action," *Journal of Refugee Studies* 11, no. 4 (1998): 396–415.

[119] John Rawls, *A Theory of Justice*, 2nd ed. (Belknap Press, 1999 [1971]), 55.

"only on terms which improve the situation of those who have lost out."[120] Allowing the talented to enjoy a larger share of the benefits of cooperation is justified because it creates a surplus of resources which can be distributed such that they increase the amount of primary goods enjoyed by the worst-off, at least on the assumption that the talented will not otherwise produce this surplus of resources. Note that in the case of the refugee regime, states are not engaged in a scheme of cooperation of the same kind as citizens of a Rawlsian society. Allowing one state to gain by reducing its relative burden in cost-sharing for the refugee regime does not plausibly create gains which are to the benefit of other states, unlike in a Rawlsian society where the productivity associated with economic incentives for the talented creates gains which can be distributed to the greatest benefit of the least advantaged.

Nonetheless, we might think that a similar justification could be advanced in favour of one state hosting fewer refugees. For example, we might think that if states in which protection is costlier hosted fewer refugees, then the total costs of refugee protection would be lower. Although this would affect the total costs of the refugee regime, note that it is not a matter of the *distribution* of costs of refugee protection. Even if the total cost of refugee protection were decreased by hosting more refugees in lower-cost states, this still says nothing about the distribution of costs between states: more refugees could be hosted in lower-cost states whilst the costs were shared equally, through redistribution. Note further that the justifiability of hosting greater numbers of refugees in lower-cost states is not *only* a matter of the costs of refugee protection, but is also a matter of where particular refugees should be hosted – that is, it also implicates question (1). States collectively may well have a claim that more refugees be hosted in lower-cost states, but this is only a *claim*, which must compete with refugees' own moral claims to be hosted (or not to be hosted) in a particular state, in our consideration of question (1).

There are, however, cases in which a departure from equality in the distribution of costs could be justified. These are cases where some states wrongly create a greater *burden*, rather than a greater benefit, in a way which justifies the ascription of liability to those states. For example, where states are involved in military action abroad which produce refugees, it is reasonable to require those states to bear a higher share of the costs of refugee protection, in order to account for the fact that their intervention has resulted in a higher overall cost.[121] States not involved in the conflict would feel justifiably resentful if their contributions were to increase as a result of the actions of another state's militarily adventurism. Why should they have to share in the cost of actions taken unilaterally by others? In cases of military intervention, refugees abroad are *produced* by the activities of particular states. As a rule of thumb, states should be liable for the costs associated with the protection of refugees they produce.

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[120] Rawls, 87.
[121] This cost only accounts for the 'negative externality' that military intervention produces. Additional measures or costs may well also be justifiable as a disincentive for military adventurism.

There are some exceptions to this rule of thumb. Notably, we cannot generally hold the states from which refugees are fleeing liable for the costs associated with those refugees, precisely because those states are no longer members in good standing of the international community. This is why we need a refugee regime in the first place: the refugee regime is designed for cases where we cannot expect a particular state to cooperate in the protection of human rights. Additionally, not *all* forms of military action that produce refugees will necessarily justify the ascription of liability. For example, where states take justified military action that prevents a shared threat to the international community, it may be justifiable for the costs of associated refugee protection to be shared collectively rather than to hold the states that took military action privately liable.

The idea that states have special responsibilities towards refugees they have produced has widespread appeal in the broader literature on refugees.[122] Often, however, this is understood as an obligation to *host*, rather than as an obligation to bear costs, as I am suggesting here. Understanding this as an obligation to bear costs helps us to explain why, for example, in wars of foreign aggression we may think that it is appropriate for belligerent states to bear the costs of the protection of the refugees they produce, but it may be inappropriate for those refugees to actually be hosted in the belligerent state.[123]

Climate change is similar to the case of military intervention, in that certain states (i.e. high-emitting ones) are responsible for the creation of a greater overall burden to be borne by the collective of states upholding the refugee regime. As such, we might think that high-emitters should be held liable for the costs of the protection of those they render refugees. This is right, but stated at this level of generality it obscures an important difference between the case of military intervention and the case of climate change. In the military intervention case, discrete actions turn identifiable individuals into refugees. In the climate change case, by contrast, individuals are rendered refugees by the uncoordinated actions of numerous individuals, none of which can be straightforwardly identified as having a causal role in the creation of climate change. Similarly, climate change interacts with and exacerbates existing drivers of displacement, which makes it difficult to describe climate change as *the* cause of an individual's movement. Both of these facts make it difficult to assign high-emitting states liability for the costs of the protection of those that climate change has rendered refugees. In the military intervention case, it is possible to apply a principle of liability for costs associated with particular refugees, whereas in the

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[122] See, for example, James Souter, "Towards a Theory of Asylum as Reparation for Past Injustice," *Political Studies* 62, no. 2 (2014): 326–42; Carens, *The Ethics of Immigration*, 195; Miller, *Strangers in Our Midst*, 90.

[123] Michael Walzer has endorsed the idea that states owe special obligations to those they have caused to be refugees, but understands this as an obligation to host those refugees. He writes that "the injury we have done them makes for an affinity between us: thus, Vietnamese refugees had, in a moral sense, been effectively Americanized even before they arrived on these shores." (Walzer, *Spheres of Justice*, 49). It seems to me that an 'affinity' is an odd way to describe relationship between us and those we render refugees.

climate case, the problems that we face in identifying particular individuals as 'climate-displaced,' which we encountered in Chapter III, make it difficult to ascribe liability in the same way.

Rather than pursuing a "liability-based" model of cost-sharing, the appropriate way of capturing the costs imposed on the refugee regime is through what Idil Boran has called an "insurance logic."[124] Through their contributions to climate change, high-emitters create a systemic risk which predictably increases the overall costs of refugee protection. Rather than focusing on costs associated with any particular refugees, we should require high-emitting states to bear the costs of the *aggregate* burden of risk that they impose on the refugee regime. This does not require us to identify any particular refugees as displaced by climate change.

This approach does, however, presupposes a prior account of how much states can permissibly emit. This is because not *all* emissions create extra burdens on the refugee, only *too many* emissions do. So, we need an account of when states have emitted too much. This task is taken up in Chapter VII, where I examine the terms of a fair international effort to mitigate climate change. Once we have an answer to this question, however, we have a way of determining how costs can be justifiably shared in the refugee regime: they are to be equally burdensome for all states, excepting the costs of refugee protection that are *produced* by the activities of states in ways that make them morally liable. This includes the costs imposed by climate change, which are measured by departures from the terms of a fair climate treaty.

5.3 Encampment

A third problem with the refugee regime is its persistent tendency to rely on the encampment of refugees. Serena Parekh has argued that containment measures have become a "*de facto* "fourth" durable solution," and that refugee camps "often become long-term temporary living spaces run in an emergency mode."[125] As a surrogate for political membership, refugee status ought to be in place for as long as the member-state relation remains broken down or until the refugee obtains citizenship in another state. In some cases, this is likely to involve refugee status as a temporary measure of protection, whereas in others it may require permanent resettlement. Parekh notes that a preference for refugee repatriation over resettlement, which relies on the assumption that refugee status will be temporary, has acted as "the implicit moral basis for our current policies of containment."[126] This preference for repatriation over resettlement stems from both a decline in the ideological usefulness of asylum as a means of expressing condemnation of other states in the context of the Cold War,[127] and a fear on the part of states that

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[124] Idil Boran, "Risk-Sharing: A Normative Framework for International Climate Negotiations." *Philosophy & Public Policy Quarterly* 32, no. 2 (2014): 4–13.
[125] Serena Parekh, *Refugees and the Ethics of Forced Displacement* (Routledge, 2016), 28–29.
[126] Parekh, 26.
[127] See T. Alexander Aleinikoff, "State-Centered Refugee Law: From Resettlement to Containment," *Michigan Journal of International Law* 14 (1992): 129.

permanent resettlement is a means to get around their sovereign privilege in setting immigration policies: they "see refugee protection as little more than an uncontrolled "back door" route to permanent immigration."[128]

Encampment often does not fulfil international community's obligation of replacing the member-state relation in a meaningful way, and has been described as a "Janus-faced" approach to human rights protection.[129] An ostensible effort to protect human rights in tough circumstances ends in the creation of 'international' spaces for the provision of human rights-protection, often through legal spaces of exception such as 'safe havens' administered by UNHCR. Recall that, as we identified it, the normative rationale behind the refugee regime was to replace the on-going protection of human rights associated with political membership, which is unavailable to refugees in their home state. If refugee camps are unable to do this, then they fail to live up to the normative rationale that justifies the refugee regime. As we shall see, UNHCR is generally unable to robustly protect human rights over time.

Climate change presents distinctive challenges to the presumption of temporariness in the refugee regime, which has acted as the 'moral basis' of refugee encampment, because there are likely to be cases of climate-induced displacement which are foreseeably long-term or permanent. Where land is lost, through coastal erosion or sea-level rise, or where areas become too dangerous or unsuitable for human habitation, it will be necessary for communities and individuals to relocate permanently. Where anticipatory forms of planning for such movement fails, some may require protection under the auspices of the refugee regime. Certainly, many cases of climate-induced displacement will be temporary, but the presumption that refugee status is temporary is likely to adversely affect many of those displaced by the impacts of climate change. Temporariness may be an obstacle to citizenship, especially in those cases where prolonged 'temporary' protection becomes *de facto* permanent.[130]

Here, I argue that the practice of long-term encampment of refugees is morally objectionable, but that short-term refugee protection in refugee camps can be justified in some circumstances. In order to prevent such situations from devolving into long-term encampment, however, I suggest a mechanism where states collectively pre-commit themselves to principled limits on encampment. Where refugees are kept in camps beyond that limit, the mechanism provides those refugees with the legal right to choose their country of protection.

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[128] James C. Hathaway and R. Alexander Neve, "Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection," *Harvard Human Rights Journal* 10 (1997): 117.
[129] Guglielmo Verdirame and Barbara Harrell-Bond, *Rights in Exile: Janus-Faced Humanitarianism* (Berghahn Books, 2005).
[130] For the ways in which temporal boundaries regulate the *demos* of a political community, see Elizabeth F. Cohen, *The Political Value of Time: Citizenship, Duration, and Democratic Justice* (Cambridge University Press, 2018), 49–53.

We can distinguish two justifications for the existence of refugee camps in the literature. The first is that refugee emergencies often unfold in ways which overwhelm the immediate capacity of the international community, and particularly of states which are geographically proximate to refugee-producing regions. Refugee camps, on this view, can be an efficient temporary solution which protect refugees' basic human rights whilst the international community conducts refugee status determinations and organises fair ways of organising the longer-term protection of refugees in host societies. Or, in some cases, the crisis that has led to the refugee emergency subsides quickly, and refugees can return home.[131] This justification for the existence of refugee camps is a reasonable one. It is certainly regrettable that refugee crises unfold in ways which can overwhelm the capacity of nearby states and international community to respond swiftly, and this gives us good reason to think that states should increase their capacities to respond to refugee crises and address the root causes of large-scale refugee crises. To the extent that this is an unavoidable feature of refugee crises, however, refugee camps may be a regrettable necessity if we are to first ensure the protection of refugees' basic human rights. Importantly, though, this argument does not serve to justify the current practice of keeping refugees contained within camps for long periods of time. It justifies them only as a genuinely short-term response to refugee emergencies.

A recent examination of refugee camps has made the case that they can, if they are sufficiently well-reformed, be efficient ways of protecting refugees' human rights which also allow refugees to exercise considerable autonomy.[132] Alexander Betts and Paul Collier have recently argued that the refugee camp has become a "humanitarian silo" which stops refugees from exercising autonomy and erodes their dignity.[133] According to Betts and Collier, the "core problem" is that refugee camps are modelled on an idea of segregating refugees from host populations, which can "lead to long-term reliance upon aid, exacerbate vulnerability, and erode people's capacities for independence."[134] They propose that we should give up the "fiction" that those in camps will quickly return home, and instead reform refugee camps such that they are better able to enhance, rather than undermine, refugees' autonomy by embracing a "development-based" approach to refugee protection.[135] This involves both improving conditions in refugee camps through, for example, electrification and the provision of education, and by creating opportunities for refugees to work. According to Betts and Collier, allowing refugees to work is a way of empowering refugees and allowing them to become self-reliant, which removes the principal objectionable features of the refugee camp. It is also to the benefit of hosting states, since refugees can be turned into productive assets for developing economies.[136]

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[131] For a succinct articulation of this view, see Carens, *The Ethics of Immigration*, 203–4.
[132] Alexander Betts and Paul Collier, *Refuge: Rethinking Refugee Policy in a Changing World* (Oxford University Press, 2017).
[133] Betts and Collier, 127.
[134] Betts and Collier, 137.
[135] Betts and Collier, 144.
[136] Betts and Collier, 151.

Although the intention to benefit refugees through the reform of refugee camps is laudable, there are both practical and principled objections to Betts and Collier's proposal. One practical reason to worry is that, as Betts and Collier identify, their proposal has a "win-win" nature from the perspective of Northern and Southern states.[137] Precisely because refugee camps reformed in this way appeal to Southern states' interests in turning refugees into productive assets for their economies and Northern states' interests in keeping them out of their territory, such reform is likely to retrench the practice of the long-term encampment rather than reduce its prevalence. If refugee encampment is a morally troubling practice, then making it more attractive from the perspective of states is a perverse incentive. This is not a problem if well-reformed refugee camps *are* acceptable from the standpoint of justice, but there are principled reasons to think that they are not.

One principled reason to object to long-term encampment is that the prospects for the secure and on-going protection of human rights in refugee camps are dim. Refugee camps are often run by UNHCR in a *de facto* position of sovereign authority; even where they are nominally subject to the jurisdiction of a state, they are often treated as spaces of exception. UNHCR, however, does not have the capacity to robustly protect human rights over time. The litany of human rights abuses in refugee camps attests well to its inability to provide robust human rights protection.[138] For one thing, UNHCR is dependent in its work on funding from donor states, which makes it vulnerable to changes in its funding provision at the discretion of donors. And as Barbara Harrell-Bond has chronicled, the delegation of authority to UNHCR in refugee camps and the treatment of refugee protection as a matter of humanitarianism has created environments in which refugees face repression, cruel infantilization and subordination.[139] UNHCR is not able to offer human rights protection in the way that states can. The protection of human rights is associated with political membership precisely because states are the kinds of actors which generally *are* able to protect the rights of their members securely over time and have the legitimate authority to do so. Unlike states, UNHCR is unable to mobilise the coercive power that underpins protections of human rights through the rule of law. Even if it were able to do so, it would certainly not have the legitimate authority to do so any standard account of what makes the exercise of coercive power legitimate.

Even if refugee camps could provide secure, on-going protection of human rights, refugee camps as Betts and Collier envisage them could still only afford refugees some minimal ways in which they can exercise autonomy – namely, through economic participation. But political membership in a state concerns much more than mere economic participation. Political membership is not only valuable because of its role in

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[137] Betts and Collier, 151.
[138] For a particularly vivid account of life in refugee camps, see Michel Agier, *Managing the Undesirables* (Polity, 2011).
[139] Barbara Harrell-Bond, "Can Humanitarian Work with Refugees Be Humane?," *Human Rights Quarterly* 24, no. 1 (2002): 51–85. See also Didier Fassin's account of repression and humanitarianism in the Sangette refugee camp in his *Humanitarian Reason: A Moral History of the Present* (University of California Press, 2011), 133–57.

securing on-going human rights protection, it is also valuable because it is a practical prerequisite for individuals to be able to engage in the practices of civic and social life. Robust political membership in a state functions as a background condition which makes it possible for members to participate in collective projects and makes possible central aspects of human life. Parekh identifies one of the central problems of refugee encampment as being what she calls "ontological deprivation," which consists in refugees being reduced to "bare life," being deprived of the ability to share in the "common world," and being deprived of the opportunity to meaningfully act politically and socially.[140] Participating in the economy may be one way in which individuals can exercise some autonomy, but it does not permit refugees in camps to pursue these central human activities. We should reject the suggestion that the 'development-based' approach to refugee camps can empower refugees in the way that Betts and Collier claim.

We can see, then, that whilst short-term refugee protection in camps may be justifiable as a regrettable necessity given the nature of modern refugee crises, the long-term encampment of refugees is a not a justifiable practice. Where the usage of refugee camps can be justified, the danger is that the initially short-term use of refugee camps for emergencies devolves into a practice of refugee encampment of indefinite duration. In order to avoid this, we need an institutional mechanism for maintaining principled limits to refugee encampment and ensuring that it is only used as a response to the genuine emergencies. In order to guard against initially short-term refugee encampment devolving into long-term encampment, I want to suggest a mechanism by which states collectively pre-commit themselves to granting refugees whose encampment lasts beyond principled limits to a right to choose their state of asylum.

In outline, this proposal would look as follows. First, states collectively agree on a principled time limit beyond which refugee encampment is unacceptable. This time limit should be *principled* in the sense that it should be justified by reference to the moral unacceptability of leaving refugees in camps for prolonged periods of time, as identified by Parekh and others. It may also be sensitive to the on-the-ground realities of refugee protection as it exists. If it proves difficult to find a time limit that is both practically workable and morally acceptable, then the time limit could be ratcheted down over time as states develop their capacities to respond effectively to refugee crises. Second, states collectively agree to recognise a document which provides the bearer the legal right to asylum in a state of her choice, to be issued by UNHCR. Once a refugee who is being held in a refugee camp has stayed in the camp beyond the time

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[140] Parekh, *Refugees and the Ethics of Forced Displacement*, 82–101. Parekh draws on the work of Hannah Arendt for her understanding of the ways in which refugee camps deprive refugees of a place in the 'common world' and an ability to speak and act meaningfully. See Hannah Arendt, "We Refugees," *Menorah Journal* 31, no. 1 (1943): 69–77 and, for the conceptions of 'speech' and 'action' underlying this approach, Hannah Arendt, *The Human Condition* (University of Chicago Press, [1958] 2018). See also Jamie Draper, "The Enduring Relevance of Arendt's Understanding of the Harm of Statelessness," *Statelessness Working Paper Series* 2016/02 (2016). For the notion of 'bare life' upon which Parekh draws, see Michel Agier, *On the Margins of the World: The Refugee Experience Today* (Polity, 2008); Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford University Press, 1998).

limit, she is issued this document and is able to freely travel to and settle in the state of her choice. She would bear the same legal rights as other refugees, aside from having the power to sidestep the procedure through which the locus of refugee protection is decided for other refugees. Clearly, the details of such a proposal would need to be worked out more concretely in order for it to be viable, which I am unable to do in the space available to me here. Rather, I only want to indicate some reasons that I think this proposal is attractive, and to allay some concerns that a critic might raise against it.

This proposal would be attractive for two reasons. First, it provides a clear incentive for states to cooperate in ending the practice of long-term refugee encampment. Unlike Betts and Collier's approach, which makes long-term encampment attractive to states, this proposal makes long-term encampment *unattractive*, since it would mean that states would not be able to exclude refugees from their territory. Northern states in particular, which benefit most from the long-term refugee encampment, would be concerned that refugees with the legal power to decide their state of asylum would want to claim asylum in their territory. Northern states are best positioned to help end the practice of long-term encampment, and this proposal gives them a strong reason to do so. Second, the proposal provides a form of compensation for those refugees who are kept in morally objectionable circumstances for longer than necessary. Such a right would not 'make up' for the harms faced by refugees in situations of long-term encampment. But granting these refugees the right to choose their state of asylum is a way of symbolically recognising that they have been let down by a failing system of refugee protection.

At least two possible objections might be raised against this proposal. First, a critic might worry that rather than seeking to reduce long-term encampment, states would rather seek to make themselves less attractive to refugees by, for example, reducing the social welfare provision available to them. We might worry that this would spark a 'race to the bottom' in social welfare provision for refugees.[141] In response to this worry, it is first worth noting that this would be a drastic strategy for states to take, because it could not *only* be targeted at social welfare provision for refugees, at least if they are signatories to the Refugee Convention. Signatory states to the Refugee Convention have agreed to accord refugees the same treatment as nationals with regards to public relief and social assistance.[142] As such, in order to make themselves less attractive to refugees with the ability to choose, they would have to significantly reduce the benefits available to their own citizens or stand in violation of the Refugee Convention. Moreover, such a strategy is unlikely to have a strong deterrent effect. The evidence suggests that refugees do not tend to make decisions about where to seek asylum on the basis of the social welfare provision available to them, and that social networks and former colonial ties have a much more significant role.[143]

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[141] I thank Alex McLaughlin for raising this objection.
[142] *Convention Relating to the Status of Refugees*, articles 23 and 24.
[143] See Poppy James and Lucy Mayblin, "Factors Influencing Asylum Destination Choice: A Review of the Evidence," *Asylum, Welfare, Work: Working Paper* (University of Warwick, 2016).

Second, a critic might worry about the feasibility of such a proposal. Why should we expect states to agree to such a scheme? The first thing to note in response to this is that my primary concern here is to articulate standards which can be endorsed from the standpoint of justice, not necessarily to propose mechanisms which are implementable given existent levels of political will. If this proposal is infeasible, then we might seek to organise politically such that the requisite political conditions for its implementation are brought about, rather than rejecting the proposal. Of course, it is to the credit of the proposal if it is *also* politically feasible. Given this, it is also worth noting that there are reasons why states might endorse this proposal, at least as part of a package of broader reforms design to make the refugee regime fairer. First, recall that upholding the refugee regime is partly a matter of states' legitimacy. States might seek to bolster their legitimacy by being seen as upholding a just international order based on cooperation. Reputational benefits could accrue to states which take the lead in the creation of a just and stable system of refugee protection. Second, a just system of refugee protection is also likely to be more stable than an unjust system which brings about resistance and resentment through its repeated failings. States which value stability might seek to uphold a more just system of refugee protection as a way of maintaining conditions of order and stability in the international order.

6. Conclusion

This chapter has sought to examine the refugee regime and its significance for the phenomenon of climate-induced displacement. First, I set out a normative reconstruction of the refugee regime. Here, we saw that was I termed the *membership view* provided the most defensible interpretation, in contrast to the *persecution* and *basic needs* views. This allowed us to see the kinds of cases of climate-induced displacement that fall under the scope of the refugee regime. Second, I sought to identify some of the primary challenges facing the refugee regime, which we saw were the legal definition of the refugee, the maldistribution of the costs of the refugee regime, and the long-term encampment of refugees. We also saw that climate change serves to exacerbate these challenges. Finally, I sought to provide some ways to address these challenges. In the case of the legal definition of the refugee, we saw that this involved a shift away from a definition based on the causes of displacement, and instead towards one which captures those for whom the membership relation is broken. In the case of the maldistribution of costs, I defended a principle of equal burdens, with departures from equality being justified by states being liable for imposing costs on the regime, including through their contributions to climate change. In the case of refugee encampment, I argued that whilst short-term refugee encampment may be justified in some limited circumstances, the practice of long-term encampment is not. I proposed a mechanism for avoiding situations where short-term encampment devolves into long-term encampment, through a scheme whereby states pre-commit to providing those whose encampment lasts beyond principled limits the right to choose their state of asylum. In the next chapter, we turn towards the governance of internal displacement, and in doing so complete our account of the institutions under which climate-related movement might be governed.

VI. Climate Change and Internal Displacement

1. Introduction

In the previous chapter, we saw that the refugee regime is appropriate for governing cases of reactive displacement where the member-state relation, which makes possible the protection of human rights over time, has broken down. This, however, does not exhaust the ways in which reactive movement relating to climate change takes place. In this chapter, I turn to another way in which reactive displacement might be governed, by examining the institutions and practices of the governance of internal displacement.

According to the account of the refugee regime set out in the previous chapter, refugees are those for whom the member-state relation has broken down. As we saw, sometimes this can happen *within* the territory of a state. This means that some who are displaced within the territory of the state are properly thought of as refugees. If our accounts of the refugee regime and the governance of internal displacement are to fit together, then we need an account of internal displacement which is able to distinguish between refugees and internally displaced persons (IDPs) within a state. In this chapter, I propose a novel reconstruction of internal displacement governance which also understands the status of the IDP in terms of the relationship between the member and the state. Where the refugee is characterised by the breakdown of the member-state relation, IDPs are best understood as those who are displaced, but for whom the member-state relation remains intact (even if it is 'frayed'). Most of the time, IDPs will be within the territory of their state, and refugees will be outside of it, but I contend that the morally salient feature of a person's displacement is her relationship with her state, not her territorial presence.

This form of displacement is of increasing importance in the context of climate change. Empirical research on climate-induced migration and displacement tells us that most displacement relating to climate change will take place within the borders of the state. The International Organisation for Migration (IOM) notes that "[t]here is evidence to suggest that the majority of environmental migration will be internal", and that "[d]isplacement post-disaster tends to be local."[1] Not all internal movement is best characterised as internal displacement (some, as we have seen, is better characterised as anticipatory migration, and some may be best characterised as refugee movement). Most reactive displacement, however, is likely to be internal. As such, the principles governing internal displacement are likely to be very important in the face of a changing climate. The exact scale of internal displacement relating to climate change is difficult to quantify.[2] Predictions are dependent on a set of assumptions about the extent to which the international community manages to mitigate climate change and adapt to its impacts,

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[1] IOM, "IOM Outlook on Migration, Environment and Climate Change" (IOM, 2014), 40, available at http://publications.iom.int/system/files/pdf/mecc_outlook.pdf.
[2] François Gemenne, "Why the Numbers Don't Add up: A Review of Estimates and Predictions of People Displaced by Environmental Changes," *Global Environmental Change* 21 (2011): S41–49.

as well about the extent to which the most disadvantaged will continue to be particularly vulnerable to the impacts of climate change. Given the international community's poor track record in pursuing climate change mitigation and adaptation, however, we have good reasons to consider the ways in which the governance of internal displacement might be brought to bear on climate-induced displacement.

Unlike the refugee regime, the governance of internal displacement has not received sustained philosophical attention. The existent philosophical literature on migration has tended to focus on migration *between* states and has tended to ignore migration *within* states. As Alex Sager points out, the "methodological nationalism" of debates about migration "treats the mobility of people within the boundaries of the state as irrelevant."[3] Moreover, the international principles concerning the treatment of internally displaced persons (IDPs) have only been articulated and codified relatively recently, in the 1998 *Guiding Principles on Internal Displacement*.[4] Though internal displacement has always happened, the institutions and practices that govern it have only recently crystallised into a formal structure of governance. Given this paucity of existent philosophical work on internal displacement, a significant part of this chapter is dedicated to normatively reconstructing a conception of justice in internal displacement through an examination of these structures of governance.

This task has three parts. First, I set out an account of the IDP as an individual who is displaced, but for whom the member-state relation remains intact (even if it is frayed). I compare the IDP with the refugee and explain why the member-state relation, rather than 'non-alienage' (the fact that an individual has not crossed a border), is morally relevant in identifying the IDP. Second, I characterise the wrong of displacement, and demonstrate why states have a standing obligation to protect their members against it. Here, I draw on Anna Stilz and Margaret Moore's conceptions of 'occupancy' and 'residency' rights.[5] Third, I explain why IDP protection generates *international* duties of justice. I argue that the characteristic features of internal displacement give the international community good reason to treat it a matter of international concern, and that advantaged states in the international community have duties to assist vulnerable states in protecting their members against displacement. Given the lack of sustained philosophical attention that has been given to internal displacement, articulating a conception of justice in internal displacement is itself an important contribution to the broader literature.

In later parts of the chapter, I show how some forms of climate-induced displacement can be understood as internal displacement. Here, I focus on displacement stemming from *sudden-onset disasters*, but I also point towards other possible climate-related causes of internal displacement. Then, I outline two

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[3] Alex Sager, *Toward a Cosmopolitan Ethics of Mobility: The Migrant's-Eye View of the World* (Springer, 2017), 17.
[4] Francis M. Deng, "Guiding Principles on Internal Displacement," *The International Migration Review* 33, no. 2 (1999): 484–93.
[5] Anna Stilz, "Occupancy Rights and the Wrong of Removal," *Philosophy & Public Affairs* 41, no. 4 (2013): 324–56; Margaret Moore, *A Political Theory of Territory* (Oxford University Press, 2015), 35–46.

problems with the governance of internal displacement as it is currently practiced, both of which are exacerbated in the context of climate change, and propose some reforms to address them. First, many of the duties of justice in the governance of internal displacement are treated as a matter of charity. I suggest that presently 'soft' international law surrounding IDP protection should be 'hardened,' and that hardening should be pursued in both domestic and international obligations concomitantly, both as a matter of fairness and as a matter of feasibility. Second, the current internal displacement regime has no way to account for the transboundary causes of internal displacement. I propose a principle for internalising the costs imposed upon the IDP protection regime by climate change, arguing that departures from a 'baseline' principle of cost-sharing for IDP protection can be justified by reference to states' responsibilities for imposing the costs of displacement through climate change. I sketch the contours of this approach at the end of the chapter, but as in the case of the refugee regime, a full elaboration of it is left for Chapter VII.

2. Reconstructing Internal Displacement

A good starting point for a normative reconstruction of internal displacement governance is the definition of 'internally displaced persons' as it is set out in the *Guiding Principles*:

> Internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.[6]

There are two key components to this definition. First, IDPs are those who have been 'forced or obliged' to move: their movement is *involuntary*. Second, IDPs 'have not crossed an internationally recognised State border': they are *internally* displaced. To summarise of my conception of the IDP, we can take each component in turn.

First: involuntary displacement. As we saw in the discussion of climate change adaptation, much migration can be understood to be involuntary in a broad sense. Some cases of anticipatory migration are plausibly thought of as involuntary, because the options available to those migrating have been curtailed such that remaining in place is not a reasonable option, and so migration cannot be thought of as a fully autonomous choice.[7] Here, I contend that the involuntariness of displacement is best understood in a more specific sense, which refers to it being *reactive*. This, as we will see, helps to make sense of the distinctive wrong of displacement. Displacement, as it is best understood in the context of the IDP protection regime, is involuntary in the sense that it is triggered by rapid breakdowns of stability. It

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[6] Deng, "Guiding Principles on Internal Displacement," 484.
[7] See Joseph Raz, *The Morality of Freedom* (Clarendon Press, 1988), 373–77, and the discussion in Chapter IV sec. 3.

demands immediate movement, bringing about a disruption in the life of the displaced person, upsetting the background of stability upon which she depends. This also captures the characteristics of the causes of displacement which are listed in definition set out in the *Guiding Principles*, such as armed conflict or disasters. It is important to recognise, though, that as a matter of international law, the list of causes in the definition is indicative rather than constitutive.[8] It is the fact of having to move, in a sudden and disruptive way, which makes an IDP involuntarily displaced.

Secondly: internal displacement. The fact that the IDP regime is centrally concerned with *internal* displacement appears, at first sight, to cause a serious problem for the revisionary approach that I am proposing. I suggest that non-alienage is not, in fact, the morally relevant feature of her displacement that renders her an IDP. Rather, the morally relevant feature is whether or not the member-state relation remains intact. How, then, should we make sense of this central aspect of the international legal practice of IDP governance? In brief, I contend that the criterion of alienage is best understood as a *legal heuristic* which, most of the time, tracks the member-state relation well. It generally works well because once an individual has crossed a state border, she is beyond the jurisdictional reach of her state, and so her state generally cannot reliably function as the on-going guarantor of her human rights. This view, as we will see, also helps us to make sense of some of the practices of state sovereignty.

To make these contentions plausible, we need examine the practices of IDP protection in greater detail. I start, first of all, by comparing the IDP to the refugee.

2.1 IDPs and Refugees

IDPs and refugees seem similar in some respects. IDPs "find themselves in situations analogous to refugees" and both are displaced from their homes.[9] Both refugees and IDPs can be understood as being under the "catch-all" category of forced migration and often face similar challenges.[10] There are distinctive human rights threats which comes with being displaced. Displaced persons are deprived "of shelter and the basic protection it can provide," "cut off from their land[s], traditional livelihood[s] and means of generating income," and from family and social networks.[11] The fact that both refugees and IDPs face similar harms has led some theorists to "regard both categories as essentially similar victims of

[8] Walter Kälin, "Internal Displacement," in *The Oxford Handbook of Refugee and Forced Migration Studies*, ed. Elena Fiddian-Qasmiyeh et al. (Oxford University Press, 2014), 163.
[9] Phil Orchard, "Implementing a Global Internally Displaced Persons Protection Regime," in *Implementation and World Politics: How International Norms Change Practice*, ed. Alexander Betts and Phil Orchard (Oxford University Press, 2014), 105.
[10] Alexander Betts, "Global Governance and Forced Migration," in *The Routledge Handbook of Immigration and Refugee Studies*, ed. Anna Triandafyllidou (Routledge, 2015): 312.
[11] Erin Mooney, "The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern," *Refugee Survey Quarterly* 24, no. 3 (2005): 15.

forced migration."[12] Moreover, the two categories are often intertwined in practice. UNHCR has been operationally involved in IDP protection since it became recognised as a category of concern, although since 2005 a collaborative inter-agency approach has been pursued. UNHCR still assumes a leadership role in protection, camp coordination and management, and emergency shelter.[13]

Although both IDPs and refugees face similar harms, I contend that there is an important difference between them in terms of the member-state relation. In the case of the refugee, that relation has broken down, whilst in the case of IDPs, it remains intact (though it may well be frayed). In terms of Charles Beitz's two-level model of human rights protection, the state is still rightfully understood as the "first-level" guarantor of human rights for IDPs, even if it must call upon the international community to discharge its "second-level" human rights duties by providing assistance.[14] In terms of the distinction drawn by David Owen, the international community is rightfully asked to supplement, rather than to replace, the state in the case of IDP protection.[15]

Ordinarily, the status of the member-state relation is subsumed within the criterion of alienage. James Hathaway, for example, sees alienage as being fundamental to the distinction between IDPs and refugees. He writes that the "rights which follow from refugee status are directly related to the predicament *of being outside their country of origin*" and that "addressing the disadvantages of *involuntary alienage* is the primary goal" of the refugee regime.[16] For Hathaway, this explains the different roles that the state and the international community play in refugee and IDP protection:

> There is a fundamental difference between the circumstances of those outside their own country and those still inside it-namely, the unqualified ability of the international community to ensure that protection is provided.[17]

For Hathaway, alienage is fundamental, and is the morally relevant distinction between refugees and IDPs. Alienage explains the different roles that the state and the international community can play in protection. My view, however, is that the 'direction of fit' travels in the opposite direction: the legal criterion of alienage is explained by the morally basic criterion of the member-state relation. Although it is *ordinarily* the case that the role of the international community changes depending on whether or not the

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[12] Kälin, "Internal Displacement," 165. Kälin refers here to Oliver Bakewell, "Conceptualising Displacement and Migration: Processes, Causes and Categories," in *The Migration-Displacement Nexus: Patterns, Processes, and Policies*, ed. Khalid Koser and Susan Martin (Berghahn Books, 2011).
[13] Khassim Diagne and Hannah Entwisle, "UNHCR and the Guiding Principles," *Forced Migration Review*, Special Issue: Ten Years of the Guiding Principles on Internal Displacement (2008): 33.
[14] Charles R. Beitz, *The Idea of Human Rights* (Oxford University Press, 2011), 109.
[15] David Owen, "In Loco Civitatis: On the Normative Basis of the Institution of Refugeehood and Responsibilities for Refugees." In *Migration in Political Theory: The Ethics of Movement and Membership*, ed. Sarah Fine and Lea Ypi (Oxford University Press, 2016), 279.
[16] James C. Hathaway, "Forced Migration Studies: Could We Agree Just to 'Date'?," *Journal of Refugee Studies* 20, no. 3 (2007): 358, 363. Emphasis original.
[17] Hathaway, 353.

displaced person has crossed a border, alienage itself is not necessary for refugee status, and non-alienage is not necessary for IDP status. There are cases where the two come apart and, where they do, it is the member-state relation, not (non-)alienage, which distinguishes the IDP and the refugee.

To see this, we can begin by noting that in some cases, the state does function as the on-going guarantor of human rights when its member is outside of its territory. Consider, for example, the mundane example of a tourist on holiday in another state. Clearly, her home state is still the effective and on-going guarantor of her human rights. Even though the state she is visiting bears an obligation not to violate her human rights, her home state has the more robust obligation of ensuring the possibility of her human rights-protection over time. This includes obligations to, for example, "give her documentation for purposes of international travel, to stand up for her in disputes with nations in which she is travelling or residing, to provide other forms of 'diplomatic protection.'"[18] This is one of the basic obligations that states have to their members as the on-going guarantor of their members' human rights.

Sometimes, though, states do not provide this kind of protection. When they fail to do so, this is ordinarily a sign that they are not upholding the member-state relation. Where the member-state relation breaks down, this renders the member a refugee. As we saw in the previous chapter, this understanding of refugee status best explains and justifies of the practices of refugee protection. It also helps to explain its origins: the original role of the Nansen passport, issued largely to Armenian and Russian refugees in the inter-war period, was to provide them with a "legal and juridical status" which allowed the High Commissioner for Refugees to act in a "quasi-consular" capacity– that is, acting so as to replace (rather than to supplement) the state in the provision of consular and diplomatic protection abroad.[19]

Unlike the tourist, the displaced person has particular needs which can often only be addressed through interventions which generally require the state to have jurisdiction over the territory in which the displaced person finds herself. Providing immediate relief to meet basic needs and providing temporary accommodation will most often require the work of state actors on the front lines of displacement. This means that most of the time, being displaced outside of the borders of one's state prevents one's state from acting as the guarantor of one's human rights. It is only *ordinarily* the case, however, that having crossed a border renders a state unable to robustly uphold one's human rights. It is not *necessarily* the case, which means that non-alienage itself is not the morally basic criterion for identifying IDPs.

To see this, consider an example where someone is displaced across a border, but where she still stands in the right kind of relation to her state for us to describe it as the on-going guarantor of her human rights.

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[18] T. Alex Aleinikoff and Leah Zamore, *The Arc of Protection: Toward a New International Refugee Regime* (Stanford University Press, 2019), 35.
[19] Louise W. Holborn, *Refugees: A Problem of Our Time: The Work of the United Nations High Commissioner for Refugees, 1951-1972, vol. 1* (Scarecrow Press, 1975), 10, cited in Claudena M. Skran, *Refugees in Interwar Europe: The Emergence of a Regime* (Oxford University Press, 1995), 116.

In April 2014, when the banks of the Mamore River burst after heavy flooding in Bolivia, some 120 families in the border region of Guayaramerín fled across the border and were sheltered in Brazil, because the levels of the river prevented them from being easily moved to Bolivian shelters.[20] We can suppose that it was merely for ease of finding protection that these families went to Brazil and remained outside the territory of their own state. Suppose that if Brazil failed to provide adequate protection, Bolivia would have robustly fulfilled its obligations of consular and diplomatic protection and would have provided protection within Bolivia if necessary. In this case, it seems clear that these families, despite being displaced and being outside of their own state, still stand in the right kind of relationship with their state for us to describe their state is the on-going guarantor of their human rights. It would be strange to call these people refugees, even though they are displaced outside of the territory of her state, because the member-state relation is intact. The best explanation of this case, I contend, is that the member-state relation, rather than (non-)alienage, is morally basic in identifying both IDPs and refugees.

This case also helps us to understand why the criterion of alienage generally works well as a legal heuristic for identifying IDPs. As we can see, the circumstances in which an individual is displaced outside of her territory, but nonetheless counts as an IDP, are rare. As a displaced person, she has distinctive needs which demand a response from the on-going guarantor of her human rights. Generally, a state needs to have jurisdiction over the territory in which the individual is displaced in order to discharge its obligations to her, and so alienage is ordinarily a good proxy for the member-state relation in cases of displacement. But it is not *itself* the morally relevant feature of either IDP or refugee status. Analogously, consider the legal age requirement for getting a tattoo. Presumably, it is one's maturity or one's ability to properly conceptualise the long-term consequences of getting a tattoo, rather than the number of times the earth has rotated around the sun since one's birth, which is morally relevant for being ascribed the right to get a tattoo. Age, though, generally works at least tolerably well as a legal heuristic for tracking maturity, which is a lot easier to operationalise (and a lot less invasive) than a direct assessment of it.

This view also makes sense of some important aspects of the practices of state sovereignty. The *Guiding Principles* recognise the state's primary responsibility towards IDPs:

> National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.[21]

The obligation that this confers on states rests on an underlying conception of sovereignty known in international legal practice as "sovereignty as responsibility."[22] The idea of sovereignty as responsibility is

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[20] Veridiana Sedeh, "Floods and Displacement in Bolivia," in *The State of Environmental Migration 2014: A Review of 2013*, ed. François Gemenne, Pauline Brücker, and Dina Ionesco (IOM and Sciences Po, 2014), 179–80.
[21] Deng, "Guiding Principles on Internal Displacement," 485.
[22] Roberta Cohen and Francis M. Deng, "Sovereignty as Responsibility," in *The Oxford Handbook of the Responsibility to Protect*, ed. Alex J. Bellamy and Tim Dunne (Oxford University Press, 2016).

that sovereignty is conditional on "accountability to one's domestic population and also to the international community."[23] One of the basic obligations that sovereign states have is to protect their own members' human rights, including their rights against displacement.[24] This conception of sovereignty underlies the principle of the 'Responsibility to Protect' (R2P) in international legal practice. The idea of the R2P is that where states fail to discharge their 'first-order' sovereign responsibilities of human rights protection, the international community has a 'second-order' responsibility to step in.[25]

There are broadly two qualitatively different ways in which the state might fail to fulfil their members' rights, including rights against displacement and, correspondingly, two broad forms of intervention that the international community might pursue in response. First, a state might comprehensively fail to fulfil its obligations and lose its standing as the on-going guarantor of its members' human rights. Second, a state might fail to fulfil specific rights, including rights against displacement, whilst nonetheless retaining its standing as the on-going guarantor of its members' human rights. These ways of failing correspond to the distinction between a "betrayal" and an "offence" against a friendship that we drew from Tamar Schapiro in the previous chapter, and to the distinction between cases where the member-state relation is 'broken' or 'frayed,' in my terms.[26]

In the first case, the international community is justified in acting so as to *replace*, rather than supplement, the state in its role as human rights guarantor. In some cases, the state may be a rogue actor, unwilling to uphold its obligations. Here, the R2P principle suggests that the international community may even use military means to enforce human rights protection abroad, notably when states are "manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity."[27] Other forms of intervention, less drastic than military intervention, can also involve the international community replacing the state in its role as the on-going guarantor of human rights: the refugee regime is one such form of intervention. Where the state has lost its standing as the human rights guarantor, those who are displaced are best understood as refugees. There may be some cases which have traditionally been viewed as cases of internal displacement where states have in fact lost their standing in this way. We might think, for example, of the displacement of Kosovo Albanians.[28] Indeed, Hathaway suggests that a significant source of the relative popularity of the IDP label amongst states is that it was a convenient way for states to shirk their responsibilities to would-be refugees. As Hathaway points out, "[t]hese persons

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[23] Cohen and Deng, 82.
[24] The content of the right against displacement is specified in greater detail in sec. 2.2 below.
[25] Erin Mooney, "The Guiding Principles and the Responsibility to Protect," *Forced Migration Review* 1 (2008): 12. This way of explaining the R2P demonstrates its compatibility with the Beitzian model of human rights protection, which Beitz himself notes in *The Idea of Human Rights*, 109 n23.
[26] Tamar Schapiro, "Kantian Rigorism and Mitigating Circumstances." *Ethics* 117, no. 1 (2006): 54.
[27] United Nations General Assembly, *Resolution 60/1 World Summit Outcome,* article 139. See also Brian Barbour and Brian Gorlick. "Embracing the 'Responsibility to Protect': A Repertoire of Measures Including Asylum for Potential Victims." *International Journal of Refugee Law* 20, no. 4 (2008): 533–66.
[28] See Roberta Cohen and David A. Korn, "Failing the Internally Displaced," *Forced Migration Review* 5 (1999): 11–13.

would in most cases have qualified for refugee status had they not been encouraged, and at times compelled, to remain inside their own country."[29] In cases like these, my revisionary account has the advantage of being able to explain why these displaced people, even if they have remained inside their state, are better understood as refugees.

In the second case, the international community is justified in acting so as to *supplement* the state in its protection of human rights (and, in some cases, it may even be required to do so).[30] In cases like these, the state is unable to discharge its human rights obligations without outside assistance. The state may need to act in concert with members of the international community, drawing on their resources, in order to meet its obligations to its own members. Here, the state is still basically competent and is trying to uphold human rights-protecting obligations in good faith, but exigent circumstances mean that it cannot meet all of its human rights obligations fully without outside assistance. In these cases, the member-state link is 'frayed' (the state is not discharging its obligations fully) but it is not yet broken (the state has not lost its standing). We might think, for example, of internal displacement following large-scale natural disasters which overstretch the state's immediate capacity to respond to displacement.[31] In these cases, the state may need to call on the international community for assistance in discharging its obligations to its members. Principle 25 of the *Guiding Principles* states that "[i]nternational humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced" and that "[c]onsent thereto shall not be arbitrarily withheld."[32] Although this is not a firm legal obligation on the part of the international community to offer support, Francis Deng, the first Special Rapporteur on the Human Rights of Internally Displaced Persons, emphasised in early meetings during the development of the *Guiding Principles*, that "if a government is incapable of providing protection and assistance, then the international community would be expected to act."[33] This coheres well with the idea of "positive" sovereignty that we encountered in the previous chapter: in some cases, states will need to act in concert with others in order to achieve institutional self-mastery, including in meeting their human rights commitments.[34] It also helps explain why there is an *international* structure of governance for the protection of IDPs. In cases like these, those who are displaced but whose states still have standing as the on-going guarantor of their human rights are best described as IDPs.

There is, then, an important difference between refugees and IDPs in the structure of human rights protection. Where refugees are those for whom the international community must stand *in loco civitatis*,

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[29] Hathaway, "Forced Migration Studies," 356.
[30] The duties of the international community to assist in the domestic protection of the right against displacement are examined in greater detail in sec. 2.3 below.
[31] See Walter Kälin, "Natural Disasters and IDPs' Rights," *Forced Migration Review* 24 (2005).
[32] Deng, "Guiding Principles on Internal Displacement," 492.
[33] Cohen and Deng, "Sovereignty as Responsibility," 82.
[34] Miriam Ronzoni, "Two Conceptions of State Sovereignty and Their Implications for Global Institutional Design," *Critical Review of International Social and Political Philosophy* 15, no. 5 (2012): 573–91.

IDPs are those who are displaced, but whose states retain their standing as the role of the on-going guarantor of their human rights. Where refugees must turn to the international community for their protection, for IDPs "the international community is not entitled to substitute for national authorities but plays a subsidiary role of supporting or complementing governmental action."[35]

2.2 What's Wrong with Displacement?

The IDP, as well as being *internally* displaced (though we have seen that 'internally' is to some extent a misnomer), is *involuntarily* displaced. I said earlier that for IDPs, movement is involuntary in a specific sense: it is *reactive*.[36] In order to adequately reconstruct the normative rationale for the IDP governance regime, we need to know why displacement of this kind is a wrong that governments have an obligation to protect their members against.

Displacement often leaves people in morally objectionable circumstances. Michael Cernea has identified some of the key risks facing the displaced as being "landlessness, joblessness, homelessness, marginalization, food insecurity, increased morbidity and mortality, loss of access to common property assets, and community disarticulation."[37] Displacement may be wrong because it contributes to other kinds of wrongs, such as these. Here, however, I want to suggest that displacement is a wrong in itself. My contention is that we can understand the wrong of displacement in terms of the ability to pursue life-plans against stable background conditions.

The basic right with which we are concerned, which renders displacement a wrong, is the right to a background of stability against which one can form and pursue one's own ends and life-plans. Protection against displacement is a key component of that right because displacement is one of the principal ways in which a background of stability can be disrupted. Displacement is a "standard threat" to that background of stability which, I contend, justifies ascribing duties to others (in the first instance, governments) to reduce the risks of displacement and restore the background conditions of stability which enable the pursuit of life-plans when it does occur.[38]

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[35] Kälin, "Internal Displacement," 165.
[36] This is not to say that other forms of displacement are not involuntary, it is only to say that my conception of internal displacement governance is specifically concerned with reactive displacement.
[37] Michael M. Cernea, "Risks, Safeguards, and Reconstruction: A Model for Population Displacement and Resettlement," in *Risks and Reconstruction: Experiences of Resettlers and Refugees*, ed. Michael M. Cernea and Christopher McDowell (The World Bank, 2000), 20.
[38] The idea of a 'standard threat' is due to Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton University Press, 1996), 17, who argues that "[t]he fulfilment of both basic and non-basic moral rights consists in the effective, but not infallible, social arrangements to guard against standard threats," 34. See also James W. Nickel, *Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights* (University of California Press, 1987), 113 and Beitz, *The Idea of Human Rights*, 109–10.

Anna Stilz and Margaret Moore have both set out accounts of the rights of individuals to stably occupy places over time.[39] Stilz refers to these rights as "occupancy rights," whereas Moore refers to them as "residency rights" (for Moore, 'occupancy rights' are rights held by a collective[40]). Both begin with the identification of what they take to be a central human interest: the interest in pursuing one's own life-plans. Moore points to the fact that humans "develop projects and relationships and pursue a general way of life to which we are typically attached."[41] Stilz points out that "our personal well-being depends substantially on our success in pursuing the morally reasonable projects and relationships that we adopt."[42] This interest, they argue, depends for its realisation on background conditions of stability. They point out that our life-plans are, in an important sense, *located*.[43] Life-plans are organised around our "expectations of continued use of, and secure access to, a place of residence,"[44] including secure access our homes and to shared spaces in which we participate in social practices. In Moore's words, "our individual plans and pursuits depend on a stable background framework, and this is provided by security of place."[45]

The locatedness of life-plans is more obvious in some cases than in others. In more obvious cases, life-plans involve cultural and religious practices that are bound up with access to sacred or culturally valued sites. Stilz points to the examples of the religious rituals of the Taos Pueblo which focus on the Black Lake, the significance the Black Hills for the Sioux and the importance of the Alps in Swiss highland culture; Moore points to Labrador Inuit and the indigenous Haidi people in Canada.[46] But even less obvious life-plans are located in the relevant sense. Stilz points out that even the telecommuter who lives in a "cookie-cutter suburb" and who has few social connections depends on a background structure with "the geography and environment of a modern, urban, industrialized society."[47] Moore points out that even traditionally nomadic peoples such as the Bedouin have located life-plans, in the sense that they are "nomadic *over a particular area*; they are familiar with the specific features of the landscape, the stars and the location of water-holes, in order to live that particular way of life."[48] This shows that even apparently marginal cases depend on a background of stability that is located. But the point is more basic. Even those who do lead genuinely peripatetic lifestyles have an interest in *being able* to put down roots and form life-plans in particular places. If they were unable to do so, then their peripatetic lifestyles would not amount to an autonomously formed and pursued life-plan. They would be deprived of an "adequate

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[39] Stilz, "Occupancy Rights and the Wrong of Removal"; Moore, *A Political Theory of Territory*, 36–40. See also Stilz's *Territorial Sovereignty: A Philosophical Exploration* (Oxford University Press, 2019), 33–58.
[40] Moore, *A Political Theory of Territory*, 35.
[41] Moore, 38.
[42] Stilz, "Occupancy Rights and the Wrong of Removal," 335. For Stilz, 'morally reasonable' plans are ones which are nonharmful.
[43] Stilz, 336.
[44] Stilz, 335.
[45] Moore, *A Political Theory of Territory*, 38.
[46] Stilz, "Occupancy Rights and the Wrong of Removal," 338–39; Moore, *A Political Theory of Territory*, 40–42.
[47] Stilz, "Occupancy Rights and the Wrong of Removal," 340.
[48] Moore, *A Political Theory of Territory*, 42.

range of valuable options," even if they did not in fact wish to pursue one of the options of which they were deprived.[49] There appears to be good reason, then, to think that autonomous life-plans depend on a stable background which is, in an important sense, located.

The human interest in forming and pursuing life-plans depends is also dependent on secure access to a home. Cara Nine has recently argued that one's home can function as a part of the "extended mind," since a secure home can enable us to construct "home niches" which function as "external cognitive supports," enabling one to form, evaluate and revise mental content, as well as enabling practical rationality.[50] And as Katy Wells has recently argued, secure access to housing is a basic pre-requisite for living an autonomous life, and since without it individuals would be "constantly having to negotiate changes in their place of habitation" which would "undermine their ability to develop and exercise a plan of life."[51] Practical rationality and basic stability are required for us to be able to form and pursue life-plans, and stable access to a home appears to be crucial for realising this basic human interest.

The human interest in forming and pursuing life-plans is, for Moore and Stilz, justifies holding others under an obligation to respect it.[52] The right to occupancy has two components: first, a liberty to reside in a particular space, and second, a claim against removal from that space.[53] For Stilz, this helps to explain the wrong of removal, beyond the use of coercive force. Removal is wrong not only because it involves unjustified coercion, but also because it disrupts our ability to pursue our own life-plans by removing the background of stability which makes pursuing those plans possible.[54]

Although Moore and Stilz are primarily concerned with removal, their understanding of occupancy rights can help us to understand the wrong of reactive displacement. Reactive displacement, like removal, involves sudden disruptions which render the background conditions against which we form and pursue our life-plans plans unstable. It upsets the expectations that we have to continue to be able to securely use and access particular spaces, including our homes, which enables us to form long-term plans. Unlike removal, however, displacement need not involve human agency. Displacement can be precipitated by

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[49] Raz, *The Morality of Freedom*, 373–77. Here, my view departs from Moore (see *A Political Theory of Territory*, 38) and the later Stilz (see *Territorial Sovereignty*, 41), who do not think autonomy is central to the formation and pursuit of life plans. My view aligns instead with views which take autonomy to be central to forming and pursuing life-plans, such as Stilz's earlier Kantian view (see her "Nations, States and Territory," *Ethics* 121, no. 3 (2011): 583–84) and Cara Nine's Lockean view (see her *Global Justice and Territory* (Oxford University Press, 2012), 90–92).
[50] Cara Nine, "The Wrong of Displacement: The Home as Extended Mind," *Journal of Political Philosophy* 26, no. 2 (2018): 240–57. Nine does not endorse, and neither need we, the 'strong' extended mind thesis that the home is part of the mind in some metaphysical sense. Rather, we need only claim that the home *functions* so as to outsource and enable some of our practical and rational activities.
[51] Katy Wells, "The Right to Housing," *Political Studies* 67, no. 2 (2019): 410.
[52] Stilz follows Raz's claim that "'X has a right' if and only if X can have rights, and, other things being equal, an aspect of X's well-being (his interest) is a sufficient reason to hold some other person(s) to be under a duty." Stilz, "Occupancy Rights and the Wrong of Removal," 341; Raz, *The Morality of Freedom*, 166.
[53] Stilz, "Occupancy Rights and the Wrong of Removal," 327–28; Moore, *A Political Theory of Territory*, 36.
[54] Stilz, "Occupancy Rights and the Wrong of Removal," 345–49.

purely natural disasters and need not involve any agent infringing upon the claim-right against being removed.

Why, then, is displacement a wrong, and not merely a harm?[55] My suggestion is that displacement is a wrong because states have standing obligations to protect their members against displacement. By analogy, consider the wrongness of famines. As Judith Shklar points out, "[s]ome misfortunes of the past… are now injustices, such as infant mortality and famines, which are caused mainly by public corruption and indifference."[56] Although famine may be precipitated by natural misfortune, its persistence "owes far more to human injustice or folly."[57] As Amartya Sen has shown, a decline in total food availability does not by itself cause famines; even where total food availability declines (and in some cases where it does not), starvation is a matter of the *relationship* between people and food, which is mediated by structures of ownership, political institutions and the exchange entitlements. Where state actors allow a decline in total food availability to translate into starvation for some, they commit a wrong, because states have a duty to protect their members against famines.[58] Similarly, I contend that states have a duty to protect their members against displacement. Though events associated with displacement may be precipitated naturally, states commit a wrong when they permit such events to violate the right against displacement.

The precise content of the 'right against displacement,' and the corollary duty that states have, should be made clear. It would not be reasonable to expect states to prevent all cases of displacement which arise under any circumstances – after all, displacement is hard to predict, occurs suddenly, and may be of such scale that it is not feasible to stop everyone from being displaced. Despite our best efforts to protect against displacement, displacement may still, tragically, occur. If good faith efforts are made to restore conditions of stability in such cases, I do not think we can say that those affected have been *wronged*, even if they have been harmed.

However, we can still specify the content of what I will call, for simplicity, the *right against displacement*. The right against displacement is composed of, first, a right to the reduction of risks of displacement to 'tolerable' levels, and second, to a right to have the background conditions of stability restored quickly and effectively when displacement does occur.[59] The first component of this right can be explained by the

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[55] In drawing this distinction between a wrong and a harm, I understand a harm in the broad, non-normative sense identified by Joel Feinberg, as the "thwarting, setting back, or defeating of an interest." See Joel Feinberg, *The Moral Limits of Criminal Law: Volume 1* (Oxford University Press, 1987), 33.
[56] Judith N. Shklar, *The Faces of Injustice* (Yale University Press, 1990), 5.
[57] Shklar, 67–68.
[58] Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford University Press, 1981), 39-51.
[59] What counts as a 'tolerable' level of risk of displacement is likely to vary across circumstances. For example, we might think that those who have chosen to live in high-risk areas for disasters despite having an adequate range of valuable options available to them might be reasonably expected to bear the burden of a higher level of risk than those living in low-risk areas.

fact that the presence of pervasive risk of sudden disruptions to the background conditions of our lives can itself disrupt our ability to form and pursue our own life-plans.[60] This component of the right against displacement is most sensibly addressed through anticipatory planning such as disaster risk reduction programmes and, in the climate change context, policies of climate change adaptation. The second component, however, can only be governed through the reactive provision of assistance once displacement has occurred. We must recognise that our best efforts to protect against displacement may fail, and that where they do, we have an on-going obligation to restore the background of stability that has been disrupted. Taken together, these two components constitute an interpretation of the idea of protecting members of the political community against the standard threat of displacement.

Stilz argues that although there is a *negative* right not to be removed by others, occupancy rights do not always amount to a *positive* claim to protection of the background conditions of stability which enable us to form and pursue our life-plans, writing that "[t]he fact that we ought not to interfere with others' territorial occupancy, then, does not necessarily entail that we are also obliged to subsidize them in maintaining their located life-plans."[61] She uses the example of a mining community and argues that the community does not have a right that others subsidise their economic activity in order to prevent their life-plans from being disrupted.[62] The reason that they do not have such a right against others is that "other people have strong countervailing interests in not bearing the burdens required to maintain the miners in their current occupations."[63] Stilz does accept, though, that others may have a duty to "cushion dislocation" in the mining community through social welfare benefits or worker retraining.[64] If Stilz is right about the mining community, then we might think that a positive claim to protection against displacement is similarly unjustified, since it would involve imposing burdens on others to pay for the reduction of displacement risks and for the reactive provision of displacement assistance when it does occur. More than requiring mere non-interference, protection against displacement requires the positive protection of the conditions of stability that make forming and pursuing life-plans possible.

There are, however, important differences between protection against displacement by natural disasters and protection against the forces of economic change which make it reasonable to hold others under an obligation to uphold the right against displacement. First, as Stilz notes, the miners face a disruption which, although it may be significant, need not undermine their life-plans writ large, including their personal relationships and participation in social and civic practices.[65] Displacement, by contrast, typically involves being forced out of one's home, separated from those with whom we maintain personal

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[60] Jonathan Wolff and Avner de-Shalit, *Disadvantage* (Oxford University Press, 2007), 65–73; Alice Baderin and Lucy Barnes, "Risk and Self-Respect," *British Journal of Political Science* (2018) [online first].
[61] Stilz, "Occupancy Rights and the Wrong of Removal," 344.
[62] Stilz, 343–45.
[63] Stilz, 344.
[64] Stilz, 344 n27.
[65] Stilz, 344.

relationships and being cut off from participating in civic and social life. We might think, then, that displacement is totalising in a way which economic restructuring is not.

More importantly, however, the countervailing reasons to which Stilz appeals in the mining case do not have the same force in the displacement case. Stilz argues that the benefits which accrue to a representative citizen as a result of having a market economy ("dynamic innovation, lower consumer prices and greater opportunities") outweigh the miners' interest in being protected against market forces.[66] Since, according to Stilz, protecting the miner would mean denying the representative citizen access to the benefits of a properly competitive market economy, we have good reason to think that occupancy rights do not extend to subsidising dying industries against economic change. Protection against displacement, however, does not require us to deny citizens the benefits of the market economy. Protection against displacement requires only that some portion of the state's resources be used to address the threat of displacement through programmes of disaster risk reduction and assistance in cases of displacement. The representative individual, who does not know their place a scheme of social cooperation, is likely to see the benefits of stability that accrue from the protection against displacement as significant, given their role in protecting the fundamental human interest in forming and pursuing life-plans.[67] Protection against displacement is more like the social welfare benefit provision that Stilz finds acceptable in the mining case than the intervention in the competitive market economy that she finds unacceptable.

We can see, then, that there is a good case for a right against displacement, understood as a right to the reduction of risks of displacement to tolerable levels and to the quick and effective restoration of background conditions of stability when displacement does occur. This right is based in the human interest in forming and pursuing life-plans, which is dependent on a background of stability that is upset by displacement. This explains why states have a duty to protect their members against displacement, and helps to explain why the involuntariness of displacement in the IDP protection regime should be understood specifically in terms of reactive displacement.

2.3 Internal Displacement and International Obligations

Thus far, we have only examined the rights that the displaced hold against their own state to be protected against displacement. The governance of internal displacement as it is currently practiced, however, has an international component. As we have already seen, UNHCR has a large role in delivering IDP protection, but other agencies such as the World Food Programme (WFP), the International Organisation

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[66] Stilz, 344.

[67] The idea of the 'representative individual' is due to Rawls, who takes the perspective of the representative individual (understood either as a representative *citizen* or as a representative individual defined by her place in the distribution of income and wealth) to articulate a "suitably general point of view." John Rawls, *A Theory of Justice*, 2nd ed. (Belknap Press, 1999 [1971]), 82.

for Migration (IOM), the World Health Organisation (WHO), the United Nations Children's Fund (UNICEF) and the Office of the High Commissioner on Human Rights (OHCHR) also play an important role.[68] Internal displacement is taken to be a matter of international concern, and when states cannot protect their own members against displacement on their own, they call on the international community to supplement their efforts. This section examines the international aspects of IDP governance and sets out an account of the international obligations that states owe with respect to upholding the right against displacement.

My contention is that upholding and maintaining a collective project of IDP protection is required as a matter of justice for states in the international order. I contend that the duties to assist in the protection of IDPs are duties of justice, not duties of charity. If these duties were duties of charity, then members of the international community would be morally at liberty to supplement the protection of IDPs by their own states according to their discretion. Rather, I take it to be the case that duties to assist in protection of displacement are duties of justice, which give the displaced, and their states, grounds for complaint when they are not discharged, since they have been denied something which they are owed by right.[69] In brief, I defend what I call the *moderate view*, which is that 'well-placed' states collectively have a duty of justice to assist 'burdened' states in upholding their members' rights against displacement. Collectively, they owe burdened states the support necessary to eliminate predictable risks of those states losing their standing as the on-going guarantors of their members human rights. Before defending this view, however, it is worth contrasting it with two other possible views, which explain why I have called it the 'moderate' view.

First, consider what I will call the *expansive view*. According to the expansive view, justice requires that the international community cancels out the effect of bad "brute luck" in the distribution of the costs of addressing displacement between states.[70] It says that as, a matter of justice, the burdens that states bear in protecting their members against the standard threat of displacement should be equalised. The expansive view might be justified by appeal to, for example, a moral principle that says that inequalities are unjust if they are unchosen (and just if they are chosen), or an ideal of an international society of

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[68] Catherine Phuong, *The International Protection of Internally Displaced Persons* (Cambridge University Press, 2005), 92–102.

[69] This formulation of the distinction between duties of justice and duties of charity goes back at least to Kant, who distinguishes between *officia juris* (duties of right) and *officia virtutis* (duties of virtue), where "external lawgiving" is possible for the former but not the latter. See Immanuel Kant, "The Metaphysics of Morals," in *The Cambridge Edition of Works of Immanuel Kant: Practical Philosophy*, ed. Mary J. Gregor (Cambridge University Press, 1996 [1797]), 394–95 (AK 6:239). For similar distinctions (and discussions of such distinctions), see Brian Barry, "Humanity and Justice in Global Perspective," in *Nomos XXIV: Ethics, Economics and the Law*, ed. J. Rowland Pennock and John W. Chapman (New York University Press, 1982), 219–52; Jeremy Waldron, "Welfare and Images of Charity," *The Philosophical Quarterly* 36, no. 145 (1986): 463–82; Allen Buchanan, "Justice and Charity," *Ethics* 97, no. 3 (1987): 558–75; Robert E. Goodin, "Duties of Charity, Duties of Justice," *Political Studies* 65, no. 2 (2017): 269.

[70] For the idea of 'brute luck,' see Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Harvard University Press), 73.

equals, where equality requires the equal distribution of resources between states.[71] As an interpretation of the practices of IDP protection in the international order, the expansive view is implausible: the duties of justice that it proposes go well beyond the settled practices of IDP protection as they exist. This does not mean that it is unjustifiable, but it does mean that its justification cannot stem from a reconstruction of the practices of IDP protection.

Second, consider what I will call the *restricted view*. According to the restricted view, international duties of *justice*, rather than charity, only obtain when our agency is implicated in some state's vulnerability to disasters. According to Laura Valentini, "we have duties of justice towards the needy when our agency has contributed to their plight…and duties of charity when our 'hands are clean' but we can still help them at reasonable costs."[72] Valentini claims that this distinction helps us to explain our moral intuition that those affected by the Haitian earthquake of 2010 are owed assistance as a matter of justice, whilst those affected by the earthquakes of 2011 in New Zealand and Japan are owed assistance as a matter of charity. On Valentini's view, our duties of justice in the Haitian case arise from the fact that Haiti's vulnerability to the impact of natural disasters has roots in historic injustices which have marred it with structural poverty, including its colonial past and the reparations it was forced to pay to France, its occupation by the United States, and the economic liberalisation that was thrust upon it by the World Bank and the International Monetary Fund (IMF) as a condition for the receipt of loans.[73] As an interpretation of the practices of IDP protection in the international order, the restricted view is more plausible: the international legal framework around IDP protection does treat states' obligations largely as a matter of charity. As we saw above, Principle 25 of the *Guiding Principles* states that "[i]nternational humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced" and that "[c]onsent thereto shall not be arbitrarily withheld,"[74] which clearly does not constitute a firm obligation on the part of the international community to offer support.

I contend that the alternative view that I propose, the moderate view, is both plausible as an interpretation of the practices of IDP governance and, moreover, is morally justifiable as a reconstruction of those practices. Unlike the restricted view, it does not merely systematise the existing principles of IDP protection in the international order, but rather revises them in light of the moral justifiability of international duties of justice concerning IDP protection.

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[71] These justifications are, respectively, inspired by Cohenite and Dworkinian justifications of luck egalitarian principles of justice. See, G. A. Cohen, "On the Currency of Egalitarian Justice," *Ethics* 99, no. 4 (1989): 906–44; Dworkin, *Sovereign Virtue*.

[72] Laura Valentini, "Justice, Charity, and Disaster Relief: What, If Anything, Is Owed to Haiti, Japan, and New Zealand?" *American Journal of Political Science* 57, no. 2 (2013): 491–503. See also Valentini, "Social Samaritan Justice: When and Why Needy Fellow Citizens Have a Right to Assistance," *American Political Science Review* 109, no. 4 (2015): 735–49.

[73] Valentini, "Justice, Charity, and Disaster Relief," 500.

[74] Deng, "Guiding Principles on Internal Displacement," 492.

The defence of the moderate view begins by noting, as we have already seen, that displacement often takes the form of a sudden rupture – for example, in the form of a natural disaster – and demands the large-scale mobilisation of resources in order to address it. For disadvantaged states, mobilising these resources can be difficult and, when acting alone, their immediate capacities to respond to displacement can be overstretched. Often, states may be unable to mobilise the resources necessary to address displacement and may need to call upon the international community. As Roberta Cohen points out, situations of displacement are often particularly acute, and states cannot always provide adequate protection to IDPs:

> Many governments do not have the resources, capacity or will to address the needs of the displaced, so that attention understandably shifts to the international community. The Guiding Principles on Internal Displacement, based on international humanitarian and human rights law, make clear that the international community has an important role to play in addressing the protection and assistance needs of IDPs, even though primary responsibility rests with their governments.[75]

Where states are able to depend on assistance from the international community, then they are more robustly able to respond to crises of displacement.

Internal displacement which arises in the form of a crisis presents a challenge for disadvantaged or vulnerable states in upholding their responsibilities as a human rights guarantor. It is a recognition of the challenging nature of internal displacement which, on the moderate view, generates international obligations. Displacement is a standard threat against which states have an obligation to protect their members, but it is foreseeable that some states will not be able to quickly and easily mobilise resources at a large scale in the way that addressing displacement requires. As such, an international structure of governance for IDP protection, which enables states to work with each other to mobilise the resources necessary to address displacement and stabilises the regime, makes sense given its predictable features. We can see the international governance of internal displacement as a collective project upheld by the international community in order to improve states' capacities to protect their own members against the standard threat of displacement. This interpretation helps to explain the presence of a regime of international governance in the domain of internal displacement and makes sense of the role that the international community does in fact play in supplementing state protection of IDPs.

However, this does not yet explain why states are *obliged* to participate in this collective project of IDP protection. As I noted above, my contention is that the duties that states owe to uphold the collective project of IDP protection are duties of justice, not duties of charity. In the case of the refugee regime, we saw that the collective provision of refugee protection was morally mandatory as a matter of the *legitimacy*

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[75] Roberta Cohen, "Response to Hathaway," *Journal of Refugee Studies* 20, no. 3 (2007): 371.

of the international order. When states lose their standing as guarantors of human rights, they create a legitimacy-deficit in the international order, and the refugee regime functions as a "legitimacy-repair mechanism."[76] In the case of IDPs, by contrast, states have not lost their standing. Why, then, does the international community have an obligation to provide IDP protection?

The international community's obligation to assist in IDP protection arises from the fact that internal displacement creates chronic *risks* of situations in which states lose their standing as on-going guarantors of their members human rights. In protracted situations of internal displacement, where the state fails to restore the background conditions of stability upon which their members depend, an initial 'offence' against the member-state relation can easily become a 'betrayal' of it. As Roberta Cohen and Francis Deng put it, internal displacement can be a "symptom of state dysfunction."[77] Protracted situations of internal displacement often create threats to regional peace and security, threats of wider human rights violations, and even threats of state collapse which, under the doctrine of R2P and the notion of 'sovereignty as responsibility,' can justify forms of international intervention where the international community acts to replace the state.[78] Given that some states will foreseeably be unable to protect all of their members against internal displacement without outside help, the international community has an obligation to assist in order to avoid creating situations in which states lose their standing as the on-going guarantor of their members' human rights. We can see the international community's obligation to assist in IDP protection as an obligation to protect against situations in which legitimacy-deficits in the international order arise in the first place.

This helps to explain why IDP protection generates international obligations whilst other human rights transgressions do not. It seems plausible to suggest, for example, that there is a universal right to free basic education.[79] Access to this right would be strengthened by international assistance in upholding it. But unlike in the case of internal displacement, failures to adequately fulfil this right do not normally generate concerns about the state's standing as the on-going guarantor of human rights and pose legitimacy-deficits for the international order.[80] By contrast, there may be other rights violations which *do* generate international obligations, because of the risks they pose to the international order. We might think, for example, of protection against infectious diseases which create threats of global health pandemics. The point here is that appealing to the consequences for the international order of states failing to uphold a human right gives us a principled way to distinguish between those human rights

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[76] Owen, "In Loco Civitatis."
[77] Roberta Cohen and Francis M. Deng, "Exodus within Borders: The Uprooted Who Never Left Home," *Foreign Affairs*, July/August 1998.
[78] Phuong, *The International Protection of Internally Displaced Persons*, 219–26.
[79] The right to free basic education is set out in *The Universal Declaration of Human Rights* (1948), article 26.
[80] At least, not in the first instance – there may, for example, be scenarios where denial of education may be a tool of repression wielded by rogue states.

which generate international duties of justice, and those which do not. Internal displacement is the kind of human rights project that does generate international duties of justice.

All that this tells us so far is that the international community *collectively* has a duty of justice to assist in the protection of IDPs. I want to propose a more specific interpretation of what justice requires in these cases. In order to do so, it is useful to borrow Rawls' stylised distinction between "burdened societies" and "well-ordered peoples."[81] For Rawls, burdened societies are those which face "unfavorable conditions" in that they "lack the political and cultural traditions, the human capital and know-how, and, often, the material and technical resources needed to be well-ordered."[82] Well-ordered peoples, may be either "liberal peoples,"[83] or "decent peoples," who meet the minimal criteria for being "peoples in good standing" in the international order.[84] There is a lot to unpack in Rawls' ideas of decent and liberal peoples, but for our purposes what is most important is what unites 'well-ordered peoples': they are entrusted with the responsibility of protecting their own members' human rights without outside assistance. Burdened societies, by contrast, need outside assistance in order to meet their human rights obligations towards their members. For our purposes, we can consider 'burdened' states to be those which need to call on international assistance to protect their members against the standing threat of displacement, whether because of their own lack of capacity, because of the enduring impacts of historic injustices, or simply because accidents of geography leave them more vulnerable to displacement. What I call 'well-placed' states, by contrast, can meet their obligations to protect their members against displacement, whether because of their particular competencies or because fortuitous circumstances mean that they are not especially vulnerable to displacement.[85]

The duty of justice that I have in mind to assist in the protection of the displaced – which I shall call *the duty of international IDP assistance* – begins with a recognition not all states are equally well-situated to fulfil their members' rights against displacement without outside assistance: some states are burdened, whereas others are well-placed. Well-placed states collectively have a duty of justice to assist burdened states in fulfilling their obligations to their members by providing them with assistance in upholding their members' rights against displacement. Collectively, they owe burdened states the support necessary to eliminate predictable risks of those states losing their standing as the on-going guarantors of their members human rights. If they fail to fulfil this duty, then they create predictable risks to the legitimacy of an international order based on the norms of human rights protection. Admittedly, this standard is a little fuzzy. There is likely to be disagreement about when risks of this kind are 'predictable' or 'eliminated.'

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[81] John Rawls, *The Law of Peoples; with, The Idea of Public Reason Revisited* (Harvard University Press, 1999).
[82] Rawls, 106.
[83] Rawls, 23–25.
[84] Rawls, 67.
[85] I use the term 'well-placed' rather than 'well-ordered' here as a way of indicating that it may be accidents of geography which make it more or less difficult for some states to meet their obligations to protect their members against displacement, rather than the public culture or institutions of the state.

But this standard nonetheless gives us a principled account of the extent of international obligations associated with IDP protection.

Rawls argues that well-ordered societies have a duty to assist burdened societies in becoming well-ordered.[86] The exact nature of this obligation, and especially whether it is a humanitarian duty or a duty of justice, is a matter of interpretive dispute.[87] The duty of international IDP assistance that I propose is akin to Rawls' duty of assistance in that its goal is to supplement the protection that states should ordinarily provide for their members. Importantly, the duty of international IDP assistance is a duty of justice, since states are not morally at liberty to discharge it according to their discretion. Like Rawls' duty of assistance, the duty of international IDP assistance aims to ensure that states are supported in fulfilling their obligations to their own members when they are not able to do so on their own. For Rawls, the duty of assistance is *transitional* in the sense that "its aim is to help burdened societies to be able to manage their own affairs" and that it "ceases to apply once the target is reached."[88] If all states were eventually able to robustly protect their own members, then the duty of international IDP assistance would similarly be transitional. Importantly, though, we should not expect that all burdened societies will eventually become well-placed with respect to displacement. After all, accidents of geography mean that some states will predictably be more vulnerable to disasters than others.

We have seen that IDPs are those who are displaced but for whom the member-state relation stays intact; that displacement is a wrong that governments have an obligation to protect their members against, because it upsets the background of stability upon which we depend to form and pursue life-plans; and that well-placed states collectively owe burdened states assist in upholding their members' rights against displacement, in order to avoid creating predictable risks to the legitimacy of the international order. Taken together, these components amount to a normative reconstruction of the IDP protection regime, which is not simply systematisation of the existing practices of IDP protection, but an ameliorative model which shows how they can be best justified and understood. Before examining some ways in which the practices of IDP protection fail to live up to this model, it is important to examine briefly the ways in which climate change interacts with internal displacement, to understand the new context in which the governance of internal displacement must operate.

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[86] Rawls, *The Law of Peoples; with, The Idea of Public Reason Revisited*, 105–13.
[87] For expressions of the view that the duty of assistance is a humanitarian duty, see Allen Buchanan, "Rawls's Law of Peoples: Rules for a Vanished Westphalian World," *Ethics* 110, no. 4 (2000): 710; Kok-Chor Tan, *Justice Without Borders: Cosmopolitanism, Nationalism, and Patriotism* (Cambridge University Press, 2004), 23. For expressions of the view that the duty of assistance is a duty of justice, see Samuel Freeman, "The Law of Peoples, Social Cooperation, Human Rights, and Distributive Justice," *Social Philosophy and Policy* 23, no. 1 (2006): 29–68; Mathias Risse, "What We Owe to the Global Poor," *The Journal of Ethics* 9, no. 1/2 (2005): 81–117. For a discussion, see Chris Armstrong, "Defending the Duty of Assistance?" *Social Theory and Practice* 35, no. 3 (2009): 461–82.
[88] Rawls, 111, 119. See also Caleb Yong, "Rawls's Duty of Assistance: Transitional Not Humanitarian or Sufficientarian," *Nuffield's Working Paper Series in Politics* (Nuffield College, 2012), available at https://www.nuffield.ox.ac.uk/politics/papers/2012/Yong_working%20paper_2012_05.pdf.

3. Climate Change and Internal Displacement

One of the clearest and most vivid ways in which the impacts of climate change affect internal displacement is through *sudden-onset disasters*.[89] Disasters, alongside conflict and large-scale development programmes, are one of the primary drivers of internal displacement. According to the Internal Displacement Monitoring Centre (IDMC), around 18.8 million people were newly displaced in 2017 by disasters, of whom roughly 18 million were displaced by weather-related disasters such floods, cyclones, typhoons and wildfires.[90] We know that both the intensity and frequency of extreme-weather events are likely to increase as climate change advances.[91] And as Khalid Koser notes, the "general consensus" amongst social scientists is that most of those displaced by disasters will be displaced within their own state.[92] We have good reason, then, to be concerned that the impacts of climate change will have significant implications for the IDP protection.

Of course, the relationships between climate change and disasters, and between disasters and displacement, are not straightforward. What constitutes an 'extreme' weather event, or a disaster, is often hard to measure, as classifications of events as 'extreme' depend on a set of baseline assumptions about 'normal' climatic conditions which are themselves controversial.[93] And we often lack good information about the extent to which particular events are related to climate change. Despite some progress in the science of probabilistic event attribution it remains difficult to identify any particular disaster or extreme event as being the result of climate change.[94] So, although we know that disasters which take the form of extreme weather events are becoming more frequent and more intense as a result of climate change, it is hard to say with much confidence that any *particular* extreme weather event is the result of climate change.

The effect of disasters on displacement is also complex and depends on range of intervening variables, including most significantly the vulnerability and resilience of those at risk of displacement. Vulnerability "is generated by social, economic and political processes that influence how hazards affect people in various ways and with differing intensities."[95] Richard Black and his co-authors have demonstrated that

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[89] What constitutes a 'disaster' is not straightforward. For a discussion, see Anthony Oliver-Smith, "'What Is a Disaster?': Anthropological Perspectives on a Persistent Question," in *The Angry Earth: Disaster in Anthropological Perspective*, ed. Anthony Oliver-Smith and Susannah M. Hoffman (Psychology Press, 1999).
[90] IDMC, *Global Report on Internal Displacement 2018* (IDMC, 2019), 7. Non-weather-related disasters include geophysical events such as earthquakes and volcanic eruptions.
[91] Clare M. Goodess, "How Is the Frequency, Location and Severity of Extreme Events Likely to Change up to 2060?" *Environmental Science & Policy*, 27, Supplement 1 (2013): S4–14.
[92] Khalid Koser, "Climate Change and Internal Displacement: Challenges to the Normative Framework," in *Migration and Climate Change*, ed. Etienne Piguet, Antoine Pecoud, and De Guchteneire (Cambridge University Press, 2011), 289.
[93] See Mike Hulme et al., "Unstable Climates: Exploring the Statistical and Social Constructions of 'Normal' Climate," *Geoforum*, 40, no. 2 (2009): 197–206.
[94] For an overview of the developments of the science of probabilistic event attribution, see Friederike E. L. Otto et al., "The Attribution Question," *Nature Climate Change* 6 (2016): 813–16. See also the discussion of probabilistic event attribution in this thesis, in Chapter III sec. 3.3.
[95] Benjamin Wisner et al., *At Risk: Natural Hazards, People's Vulnerability and Disasters* (Psychology Press, 2004), 7.

vulnerability is crucial to understand how displacement (and immobility) occur in the aftermath of extreme weather events.[96] The mediation of extreme weather events by social facts of vulnerability makes it difficult to say with confidence that displacement is *caused* by the extreme weather event that precipitated it, as opposed to other 'root' causes that rendered particular individuals vulnerable. The scale of the impacts of climate change for disaster displacement are also likely to vary according to the human action that is undertaken in both mitigating and adapting to climate change. Interventions through disaster risk reduction and climate change adaptation can make individuals and groups less vulnerable to displacement by disasters. And the severity of the threat of disasters in the future is significantly dependent on the emissions pathway that humanity follows in the coming years.[97]

The problems that we face in understanding the relationship between climate change and particular disasters, and disasters and particular displacements, give us reason to think that those displaced by the impacts of climate change will often not be distinguishable from those displaced in the course of 'regular' disasters. But we do not need to know the particulars of who is displaced by climate change in order to know that the internal displacement governance regime will be of great importance in the overall project of addressing climate-induced displacement. It is important to recognise that many more people are predicted to be displaced as a result of the impacts of climate change, and, though we may not know exactly who those people are or precisely how climate change interacts with other drivers of their displacement, many of them will need to call on the protection of their state and of the international community under the auspices of the IDP protection regime.

Recent examples of high-profile disasters provide vivid illustrations of the way in which climate change, through its implications for increasingly frequent and severe extreme-weather events, can precipitate internal displacement. In 2013, for example, Typhoon Haiyan displaced around 4 million people in the Philippines. Evacuation centres were overcrowded, and makeshift shelters set up in schools, but even then, the vast majority of those displaced were dispersed and staying outside of formal spaces of protection.[98] In the wake of Hurricane Katrina in 2005, almost the entire city of New Orleans was evacuated, and large numbers of people remained displaced for a long time afterwards. Consistent with what we would expect given the social mediation of disaster impacts, the impacts of Hurricane Katrina were most profoundly felt by the city's racialised and socio-economically disadvantaged groups, who returned to the city at a much lower rate.[99] Although we cannot say with any certainty that either of these

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[96] Richard Black et al., "Migration, Immobility and Displacement Outcomes Following Extreme Events," *Environmental Science & Policy*, 27, Supplement 1 (2013): S32–43.
[97] IPCC, *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation*, ed. C.B. Field et al. (Cambridge University Press, 2012), 11–16.
[98] IDMC and IOM, "The Evolving Picture of Displacement in the Wake of Typhoon Haiyan," (IOM, 2014), 2, available at https://www.iom.int/files/live/sites/iom/files/Country/docs/The-Evolving-Picture-of-Displacement-in-the-Wake-of-Typhoon-Haiyan.pdf.
[99] Elizabeth Fussell, Narayan Sastry, and Mark Van Landingham, "Race, Socioeconomic Status, and Return Migration to New Orleans after Hurricane Katrina," *Population and Environment* 31, no. 1–3 (2010): 20–42.

events was caused by climate change, we do know that displacements stemming from events such as these will only become more frequent and severe as climate change advances.

The impact of extreme weather events is the primary way in which climate change will foreseeably cause internal displacement. But there are other ways in which this may occur as well. One way in which displacement may be exacerbated in the climate change context is through the failure of adequate adaptation planning to prepare for foreseeable threats to background conditions of stability. Threats to food security, health, and economic practices are all predictable threats which are often best addressed through climate change adaptation (including, sometimes, anticipatory migration).[100] To the extent that adaptation to these impacts fails, we can expect to see an increase in the number of people who are internally displaced. There are likely to be limits to successful adaptation[101] (even if those limits are, to some extent, mutable[102]). The extent of humanity's success in mitigating climate change is also important for future displacement relating to the failure to adapt to climate change. In a world in which humanity's emissions create climate change impacts which go beyond what can be managed through adaptation, we can expect an increase in internal displacement.[103]

Another way in which climate change may precipitate displacement is not through its impacts, but through the measures taken to mitigate climate change or adapt to its impacts. The 'biofuel boom,' for example, has been identified as precipitating displacement, especially where existing land rights are insecure.[104] More broadly, the phenomenon of 'green-grabbing,' the "appropriation of land and resources for environmental ends," often involves removing peoples from lands or enacting large-scale changes which prevent existing livelihoods or patterns of resources use from being viable.[105] This process has a lot in common with development projects which have precipitated large-scale displacement, for example through the construction of mines and hydro-electric dams.[106] Often, such programmes straightforwardly

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[100] An overview of these threats and the state of our scientific understanding of them can be found in the International Panel on Climate Change (IPCC)'s *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects*, ed. C.B. Field et al. (Cambridge University Press, 2014), 659–832.
[101] Kirstin Dow et al., "Limits to Adaptation," *Nature Climate Change* 3, no. 4 (2013): 305–7.
[102] W. Neil Adger et al., "Are There Social Limits to Adaptation to Climate Change?" *Climatic Change* 93, no. 3 (2009): 335–54.
[103] See, for example, François Gemenne, "Climate-Induced Population Displacements in a 4°C+ World," *Philosophical Transactions of the Royal Society of London A: Mathematical, Physical and Engineering Sciences* 369, no. 1934 (2011): 182–95.
[104] Sara Vigil, "Displacement as a Consequence of Climate Change Mitigation Policies," *Forced Migration Review* 49 (2015).
[105] James Fairhead, Melissa Leach, and Ian Scoones, "Green Grabbing: A New Appropriation of Nature?" *The Journal of Peasant Studies* 39, no. 2 (2012): 238, 252–53.
[106] Pablo S. Bose, "Vulnerabilities and Displacements: Adaptation and Mitigation to Climate Change as a New Development Mantra," *Area* 48, no. 2 (2016): 168–75.

violate occupancy rights because they often involve processes of removal or dispossession: 'accumulation by dispossession' is often the primary way in which green-grabbing takes place.[107]

There may, however, be cases where climate change mitigation or adaptation projects have sufficient weight as to warrant relocation of communities.[108] Principle 6(c) of the *Guiding Principles* mandates that states should not allow displacement by development projects to occur unless such projects are "justified by compelling and overriding public interests."[109] If there are overriding reasons to relocate communities, however, then this should be done in an anticipatory way, and should involve fair processes of participation and substantively just outcomes. Theorists working on displacement by development have set out important accounts of the kinds of principles that might be used to navigate this kind of relocation when it does occur.[110] The World Commission on Dams (WCD) report, for example, is often taken as a good model of the kinds of principles of participation that are appropriate.[111] This form of movement is in general better addressed through anticipatory processes more similar to those considered in Chapter IV, however, and not in this chapter, where I focus on the reactive provision of assistance to those displaced. To the extent that anticipatory planning for this kind of relocation fails, however, those affected may well find themselves displaced. Given the historic failings of development actors to implement relocation in procedurally and substantively just ways, we have good reason to be concerned that new efforts to mitigate and adapt to climate change will also bring about displacement.

4. Reforming the Internal Displacement Governance Regime

The context of the climate change gives rise to new pressures on the governance of internal displacement, and the IDP protection regime as it is presently governed also fails to realise the normative model that best justifies its existence. There are at least two problems in the current practices of IDP protection, both of which are exacerbated in the context of climate change. The first problem is that obligations under the IDP protection regime are presently treated as a matter of charity, rather than as a matter of justice. The second problem is that the internal displacement governance regime ignores the transboundary causes of internal displacement. This section examines each in turn and propose some reforms to the current practices of IDP protection.

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[107] Fairhead, Leach, and Scoones, 243–47. For the idea of 'accumulation by dispossession,' see David Harvey, *Spaces of Global Capitalism* (Verso, 2006).
[108] Though, for an account of high bar of justification that such projects would need to meet in order to justify relocation, see Cara Nine, "Water Crisis Adaptation: Defending a Strong Right Against Displacement from the Home," *Res Publica* 22, no. 1 (2016): 37–52.
[109] Deng, "Guiding Principles on Internal Displacement," 486.
[110] Peter Penz, Jay Drydyk, and Pablo S. Bose, *Displacement by Development: Ethics, Rights and Responsibilities* (Cambridge University Press, 2011). For an account of the lessons from development-induced displacement that might be transposed to the climate change context, see Jay Drydyk, "Development Ethics and the 'Climate Migrants,'" *Ethics, Policy and Environment* 16, no. 1 (2013): 43–55.
[111] World Commission on Dams, *Dams and Development: A New Framework for Decision-Making* (Earthscan, 2000).

4.1 Justice and Charity in IDP Protection

Assistance given to those who are displaced is largely treated as discretionary, or as a matter of charity, rather than as being required as a matter of justice. This is true both of the obligations that states owe to IDPs, and of the obligations that the international community owes to assist burdened states in protecting IDPs.

Being labelled as an IDP does not give the individual any specific rights under international law. Unlike the refugee conventions, the *Guiding Principles* do not provide a firm legal status – they are rather a matter of "soft" law.[112] Though the sources from which the *Guiding Principles* are drawn are in human rights, humanitarian and refugee law, and whilst there is evidence of widespread international recognition of the relevance of the principles, the lack of legal standing given to IDPs makes it difficult for them to claim their rights under international law.[113] This is at least in part a result of the political context in which the *Guiding Principles* were drafted. Cohen and Deng explain:

> There was no support for a legally binding treaty given the sensitivity surrounding the sovereignty issue. Second, treaty making could take decades, whereas a document was needed urgently. Third, sufficient international law already existed to protect IDPs. What was needed was a restatement of the law tailored to the explicit concerns of IDPs.[114]

The result of this, however, is that states are under no formal obligation to recognise the *Guiding Principles* as authoritative in their treatment of IDPs. Nor are they formally required to recognise the definition of IDPs as set out in the *Guiding Principles*. As such, the implementation of IDP protection is patchy at best, even in states which do formally recognise their obligations to IDPs. Phil Orchard notes that "[g]iven the soft law nature of the principles, governments which make a commitment at the international level to protect their own IDPs have only done so rhetorically."[115] A recent study of the practical implementation of IDP protection found serious failings in implementation in a number of countries where IDP protection has been recognised in national legislation, including in Colombia, Sudan, Pakistan, Nepal, the Democratic Republic of the Congo, Georgia, Kenya, the Central African Republic and Turkey.[116] Sometimes, failings in implementation can be traced to lack of political will, and sometimes to a lack of capacity.[117]

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[112] Kälin, "Internal Displacement," 170.
[113] Orchard, "Implementing a Global Internally Displaced Persons Protection Regime," 106–14.
[114] Roberta Cohen and Francis M. Deng, "The Genesis and the Challenges," *Forced Migration Review*, Special Issue: Ten Years of the Guiding Principles on Internal Displacement (2008): 4.
[115] Orchard, "Implementing a Global Internally Displaced Persons Protection Regime," 117.
[116] Elizabeth Ferris, Erin Mooney, and Chareen Stark, F*rom Responsibility to Response: Assessing National Approaches to Internal Displacement* (Brookings Institution, 2011), 23–29.
[117] Orchard, "Implementing a Global Internally Displaced Persons Protection Regime," 117–18.

Where the problem in implementation is a lack of capacity, it is compounded by the lack of binding international obligations in IDP protection. Any international assistance that is given for IDP protection is treated as discretionary. As we have seen, there are no binding obligations to which burdened states can refer when they need to call on the assistance of the international community in order to protect their members against displacement. Where assistance is given, it is rarely allocated in ways which fulfil the duty of justice that states owe to assist in IDP protection. A macro-level study of the flows of international humanitarian assistance in the wake of disasters indicates that assistance is largely not allocated on the basis of need, but rather along the lines of former colonial ties, shared languages, geographical distance and (with statistically weaker results) the economic interests of donor countries.[118] Other studies have shown that foreign aid is often directed according to the geo-political interests and foreign policy objectives of donor countries (although some of these results may be attributable to the time period being studied being that of the Cold War).[119] The humanitarian nature of international assistance in the current practices of IDP protection means that there is no guarantee that international assistance will be provided, let alone that it will be provided in ways which fulfil the duty of justice that well-placed states owe to burdened states.

In the context of climate change, this problem is exacerbated. At the domestic level, the increased pressure on burdened states is likely to mean increased pressure on the resources that they need to mobilise in order to address displacement. Given that the *Guiding Principles* do not provide a firm legal basis for IDPs to claim their rights under international law, states which fail to fulfil their obligations to their displaced members are likely to find it easier to get away with not doing so. At the international level, the increasing severity of climate change means that states are likely to face competing demands on their own resources. As such, we would expect to see states taking advantage of the discretionary nature of international assistance and directing their resources inward towards their own competing priorities, or outward, but in line with their own strategic interests. The status of the *Guiding Principles* as soft rather than hard law means that states are likely to find it easier to renege on their commitments to IDPs, both within their own jurisdictions and in providing assistance to burdened states.

One way in which this problem could be addressed would be to transform IDP governance from 'soft' to 'hard' international law. Moves to 'harden' the governance of internal displacement in international law, I contend, could provide a fruitful way of creating a system of IDP governance where states' obligations could be treated as a matter of justice, not charity. If moves to harden the governance of internal displacement are to be made, then I argue that they should seek to harden *both* states' obligations to their

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[118] David Strömberg, "Natural Disasters, Economic Development, and Humanitarian Aid," *Journal of Economic Perspectives* 21, no. 3 (2007): 199–222.
[119] A. Cooper Drury, Richard Stuart Olson, and Douglas A. Van Belle, "The Politics of Humanitarian Aid: U.S. Foreign Disaster Assistance, 1964–1995," *Journal of Politics* 67, no. 2 (2005): 454–73; Alberto Alesina and David Dollar, "Who Gives Foreign Aid to Whom and Why?," *Journal of Economic Growth* 5, no. 1 (2000): 33–63.

own IDPs and states' international obligations to provide assistance, concomitantly. Otherwise, hardening IDP protection obligations risks either systematically disadvantaging burdened states or incentivising them to extract benefits from well-placed states whilst reneging on their obligations to IDPs.

In distinguishing between "hard" and "soft" international law, I follow Kenneth W. Abbott and Duncan Snidal in taking the distinction to be mostly a matter of degree rather than of kind.[120] Hard forms of international law (a) institute binding legal obligations that are (b) precise and which (c) delegate authority for the interpretation and implementation of the law. Law becomes 'softer' to the extent that (a) the bindingness of the legal obligation, (b) the precision of the content or (c) the extent of the delegation is weakened.[121] For example, a legal obligation to which states have committed themselves through an international treaty, with a high degree of precision and with an independent arbitrator or court for settling interpretation, is a very hard legal instrument. An open-ended framework for action with imprecise or general commitments and with no mechanism for dispute resolution is much softer. As Abbott and Snidal note, there are advantages and disadvantages to each approach; the choice between hard and soft legalisation "reflects a series of tradeoffs," and different strategies are likely to prove useful for tackling different problems in different contexts.[122] In international climate governance, for example, the Paris Agreement reflected a mix of soft and hard legal commitments with the aim of securing a broad base of participation and the ability to ramp up commitments over time, as compared to the harder approach pursued in the Kyoto Protocol.[123] Whether or not this choice will pay off remains to be seen.[124]

In the context of IDP governance, hardening soft law could mean several different things. It could mean, for example, negotiating a multilateral treaty on internal displacement; delegating authority to an international institution to adjudicate disputes over who has a claim to protection as an IDP; formal recognition of obligations to provide assistance to burdened states; or states translating the *Guiding Principles* into effective domestic legislation. One good example of the hardening of international law in the case of IDP protection can be found in the Great Lakes Protocol, adopted in 2006, which seeks to regularise and formalise responses to internal displacement in the Great Lakes region of Africa, and

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[120] Kenneth W. Abbott and Duncan Snidal, "Hard and Soft Law in International Governance," *International Organization* 54, no. 3 (2000): 421–56.
[121] Abbott and Snidal, 421–22.
[122] Abbott and Snidal, 455.
[123] David Held and Charles Roger, "Three Models of Global Climate Governance: From Kyoto to Paris and Beyond," *Global Policy* 9, no. 4 (2018): 527–37.
[124] For an optimistic view, see Anne-Marie Slaughter, "The Paris Approach to Global Governance," *Project Syndicate* (blog), December 28, 2015, available at https://www.project-syndicate.org/commentary/paris-agreement-model-for-global-governance-by-anne-marie-slaughter-2015-12. For a pessimistic view, see Jen Iris Allan, "Dangerous Incrementalism of the Paris Agreement," *Global Environmental Politics* 19, no. 1 (2019): 4–11. See also the discussion of the development of international climate treaties in Chapter VII, sec. 3.

explicitly requires member states to recognise the *Guiding Principles* and implement them into national legislation.[125]

My aim here is not to prescribe a precise blueprint for the hardening of soft law in IDP governance. But it is important to recognise that hardening law in IDP protection can realise goods in IDP protection that may otherwise not be attainable. Harder forms of international law, as Abbott and Snidal point out, increase the costs that states take on if they renege on their commitments, allow less space for "self-serving auto-interpretation" of legal commitments, and can create more capacity for enforcement, especially when international commitments are incorporated into domestic law.[126] Moves to harden law in IDP governance would go a long way to addressing the problems of the patchy implementation of IDP protection and the treatment of it as discretionary by states.

Of course, hardening soft law has costs for states, most importantly in terms of what Abbott and Snidal call "sovereignty costs."[127] Hard international law constrains the options available to states, and so many states are reticent to endorse moves to harden the law surrounding IDP protection. Indeed, Walter Kälin has argued against pursuing a treaty for internal displacement on the basis that states are not ready to recognise their legal character, and that we should instead seek to "build consensus from the 'bottom up.'"[128] Kälin may be right to suggest that the political context is not ripe for a binding treaty, but this need not preclude attempts to harden international law surrounding IDP protection. Other options, including pursuing the implementation of IDP protection in national legislation, which Kalin himself prefers, may be more politically palatable whilst moving in the right direction.[129]

Importantly, though, sovereignty costs are not always an overriding concern for states. Sometimes, by binding themselves and others through harder forms of international law, states are able expand as well contract their possibilities for action. If the perceived benefits of harder forms of IDP protection for both burdened and well-placed states outweigh states' perceived sovereignty costs, then harder forms of IDP protection may be made achievable as well as desirable.

Currently, states are reticent to endorse hard law in IDP protection at least in part because they fear that they will bear disproportionate burdens from doing so. If the *Guiding Principles* in their current formulation were to form the basis of a treaty, then burdened states would be justifiably be concerned that they would be required to bear significant costs as compared to well-placed states, because the *Guiding Principles* do

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[125] Chaloka Beyani, "The Politics of International Law: Transformation of the Guiding Principles on Internal Displacement from Soft Law into Hard Law," *Proceedings of the ASIL Annual Meeting* 102 (2008): 194–98.
[126] Abbott and Snidal, "Hard and Soft Law in International Governance," 427–28.
[127] For an overview of the sovereignty costs for states that hard law can bring, see Abbott and Snidal, 436–44.
[128] Walter Kälin, "Guiding Principles on Internal Displacement: The Way Ahead," *Proceedings of the ASIL Annual Meeting* 102 (2008): 199.
[129] Kälin, 200.

not contain strong provisions for international assistance. Similarly, if only the provisions for international assistance were strengthened, then well-placed states would be justifiably concerned that they would have no guarantee that burdened states would use the resources to address internal displacement. Burdened states providing robust IDP protection is likely to realise the goals of well-placed states – either their normative goals of promoting human rights protection abroad or their self-interested goal of maintaining a background of international peace and stability. Without good reason to think that this goal would be achieved, well-placed states would be reticent to contribute international assistance to burdened states.

This interpretation of the reticence of states to endorse a treaty for internal displacement reveals that it has the structure of the Rawlsian "assurance problem" that we first encountered in Chapter IV.[130] Hardening IDP protection is stymied by the fear that the process of hardening will advantage some at the expense of others. As such, a useful way of moving forward in hardening IDP protection would be to ensure that *both* the obligations that states owe to their IDPs *and* the obligations of assistance that well-placed states owe to more burdened states are hardened concomitantly. As Abbott and Snidal point out, harder forms of international law have the advantage of being able to provide "credible commitments" which can overcome problems of assurance.[131] If credible commitments could be made regarding both domestic IDP protection and international assistance, then the perceived sovereignty costs that states would have to take on in hardening soft law may be outweighed by the perceived benefits that they would receive from an agreement. Sovereignty costs could even prove to be negative, in the sense that the benefits gained from the agreement could even increase states' positive sovereignty, understood as their effective ability to pursue their own policy goals.

Hardening soft law is a good goal for reform because it would plausibly improve the implementation of IDP protection and would encourage states to treat IDP protection as a matter of justice, not charity. If hardening is pursued in both international assistance and in the obligation that states owe to their IDPs, then hard law in IDP protection will also be both fairer, in that it would not advantage some states at the expense of others, and more achievable, in that it would overcome the problems of assurance that states have in committing to hard international law.

4.2 Transboundary Causes of Internal Displacement

A second problem in the practice of internal displacement governance is that it fails to account for the *transboundary causes* of internal displacement. In its presumption that internal displacement is primarily a matter of 'first-level' human rights protection, and thus a matter of domestic jurisdiction, the IDP

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[130] Rawls, *A Theory of Justice*, 237–38. See also the discussion in Chapter IV, section 4.1.
[131] Abbott and Snidal, "Hard and Soft Law in International Governance," 426.

protection regime does not account for the fact that internal displacement can be have transboundary causes. In the context of climate change, greenhouse gas (GHG) emissions can, through the creation of climate change impacts, precipitate internal displacement abroad. The notion of 'sovereignty as responsibility' in the R2P principle elides the fact that *external* actors can be responsible for the displacement of IDPs through their contributions to climate change. As high-emitting states continue to emit and exacerbate the displacement of populations abroad, burdened states which are vulnerable to internal displacement precipitated by extreme weather events bear the increased costs of IDP protection. We know that, most often, those states which are most vulnerable to the impacts of climate change are also likely to be least responsible for contributions to climate change.[132]

This creates a problem for IDP governance in at least two ways. First, it creates a negative externality in GHG emissions: high-emitting states can continue to emit without bearing the costs of those emissions, which are instead borne by those displaced within their own state and the states charged with protecting their human rights. Second, it is likely to strain the commitments required to sustain the fragile project of IDP protection. Those states most affected by internal displacement in the context of climate change may have a justified complaint that they are being required to bear disproportionate costs in upholding the IDP protection regime, and their commitments to that regime may weaken as a result. The new context of climate change gives us reasons to rethink the way the costs of IDP protection are distributed between states. Rethinking the distribution of the costs of internal displacement is important both as a matter of fairness, since it is unfair for high-emitting states to unilaterally impose costs upon burdened states, and as a matter of sustaining commitments to the IDP protection regime, since burdened states are likely to renege on their commitments if they perceive the distribution as unfair.

In order to account for the transboundary causes of internal displacement fairly, the negative externality of the costs of internal displacement imposed upon states by the impacts of climate change needs to be internalised. High-emitting states must be required to bear the costs that they impose upon the IDP protection regime. Broadly, there are two ways of doing this, which we first encountered in our discussion of cost-sharing in the refugee regime. The first way is to follow a liability model, according to which those responsible for discrete instances of displacement bear the costs of the addressing those cases of displacement. In the case of displacement by development, for example, it may be relatively straightforward to identify responsible parties who could rightfully be required to bear the costs of displacement. Those who negligently or culpably displace particular individuals or groups in the process

[132] Glenn Althor, James E. M. Watson, and Richard A. Fuller, "Global Mismatch between Greenhouse Gas Emissions and the Burden of Climate Change," *Scientific Reports* 6 (2016): 20281.

of constructing dams, mines and so on, would be required to bear the costs of responding to their displacement.[133]

However, the liability model is not likely to work in the case of climate change. This is because the impacts of climate change are rarely distinguishable at the micro-level from the natural variability of the climate system, and it because it is difficult to establish the causal role of climate change in displacement when displacement is also mediated by social facts about vulnerability. In the paradigmatic case of displacement by disasters, we do not know if a given disaster is a result of the impacts of climate change, and even if it is, the fact that displacement is mediated by antecedent vulnerabilities means that it is difficult to say that any individual is displaced *by* climate change. The upshot of this is that a liability model is unlikely to work as a way of internalising the costs of GHG emissions on displacement. Rather than a "liability-based" model, a more promising way of internalising the costs imposed upon the IDP protection regime by high-emitters is an "insurance model,"[134] which requires high-emitters to bear the costs of the aggregate burden of risk that they impose upon the regime. Rather than requiring us to know which discrete individuals are displaced by high emitters through climate change, this only requires us to know (or to have reasonable estimates of) the total increased burden of risk of displacement imposed upon the regime. This means that the parties responsible for imposing this risk (i.e. high-emitting states) can be required to bear the additional costs of internal displacement in proportion to their responsibility.

Internalising the transboundary costs of internal displacement imposed by climate change requires us, first, to have an account of what the fair distribution of the costs of internal displacement would be in the absence of climate change (a 'baseline'), and second, to have an account of when a state has emitted *too much* (i.e. of what its obligations would be under a fair international effort to mitigate climate change). Then, costs of internal displacement can be redistributed from the baseline in order to account for the extra burdens imposed upon the regime by those emitting too much. As in the case of my examination of the refugee regime, I defer the task of determining states' obligations under a fair international climate treaty until the next chapter, as this requires substantial discussion.

We have seen what the baseline of the fair distribution of the costs of internal displacement might look like: I argued that well-placed states are required, as a matter of justice, to assist burdened states in fulfilling their members' rights against displacement up to the point that those states no longer present predictable risks to the legitimacy of the international order. It is possible to further specify the nature of this collective obligation by specifying derivative obligations for each well-placed state. States might, for

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[133] This need not be the *only* cost that those responsible for displacement might be asked to bear. It may be justifiable, for example, to impose costs upon responsible actors in order to disincentivise activities which risk displacement, or to furnish compensation for those affected by displacement.

[134] See Idil Boran, "Risk-Sharing: A Normative Framework for International Climate Negotiations" *Philosophy & Public Policy Quarterly* 32, no. 2 (2014): 4–13; see also the discussion in Fanny Thornton, *Climate Change and People on the Move: International Law and Justice* (Oxford University Press, 2018), at 97–127.

example, agree to share the costs of the duty of international IDP assistance according to an 'ability to pay' principle, where states bear costs in relation to their overall wealth.[135] Once we have both a baseline for the distribution of the costs of IDP protection and an account of states' obligations to mitigate climate change, then we can determine which states ought to bear which costs in order to account for the transboundary causes of internal displacement. In the most general terms, this can be specified as follows: the costs of IDP protection are to be distributed according to the baseline distribution of costs specified by the principle of international IDP assistance, excepting the costs imposed upon the regime by states which create particular IDPs and excepting the costs imposed by climate change, which are measured by departures from the terms of a fair international effort to mitigate climate change.

This formulation is similar to the formulation set out in the last chapter for sharing the costs of the refugee regime. This is not accidental: it recognises that the distribution of costs in the refugee regime and in the regime of IDP protection are affected in the same way by the impacts of climate change. Both internal displacement governance and the refugee regime, in the absence of climate change, have fair baseline distributions of costs from which deviations must be justified. One justification for a departure from that baseline is that, by failing to meet their obligations to mitigate climate change, high-emitting states are imposing extra costs upon those regimes. Requiring states which have failed to mitigate successfully to bear these costs is a way of internalising the negative externality that their high-emitting actions impose upon the regimes of refugee and IDP protection.

5. Conclusion

This chapter has examined internal displacement as a domain for governing climate-induced displacement. In the first section of the chapter, I set out a normative reconstruction of the internal displacement governance regime. Here, we saw that IDPs are best understood as those who are displaced but for whom the member-state relationship remains intact (even if it is 'frayed'). We examined the idea of a right against displacement, based on the human interest in a background of stability against which we can form and pursue life plans. Protecting this right, I argued, requires both the reduction of displacement risks to tolerable levels, and restoring the background of stability quickly and effectively when displacement does occur. Given that the standard threat of displacement foreseeably demands resources that states may be unable to quickly mobilise on their own, and creates predictable risks to states' standing as human rights guarantors, I argued that protection against displacement generates international duties of assistance owed by well-placed states, as a matter of justice.

Next, we examined the main ways in which climate-induced displacement may arise within it. The primary way in which this takes place is through sudden-onset disasters. We saw that there are important

[135] For a discussion of the 'ability to pay' principle, see the discussion in this thesis at Chapter VII, sec. 3.3.

limitations to our knowledge of when particular weather events are climate-related and when displacement relating to them is caused by climate change. Nonetheless, we know that as the impacts of climate change advance, so too will displacement which falls within the auspices of the internal displacement regime. Then, we examined some problems in the current practices of internal displacement governance. Two problems were examined. First, IDP protection obligations are primarily treated as a matter of charity, both in the domestic protection of IDPs and in international assistance. We also saw that this problem is likely to be exacerbated in the context of climate change. I argued that a goal for reform should be the hardening of the presently soft law surrounding IDP protection, and that hardening should be pursued in both the domestic and international contexts concomitantly, both as a matter of fairness and as a matter of feasibility. Second, the IDP protection regime fails to account for the transboundary causes of internal displacement. In the context of climate change, external actors are responsible for internal displacement through their GHG emissions, which contribute to the increasing frequency and severity of extreme weather events. I argued that the negative externality of displacement created through high GHG emissions should be internalised, and that we should require states to bear the costs of the aggregate burdens of risk that they impose upon the IDP protection regime through their emissions. In order to do this, we need a prior account of the fair distribution of costs internationally in IDP protection, which I take to be given by the duty of international IDP assistance, and an account of when states have emitted too much – that is, an account of states' obligations under a fair international effort to mitigate climate change.

States' obligations under a fair international climate treaty were left unspecified in this chapter, as in the previous chapter where we considered the distribution of the costs in the refugee regime. In the next chapter, I turn towards the task specifying the idea of a fair international climate treaty. This takes us from the 'first-order' questions of how to respond to the phenomenon of climate-induced migration and displacement to the 'second-order' question of how to distribute the costs of those first-order responses. Together, the answers that I set out to these questions form a coherent answer to the broader question take up in this thesis, of how the international community should address the phenomenon of climate-induced migration and displacement in ways which realise the ideal of justice.

VII. Sharing the Costs of Climate-induced Migration and Displacement

1. Introduction

So far in this thesis, we have examined the 'first-order' question of how our political institutions should be reshaped so as to respond to climate-induced migration and displacement in ways which realise the ideals of justice. We have reconstructed the institutions and practices that constitute three domains in which climate-induced migration and displacement arise – climate change adaptation, the refugee regime, and the governance of internal displacement – in order to formulate principles of justice for governing them. We have examined problems posed to these institutions, both by deficiencies in how they are currently practiced and by climate-induced migration and displacement. Finally, we have set out proposals for the reform of these institutions, which aim to enable them to realise the normative ideals that best justify their existence and to reconcile themselves to the challenge posed by climate-induced migration and displacement.

This chapter addresses the 'second-order' question of who should bear the costs of addressing climate-induced migration and displacement. Climate change is *anthropogenic*: it is brought about by human action (and inaction). Some have played a greater role in bringing about the impacts of climate change than others, and the anthropogenic nature of climate change raises questions about how we can fairly share the costs that it imposes upon the institutions that govern migration and displacement relating to climate change. The distribution of the costs of tackling climate-induced migration and displacement should, I contend, be sensitive to ways in which climate-induced migration and displacement is produced.

In Chapter III, we considered and rejected one possible way of responding to climate-induced migration and displacement: a *unitary approach* to climate-induced migration and displacement. An advantage of that approach, we saw, was that it made it straightforward to distribute the costs of climate-induced migration displacement in a way which tracked different agents' responsibilities for the problem. We called this advantage of the unitary approach the *responsibility rationale*. I argued that, despite this advantage, the unitary approach faces important problems which mean that it should be rejected. The responsibility rationale, I claimed, could be met through a second-order principle which redistributes the climate-related costs imposed on existing institutions. In Chapters V and VI, in my discussions of the governance of internal displacement and the refugee regime, I also claimed that the costs imposed on those regimes by the impacts of climate change could be redistributed according to a principle of responsibility. In this chapter, I seek to make good on these claims.

I have already alluded to the strategy that I pursue at various points throughout the preceding chapters, where I have claimed that the costs of climate-induced displacement should be measured by departures from states' obligations under a 'fair international climate treaty.' The exact relation between states'

obligations to bear costs for climate-induced migration and displacement and the content of their obligations under a fair climate treaty, however, has been underspecified. In order to make good on my claim, I need to say something about the content of a fair international climate treaty, and about how it relates to states' obligations to bear the costs of climate-induced migration and displacement. In the next section, I clarify this relation by arguing for what I call the *responsibility view*. I argue that the costs of addressing reactive displacement, both in the refugee regime and in the governance of internal displacement, are justifiably apportioned in proportion to states' failures to meet their obligations under a fair climate treaty. The costs of addressing anticipatory migration, as policies of climate change adaptation, are best understood as falling within the scope of a fair international climate treaty.

After having defended this view, the rest of the chapter seeks to provide some clarity about the content of a fair international effort to tackle climate change. Here, I pursue the same general methodological strategy that I have employed throughout the thesis so far: I reconstruct the institutions and practices of the international climate change regime in order to excavate the normative principles embedded within it. I do not set out a precise account of the terms of a fair climate treaty, but rather identify some normative parameters which constrain the content of any fair climate treaty. Different interpretations of the central normative concepts of the climate policy regime – 'dangerous climate change,' the 'right to sustainable development,' and 'common but differentiated responsibilities and respective capabilities' – lead to different substantive views about fairness in international climate policy. But these differing views also converge on some mid-level principles of fairness in climate policy, which I identify as a space of agreement. Beyond this, there will be reasonable disagreement about the fair terms of a climate treaty. I argue that in the face of such disagreement, states have an obligation to render their climate obligations determinate through a legitimate institution with the authority to adjudicate between competing reasonable views over fairness in climate policy. They have not done so yet, because the terms set so far in actual negotiations violate the principles which make up the space of agreement. In the interim period before fair terms have been settled, I argue that we should hold states responsible for the maximal amount of climate-related duties that they could be asked to fulfil on any conception of fairness in international climate policy. This provides us with a standard against which we can measure states' failures, even in the face of persistent disagreement.

2. Responsibility for Climate-induced Migration and Displacement

My account of the relation between states' obligations to tackle climate change and states' obligations to bear the costs of addressing climate-induced migration and displacement can be described fairly straightforwardly. On my account, some costs associated with climate-induced migration and displacement fall within the scope of a fair climate treaty, whereas others result from our failures to discharge our obligations under a fair climate treaty. States are morally liable to bear the costs that arise from their failure to discharge their obligations to tackle climate change, and thus prevent those costs

from arising in the first instance. We can call this view the *responsibility view*, because it requires states to bear the costs of displacement to the extent that they are responsible for those costs having arisen.

Generally, the costs associated with anticipatory migration will fall within the scope of a fair climate treaty. This is because anticipatory migration is a form of climate change adaptation, as we saw in Chapter IV, and so can be governed according to the principles of cost-sharing that are specified by a fair climate treaty, which covers both mitigation and adaptation. Generally, the costs associated with reactive forms of displacement represent *failures* to adequately tackle climate change (through either mitigation or adaptation). States have obligations to bear the costs of reactive climate-induced displacement in proportion to the extent of their failure to discharge their obligations under a fair climate treaty.

Two caveats are worth introducing here. First, I say 'generally' here because this is a simplification which is useful for the purposes of exposition. In reality, it may be that some costs associated with increased risk of displacement do not result from failure to tackle climate change, because are properly thought of as being permitted under a fair climate treaty. This, as we will see, depends on the conception of 'dangerous climate change' that we employ in understanding the idea of a fair climate treaty. If some acceptable increase in the risk of displacement is not a failure to tackle climate change, then the costs associated with that increased risk of displacement should not simply be left to lie where they fall, but should rather be distributed according to the principles of cost-sharing internal to the refugee and internal displacement regimes which I articulated in Chapters V and VI. Generally, though, I assume that the phenomenon of reactive displacement is a paradigmatic case of the kind of climate impact that efforts to tackle climate change seek to avoid, alongside crises of food security and global health pandemics.[1]

Second, I assume that the costs of adaptation are shared according to the terms of a fair climate treaty. In practice, it is much more difficult to get states to share the costs of adaptation than it is to get them to share the costs of mitigation, because the benefits of mitigation accrue globally, whereas the benefits of adaptation are localised.[2] From a normative point of view, however, the costs of adaptation cannot be excluded from the terms of a fair climate treaty. Since the costs of adaptation are intimately connected to the costs of mitigation – the less mitigation we undertake, the greater the need for adaptation – excluding the costs of adaptation from a fair climate treaty would be to unfairly burden those most vulnerable to the impacts of climate change with the costs of adaptation, and would incentivise less vulnerable states to

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[1] For an overview of paradigmatic kinds of climate impacts to be avoided in high-emissions scenarios, see Mark G. New, Diana M. Liverman, Richard A. Betts, Kevin L. Anderson and Chris C. West (eds.) "Four degrees and beyond: the potential for a global temperature increase of four degrees and its implications," [special issue] *Philosophical Transactions of the Royal Society A: Mathematical, Physical and Engineering Sciences* 369, no. 1934 (2011), especially François Gemmene, "Climate-Induced Population Displacements in a 4°C+ World,"; Philip K. Thornton et al., "Agriculture and Food Systems in Sub-Saharan Africa in a 4°C+ World,"; and Rachel Warren, "The Role of Interactions in a World Implementing Adaptation and Mitigation Solutions to Climate Change," all in that issue.
[2] Sverker C. Jagers and Göran Duus-Otterström, "Dual Climate Change Responsibility: On Moral Divergences between Mitigation and Adaptation," *Environmental Politics* 17, no. 4 (2008): 577–78.

reduce their own burdens by transforming the socialised costs of mitigation into the privatised costs of adaptation.[3] As such, in what follows I treat the costs of adaptation as part of the costs to be distributed according to the terms of a fair climate treaty. This claim is compatible with a number of substantive views on how the costs of climate change adaptation should be distributed: it can be endorsed by those who argue that the costs of adaptation should be distributed according to historic responsibility for climate change,[4] those who argue that they should be distributed according to ability to pay,[5] and those who think some hybrid approach is appropriate.[6]

With these caveats out the way, we can examine the content and justification of the responsibility view. A simplified example is useful in illustrating how the responsibility view works. Imagine that two states fail to fully discharge their obligations to tackle climate change, either through failing to engage in sufficient mitigation (for example, in carbon sink preservation, domestic emissions reductions or clean energy technology investment or transfers) or through failing to contribute their share to international adaptation finance programmes. Their failure to do brings about an increased risk of harmful climate change impacts which, in turn, increase the risk of displacement. Let us stipulate that combined, the failures of these two states mean that the risk of displacement which falls under the auspices of the refugee and internal displacement regimes creates an additional $50 million in costs. State A's failures to fulfil its obligations represent 80% of that total burden, and State B's failures represent 20% of that burden. According to the responsibility view, this means that State A pays $40 million towards maintaining the refugee and internal displacement regimes, and State B pays $10 million, above and beyond any costs that they are already required to bear in the maintenance of those regimes. On this view, states bear costs in proportion to the share of the costs that they have created.

Clearly, this example is far more simplified than the actual ways in which states fail to discharge their obligations to tackle climate change, but it serves to illustrate the relationship between states' obligations to bear the costs of displacement. In reality, the extent to which different states fail to live up to their obligations to tackle climate change is likely to be difficult to assess. Clear standards of measurement will be necessary to understand the true extent to which states are discharging, or failing to discharge, their obligations. The proper functioning of monitoring and transparency mechanisms built into climate

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[3] See the discussion of the 'coping costs' of climate change in Henry Shue, "Subsistence and Luxury Emissions," in *Climate Justice: Vulnerability and Protection* (Oxford University Press, 2014), 51–55 and Jouni Paavola and W. Neil Adger, "Fair Adaptation to Climate Change," *Ecological Economics* 56, no. 4 (2006): 594–609.
[4] Paul Baer, "Adaptation to Climate Change: Who Pays Whom?," in *Climate Ethics: Essential Readings*, ed. Stephen M. Gardiner et al. (Oxford University Press, 2010); Marco Grasso, "An Ethical Approach to Climate Adaptation Finance," *Global Environmental Change*, 20, no. 1 (2010): 74–81.
[5] Darrel Moellendorf, *The Moral Challenge of Dangerous Climate Change: Values, Poverty, and Policy* (Cambridge University Press, 2014), 186–89.
[6] Jagers and Duus-Otterström, "Dual Climate Change Responsibility."

change agreements like the Paris Agreement will be essential.[7] Civil society organisations, such as Climate Action Tracker, which publishes regular assessments of the extent to which different states are discharging to their obligations to tackle climate change as set out in international agreements, will also be central.[8]

We will also need to understand the impact that failures to tackle climate change have on aggregate patterns of displacement. As we saw in Chapter I, the empirical literature on the overall number of people displaced by climate change has traditionally been stunted by unreasonable assumptions about human behaviour being built into models which project migration patterns into the future.[9] But the science of modelling climate-related movement is developing, and promising new forms of spatial-vulnerability modelling such as 'agent-based modelling' are improving our ability to make more fine-grained predictions of displacement, especially at local levels.[10] Of course, better data and more sophisticated methodological approaches will be necessary to make presently crude estimates more precise. As Robert McLeman points out, however, "[t]he prospects for linking migration data and climate information at regional, national and sub-national scales are promising in the near term" and we can expect to see both data and methodological tools get better over time.[11] Understanding the aggregate increase in risk of displacement that climate change brings is a challenge. Importantly, though, it does not require us to identify *particular* individuals as being displaced specifically by climate change, which, as we have seen, is incredibly difficult to do. It is an advantage of this approach that no individual's fate hangs on their being identified as 'climate-displaced.' It is much easier to assess the aggregate costs that climate change imposes, and our current capacity to estimate the aggregate impact of climate change provides us with useful working assumptions that can be corrected over time as our knowledge improves.

To see why states are morally liable to bear costs according to the responsibility view, we can begin by examining the way in which states can be understood to be 'responsible' for climate-induced displacement.[12] Responsibility, as David Miller notes, "has proved to be one of the most slippery and confusing terms in the lexicon of moral and political philosophy."[13] When states fail to fulfil their obligations to tackle climate change, and thus increase the risk of displacement relating to climate change, they are responsible in a dual sense. They are responsible in two senses of responsibility distinguished by

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[7] The transparency mechanisms in the Paris Agreement are among its most robust provisions. See Harald Winkler, Brian Mantlana, and Thapelo Letete, "Transparency of Action and Support in the Paris Agreement," *Climate Policy* 17, no. 7 (2017): 853–72.
[8] See https://climateactiontracker.org/
[9] For example, Norman Myers, "Environmental Refugees: A Growing Phenomenon of the 21st Century.," *Philosophical Transactions of the Royal Society B: Biological Sciences* 357, no. 1420 (2002): 609–13.
[10] Dominic Kniveton et al., *Climate Change and Migration: Improving Methodologies to Estimate Flows* (IOM, 2008).
[11] Robert McLeman, "Developments in Modelling of Climate Change-Related Migration," *Climatic Change* 117, no. 3 (2013): 607.
[12] Here I draw on a similar account that I have set out in Jamie Draper, "Responsibility and Climate-induced Displacement," *Global Justice: Theory, Practice Rhetoric* 11, no. 2 (2019): 59–80.
[13] David Miller, *National Responsibility and Global Justice* (Oxford University Press, 2007), 82.

Miller: "outcome responsibility" and "remedial responsibility."[14] Put crudely, outcome responsibility means that they are responsible for having done something in a backward-looking sense: having brought about an increased risk of displacement through their failure to tackle climate change. Remedial responsibility means that they are responsible for doing something in a forward-looking sense: bearing the costs associated with addressing that increased risk of displacement. I argue that states' outcome responsibility for the increased risk of displacement justifies the ascription of their remedial responsibilities to bear the costs of that displacement. To see why, it is useful to look at each concept in a little more detail, to understand the relation between them, and to see how they apply to states that fail to discharge their obligations to tackle climate change.

Outcome responsibility, according to Miller, "has to do with agents producing outcomes."[15] It is not, however, identical with causal responsibility. Rather than capturing a causal relation, outcome responsibility' refers to the idea that an outcome can be "credited or debited" to a particular agent.[16] Although some causal connection between the agent's action and an outcome is necessary for outcome responsibility, the ascription of outcome responsibility itself is a judgement about whether the relation between an agent's action and a particular outcome is of the right kind to normatively implicate her in the outcome.[17] For an ascription of outcome responsibility to be apt, there must not only be some causal relation between the agent's action and the outcome, but crucially there must also be *agency* involved.[18] Importantly, this need not require intention: one can, for example, be outcome responsible for producing outcomes negligently.[19] Not is just *any* connection between the agent and the outcome is sufficient, however, since otherwise agents could be outcome responsible for the remotest outcomes of their actions. Rather, in assessing outcome responsibility we must apply "a standard of reasonable foresight: an agent is outcome responsible for those consequences of his action that a reasonable person would have foreseen, given the circumstances."[20]

To have a remedial responsibility is "to have a special responsibility, either individually or along with others, to remedy the position of the deprived or suffering people."[21] The ascription of a remedial

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[14] Miller, 83–84. A similar distinction is made between "responsibility as attributability" and "substantive responsibility" in Thomas Scanlon, *What We Owe to Each Other* (Harvard University Press, 1998), 248, and between "blame-responsibility" and "task-responsibility" in Anna Stilz, "Collective Responsibility and the State," *Journal of Political Philosophy* 19, no. 2 (2011): 194. Stilz and Scanlon, however, see 'blame-responsibility' and 'responsibility as attributability' as being essentially related to moral appraisal, whereas Miller does not take outcome responsibility itself to be sufficient for moral appraisal (though he does see it as necessary). I appeal to Miller's distinction here because nothing in my argument hangs on our ascribing states which fail in their obligations to tackle climate change moral blame (though such blame may well be justified).
[15] Miller, *National Responsibility and Global Justice*, 83.
[16] Miller, 87.
[17] Miller, 86–90.
[18] Miller, 87–88.
[19] Miller, 88.
[20] Miller, 96.
[21] Miller, 98–99.

responsibility begins with the identification of a situation where it is "morally unacceptable for people to be left in that deprived or needy condition."[22] A remedial responsibility then picks out the agent or agents who are rightfully given the task of putting that situation right. That ascription may be justified on the basis of one or more relevant connection that an agent has to the person(s) in the morally unacceptable condition. According to Miller's "connection theory" of responsibility, moral responsibility (which Miller takes to be concerned with the aptness of issuing moral blame and praise), outcome responsibility, causal responsibility, benefit, capacity and community can all justify the ascription of remedial responsibilities.[23]

For our purposes, it is most important to understand why outcome responsibility can justify the ascription of remedial responsibility. First, it is important to note that outcome responsibility only justifies a *presumption* that the outcome responsible party should bear remedial responsibility – there may be countervailing reasons which mean that, all-things-considered, we should ascribe remedial responsibility elsewhere. If, for example, ascribing remedial responsibility on the basis of outcome responsibility would mean making the very poor bear significant costs, we might refer to another ground of remedial responsibility, such as capacity or community.

In general, though, we tend to think that outcome responsibility is a good reason to ascribe remedial responsibility. Outcome responsibility identifies a relation between the agent and the outcome which is morally relevant in the context of assigning remedial responsibility: it identifies cases where an agent is the *author* of the outcome in question. Not all causal relations are morally relevant in this way. For example, when I purchase something from a shopkeeper who, unbeknownst to me (and reasonably so), uses the proceeds to fund criminal activities, I may be *causally* implicated in the outcome of those activities (which may not have been possible without my contribution), but my causal role is not morally relevant because I cannot be properly described as the author of the outcome. Similarly, not all relations of outcome responsibility make it appropriate for us to ascribe moral blame or praise, despite the morally loaded language of 'crediting' and 'debiting' that Miller uses. When, for example, I score a goal in a five-a-side game, it may be accurate to describe me as the author of the goal, and to 'credit' that goal to me, but scoring a goal is not morally praiseworthy itself. Outcome responsibility simply identifies cases where the agent in question is the author of the outcome, and in contexts of assigning remedial responsibility that relation is a morally relevant one.

Authorship is morally relevant in ascribing remedial responsibility because it captures the idea that we value being able to control our liabilities and exercise choice. In cases which do not meet the conditions for outcome responsibility, we are not in control of our actions and are not exercising genuine choice (either because we are not exercising genuine agency or because we could not reasonable have foreseen

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[22] Miller, 98.
[23] Miller, 100–104.

their outcomes).[24] When an agent does exercise choice and control over her actions, she is the author of the outcome. In such cases, our presumption is that the agent herself is responsible – remedially – to bear the costs associated with the outcome, just as she is permitted to reap the benefits associated with it (again, absent countervailing reasons to redistribute them). As Miller puts it, "[w]hen we act as free agents among other free agents, we expect to keep the benefits that result from our actions, and so we should also expect, in general, to bear the costs."[25] This understanding of the relation between outcome and remedial responsibility captures an important part of the how the concept of responsibility is employed in the practices of our moral life. Positing this connection between outcome and remedial responsibility makes sense of our practices of holding each other responsible. As Henry Shue puts it, "[a]ll over the world parents teach children to clean up their mess."[26]

It is worth noting that in practice, our ascriptions of responsibility apply similarly to corporate entities like states. This helps us to make sense of the practices such as the doctrine of state responsibility under international law.[27] Corporate entities such as states can plausibly exercise agency in the relevantly similar ways to individuals.[28] But regardless of underlying social ontology of group agents, we should note that *any* plausible conception of the state requires it to be the sort of agent that can take bear responsibilities. Capacities which are essential for the modern state, such as taking on public debt, require us to understand the state as a *persona ficta*, able to bear liabilities across time.[29] This conception of the state also explains its capacity to sign treaties under international law.[30] Insofar as we want our account of responsibility to make sense of our practices and institutions, then we need to treat the state as the kind of agent which, like the individual, can be ascribed responsibility.

In the case at hand, the relevant outcome in which we are interested is the increased risk of displacement, and the relevant action that implicates an agent in that outcome is the failure to discharge obligations to tackle climate change. Those states which failed to discharge their obligations to tackle climate change were aware that, in combination with others, their inaction would generate harmful effects such as the increased risk of displacement. They exercised their agency in their failure to prevent those effects from

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[24] Miller writes that, in distinguishing causal from outcome responsibility, "the key question to ask is what the agent has control over – how far the outcome is within her power." Miller, *National Responsibility and Global Justice*, 93. On the value of choice, see Scanlon, *What We Owe to Each Other*, 251–67. On contribution to outcomes and control, Robert Jubb, "Contribution to Collective Harms and Responsibility," *Ethical Perspectives* 19, no. 4 (2012): 733–764.
[25] Miller, *National Responsibility and Global Justice*, 101.
[26] Henry Shue, "Global Environment and International Inequality," *International Affairs* 75, no. 3 (1999): 533.
[27] On the doctrine of state responsibility, see James Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* (Cambridge University Press, 2002), 191–251.
[28] For prominent attempts to defend this claim, see Peter A. French, *Collective and Corporate Responsibility* (Columbia University Press, 1984); Philip Pettit, "Responsibility Incorporated," *Ethics* 117, no. 2 (2007): 171–201; Christian List and Philip Pettit, *Group Agency: The Possibility, Design, and Status of Corporate Agents* (Oxford University Press, 2011).
[29] Quentin Skinner, "A Genealogy of the Modern State," in *Proceedings of the British Academy, Vol. 162, 2008 Lectures* (Oxford University Press, 2009).
[30] Janna Thompson, *Taking Responsibility for the Past: Reparation and Historical Injustice* (Polity, 2002), 14. See also the legal expression of this power in the *Vienna Convention on the Law of Treaties* (1969).

arising. This failure to discharge their climate change obligations justifies the ascription of remedial responsibility in bearing the costs associated with that increased risk of displacement.

We do not need to draw a tight causal connection between any particular emission and any particular incidence of displacement. *Some* causal connection is required for outcome responsibility, but causal relations can be described at different levels of specificity and generality whilst remaining true. Compare the general causal claim 'Austerity caused a decrease in social welfare' and the specific 'Cuts to Reading Borough Council's mental health provision caused ten individuals to be unable to access welfare-promoting interventions.' In the case at hand, the causal connection is described at a fairly general level: states' failures to discharge their obligations to discharge climate change caused an aggregate increase in the risk of displacement. But the level of generality at which the causal relation is described is not centrally important, and does not make it less true. What is centrally important is rather whether the agents are implicated in the outcomes because they are the authors of the outcomes, which is morally relevant when it comes to the ascription of remedial responsibility.

Nor is it a problem that it is largely state *inaction*, rather than action, that has led to the increased risk of displacement.[31] States have it within their control to decide whether or not to act on climate change, and their decisions to enact or not to enact robust climate policies condition the many individual actions which taken together add up to climate impacts. States' failures to put in place effective climate policies express agency in the same way that action does, and as we saw above, outcome responsibility can be ascribed on the basis of negligence. In the case at hand, agents with obligations to avert harms have failed to discharge their obligations. Their negligent failure to do so is a reason to 'debit' them with the outcome, and so to justifiably ascribe outcome responsibility to them.

As noted above, a standard of foreseeability must be met for the ascription of outcome responsibility to be appropriate. In the case at hand, it seems clear that harmful effects were foreseeable.[32] The fact that states might not have specifically foreseen *displacement* does not undercut this claim. We can still be held outcome responsible when we foreseeably cause indeterminate harms, as is demonstrated by Miller's example of a stray spark from a bonfire in one's garden burning down a neighbour's shed.[33] Moreover, in actual fact, the possibility of displacement as a result of climate change was foreseen as early as the first Intergovernmental Panel on Climate Change report in 1990.[34] And, as we noted above, the cooperative

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[31] In making the claim that inaction can be sufficient for the attribution of outcome responsibility, I am not making the further claim that there is no moral difference between doing and allowing. Only the weaker claim, that allowing can itself be wrongful, is necessary for my argument.
[32] I return to the issue of whether the foreseeability standard is met in the face of indeterminacy about the precise extent of states' obligations to tackle climate change in sec. 5 of this chapter.
[33] Miller, *National Responsibility and Global Justice*, 88.
[34] Intergovernmental Panel on Climate Change (IPCC), "Climate Change: The IPCC Impacts Assessment," ed. WJ. McG. Tegart, G.W. Sheldon and D.C. Griffiths (IPCC, 1990), chap. 5.

project of tackling climate change makes sense precisely because it is a project which seeks to avoid dangerous harms such as those which arise in cases of climate-induced displacement.

I take the argument from responsibility to have a powerful intuitive appeal. As Samuel Scheffler points out, the strictness of negative duties, such as duties to refrain from causing harm, is central to the idea of moral responsibility as it exists in "common-sense" moral thought.[35] States which fail to discharge their obligations to tackle climate change, through that failure, impose an extra burden of risk on the internal displacement and refugee regimes. By failing to tackle climate change, states increase the incidence of displacement-inducing effects of climate change, such as extreme weather-events, drought and desertification, and conflict-related resource scarcity. These impacts increase the risk of displacement amongst those vulnerable to climate change impacts. As such, through their failure to discharge their obligations to tackle climate change, states increase the risk of displacement and thus the total cost of protection against displacement under the refugee and internal displacement regimes.

As I have articulated it, the responsibility view depends upon a prior account of a fair international climate treaty. If we are to know precisely what costs states must bear, then we must know what their obligations to tackle climate change are. In the remainder of the chapter, I examine the idea of a fair climate treaty in greater detail, in order to shed light on how we can measure states' obligations to bear the costs of climate-induced displacement. In doing so, I hope to show that there is considerable scope for reasonable disagreement in the idea of a fair climate treaty, but to point out that we can construct an account of responsibility for the costs of climate-induced displacement even in the face of that disagreement.

3. The Idea of a Fair Climate Treaty

Specifying precisely the terms of a fair climate treaty is an enormous task, which would be unachievable in the space available to me here. My aim in this section is more limited: I seek to outline the parameters within which a climate treaty must remain if it is to be tolerably fair. In doing so, I follow the interpretive method that I have pursued throughout this thesis. I begin by reconstructing the practices of international climate change politics in order to excavate the normative principles that embedded within it. I set out a brief history of international climate negotiations and identify three key normative concepts which shape the requirements of a fair international climate treaty: the idea of 'dangerous climate change'; the idea of the 'right to sustainable development'; and the idea of 'common but differentiated responsibilities and respective capabilities' (CBDR-RC) amongst states. These concepts set parameters within which a climate treaty must remain in order to be tolerably fair, and I examine the normative demands they make.

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[35] Samuel Scheffler, *Boundaries and Allegiances: Problems of Justice and Responsibility in Liberal Thought* (Oxford University Press, 2001), 36.

My focus here will be on the international climate policy regime as it has developed under the United Nations Framework Convention on Climate Change (UNFCCC). As Darrel Moellendorf points out, the UNFCCC is a "rich source of norms and principles for guiding future deliberations and actions to mitigate and adapt to climate change."[36] Examining the structure of international climate policy under the UNFCCC enables us to extract the main normative commitments that characterise the international effort to tackle climate change. Of course, there are antecedents and alternatives to the UNFCCC in the international effort to tackle climate change,[37] but examining these in depth would lead us too far away from the central task of articulating the idea of a fair climate treaty.[38]

The UNFCCC was adopted in Rio de Janeiro in 1992, alongside the Rio Declaration on Environment and Development. It articulated some of the fundamental concerns of the international effort to tackle climate change. It defines its ultimate objective as being to achieve the "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system."[39] Importantly, it also articulates the idea that the parties should work towards this goal "on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities."[40] As we will see, the competing interpretations of what this requires have been controversial throughout the negotiations. The Convention also set out the idea of a precautionary approach to climate policy in the face of scientific uncertainties and the idea of a right to sustainable development.[41] The UNFCCC also inaugurated a series of climate negotiations by establishing regular diplomatic meetings under the Conference of the Parties (COP) system. Landmark international climate agreements have been formulated under the COP system, including the Kyoto Protocol (at COP-3 in 1997), the Copenhagen Accord (at COP-15 in 2009) and the Paris Agreement (at COP-21 in 2015).[42]

Under the Kyoto protocol, which was the first substantive attempt to agree to terms of cooperation for tackling climate change, countries were divided into 'Annex I' and 'non-Annex I' countries, based broadly on their having either developed or developing economies. Amongst other measures, including the establishment a fundraising mechanism for adaptation, Kyoto imposed legally binding emissions targets on Annex I countries. These targets differed for each country, but sought to reduce emissions to lower than 1990 levels between 2008 and 2012, initially by 5% (later reduced to 2% at the Bonn and Marrakesh

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[36] Moellendorf, *The Moral Challenge of Dangerous Climate Change*, 2.
[37] The constellation of institutions that regulate climate change is examined in Robert O. Keohane and David G. Victor, "The Regime Complex for Climate Change," *Perspectives on Politics* 9, no. 1 (2011): 7–23.
[38] For an overview of the international climate policy regime, see Dale Jamieson, *Reason in a Dark Time: Why the Struggle Against Climate Change Failed - and What it Means for Our Future* (Oxford University Press, 2014), 11–60.
[39] UNFCCC, *United Nations Framework Convention on Climate Change* (1992), article 2.
[40] UNFCCC, article 3.1.
[41] UNFCCC, article 3.3, 3.4.
[42] For overviews of the development of the international climate policy regime, see Joyeeta Gupta, "A History of International Climate Change Policy," *Wiley Interdisciplinary Reviews: Climate Change* 1, no. 5 (2010): 636–53; Joanna Depledge, "The Paris Agreement: A Significant Landmark on the Road to a Climatically Safe World," *Chinese Journal of Urban and Environmental Studies* 04, no. 01 (2016): 1650011.

COPs).[43] Joanna Depledge characterises the Kyoto Protocol as "strong but narrow,"[44] in that it contains strong commitments (legally binding emissions reduction targets) but those commitments have a narrow scope (there are only around 40 Annex I countries, which do not include large emerging emitters such as China, Mexico and Brazil). Despite its ambitions, the Kyoto Protocol faced important setbacks. First amongst these setbacks was the USA's non-ratification of and eventual withdrawal from the Protocol under the Bush Administration. Achieving meaningful progress in reducing emissions without the participation of one of the largest emitters – responsible at the beginning of formal negotiations in 1990 for 36% of emissions – was always unlikely.[45] But even without the participation of the USA, the targets set at Kyoto were woefully inadequate.[46] Kyoto was "a historic step"[47] in that it developed the international climate policy architecture, but it ultimately failed to achieve the goals of the international climate policy regime.

The next landmark in international climate policy was the Copenhagen Accord in 2009. The Copenhagen Accord was widely viewed as a diplomatic failure. An editorial in the Guardian characterised it as follows: "[o]utright failure to agree anything at all would have been very much worse, but that is about the best thing that can be said."[48] The Accord was 'noted,' rather than adopted, and merely invited countries to make voluntary emissions reductions. Copenhagen was characterised by a deepening of divisions over fault lines in the negotiations. Emerging economies such as China (whose own emissions had overtaken the USA) were under pressure to accept binding targets, but saw those targets as a threat to their development and sought to extract concessions from developed states (such as technology transfers and financial assistance for clean energy).[49] For its part, there was also a "clear failure on the part of the United States to demonstrate meaningful leadership."[50] The USA was "crippled by its lack of an effective domestic policy,"[51] as well as an organised climate denial movement, which meant that it offered only paltry commitments, which few believed were being made in good faith. The Accord was also seen as procedurally illegitimate; it was "thrashed out in a single day between five major powers and then presented as a *fait accompli* to the rest of the world."[52] Despite these failures, though, Copenhagen laid the groundwork for some significant aspects of future climate policy. Parties agreed for the first time to a

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[43] Stephen M. Gardiner, *A Perfect Moral Storm: The Ethical Tragedy of Climate Change* (Oxford University Press, 2011), 130.
[44] Depledge, "The Paris Agreement," 2.
[45] Jamieson, *Reason in a Dark Time*, 47.
[46] See Steven Gardiner's analysis of the Kyoto Protocol in Gardiner, *A Perfect Moral Storm*, 128–34.
[47] Gardiner, 80.
[48] Editorial, "Copenhagen Climate Conference: The Grim Meaning of 'Meaningful,'" *The Guardian*, December 19, 2009.
[49] Gupta, "A History of International Climate Change Policy," 648–49.
[50] Gupta, 649.
[51] Jamieson, *Reason in a Dark Time*, 58.
[52] Michael Grubb, "Copenhagen: Back to the Future?" *Climate Policy* 10, no. 2 (2010): 128.

definition of 'dangerous climate change' (an average warming of 2°C above the pre-industrial baseline) and to a 'bottom-up' system of pledge-and-review for national emissions reductions.[53]

These commitments were built upon in the Paris Agreement, adopted at COP-21 in 2015. Unlike the Copenhagen Accord, the Paris Agreement was hailed as a diplomatic success. This time, the Guardian editorial read that the talks demonstrated "just how much can be achieved by determined diplomacy, even while working within the unbending red lines of jealously sovereign states."[54] The Paris Agreement represented a move away from the 'strong but narrow' approach to a "wide but weak" approach – one which sought a broad base of participation, at the price of weaker commitments.[55] The Paris Agreement contains a complex mix of legally binding commitments and 'softer' mechanisms. Several of its provisions are notable. First, the level of collective ambition was raised from the Copenhagen Accord, with the parties agreeing to keep global temperatures "well below" 2°C and "pursuing efforts" to limit temperature increase to 1.5°C.[56] This push for a more ambitious target was largely the work of a coalition of countries vulnerable to the impacts of climate change, led by the Alliance of Small Island States.[57] Second, the distinction between Annex I and non-Annex I countries, which had been a stumbling block in negotiations since Kyoto, was abandoned. The text only mentions "developed" and "developing" countries, requiring developed countries to "take the lead" in economy-wide emissions reductions, but does not specify which states count as 'developed.'[58] Instead, each state is required to submit its own 'Nationally Determined Contributions' (NDCs) to reducing emissions, alongside public justifications of those NDCs. States are required to update their NDCs every 5 years, with the expectation that commitments will 'ratchet up' over time. This new mechanism has the advantage of securing broad participation amongst the parties (at the time of writing, 197 states are parties to the convention, 185 have ratified the agreement, and 183 have submitted NDCs[59]).

Concerns about the Paris Agreement have been raised. Even if all of the NDCs were met (which, given the international community's record of failure to reduce emissions, appears unlikely) then they would not succeed in limiting warming to 2°C.[60] More recently, the Trump Administration's declaration that it intends to withdraw the USA from the Agreement has signalled problems for the Agreement. Although

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[53] Daniel Bodansky, "The Copenhagen Climate Change Conference: A Postmortem," *American Journal of International Law* 104, no. 2 (2010): 230–40.
[54] Editorial, "The Guardian View on COP 21 Climate Talks: Saving the Planet in a Fracturing World," *The Guardian*, December 13, 2015.
[55] Depledge, "The Paris Agreement," 4.
[56] UNFCCC, *Adoption of the Paris Agreement* (2015), articles 2, article 1(a).
[57] Timothée Ourbak and Alexandre K. Magnan, "The Paris Agreement and Climate Change Negotiations: Small Islands, Big Players," *Regional Environmental Change* 18, no. 8 (2018): 2201–7.
[58] UNFCCC, *Adoption of the Paris Agreement* (2015), article 4.4.
[59] An up-to-date list of states that are party to and have ratified the Agreement is available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en. Parties' NDCs are available at https://www4.unfccc.int/sites/NDCStaging/Pages/All.aspx.
[60] Joeri Rogelj et al., "Paris Agreement Climate Proposals Need a Boost to Keep Warming Well below 2 °C," *Nature* 534, no. 7609 (2016): nature18307.

the USA's withdrawal may have little material effect on its emissions (because national policy appears to have a much less significant effect on emissions in the USA than market forces), US non-cooperation is a significant threat to climate finance mechanisms.[61] Ultimately, it is probably too soon to tell whether Paris was a success or a failure.

Generally, though, the international climate policy regime has not had a large amount of success in tackling climate change. Many prominent climate ethicists, writing before the adoption of the Paris Agreement, have expressed a profound pessimism over the state of the negotiations. Dale Jamieson, for example, assesses the situation as follows:

> After 20 years of climate diplomacy, the undeniable fact is that the three main factors that have reduced GHG [greenhouse gas] emissions are, in increasing importance: global recession, the collapse of communism, and China's one child policy. The Rio dream is over.[62]

Others have drawn similar conclusions. Catriona McKinnon, for example, has called the current generation's record on addressing climate change "dismal and shameful."[63]

One might think that this assessment of the state of the history of climate negotiations makes it untenable to claim that the goal of the climate policy regime is, in fact, to mitigate climate change. Steven Gardiner, for example, writes that "it is difficult to interpret the Kyoto Protocol or its successor the Copenhagen Accord as sincere global initiatives to protect the interests of future generations from a serious threat."[64] Rather, we might think that the *actual* goal of the climate policy regime is something else – perhaps to alleviate public concern about climate change enough to avoid a backlash, whilst allowing high-emitting industries to continue with 'business as usual.' On my view, this pessimistic interpretation of the climate policy regime overreaches the evidence available to us. Certainly, there are plenty of actors operating in bad faith, but this interpretation extrapolates too far and assumes that these cynical motives are a basic structuring feature of the practice. It is much more plausible to suggest that most actors in climate policy engage in good faith, but that persistent disagreements and a structurally difficult problem – one which has been described as "super-wicked" – explain the failure of the regime to achieve its ends so far.[65]

Even if the more pessimistic interpretation of the climate policy regime is accurate, however, this does not mean that the project of articulating the terms of a fair international climate treaty is fruitless. After all, we are looking for a *normatively justifiable* reconstruction of the practice, not merely an interpretation of

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[61] Johannes Urpelainen and Thijs Van de Graaf, "United States Non-Cooperation and the Paris Agreement," *Climate Policy* 18, no. 7 (2018): 839–51.
[62] Jamieson, *Reason in a Dark Time*, 59.
[63] Catriona McKinnon, *Climate Change and Future Justice: Precaution, Compensation and Triage* (Routledge, 2012), 10.
[64] Gardiner, *A Perfect Moral Storm*, 140.
[65] Kelly Levin et al., "Overcoming the Tragedy of Super Wicked Problems: Constraining Our Future Selves to Ameliorate Global Climate Change," *Policy Sciences* 45, no. 2 (2012): 123–52.

it. Plainly, the pessimistic interpretation of the climate policy regime cannot stand as a normatively justifiable reconstruction of it. Rather, we should turn to the aspects of the practice which *do* seek to ameliorate global climate change in our reconstruction of it. It is clearly true that many of the disputes that have emerged in international climate change policy can be attributed to the propensity of states to pursue their own short-term self-interest and failures to take the moral imperatives of climate change seriously,[66] but some can also be traced to the divisions over competing interpretations of the concepts embedded in the international climate policy regime. A clear understanding of these concepts is essential if we are to understand what a fair climate treaty would look like. To that end, I turn now towards examining three central concepts which have both been stumbling blocks in climate negotiations and are essential for identifying the parameters of a fair climate treaty. These three concepts are not exhaustive (for example, they do not include the idea of a precautionary approach to climate policy, or a discussion of the extent to which it is morally permissible or economically rational to defer the costs of tackling climate change into the future), but for our purposes they are the most important, because they are central for identifying how obligations to tackle climate change should be distributed between states.

3.1 'Dangerous Climate Change'

The first normative concept that needs to be examined is the idea of 'dangerous climate change.' The entire project of international climate policy centres around the idea of preventing dangerous anthropogenic interference in the climate system, but the precise content of 'dangerous' is often left unspecified. As noted above, the Copenhagen Accord used the 2°C target to specify dangerous climate change, and this has often been identified as the threshold for dangerousness. It is important to note, though, that there is no natural fact about 2°C that makes it appropriate as a threshold for dangerousness. In fact, there is no need to use a temperature threshold at all. Measures of the concentration of CO_2 in the atmosphere have been proposed (stabilisation at less than 350 parts per million has been one popular target[67]) alongside cumulative anthropogenic emissions of CO_2 (1 trillion tonnes of carbon (3.67 trillion tonnes of CO_2) has also been a popular target[68]). Ultimately, these measures are proxies for estimated amounts of climate-related harm. In the agreement, 'dangerous climate change' is climate change that should be avoided, and so specifying what counts as dangerous climate change is a matter of specifying what amount of (risk of) climate-related harm we are willing to permit.

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[66] In particular, Gardiner argues that the structure of the problem of global climate change lends itself to self-serving forms of reasoning including 'intergenerational buck-passing' and 'moral corruption.' See, Gardiner, *A Perfect Moral Storm*, 148–60, 301–38.

[67] For the scientific basis of the 350ppm target, see J. Hansen et al., "Target Atmospheric CO2: Where Should Humanity Aim?," *The Open Atmospheric Science Journal* 2, no. 1 (2008): 217–31. For the advocacy movement organised around this target, see https://350.org/.

[68] For the scientific basis of the trillionth tonne target, see Myles Allen et al., "Warming Caused by Cumulative Carbon Emissions towards the Trillionth Tonne," *Nature* 458, no. 7242 (2009): 1163–66. For an up-to-date view of how close we are to overshooting this target, see http://www.trillionthtonne.org/.

The simplest answer to this question would be 'none.' Ideally, we would not allow any harm to come about as a result of the impacts of climate change. Unfortunately, this is not possible. For one thing, we are already experiencing climate-related harms at current levels of warming.[69] Moreover, the way that the climate system works means that GHGs emitted now will remain in the climate system for centuries and will continue to precipitate changes in the climate system – meaning that there is already a certain amount of climate-related harm that is 'locked in' by our previous emissions.[70]

More importantly, however, when we make a judgement about what amount of climate change counts as dangerous for the purposes of an international climate treaty, we need to consider the costs of avoiding that amount of climate change. We need to consider not *only* the reasons that we have to avoid a particular level of warming, but also the reasons that we have to avoid the costs that reducing warming to a particular level may impose. As Moellendorf puts it, we should identify what counts as dangerous climate change by identifying when a particular level of warming would be too risky "in light of the available alternatives."[71] As Moellendorf points out, this conception of dangerousness preserves the function of the assessment of danger in the Convention by specifying dangerous climate change as climate change that ought, all-things-considered, to be avoided.[72]

This question, which Simon Caney calls the question of the "just target" of climate policy, is not as straightforward as it initially appears.[73] The lower the target, the fewer emissions will be available in the overall 'carbon budget.' Given that emissions are instrumental for achieving other morally important goals, such as pursuing poverty-alleviating development, whether or not we should prioritise a lower level of warming over achieving these other goals is an open question. Particular climate policies, such as those which involve substantial investment in clean energy technologies and transfers to developing states, may attenuate the tension between climate stabilisation at a lower temperature target and pursuing other goals which require energy. Similarly, greater investment in climate change adaptation may make any particular level of warming less harmful. So, a judgement of what counts as dangerous climate change for the purposes of a climate treaty will take a stance both on the relative importance of tackling climate change as compared to other objectives, and on the kinds of climate change policies that ought to be pursued. For example, a higher target for warming might be considered less dangerous under the assumption that there will be significant investment in climate change adaptation, or because of a high priority accorded to pursuing poverty-alleviating development. Or, a lower target for warming might be considered less dangerous because of an assumption that a lower target is achievable without sacrificing development

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[69] IPCC, *Climate Change 2014: Synthesis Report*, ed. R. K. Pachauri and Leo Mayer (IPCC, 2015), 6.
[70] IPCC, 10.
[71] Moellendorf, *The Moral Challenge of Dangerous Climate Change*, 11.
[72] Moellendorf, 11.
[73] Simon Caney, "Distributive Justice and Climate Change," in *Oxford Handbook of Distributive Justice*, ed. Serena Olsaretti (Oxford University Press, 2018).

(through, for example, clean technology transfer), or because of a high priority accorded to avoiding climate-related harms.

One might think that avoiding climate-related harms is the task of an international climate treaty in a way that alleviating global poverty is not. Eric Posner and David Weisbach, for example, argue that a climate treaty should not be concerned with the "redistributive" project of poverty eradication; they claim that "there is no obligation to fulfil duties to the poor through a climate change treaty."[74] Even if Posner and Weisbach are right that the *immediate* task of a climate treaty is not poverty eradication, however, our conception of dangerous climate change will have an important bearing on the prospects for morally valuable projects such as poverty eradication.[75] As such, when we interpret the concept of dangerous climate change, we make a judgement about the relative importance of these projects.

These considerations have led theorists to defend a number of different conceptions of dangerous climate change. One approach seeks to identify dangerous climate change by setting out the 'optimal' climate policy from the perspective of cost-benefit analysis, seeking to determine which projected policies have the greatest overall expected utility.[76] This approach has the advantage of operating comparatively: it is able to explain when, in terms of overall cost, one possible target of climate policy is more dangerous than another. However, it suffers from the moral blind spot that is characteristic of utilitarian approaches to public policy: it is unable to account for what Rawls called the "distinction between persons."[77] The cost-benefit approach aggregates expected utility across persons but is unable to account for the way in which that utility is *distributed* across persons. So long as the benefits outweigh the costs, it would recommend policies which give significant benefits to the advantaged at the expense of the disadvantaged – which manifestly cannot be justified from the perspective of each person considered as a free and equal moral agent. As such, a pure cost-benefit approach is inadequate.

Another approach takes seriously the idea of justifiability from the perspective of each person, by focusing on the 'moral thresholds' beneath which individuals should not fall. Caney, for example, argues that when climate change threatens the human rights to life, health, and subsistence, we can readily say that it should be avoided.[78] This approach has the advantage of being able to set clear standards concerning when climate-related harms are dangerous. We all have reason to avoid falling below these thresholds, one might argue, so any approach which puts an individual below the threshold is

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[74] Eric A. Posner and David Weisbach, *Climate Change Justice* (Princeton University Press, 2010), 175.
[75] For a response to Posner and Weisbach which clearly makes the point that climate change and poverty eradication are "inextricably entangled," see Henry Shue, "Climate Hope: Implementing the Exit Strategy," in *Climate Justice: Vulnerability and Protection* (Oxford University Press, 2014).
[76] See, for example, William D. Nordhaus, *A Question of Balance: Weighing the Options on Global Warming Policies* (Yale University Press, 2014).
[77] John Rawls, *A Theory of Justice*, 2nd ed. (Belknap Press, [1971] 1999), 24.
[78] Simon Caney, "Climate Change, Human Rights and Moral Thresholds," in *Human Rights and Climate Change*, ed. Stephen Humphreys (Cambridge University Press, 2009).

unjustifiable, and in that sense dangerous. One problem with this approach, however, is that it may not be possible. As Moellendorf points out, "there might be no policy options that do not result in human rights violations,"[79] especially given that energy poverty under certain mitigation scenarios may itself result in human rights violations of the same kind. It is also insufficiently determinate in these cases. In cases where tragic choices about which human rights violations to permit must be made, we need an approach which is provide guidance on what the preferable option is, rather than merely telling us that we have violated some inviolable standards.

Moellendorf himself proposes what he calls the "antipoverty principle" for determining which policies are dangerous:

> Policies and institutions should not impose any costs of climate change or climate change policy (such as mitigation and adaptation) on the global poor, of the present or future generations, when those costs make the prospects for poverty eradication worse than they would be absent them, if there are alternative policies that would prevent the poor from assuming those costs.[80]

This principle ranks as dangerous those policies which involve imposing avoidable costs on the global poor, whether those costs are the costs of climate change or of action on climate change. Where there is no policy option which avoids imposing costs on the global poor, the principle picks out as dangerous those policies which impose the fewest costs on the global poor. Moellendorf argues that "everyone has reason to avoid involuntary poverty" and that, as such, this principle is "justifiable to each person affected."[81] We might disagree with substantive aspects of Moellendorf's principle for identifying dangerous climate change. One might object, for example, that Moellendorf puts too much weight on poverty eradication at the expense of avoiding climate-related harms.[82] The immediate point is not the plausibility of Moellendorf's principle, but is rather to recognise that it is a principle of the right kind. It has two features which make it suitable as a candidate principle: first, it is comparative, in that it ranks policies as dangerous according to the extent to which they let the costs of climate change, or climate change policy, fall on the global poor. Second, it takes seriously the idea that the target of climate policy should be justifiable from the perspective of each person affected. In examining other candidate interpretations of the idea of dangerous climate change, these are the features that we should be looking for.

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[79] Moellendorf, *The Moral Challenge of Dangerous Climate Change*, 25.
[80] Moellendorf, 22.
[81] Moellendorf, 21.
[82] See Stephen M. Gardiner, "Climate Ethics in a Dark and Dangerous Time," *Ethics* 127, no. 2 (2016): 430–65.

3.2 The Right to Sustainable Development

A second normative concept which is central to international climate negotiations is that of a 'right to sustainable development.' The idea of the right to sustainable development comes initially from the Brundtland Commission, which, in the report *Our Common Future*, articulated the idea of sustainable development as being "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."[83] As the report itself notes, there are two central ideas which give content to the concept of the right to sustainable development, the first being an idea of what the 'needs' of present and future generations are, and the second being the idea of what activities compromise the needs of future people – that is, an understanding of the "limitations imposed by the state of technology and social organization" on meeting future peoples' needs.[84] Just how expansively we should understand human 'needs' and 'limitations' is a matter of central importance in interpreting the idea of the right to sustainable development. The central idea in the report is that human development and the environment are inextricably linked.

It is little surprise, then, that the idea of the right to sustainable development gained traction in the UNFCCC negotiations. In the text of the UNFCCC, the idea of this right articulated more forcefully and is given more determinate content. The UNFCCC says that the parties not only have a right to, but "should" promote sustainable development,[85] and the preamble asserts "the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty."[86] This understanding directly links economic growth with development itself, which had been disambiguated in the Brundtland report. Moreover, the UNFCCC draws a tighter connection between development and energy use than the Brundtland Report does, noting that "in order for developing countries to progress towards that goal [of sustainable development], their energy consumption will need to grow."[87] There are, then, competing understandings of what the right to sustainable development means for international policy. This is also reflected in the philosophical interpretations of the right to sustainable development.

The justification for the right to sustainable development as a constraint on climate policy is that the project of human development is a morally valuable one, which we all have reason to endorse. The widespread poverty that exists in the world is clearly morally objectionable, and human development has as its goal improving the material welfare of those in poverty. Pursuing this goal is generally taken a legitimate aim of states' macro-economic policies. As Mervyn Frost points out, modernisation is an

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[83] Gru Brundtland, *Report of the World Commission on Environment and Development: Our Common Future* (1987), chap. 2, paragraph 1.
[84] Brundtland, chap. 2, paragraph 1.
[85] UNFCCC, *United Nations Framework Convention on Climate Change*, article 3.4.
[86] UNFCCC, preamble.
[87] UNFCCC, preamble.

"approved goal" for states according to the settled norms of the international order.[88] The idea of sustainability, however, sets constraints on the ways in which development can be achieved. Development must not put others, including future people, in the morally objectionable circumstances that human development seeks to avoid in the first instance, for example by creating significant climate-related costs.

In the context of climate change policy, the right to sustainable development articulates the idea that some share of the carbon budget should be allocated to developing states in order that the project of human development is not threatened by climate policy. As Moellendorf puts it, "the task of respecting the right to sustainable development involves ensuring that developing and underdeveloped states are allowed emissions allotments sufficient to achieve development within a plan of global emissions reductions."[89] The precise amount of the carbon budget that the right to sustainable development accords to developing country parties, however, is not entirely clear.

In order to determine the share of the budget that the right to sustainable development protects for human development, we need to know how capaciously we should understand the needs that the right protects and the limitations on clean development. There is some philosophical controversy about the best way to understand both of these aspects of the right to sustainable development. Moellendorf understands both broadly. He argues against a narrow focus on basic needs and in favour of understanding development along the lines of the Human Development Index (HDI).[90] He also takes as his starting point prices for fossil fuels and renewable energy at "roughly current levels," instead of positing technological breakthroughs in energy technology, and uses the emissions levels of countries with 'high' rankings on the HDI as an indicator of the emissions levels that we can expect of states that achieve human development goals.[91] A more restricted view is expressed in Henry Shue's claim that emissions from less developed countries ought to rise "insofar as this rise is necessary to provide a minimally decent standard of living for their now impoverished people" and his claim that "the economic development of the poor nations must be as 'clean' as possible – maximally efficient in the specific sense of creating no unnecessary CO_2 emissions."[92] One attempt to quantify what the right to sustainable development requires comes from the 'Greenhouse Development Rights' (GDR) framework, which sets a "development threshold" slightly (1.25 times) higher than the poverty threshold, at "the level at which a 'middle class' (or 'consuming class') begins to emerge in the developing world."[93]

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[88] Mervyn Frost, *Ethics in International Relations: A Constitutive Theory* (Cambridge University Press, 1996), 110.
[89] Darrel Moellendorf, "A Right to Sustainable Development," *The Monist* 94, no. 3 (2011): 437.
[90] Moellendorf, *The Moral Challenge of Dangerous Climate Change*, 128–31, 135.
[91] Moellendorf, 133–34.
[92] Shue, "Subsistence and Luxury Emissions," 50, 51.
[93] Paul Baer et al., "Greenhouse Development Rights: A Proposal for a Fair Global Climate Treaty," *Ethics, Place & Environment* 12, no. 3 (2009): 270.

The substantive interpretation of the right to sustainable development that we select will have an important bearing on how obligations to tackle climate change are distributed. As in the case of the concept of dangerous climate change, the right to sustainable development sets important parameters on how climate change can be fairly addressed by highlighting the tension between poverty alleviation and climate change mitigation. A climate treaty which rides roughshod over the right to sustainable development will be one which is unfaithful to the normative principles embedded within the UNFCCC, and which ignores the morally important goal of pursuing poverty-alleviating development. To be within the bounds of fairness, a climate treaty must employ some defensible conception of the right to sustainable development.

3.3 Common but Differentiated Responsibilities and Respective Capabilities

The idea that states' duties to tackle climate change should reflect their 'common but differentiated responsibilities and respective capabilities' (CBDR-RC) is a central feature of both international climate politics and philosophical accounts of justice in international climate policy. CBDR-RC is a structuring norm for a fair international climate treaty. It can be understood broadly to mean that "although all countries have common responsibilities, these responsibilities are differentiated" on the basis of "their contribution to causing the problem" or "their capabilities to address the problem," or both.[94] This broad understanding of the principle, however, is not very illuminating. The history of climate change negotiations testifies to the fact that this principle can be interpreted in multiple ways. The division between Annex I and non-Annex I countries under the Kyoto Protocol, for example, can be seen as one way of instantiating the principle. Under the Paris Agreement, parties are accorded more latitude in interpreting the principle, but each party is required to public justify its NDCs, which should be based on "its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities."[95]

As Yoshiro Matsui points out, CBDR-RC has a "dual grounding" in both states' contributions to climate change and their ability to address the problem.[96] Two normative concepts – responsibility and ability – underlie it. Much of the debate within the climate justice literature has centred on the relative importance of these concepts, the tensions between them, and the problems that arise in their application the case of climate change. It is useful to outline some of the contours of these debates.

Responsibility, in the context of debates about burden-sharing in international climate policy, generally refers to the idea that those who have brought about climate change ought to bear the costs of addressing

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[94] Gupta, "A History of International Climate Change Policy," 640. Gupta does not use the either/or/both language I use here, but the language I use is neutral with respect to competing interpretations of CBDR-RC.
[95] UNFCCC (Climate Change Secretariat), *Adoption of the Paris Agreement*, article 4.3.
[96] Yoshiro Matsui, "Some Aspects of the Principle of 'Common But Differentiated Responsibilities,'" *International Environmental Agreements* 2, no. 2 (2002): 151–70.

it, along the lines of the responsibility view set out above. The concept of responsibility has provided the normative basis for what is often referred to as the 'Polluter Pays Principle' (PPP): "those who have caused a problem (such as pollution) should foot the bill."[97] The PPP can be further specified. We might understand it as follows: "industrialized countries should bear the costs imposed by their past emissions."[98] This formulation identifies the *costs imposed* by emissions as the problem that the polluter should address. Or, we might understand the problem as being the *over-use of a common resource*: the earth's capacity to absorb GHGs. Here, the problem is that some have used more than their fair share, regardless of the effects of their emissions. This view depends on an account of what each party's fair share is: some have argued for a principle of 'emissions egalitarianism,'[99] but this view has also faced important criticisms.[100] These two interpretations of the PPP, as Gardiner points out, need not conflict with each other.[101] Some have argued that responsibility requires historically high-emitting states to bear the burdens of tackling climate change in proportion to their contributions, both in theoretical approaches to burden-sharing[102] and in the UNFCCC negotiations.[103]

Problems have been raised for accounts built on responsibility. For one thing, an account built purely on responsibility will be incomplete. Insofar as we think that some parties should be exempted from bearing the costs of tackling climate change because of their right to sustainable development, then those parties cannot be required to bear costs on the basis of their contributions.[104] Other problems that have been raised for the applicability of the PPP to historic emissions. For example, some have objected that many of those who contributed to climate change were, at the time, excusably ignorant of the effects of their actions.[105] Since responsibility is often thought of as only justifying differential burdens as a result of voluntary choices, and since it is not clear that the choices made by ignorant emitters were voluntary, it may seem unfair to burden them with the costs of tackling climate change.

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[97] Simon Caney, "Cosmopolitan Justice, Responsibility, and Global Climate Change," *Leiden Journal of International Law* 18, no. 04 (2005): 752.
[98] Stephen M. Gardiner, "Ethics and Global Climate Change," *Ethics* 114, no. 3 (2004): 579.
[99] For example, Tom Athanasiou and Paul Baer, *Dead Heat: Global Justice and Global Warming* (Seven Stories Press, 2002); Steve Vanderheiden, *Atmospheric Justice: A Political Theory of Climate Change* (Oxford University Press, 2009), 221–30; Peter Singer, "One Atmosphere," in *Climate Ethics: Essential Readings*, ed. Stephen M. Gardiner et al. (Oxford University Press, 2010); Christian Baatz and Konrad Ott, "In Defence of Emissions Egalitarianism?," in *Climate Justice and Historical Emissions*, ed. Lukas H. Meyer and Pranay Sanklecha (Cambridge University Press, 2017).
[100] See Simon Caney, "Just Emissions," *Philosophy & Public Affairs* 40, no. 4 (2012): 255–300; Megan Blomfield, "Global Common Resources and the Just Distribution of Emission Shares," *Journal of Political Philosophy* 21, no. 3 (2013): 283–304.
[101] Gardiner, "Ethics and Global Climate Change," 580.
[102] For example, Eric Neumayer, "In Defence of Historical Accountability for Greenhouse Gas Emissions," *Ecological Economics* 33, no. 2 (2000): 185–92; Shue, "Global Environment and International Inequality."
[103] See Emilio L. La Rovere, Laura Valente de Macedo, and Kevin A. Baumert, "The Brazilian Proposal on Relative Responsibility for Global Warming," in *Building on the Kyoto Protocol: Options for Protecting the Climate*, ed. Kevin A. Baumert et al. (World Resources Institute, 2002).
[104] Caney, "Cosmopolitan Justice, Responsibility, and Global Climate Change," 763.
[105] For discussion of this objection, see Derek R. Bell, "Global Climate Justice, Historic Emissions, and Excusable Ignorance," *The Monist* 94, no. 3 (2011): 391–411.

Advocates of responsibility-centred accounts have responded to these objections and moderated their positions. For example, Shue has suggested that burdens can be justifiably borne by the excusably ignorant, because requiring them to bear burdens is a matter of redressing the effects of their actions, rather than a matter of blame or punishment.[106] Others have suggested an alternative principle: the 'Beneficiary Pays Principle' (BPP). The BPP ascribes costs to parties "according to the amount of benefit that each state has derived from past and present activities that contribute to climate change."[107] The BPP itself has been subject to criticism, and it is worth noting that it does not directly appeal to parties' contributions to climate change.[108] It does, however, preserve the intuition that the history of the goods that one has accumulated matters morally when it comes to averting or redressing their negative effects in the present.

The second normative concept that underlies CBDR-RC is ability. The claim here is that a party's ability to absorb the costs of tackling climate change is morally relevant when it comes to apportioning duties to tackle it. Unlike responsibility (in the sense used above), ability refers only to 'forward-looking' considerations in order to assess who should bear the costs of tackling climate change. The 'Ability to Pay Principle' (APP) states:

> Among a number of parties, all of whom are bound to contribute to some common endeavour, the parties who have the most resources normally should contribute the most to the endeavour.[109]

Support for the APP is normally drawn from its powerful intuitive appeal. As Shue points out, its appeal is most easily seen by comparison to a flat rate of contribution.[110] If each party pays the same against background conditions of inequality, then the most disadvantaged parties are disproportionately burdened. When you only have £100, losing £20 is very significant; when you have £1000, losing £20 is a lot less significant. Contribution according to one's ability to bear the costs is an appealing way of avoiding disproportionate burdens and is, as Moellendorf points out, the rationale behind progressive taxation schemes for public goods and services.[111] Moellendorf also seeks support for the APP by appealing to the Rawlsian idea that tackling climate change is a cooperative arrangement which is to the

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[106] Shue, "Global Environment and International Inequality," 535–36.
[107] Edward Page, "Give It up for Climate Change: A Defence of the Beneficiary Pays Principle," *International Theory* 4, no. No.2 (2012): 303. See also, Axel Gosseries, "Historical Emissions and Free-Riding," *Ethical Perspectives* 11, no. 1 (2004): 36–60.
[108] For example, Simon Caney, "Environmental Degradation, Reparations, and the Moral Significance of History," *Journal of Social Philosophy* 37, no. 3 (2006): 464–82,; Lukas H. Meyer and Dominic Roser, "Climate Justice and Historical Emissions," *Critical Review of International Social and Political Philosophy* 13, no. 1 (2010): 229–53.
[109] Shue, "Global Environment and International Inequality," 537.
[110] Shue, 537–38.
[111] Moellendorf, *The Moral Challenge of Dangerous Climate Change*, 176.

mutual advantage of the parties, and so the distribution of costs should as such be acceptable from the point of view of the least well-off.[112]

The APP has also been subject to a number of criticisms, although most criticisms point to its applicability to the case of climate change, rather than to its soundness as a moral principle. Caney, for example, argues that the APP cannot by itself provide a fair account of the distribution of obligations to tackle climate change, because it in ignoring responsibility, the APP is "in conflict with a deep conviction that who should bear the burdens of climate change cannot be wholly divorced from an understanding of the historical origin of the problem."[113] It would seem unfair, for example, to make the "responsible rich" (states which have gained their wealth without generating large amounts of GHGs) bear the same costs as rich states who have gained their wealth through heavily polluting processes of industrialisation.[114]

Defenders of the APP have themselves responded to this criticism, and the debate over the relative importance of responsibility and ability in interpreting CBDR-RC continues.[115] Most, however, accept that some balance of both considerations of responsibility and ability is appropriate. Caney, for example, endorses a "hybrid" account,[116] and the GDR proposal set out by Paul Baer and his co-authors develops a joint "responsibility and capacity indicator" in order to determine states' obligations.[117] Moellendorf is the exception here: he proposes an account which is based purely on the APP, and interprets the concept of responsibility in terms of a forward-looking 'social' conception of responsibility, drawing on work by Iris Marion Young, in contrast to the conception of responsibility canvassed above.[118]

Again, adjudicating between these competing interpretations of CBDR-RC is not my objective here. What is important here is to note that the arguments canvassed above appeal to the right kind of reasons in setting out a substantive interpretation of what CBDR-RC requires. Any defensible interpretation of CBDR-RC will need to specify a distribution of obligations for tackling climate change which makes sense of the normative role of concepts such as responsibility and ability.

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[112] Moellendorf, 174–75.
[113] Simon Caney, "Climate Change and the Duties of the Advantaged," *Critical Review of International Social and Political Philosophy* 13, no. 1 (2010): 214.
[114] Edward Page, "Distributing the Burdens of Climate Change," *Environmental Politics* 17, no. 4 (2008): 561.
[115] For example, Moellendorf, *The Moral Challenge of Dangerous Climate Change*, 177–80.
[116] Caney, "Climate Change and the Duties of the Advantaged."
[117] Baer et al., "Greenhouse Development Rights."
[118] Moellendorf, *The Moral Challenge of Dangerous Climate Change*, 154–57, 173–77. For the 'social' model of responsibility, see Iris Marion Young, "Responsibility and Global Justice: A Social Connection Model," *Social Philosophy and Policy* 23, no. 1 (2006): 102–30.

4. (Dis)Agreement in Climate Policy

These normative concepts embedded in the UNFCCC framework set parameters on the fair terms of cooperation in tackling climate change. Given the competing interpretations of these concepts that are available to us, we should expect there to be disagreement over the precise terms of a fair climate treaty. As we have seen, some aspects of the tortuous history of climate negotiations can also be understood as expressing disagreements over the best way to interpret these concepts. We might, then, be concerned that we do not have a sufficiently clear idea of what is required of states in order to make determinate judgements about the extent of their failure to fulfil their obligations. This would mean that we would not have a clear idea of the costs that each state is morally liable to bear when it comes to climate-induced displacement. This is a serious concern and, as we will see, it is in one sense right. It is not, however, insurmountable. This section begins responding to that concern by demonstrating that even in the face of disagreement, we can identify clear standards at the level of mid-level principle which constitute a 'space of agreement.' Beyond this space of agreement, there will be reasonable disagreement. In the next section, I argue that an institution with legitimate authority can adjudicate between competing conceptions of fairness within this space of disagreement, and that in the absence of an authoritative adjudication, we should hold states liable for failing to fulfil the maximal amount of climate-related duties that could be required of them within the space of agreement.

To see how we can yield a space of agreement over fair terms of cooperation on the basis of the normative concepts in the UNFCCC, we can begin by noting that the normative considerations that we identified above converge significantly in their implications. This is most straightforwardly seen in the case of CBDR-RC. Shue points out that the competing moral principles that can stand as interpretations of CBDR-RC (the PPP, the BPP and the APP) "yield initial duties that are unconditional and overdetermined even if later peripheral theoretical divergence may leave the ultimate limit on the extent of the duties contested."[119] All of these principles, despite their different justifications, identify developed states as those which are obliged to bear the lion's share of the burdens of tackling climate change – in the case of the PPP, because they have largely caused the problem; in the case of the APP because they are most able to bear the burdens of tackling the problem; and in the case of the BPP, because they primarily benefit from the emissions that have caused the problem. These principles also identify the same group of agents as the bearing the fewest obligations to tackle climate change: the least developed states. By and large, the least developed states contributed least to the problem, are least able to bear the costs of addressing the problem, and have benefitted least from the emissions that caused the problem.[120]

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[119] Henry Shue, "Historical Responsibility, Harm Prohibition, and Preservation Requirement: Core Practical Convergence on Climate Change," *Moral Philosophy and Politics* 2, no. 1 (2015): 8.

[120] Occasionally, the argument is made that *all* states have benefitted from processes of industrialisation, and so are liable to bear the costs of addressing it. Whilst there may have been some universal and non-excludable goods that have been produced in the processes of industrialisation, I take it as uncontroversial that the least developed states have benefitted *least* from them. Moreover, as Shue points out, "except for a relative trickle of aid, all transfers have

As Shue points out, the convergence of these principles in their implications derives from the fact that since the process of industrialisation began, "those who contributed to the problem of excessive emissions thereby both benefitted more than others and became better able to pay than most others."[121] This is not accidental. It is the result of the fact that the international order has treated emissions in a way which "looks like "lemon socialism" on a global scale"[122] – that is, it has allowed states to privatise the benefits of emissions and to socialise their costs. As Shue puts it:

> One portion of humanity – the "Developed States" – has gathered in the vast majority the benefits from the invention of the steam engine and the Industrial Revolution in general while allocating the costs, including rights-violating harms, to be spread universally.[123]

It is because of the history of the accumulation of wealth in industrialised societies that the APP, the BPP and the PPP converge on identifying a core set of emitters as primarily responsible for bearing the costs of tackling climate change.

The concepts of dangerous climate change and the right to sustainable development also converge on identifying a set of parties as being least obligated to bear the costs of tackling climate change. The right to sustainable development, however capaciously or restrictively it is understood, will identify the least developed states as being required to bear the fewest burdens in the global effort to tackle climate change. The concept of dangerous climate change requires us to avoid imposing climate change abatement burdens on the least developed states, because imposing burdens on the least developed states would mean be forgoing poverty alleviating development within those states. At the same time, the concept of dangerous climate change requires us to avoid imposing the costs of climate-related harm on the most vulnerable to climate change: if any amount of climate-related harm is to be avoided, then it is surely that which disproportionately affects the worst-off.

From these two concepts, we get the idea that climate policy should avoid placing burdens on the least developed states and on the states most vulnerable to the impacts of climate change. We also know, however, that the most vulnerable often *are* the least developed. Partly, this is a result of accidents of geography – less developed states are more likely to be in vulnerable climatic zones – but it is also largely a result of the relationship between development and vulnerability. The IPCC states with "very high confidence"[124] that "[d]ifferences in vulnerability and exposure arise from non-climatic factors and from

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been charged to the recipients, who have in fact been left with an enormous burden of debt, much of it incurred precisely in the effort to purchase the good things produced by industrialisation." Shue, "Global Environment and International Inequality," 535.

[121] Shue, "Historical Responsibility, Harm Prohibition, and Preservation Requirement," 16.

[122] Shue, 20.

[123] Shue, 17.

[124] In the IPCC terminology, 'very high confidence' indicates that there is robust evidence and high agreement amongst scientists.

multidimensional inequalities often produced by uneven development processes."[125] Steven Gardiner calls this the problem of "skewed vulnerabilities":

> [T]he countries most vulnerable to climate change are those who have emitted least. These are those poor nations which have not yet industrialized and have very weak infrastructure for dealing with shocks. These are disproportionately located in the tropical and subtropical climate zones where the greatest climate impacts are likely, at least in the short- to medium-term.[126]

This is the reverse of the relationship between emissions and development identified above: where developed states have insulated themselves against the impacts of climate change (in a large part) through emissions-intensive development, the least-developed states have become vulnerable to the impacts of climate change (in a large part) because they have not engaged in emissions-intensive development.

Bringing these considerations together, we can identify a core set of obligations that a fair climate treaty requires, even in the face of disagreement about the precise terms of such a policy. Competing interpretations of the fair terms of a climate treaty converge on these mid-level principles, which constitute a 'space of agreement':

> (i) The most developed states should bear the greatest share of the burdens of climate change policy.
>
> (ii) The least-developed states should bear few of the burdens of climate change or climate policy, if any.

Regardless of the substantive interpretations of the concepts of dangerous climate change, the right to sustainable development, and CBDR-RC that we select, we can identify a space of agreement. Given that these concepts constitute parameters of fairness in an international climate treaty, we can say that any climate agreement which violates the principles (i) and (ii) cannot be described as fair.

This space of agreement can be understood as what Cass Sunstein has called an "incompletely theorized agreement."[127] As Sunstein describes them, incompletely theorized agreements "help to produce judgements on relative particulars amidst conflict on relative abstractions."[128] An incompletely theorized

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[125] IPCC, "Summary for Policymakers," in *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, ed. C.B. Field et al. (Cambridge University Press, 2014), 6.
[126] Stephen M. Gardiner, *A Perfect Moral Storm*, 119.
[127] Cass R. Sunstein, "Incompletely Theorized Agreements," *Harvard Law Review* 108, no.7 (1995): 1733-1772. I use the notion of an 'incompletely theorized agreement' to identify this space of agreement, rather than the Rawlsian idea of an 'overlapping consensus,' because the relevant background disagreements in this case concern principles of justice, not comprehensive religious, philosophical and moral doctrines – that is, background disagreements here are about the right, not the good. See, John Rawls, *Political Liberalism* (Columbia University Press, [1993] 2005), 144–50.
[128] Sunstein, "Incompletely Theorized Agreements," 1771.

agreement arises when agreement is reached on some matter – a judgment in a particular case or a mid-level principle – without agreement being reached (or sought, in some cases) on the background theories that account for that judgement or principle. They allow for judgements on particulars to be made even in the face of disagreements. Sunstein argues that incompletely theorized agreements have a number of virtues, including furthering social stability, fostering mutual respect and avoiding "unnecessary antagonism."[129] Their primary use, however, is in circumstances where parties "must make decisions about concrete controversies in the face of sharp or even intractable disagreements on first principles."[130] Where there is an important reason to come to an agreement, incompletely theorized agreements can help parties to move past conflict over fundamental principles.

Climate negotiations are a case where an incompletely theorized agreement is useful in this way. In this case, there is an important moral goal that needs to be achieved – tackling climate change – and persistent disagreement over the fair terms of cooperation. Some mid-level principles can be agreed upon even in the face of this disagreement because background theories converge on them. This also provides a plausible explanation for the ambiguity of the concepts that we find embedded in the UNFCCC. Facilitating action on climate change is the primary goal of the regime, and ambiguous concepts such as CBDR-RC make initial action on climate change possible in the face of disagreement. This was observed in the negotiating process of the UNFCCC:

> Negotiators had already agreed that "developed countries should take the lead" and that this concept should follow the sentence setting out the CBDR/RC principle, but they did not agree on whether developed countries were to take the lead because of their "responsibilities," "capabilities," or both. The drafting solution was to begin the sentence with "Accordingly." A Party could then interpret the basis for the developed countries' leading role on whichever aspect of the previous sentence it deemed appropriate.[131]

Ambiguities such as these (another example is a well-placed comma which makes it ambiguous whether parties have 'a right to sustainable development' or a 'right to promote sustainable development'[132]) show that progress can be made even where disagreement lurks in the background.

The space of agreement that we have identified does not exhaust the terms of cooperation in a climate treaty, however. Beyond this space of agreement, decisions must be made about the other parties' obligations. For example, the space of agreement leaves untouched the question of whether emerging

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[129] Cass R. Sunstein, "Practical Reason and Incompletely Theorized Agreements," *Current Legal Problems* 51, no. 1 (1998): 277–78.
[130] Sunstein, "Incompletely Theorized Agreements," 1771.
[131] Susan Biniaz, "Comma but Differentiated Responsibilities: Punctuation and 30 Other Ways Negotiators Have Resolved Issues in the International Climate Change Regime," *Michigan Journal of Environmental & Administrative Law* 6 (2016): 40.
[132] Biniaz, 46.

economies such as China and Brazil should undertake rapid and significant economy-wide emissions reductions because of their emerging ability to do so, or whether their reductions should be tempered by a recognition that they are not historically responsible for the problem. Nor does it tell us precisely which states count as under-developed enough to be accorded a share of the carbon budget in the name of the right to sustainable development. There are likely to be multiple reasonable views on these questions, which presents our problem for our account. In the face of such reasonable disagreement, how are we to articulate terms of cooperation in a fair climate treaty, which we can us to measure states' obligations to bear the costs of climate-induced displacement? Without articulating clear terms of cooperation, our account appears to be indeterminate.

5. Indeterminacy, Legitimacy and Responsibility (Again)

There are broadly two approaches that we could take to setting out a determinate account of states' climate obligations, from which we can derive their obligations to bear the costs of climate-induced displacement, in the face of disagreement about the best interpretation of the concepts which structure a fair climate treaty. One option is to defend a substantive view of the terms of a fair climate treaty. A second option is to argue that determinate terms of cooperation should be set out by an institution with the legitimate authority to adjudicate between competing conceptions of fairness in climate treaty.

In this section, I pursue the second option. There is a practical and a principled reason for rejecting the first option. The practical reason is simply that defending a substantive view of fairness in an international climate treaty is a huge task, suitable for a thesis itself, and I cannot undertake it here. The principled reason is that, given the range of competing values at stake in setting out an account of fairness in an international climate treaty, it is sensible to accept what Rawls called the "burdens of judgment."[133] For Rawls, the burdens of judgment are the "hazards involved in the correct (and conscientious) exercise of our powers of reason and judgment in the ordinary course of political life."[134] The fact that we disagree about the appropriate weight to accord different values and in our interpretation of moral and political concepts is particularly relevant here.[135] The burdens of judgment, in Rawls' 'political' conception of justice, help to explain persistent disagreement between people over comprehensive conceptions of the good, and explain why it is appropriate for citizens to appeal only to arguments that can be publicly justified – that is justified by appeal to arguments and ideas shared by all reasonable people. In our case, however, the burdens of judgement help to explain why we should not defend a substantive view of fairness in climate policy. As Jeremy Waldron has pointed out, we do not only reasonably disagree about the good, we also disagree reasonably about the right.[136] The case of a fair climate treaty is a case in point

[133] Rawls, *Political Liberalism*, 54.
[134] Rawls, 56.
[135] Rawls, 56-57.
[136] See Jeremy Waldron, *Law and Disagreement* (Oxford University Press, 1999), esp. 1–4, 149–63.

– as we have seen, the normative concepts that structure the idea of a fair climate treaty are can be interpreted in a variety of ways, and reasonable disagreement is foreseeable and even helps us to explain some of the ambiguities in climate treaties. This gives us reason to shy away from the task of defending one substantive view of fairness in a climate treaty. Rather, recognition of the persistent nature of disagreement over gives us reason to vest an institution with the legitimate authority to adjudicate between competing conceptions of fairness in climate policy.

The central idea here is that, in the face of persistent disagreement, we should appeal to an institution with legitimate authority to select amongst the competing conceptions of fairness in climate policy. 'Legitimacy' is often taken to settle questions about whether or not states have a 'right to rule' or can justifiably exercise coercive power, and whether or not citizens have a duty to obey the law.[137] Rawls' 'liberal principle of legitimacy,' for example, is supposed to identify when the exercise of state power is "fully proper."[138] This, however, is only a particular *conception* of legitimacy suited to a liberal constitutional state. Here, I appeal to the *concept* of legitimacy more expansively. The concept of legitimacy tells us whether or not we should allow an institution to function so as to achieve its constitutive aims, and whether or not the institution's addressees have moral reasons to comply with its directives.

Legitimacy "captures a type of moral standing that allows people to coordinate their practical responses to institutions and institutional demands."[139] According to Allen Buchanan, the practical function of legitimacy assessments is to forge "consensus on whether or not an institution is worth of our *moral reason-based support*."[140] This consensus helps us to solve a particular problem, which Buchanan calls the "metacoordination problem."[141] The metacoordination problem is the problem of determining when we should converge on granting our support to a particular institution, in order that we can give it "the sort of *standing* that is necessary for it to have if it to do its job effectively."[142] As N. P. Adams points out, the main problem here is substantive disagreement:

> [I]nstitutions would be unable to function if we were to each follow our own understanding of the good…institutions can only function if we solve the higher order coordination problem of how to unify our practical stances towards institutions themselves. What we require is a normative standard that grants institutions the space they need to function under conditions of pervasive, reasonable disagreement. Comprehensive doctrines of the good will not work (and, for the same reason, neither will conceptions of

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[137] See, for example, Anna Stilz, *Liberal Loyalty: Freedom, Obligation, and the State* (Princeton University Press, 2009); Arthur Ripstein, "Authority and Coercion," *Philosophy & Public Affairs* 32, no. 1 (2004): 2–35; Rawls, *Political Liberalism*; Joseph Raz, *The Morality of Freedom* (Clarendon Press, 1988); Ronald Dworkin, *Law's Empire* (Harvard University Press, 1986); A. John Simmons, *Moral Principles and Political Obligations* (Princeton University Press, 1981).
[138] Rawls, *Political Liberalism*, 137.
[139] N. P. Adams, "Institutional Legitimacy," *Journal of Political Philosophy* 26, no. 1 (2018): 85.
[140] Allen Buchanan, "Institutional Legitimacy," in *Oxford Studies in Political Philosophy, Vol. 4*, ed. David Sobel, Peter Vallentyne, and Steven Wall (Oxford University Press, 2018), 55. Emphasis original.
[141] Allen Buchanan, *The Heart of Human Rights* (Oxford University Press, 2017), 178.
[142] Buchanan, *The Heart of Human Rights*, 179. Emphasis original.

> justice). We need a less demanding and less controversial alternative standard. Legitimacy is distinctive because it is able to play this role.[143]

When we face pervasive disagreement over the right or the good, but we need an institution in order to achieve some morally important goal, then ascriptions of legitimacy allow us to unify our practical stances towards institutions, to allow them to do their job in the face of disagreement.

Justified ascriptions of legitimacy warrant appropriate responses from us. According to Buchanan, legitimate institutions command "a proper showing of respect."[144] For addressees of the institution, a judgement of legitimacy will ordinarily mean at least that addressees have a content-independent, exclusionary reason to comply with its directives.[145] The ascription of legitimacy gives an institution's addressee a sufficient reason to comply with its directives, because they are directives from the institution (and not because of the content of those directives) and regardless of other (countervailing or supporting) reasons that the addressee might have (such as reasons based on her own self-interest, or her own conception of justice or goodness). Legitimate institutions give their addressees reason to take their demands as authoritative.

Appealing to the concept of legitimacy is useful in the case of an international climate treaty because we face a metacoordination problem. There is pervasive disagreement about the terms of a fair climate treaty, and we need to know whether we should treat an institution as authoritative for the purposes of adjudicating between competing conceptions of fairness in a climate treaty. A legitimate institution could give states reason to take the terms of cooperation that it specifies as authoritative. It would render their obligations determinate, and would as such provide a fair baseline against which states' obligations to bear the costs of climate-induced displacement could be indexed.

There is an institution which purports to specify the fair terms of a climate treaty: the UNFCCC. The UNFCCC's job is to authoritatively adjudicate between competing conceptions of fairness in a climate treaty. If it is doing its job, and if we are justified in ascribing it legitimacy, then it is appropriate take its demands as authoritative – and we can determinately settle the terms of a fair climate treaty. Although I do believe that the UNFCCC is sufficiently legitimate for us to treat it as authoritative, I will not spend much time defending this claim, because the UNFCCC has not yet articulated terms of cooperation which fall within the space of agreement, and so its directives are not within the bounds of fairness.

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[143] Adams, "Institutional Legitimacy," 87.
[144] Buchanan, "Institutional Legitimacy," 56.
[145] Buchanan, "Institutional Legitimacy," 57–58. For the idea of a content-independent reason, see Raz, *The Morality of Freedom*, 35. For the idea of a 'pre-emptive reason,' which replaces an 'exclusionary' reason in the later Razian terminology, see Raz, 41–42.

Two brief points can be made in favour of the UNFCCC's legitimacy. First, the procedures that it employs, though imperfect, are broadly laudable. Under the COP system, parties reach agreements on substantive matters by consensus.[146] This means not only that persistent minorities are not simply outvoted, but also that "any party can object at any point to any clause in a draft agreement, and that objection must then be dealt with until some mutually agreeable resolution is reached."[147] Second, judgements of legitimacy should be sensitive to the aims of the institution.[148] Given the overriding moral importance of tackling climate change and the lack of available alternatives to the UNFCCC, we should treat it as presumptively legitimate, even despite its deficiencies.

However, even if the UNFCCC is legitimate, it still has not provided us with a determinate account of when states have failed to meet their obligations under a fair climate treaty. The reason for this is that thus far, the UNFCCC has *underspecified* the terms of cooperation in a fair climate treaty. Even if states meet all their obligations under the UNFCCC's terms, they will not have discharged their obligations under a fair climate treaty, because the terms set out so far do not represent a conception of fairness in a climate treaty. Under the Paris Agreement, states' own NDCs set their targets, and developed states have set their targets too low. Estimates from Climate Action Tracker show that current pledges, if achieved, would lead to around 3°C of warming.[149] Because of this lack of ambition, current pledges effectively apportion significant burdens to the most vulnerable in the future. This violates principle (ii) – that the least-developed states should bear few of the burdens of climate change or climate policy, if any, because the most vulnerable *are* the least developed.

However, the Paris Agreement works on the basis of a 'pledge and review' system, which seeks to ramp up ambition over time. The Paris Agreement does not seek to fix the terms of a climate treaty once and for all, but rather to provide "a robust yet adaptable framework for developing and sustaining long-term political commitment to an effective global response."[150] Current targets are too weak, but it is possible for them to become stronger over time, if ambition ramps up in the way intended by the Paris Agreement. This means that in the future, a full conception of fairness in a climate treaty, which does not violate the principles in the space of agreement, could be articulated through the UNFCCC. Thus far, states have failed to do this. At the moment, then, the full extent of their duties remains indeterminate.

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[146] UNFCCC, "Procedural, Institutional and Legal Matters. Rules of Procedure of the Conference of the Parties and Its Subsidiary Bodies," (1995), available at https://unfccc.int/index.php/documents/1184.
[147] Hayley Stevenson and John S. Dryzek, "The Legitimacy of Multilateral Climate Governance: A Deliberative Democratic Approach," *Critical Policy Studies* 6, no. 1 (2012): 3.
[148] Buchanan, *The Heart of Human Rights*, 189.
[149] Climate Action Tracker, "Warming Projections Global Update," December 2018, available at https://climateactiontracker.org/documents/507/CAT_2018-12-11_Briefing_WarmingProjectionsGlobalUpdate_Dec2018.pdf.
[150] Robert Falkner, "The Paris Agreement and the New Logic of International Climate Politics," *International Affairs* 92, no. 5 (2016): 1119.

One implication is that states have a duty to render their duties determinate. At present, there is an indeterminacy in states' obligations to tackle climate change. But crucially, this indeterminacy does not mean that their obligations *cannot* be determined, it only means that their obligations *have not yet* been determined. Rawls contended that individuals have a "natural duty of justice" which consists in a duty to uphold just institutions, but also, crucially, a duty to "further just arrangements not yet established."[151] If we take seriously the idea that we have duties to uphold and promote the establishment of just institutions, then it seems clear that states have an obligation to render their duties determinate by vesting an institution, such as the UNFCCC, with the legitimate authority to adjudicate between competing conceptions of fairness in climate policy and, through that institution, to settle on terms of a climate treaty that fall within the space of agreement. When they do so, we will have a standard against which we can measure states' obligations to bear the costs of climate-induced displacement, according to the responsibility view. Prospectively, this is the way in which we can meet the *responsibility rationale*.

This may appear unsatisfying, however, in that it means that our account still leaves states' obligations indeterminate until they have agreed fair terms of cooperation through an institution with legitimate authority. We still need an account of the standards to which we should hold states in the interim period before terms of cooperation are formally agreed through a legitimate authority. That account would provide a standard against which we can measure states' failures, at least for the interim period before fair terms of cooperation are agreed. To provide such a standard, we can ask how states should respond to this indeterminacy from a moral point of view. What is the warranted response on the part of states, when they know that the precise terms of cooperation for tackling climate change are indeterminate?

My suggestion is that we should morally expect states to err on the side of caution in fulfilling their duties. When the extent of their duties is indeterminate, we should expect states to undertake the maximal amount of climate-related duties that could be reasonably demanded of them, where what could be 'reasonably demanded' of them is understood by reference to the upper bounds of their duties within the space of agreement. If this is what is morally required from states in the face of indeterminacy about the extent of their duties, then we can measure states' failures to tackle climate change according to this standard. To the extent that states have failed to fulfil the maximal amount of climate-related duties that could be demanded of them within the space of agreement, they should bear the costs of climate-induced displacement in proportion to their failure.

To see why we should adopt this standard, note that states which are deciding which climate policy to pursue face at least two options. First, they could follow their own convictions when it comes to what they should do, determining for themselves what policy from within the bounds of the reasonable they should adopt. Second, they could forgo their own judgements about what they should do, and do the

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[151] Rawls, *A Theory of Justice*, 99.

most that could be reasonably expected of them under any reasonable agreement. Consider what would happen if each state were to take the first option. Even if each state made a good faith judgement about the extent of its responsibilities (and especially if some states made bad faith judgements), we would have no guarantee that the climate action taken overall would be sufficient to meet states' collective climate-related obligations. Each state that took this option would be contributing to a risk that significant climate-related harm would come about as a result of a collective failure to undertake sufficient climate action. By contrast, if each state were to take the second option, then the risk of significant climate-related harm would be diminished, and that state would not be implicated in the production of climate-related harm. Each state would also bear some unnecessary costs – it would, for example, need to forgo emissions-intensive activities associated with economic growth – but these costs would not be so onerous as to be comparable to the climate-related harm that would ensure if they did not take them on. This is because, according to the standard that I have set out, states are only being asked to bear costs that it would be reasonable to expect them to bear. If we accept that states should act on the basis of principles that could be agreed upon by free and equal moral agents, then it becomes clear that they should act in a *precautionary* way.

Precautionary principles for action are contested, especially by those who point out that precautionary reasoning is irrational in many cases. For example, where there is some minimal chance of a disaster – say a 0.1% of dying in an airplane crash – but a large chance of a significant gain – say a 99.9% chance of the job to which you are flying making you much happier – then it appears irrational to refuse to take up your new job on the basis that doing so would risk your death in a plane crash.[152] But, as Gardiner points out in his defence of a Rawlsian precautionary principle, the precautionary principle need only apply under certain constrained conditions. Gardiner argues that the conditions for the application of Rawls' maximin principle – the principle which says that we should make decisions on the basis that we should 'maximise the minimum' and choose the option which has the least bad outcome – are also conditions which should constrain the application of the precautionary principle.[153] These conditions are: (1) that we lack sufficient information about the probabilities of the possible outcomes of the decision; (2) that we care relatively little for potential gains above the minimum; and (3) that there are unacceptable outcomes.[154] Under these conditions, one ought to take the option which has the least bad outcome. Importantly, when this reasoning is employed in ways which are purely self-regarding – where the decision-maker is also the potential cost-bearer – this is simply a principle of practical rationality. When the decision-maker is not the cost-bearer, however, the principle has moral force, since the decision-maker is risking costs to another person for gains about which she should care little. Acting so as to risk serious harm to others for

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[152] This example comes from John Harsanyi, "Can the Maximin Principle Serve as a Basis for Morality? A Critique," *American Political Science Review* 69, no. 2 (1975): 595.
[153] Steven Gardiner, "A Core Precautionary Principle," *Journal of Political Philosophy* 14, no. 1 (2006): 33–60.
[154] Gardiner, 47; Rawls, *A Theory of Justice*, 134.

small gains to oneself is patently unjustifiable – it could certainly not form the basis of an agreement between free and equal moral agents.

This situation describes the situation facing states in the absence of political agreements about climate change. They (1) lack sufficient information about the probabilities about the possible outcomes of their decisions, since they do not know what other states will do in the absence of credible commitments created through an agreement. They (2) care relatively little for the gains above the minimum, or at least *should* care relatively little, since those gains are ones that it would be reasonable to expect them to forgo. And they (3) face unacceptable outcomes, such as the imposition of significant climate-related costs on the most vulnerable in the future. As such, it is justifiable to demand of states that they undertake the course of action which avoids the worst outcomes, and we can hold them responsible for failing to do so. It is only reasonable to require states to do the maximum that could be expected of them *within* the terms of agreement because if we were to require them to do more, then they would have legitimate reasons to care about gains above the minimum – for example, reasons to do with alleviating poverty – which would mean that condition (2) is no longer met.

Importantly, this principle is also part of the constitutive norms of the international climate policy regime. The precautionary principle is embedded in the norms of the UNFCCC; article 3(3) of the original convention states that "Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects,"[155] and precautionary principles have features in all major climate agreements since. It is true that the precautionary principle has ordinarily been interpreted as requiring states to take action in the fact of *scientific* uncertainty about the impacts of climate change, rather than lack of assurance that others will do their share, but the rationale behind it carries over to this case: where there is comparatively little to be gained, and much to be lost, we should expect states to take the option which prevents the loss.

Note further that it is within states' power to avoid incurring this obligation: all that they need to do to avoid incurring it is to agree to terms of cooperation which fall within the space of agreement through a legitimate institution, such as the UNFCCC. The obligation to do the most that could be reasonably expected of the state only obtains so long as states fail to collectively settle on fair terms of cooperation, which could afford each some benefits. As such, holding states to this standard also produces an incentive for them to settle on fair terms of cooperation: it is to the benefit of each to agree to fair terms, as otherwise they will be held responsible for failing to meet the highest standard that they could be reasonably required to meet. These considerations show that states would have little reason to object to this arrangement. It is already within their collective power to bring it to an end, and in any case the burdens that they are being asked to bear fall within the bounds of the reasonable – if they had been

[155] UNFCCC, *United Nations Framework Convention on Climate Change*, article 3.3.

issued as directives by a legitimate authority, then they would have moral reasons to comply with them in any case. Overall, this gives us good reason to think that states should be required to undertake the maximal amount of climate action that would be required of them within the space of agreement, and that they can be held responsible for their failures to do so, at least in the interim period before they come to an agreement on fair terms of cooperation.

One important objection to the view that I have set out here should be considered. One might object that in the *absence* of clearly defined fair terms of cooperation, we cannot hold states responsible for their failure to meet their obligations under a fair climate treaty. Given that their obligations have not yet been determined, we might wonder whether they can really be described as being the *author* of their failure to meet their obligations in the way I suggested is necessary for the ascription of outcome responsibility above. Paul Bou-Habib has recently objected to the idea that states can be held liable for their historical emissions in an argument along these lines.[156] Bou-Habib's "institutional view" holds that in the absence of legitimate global climate governance institutions, the "social complexity" of climate change makes it difficult for states to know the extent of their duties:

> Social complexity makes it difficult for actors to obtain the facts that they need in order to tell what their rights demand of others from one situation to the next and whether those rights are actually being fulfilled—at least when these actors lack political institutions that promulgate to them what their rights are and that monitor whether those rights are being fulfilled.[157]

For Bou-Habib, this means that "past emissions of greenhouse gases that took place prior to the establishment of legitimate institutions of global climate governance do not give rise to climate related duties."[158] The reason for this is that, in the absence of institutions which render states' duties determinate, states cannot be reasonably expected to know what their duties are, and so cannot be held liable for breaching them. In our case, the argument might be transposed as follows: in the absence of determinate fair terms of cooperation in a climate treaty, states cannot be expected to know when they have breached their obligations, and so they cannot be reasonably described as the authors of their failure and ascribed responsibility on that basis.

The appropriate response to this objection, it seems to me, is to deny the claim that states cannot be reasonably expected to know that they are breaching their duties, even in face of the indeterminacy of those duties.[159] It is important here to point out what states *do* know. States do know, and have known for a long time, that their failure to act on climate change would lead to the creation of costs such as those

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[156] Paul Bou-Habib, "Climate Justice and Historical Responsibility," *The Journal of Politics* (2019) [online first].
[157] Bou-Habib, 4.
[158] Bou-Habib, 1.
[159] I am indebted here to an argument made by Göran Duus-Otterstöm in his unpublished article "Liability for Emissions without Political Agreements" (manuscript on file with the author).

imposed upon the refugee and internal displacement regimes. Moreover, they know the rough parameters of what fairness in a climate policy requires. Importantly, they should *expect* there to be reasonable disagreement over the terms of cooperation, and should, given the overriding moral importance of tackling climate change, should seek to agree on terms within the space of agreement and act in precautionary ways until they have done so. They know that their failure to agree to fair terms of cooperation in tackling climate change would leave their obligations indeterminate, and that they would be incurring the risk that they are violating their obligations if they fail to specify them. They are the authors of the indeterminacy of their duties. It seems to me clear that on this basis, we can reasonably describe states as the authors of their own failure to tackle climate change, and can hold them responsible on this basis.

In the end, then, states' obligations under a fair climate treaty, and thus their obligations to bear the costs of climate-induced migration and displacement are indeterminate in one sense – in the sense that they have not been determined *yet*. But in another, crucial sense, these obligations are not indeterminate – in the sense that they *can* be determined. From the standpoint of justice, what is demanded of states is to fulfil their obligation to establish just arrangements when they have not yet been established. In the interim period, it is reasonable to hold states responsible for discharging the maximal amount of climate-related duties that they could be reasonably expected to discharge. This provides us with a standard against which to measure states' failures, and so the *responsibility rationale* can be met.

6. Conclusion

This chapter has sought to address the question of how we should share the costs of responding to climate-induced migration and displacement. As we saw in Chapter III, one advantage of the otherwise objectionable unitary approach was that it could be readily set up so as to distribute its costs according to the responsibilities of different parties for bringing about the problem. We called this the *responsibility rationale*. Here, I argued that the responsibility rationale could be met through a 'second-order' principle which distributing the costs of climate-induced migration and displacement. I argued for a principle of cost-sharing which I called the *responsibility view*. According to the responsibility view, states are responsible for bearing costs that fall outside the scope of a fair climate treaty to the extent that those costs arise from their failure to discharge their obligations to tackle climate change as articulated by a fair climate treaty.

Since this view is dependent on a prior notion of a fair climate treaty, the rest of the chapter explored this idea. I reconstructed the trajectory of international climate politics under the UNFCCC and identified three key normative concepts – 'dangerous climate change,' 'the right to sustainable development,' and 'common but differentiated responsibilities and respective capabilities' – which set the parameters of fairness in a climate treaty. I examined the competing interpretations of these concepts and the normative

demands that they make. I argued that whilst differing interpretations of these concepts lead to different views concerning the distribution of costs under a fair climate treaty, they also converge on some mid-level principles. I identified a 'space of agreement' beyond which there will be reasonable disagreement over the fair terms of cooperation in a climate treaty beyond this. Finally, I argued that such reasonable disagreement does not constitute a threat to the project of determining states' obligations to bear the costs of climate-induced displacement by reference to a fair climate treaty. Although states obligations are presently not determinate, states have an obligation to render their duties determinate through a legitimate institution, and thereby to settles disputes between competing reasonable views of fairness in a climate treaty. In the interim period, we should expect states to behave in precautionary ways with respect to their climate-related duties, and so should hold them responsible for fulfilling the maximal amount of climate-related duties that could be reasonably expected of them. This is the standard against which we can hold states, which shows how my approach can meet the *responsibility rationale*.

VIII. Conclusion

1. Introduction

This thesis began by raising several examples of the ways in which climate change can interact with migration and displacement. We saw, from the testimonials of Hindu Oumarou Ibrahim in Chad, Renee Kuzuguk in Alaska, Fatay and Zulaikar in Pakistan, and an anonymous Somali farmer in Uganda, the diversity of the ways in which climate change is reshaping patterns of migration and displacement across the world. The diversity and the empirical complexity of climate-induced migration has been an important theme in our inquiry. I have sought to develop an account of justice in climate-induced migration and displacement which is faithful to that diversity and complexity, and which resists simple idealisations of 'climate refugees.' At the same time, I have sought to provide generally applicable principles of justice for the governance of climate-induced migration and displacement, including principles which treat it holistically as a matter of international responsibility. There is an important tension between these two aspects of my account: the more faithful I am to the diversity and complexity of climate-induced migration and displacement, the more difficult it is to provide generally applicable normative guidance; the more generally applicable the normative guidance I provide, the more difficult it is to be faithful to the diversity and complexity of climate-induced migration and displacement.

I have sought to find a balance between the general and the specific. No doubt I have not captured the diversity and complexity of climate-induced migration and displacement in full. I hope, however, that I have helped normative theorists to move past simplistic idealisations and overly general claims, whilst at the same time treating the phenomenon of climate-induced migration and displacement holistically. The result of combining the imperatives of generality and specificity is what I have called the *ecological* approach, which conceives of a just response to climate-induced migration and displacement as consisting in a network of institutions and practices connected by a principle of responsibility in international burden-sharing. I have sought to show how existing institutions and practices can be reformed, both in order to meet the normative rationale that justifies their existence and to cope with the emerging challenge of climate change. I believe that the ecological approach stakes out a distinctive view on an important topic which has not been systematically addressed by political philosophers. Even if others disagree with the arguments I have made, I hope at least to have mapped a shared terrain of debate.

My inquiry has also brought us into close contact with existing debates in various parts of political philosophy. Reflecting on the phenomenon of climate-induced migration and displacement has, I hope, helped me to make important contributions to these more specific debates. Investigating the case of climate-induced migration and displacement not only provides us with normative guidance for that specific case, but also allows us to reflect on the more general principles of justice which we employ in other domains. Drawing on broader philosophical debates in methodology in political theory, democratic

theory, territorial rights, refugee protection and responsibility has, I hope, sharpened our theoretical tools in these areas.

This concluding chapter reflects on the account of justice in climate-induced migration and displacement that I have constructed over the course of this thesis. First, it reviews how the argument has proceeded, and points out what I take to be the distinctive contributions to the substantive debates upon which my inquiry has touched. As well as important contributions, my account has important limitations. In any project, difficult choices must be made about how to delineate the scope of the inquiry. In the second section of the chapter, I discuss the limitations of my account and explain the choices that I have taken in leaving out certain considerations. My account is not the end, but rather the beginning, of a dialogue, and in that spirit, I also chart out some avenues for future research.

2. A Review of the Argument

This project began by noting the diversity and empirical complexity of climate-induced migration and displacement. In setting out an account of justice in climate-induced migration and displacement which is faithful to this diversity and complexity, my first task was to set out a clear picture of the current state of our empirical knowledge of the phenomenon. I outlined how the state of our knowledge has developed and identified the main points of consensus and debate. In order to lay the groundwork for a normative analysis, I drew some important distinctions between various different kinds of migration and displacement relating to climate change. Some of these distinctions were borrowed from Walter Kälin: the distinctions between movement stemming to *sudden-onset disasters*, from *slow-onset environmental degradation*, from the *designation of zones too dangerous for human habitation*, and from *climate-induced unrest*.[1] Another important distinction, between *anticipatory migration* and *reactive displacement*, was my own, but was influenced by Anthony Richmond's sociological account of migration.[2] Drawing these distinctions was fundamental: it structured my inquiry and shaped the investigation into the different domains in which climate-induced migration and displacement arises. It has been an important part of my attempt to navigate the tension between the providing general normative guidance and being faithful to the diversity and complexity of climate-induced migration and displacement. In building my account, I took my cue from the social-scientific literature, but sought to distinguish between different types of migration and displacement relating to climate change on the basis of their normatively relevant characteristics. The second part of Chapter I examined the fragmented existing literature that examines climate-induced migration and displacement as a matter of justice. Here, I noted that there is a current of research which purports to address the phenomenon of climate-induced migration and displacement holistically, by

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[1] Walter Kälin, "Conceptualising Climate-Induced Displacement," in *Climate Change and Displacement: Multidisciplinary Perspectives*, ed. Jane McAdam (Bloomsbury Publishing, 2010).
[2] Anthony H. Richmond, "Reactive Migration: Sociological Perspectives On Refugee Movements," *Journal of Refugee Studies* 6, no. 1 (1993): 7–24.

proposing a new legal instrument designed to govern such migration and displacement, which we later called the *unitary* approach. This literature was an important starting point for my project, and distinguishing my own approach from this popular alternative was a crucial task in staking out my own position.

Before substantively engaging with this strand of research, however, I stepped back into broader debates about methodology in political theory, in order to set out the approach that I take in building my account. Chapter II sought to outline the methodological approach that I take in justifying principles for climate-induced migration and displacement. Taking my lead from a view of justice as being a concept which is employed in the service of practical reason, I outlined two desiderata for an approach to formulating and justifying principles, which was that they should be both *action-guiding* and vested with *moral force*. I defended what I called an *interpretivist* approach to the justification of normative principles, which draws on the so-called "practice-dependent" approach and insights from moral and political constructivism.[3] This method requires us to normatively reconstruct the 'best interpretation' of the institutions and practices that constitute a particular domain in order to develop principles of justice for governing them. I argued that in order to be the 'best interpretation' of an institution or practice, a reconstruction should display *descriptive fidelity* to the institution or practice in question, and should be *normatively justifiable*, understood in broadly constructivist terms.

Having set out my methodological approach, I was in a position to begin my inquiry with a critical assessment of the unitary approach to climate-induced migration and displacement. Chapter III reconstructed the idea of a unitary approach to climate-induced migration and displacement, drawing on several popular proposals in legal theory. I showed that this approach is objectionable in two ways. First, it is unworkable, because it depends on an untenable conception of a 'climate-displaced person' which is irreconcilable with the empirical literature on climate-induced migration and displacement. The operationalisation of this category would create a suite of practical problems. Second, it would be unjust, because it fails to treat like cases alike and relevantly different cases differently. It privileges certain people on the basis of the cause of their displacement, and responds inappropriately to the diversity of climate-induced migration and displacement. This too, stems from its identification of one category of 'climate-displaced' persons. Towards the end of this chapter, I sketched the contours of my alternative, the ecological approach, which was developed over the rest of the thesis.

Chapter IV began setting out my account by considering the question of justice in adaptation to climate change, the domain which, I argued, governs anticipatory migration, including migration stemming from both slow-onset environmental degradation and from the designation of zones too dangerous for human

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[3] See Andrea Sangiovanni, "Justice and the Priority of Politics to Morality," *Journal of Political Philosophy* 16, no. 2 (2008): 137–64; Andrea Sangiovanni, "How Practices Matter," *Journal of Political Philosophy* 24, no. 1 (2016): 3–23.

habitation. More specifically, I examined the issue of procedural justice in adaptation. I defended what I called the *collective-democratic* approach to justice in climate change adaptation, against an alternative, the *hyper-liberal* approach, which is prominent in practice yet under-theorised. The hyper-liberal approach, I argued, fails to supply the kind of collective goods which are necessary for successful adaptation. I defended the collective-democratic approach by drawing on ideas from democratic theory, against a prominent alternative defence set out by David Schlosberg.[4] The collective-democratic approach has important implications for anticipatory migration. In the case of migration stemming from slow-onset environmental degradation, it implies a radical revision of the existing practices governing such migration, which currently employ elements of both the hyper-liberal and epistocratic approaches. In the case of migration stemming from the designation of zones too dangerous for human habitation, it does not imply a radical revision of existing practice, but provides a standard for critique of the failings of existing attempts to instantiate the collective-democratic approach.

In Chapter V, I began examining reactive displacement by focusing on the domain of the refugee regime. Popular discourse around 'climate refugees' has led to some confusion about the proper role of the refugee regime in the broader architecture of migration and displacement governance, and so it was important for me to reconstruct the practices of refugee protection in order to get a clear view of their proper place. To that end, I defended an interpretation of the refugee regime that I called the *membership view*, which drew from David Owen's "political legitimacy" view of the refugee regime, against the *persecution* and *basic needs* views.[5] On this view, the normatively relevant feature that renders a person a refugee is the fact of relation between her and her state having broken down, such that her state has lost standing to act as the on-going guarantor of her human rights. Armed with this conception of the refugee regime, I was able to show that some cases of migration stemming from sudden-onset disasters and from climate-induced unrest are suited to being governed under the auspices of the refugee regime. As it is currently practiced, however, the refugee regime exhibits several important moral failings, which are exacerbated in the climate context: the anachronistic legal definition of a refugee, the maldistribution of costs between states, and the practice of refugee encampment. I proposed reforms to the refugee regime which sought to address these three moral failings, and to render the refugee regime suitable for its role in addressing climate-induced displacement, which included a change in the legal definition, a principle for internalising the costs of climate-induced refugee movement, and a mechanism for limiting the usage of refugee camps.

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[4] David Schlosberg, "Climate Justice and Capabilities: A Framework for Adaptation Policy," *Ethics & International Affairs* 26, no. 4 (2012): 445–61.
[5] David Owen, "In Loco Civitatis: On the Normative Basis of the Institution of Refugeehood and Responsibility for Refugees" in *Migration in Political Theory: The Ethics of Movement and Membership*, ed. Sarah Fine and Lea Ypi (Oxford University Press, 2016).

Chapter VI continued our examination of reactive displacement by focusing on the domain of internal displacement. Internal displacement has not received sustained philosophical attention, and so reconstructing the internal displacement governance regime was an important contribution to the broader literature on migration and displacement. Internally displaced persons (IDPs), I argued, are properly identified not by their being within the territory of their state (non-alienage), but by their relationship with their state relationship remaining intact in spite of their displacement. I also characterised the wrong of displacement, drawing on Anna Stilz's conception of "occupancy rights,"[6] and set out an account of what I called the *international duty of IDP assistance*, drawing on a Rawls-inspired distinction between 'burdened' and 'well-placed' societies.[7] Having developed an interpretation of the IDP governance regime, I could show that it is suited to playing a significant role in addressing climate-induced displacement, and in particular in addressing displacement in the aftermath of sudden-onset disasters. Again, however, there are important failings in the way internal displacement is presently governed: it is treated as a matter of charity, not justice, and it has no way of accounting for the transboundary causes of internal displacement. These problems, again, are exacerbated in the new context of climate change. In order to address them, I proposed avenues for reform, including pushing for a move towards "hard" rather than "soft" law in IDP governance and a principle for internalising the costs of climate-induced internal displacement.[8]

The accounts I set out of these three domains make up the 'first-order' response to climate-induced migration and displacement, on my account. In Chapter VII, I sought to unify these three domains by proposing a 'second-order' account of how the costs of addressing climate-induced migration and displacement should be shared between states. Doing so also enabled me to specify the principles for internalising the costs of refugee and IDP movement that I had sketched in Chapters V and VI. I argued that, generally, the costs of anticipatory migration should fall within the scope of a 'fair international climate treaty,' since anticipatory migration is a form of climate change adaptation. The costs of reactive displacement, by contrast, are generally a result of states failing to fulfil their obligations to tackle climate change. I argued that they should be borne according to a principle of responsibility, drawing on David Miller's conceptions of "outcome" and "remedial" responsibility, where states are responsible for the costs of reactive displacement that arise from their failures to discharge their obligations to tackle climate change.[9]

This account of responsibility for the costs of climate-induced migration and displacement presupposes an idea of a fair international climate treaty. In the second part of Chapter VII, I reconstructed the idea of

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[6] Anna Stilz, "Occupancy Rights and the Wrong of Removal," *Philosophy & Public Affairs* 41, no. 4 (2013): 324–56.
[7] See the distinction between "burdened" and "well-ordered" societies in John Rawls, *The Law of Peoples; with, The Idea of Public Reason Revisited* (Harvard University Press, 1999).
[8] Kenneth W. Abbott and Duncan Snidal, "Hard and Soft Law in International Governance" *International Organization* 54, no. 3 (2000): 421–56.
[9] David Miller, *National Responsibility and Global Justice* (Oxford University Press, 2007), 82–109.

a fair climate treaty and examined three normative concepts which shape conceptions of fairness in a climate treaty: 'dangerous climate change,' the 'right to sustainable development,' and 'common but differentiated responsibilities and respective capabilities.' Competing interpretations of these concepts yield a 'space of agreement,' but beyond this, there may be reasonable disagreement about what fairness in a climate treaty requires. Given this disagreement, there is an indeterminacy in states' obligations under a fair climate treaty and, as such, their obligations to bear the costs of climate-induced migration and displacement. However, states' obligations are only indeterminate in the sense that they have not *yet* been determined, not in the sense that they *cannot* be determined. The prime imperative that states face, I argued, drawing on the Rawlsian idea of a "natural duty of justice," is to *render* their obligations determinate through a legitimate institution, such as the UNFCCC, by articulating terms of cooperation which fall within the space of agreement.[10] In the interim period before their duties are rendered determinate, I argued that we should expect states discharge the maximal amount of climate-related duties that they could reasonably be expected to bear. This is the standard against which we should measure their responsibility for failing to discharge their climate-related duties.

Overall, the theory that I have set out yields a conception of justice in climate-induced migration and displacement which respects its diversity, recognising the salient moral differences between different cases. At the same time, however, it recognises its unity, which stems from the fact that it shares a common source: anthropogenic climate change. This approach, I believe, provides a compelling account of our duties to those migrating and displaced in the context of climate change, which moves past oversimplified views about the complex relationship between climate change and human mobility.

3. Limitations and Avenues for Future Research

Although I have tried to address the phenomenon of climate-induced migration and displacement in a holistic way, any inquiry must delineate its scope and exclude some considerations. There are three important limitations in the scope of my argument, which indicate avenues for future research.

The first of these limitations is that my inquiry has excluded consideration of the case of migration from small-island states. As we saw in the introduction, there is a relatively well-developed literature on this topic, which has examined the 'puzzle' posed to theories of territorial rights posed by the 'disappearance' of entire states as a result of climate change. This is an important phenomenon, and one which certainly merits critical attention. My exclusion of it from consideration in this thesis is explained by two reasons. First, the debate on the territorial rights of small-islanders is relatively well developed. The main positions in the debate have been staked out, and engaging in this debate would break less new ground than a consideration of other forms of migration and displacement relating to climate change. Second, political

[10] For the "natural duty of justice," see John Rawls, *A Theory of Justice*, 2nd ed. (Belknap Press, [1971] 1999), 99.

philosophers and the lay public have tended to view small-islanders as the primary victims of climate-induced migration and displacement, despite this being a misconception of the broader phenomenon. In choosing to focus on other forms of climate-induced migration and displacement over the case of small-island states, I have hoped to combat this tendency and to expose the breadth and diversity of the phenomenon of climate-induced migration and displacement. This being said, the exclusion of the case of small-island states is an important limitation in my account. In future research, engaging in substantive debates about the territorial rights of small-islanders would be an important way of supplementing the account that I have set out here. In particular, an examination of the case of small-island states which proceeds using the methodology that I have developed here – reconstructing the normative rationale of the practices that grant sovereignty to states in the international order, and of other forms of political community which might take the place of sovereign statehood for small-islanders – would be an innovative way of engaging in these existing debates.

A second important limitation of my approach lies in the problem of non-compliance. In this thesis, I have set out an account of the obligations that we owe to those migrating and displaced in the context of climate change. There is an important gap, however, been current practice and the demands of justice. Climate change adaptation, the refugee regime, and internal displacement governance all exhibit important deficiencies in practice. And our existing attempts to tackle climate change and articulate fair terms of cooperation in doing so have, as we have seen, largely been insufficient. There remains, as such, an important question about how the non-compliance of some actors might alter the duties owed by others. This question, I think, is best thought of as one which follows from the articulation of a conception of justice in climate-induced migration and displacement, rather than part of such a conception. As such, I have delineated the scope of my inquiry so as to exclude consideration of this question, in order to confine my focus to setting out a conception of justice in climate-induced migration and displacement. Facing the problem of non-compliance is crucial for future research, however. As a matter of political practice, humanity is manifestly failing to uphold its duties of justice in tackling climate change and in addressing climate-induced migration and displacement. We need normative guidance for what do in such circumstances, and political philosophy can help to provide such guidance. There are important questions about, for example, whether there are duties to "take up the slack" when responsible agents fail to do so, about whether and how we might sanction non-compliers.[11]

A third important limitation is that this project has focused on setting out principles for institutions, rather than principles for individuals.[12] We noted in the introduction that in this thesis I took assessments of justice or injustice to be apt when applied to institutions and practices, but we might also think, with

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[11] On the idea of "taking up the slack," see Anja Karnein, "Putting Fairness in Its Place: Why There Is a Duty to Take Up the Slack," *Journal of Philosophy* 111, no. 11 (2014): 593–607.
[12] This distinction comes from Rawls, *A Theory of Justice*, 47.

Aristotle, that justice applies to individual conduct. Even if principles for individuals are not best described as principles of justice, they remain an important part of our broader political morality. In this thesis, I have focused on the justice and injustice of institutions as a matter of the conservation of scarce theoretical resources. However, principles for individuals are an important part of the overall picture of morality in climate-induced migration and displacement. Especially in the context of wide-spread non-compliance, interesting questions of individual conduct are raised. For example, we might ask what "promotional duties" individuals have to help establish just institutions and practices for governing climate-induced migration and displacement.[13] Or, we might ask what scope there is for permissible, or even morally mandatory, forms of disobedience and resistance to unjust practices and institutions. Might, for example, those affected by climate-induced displacement have a moral permission cross borders without the permission of states that would exclude them?[14] And might citizens have a "duty to resist" the unjust practices and institutions of their states which constitute their failure to realise the ideals of justice in climate-induced migration and displacement?[15]

There are, I am sure, more limitations to this project than those I have highlighted here. Despite these limitations, however, I still hope to have set out a clear account of justice in climate-induced migration and displacement. This account is, as we can see, only the beginning of a broader conversation, and it is my hope that I will be able to continue that conversation in future work.

4. Conclusion

This thesis has been an attempt to develop a theory of justice in climate-induced migration and displacement. I have sought at once to attend faithfully to the diversity and empirical complexity of climate-induced migration and displacement, and at the same time to treat it as a unified phenomenon and provide sufficiently general normative guidance. No doubt there are various points at which I have failed to attenuate the tension between these two imperatives. I hope, however, to have nonetheless provided a clear and compelling theoretical perspective on an emerging topic of crucial importance, which has not yet been adequately scrutinised by political philosophers. The contribution of the account that I set out here, I hope, will be to invigorate further debates and to push the conversation surrounding climate-induced migration and displacement forward.

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[13] For the idea of "promotional duties," see Elizabeth Cripps, *Climate Change and the Moral Agent: Individual Duties in an Interdependent World* (Oxford University Press, 2013), 140–66.
[14] On resistance to unjust border regimes, see Javier Hidalgo, "Resistance to Unjust Immigration Restrictions," *Journal of Political Philosophy* 23, no. 4 (2015): 450–70; Caleb Yong, "Justifying Resistance to Immigration Law: The Case of Mere Noncompliance," *Canadian Journal of Law & Jurisprudence* 31, no. 2 (2018): 459–81.
[15] See Candice Delmas, *A Duty to Resist: When Disobedience Should Be Uncivil* (Oxford University Press, 2018).

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