

Loyola University Chicago, School of Law

LAW eCommons

Faculty Publications & Other Works

2020

Migration As Reparation: Climate Change and the Disruption of Borders

Carmen G. Gonzalez

Loyola University Chicago School of Law, gonzalez@seattleu.edu

Follow this and additional works at: <https://lawecommons.luc.edu/facpubs>



Part of the [Environmental Law Commons](#), [Immigration Law Commons](#), and the [International Humanitarian Law Commons](#)

Recommended Citation

Carmen G. Gonzalez, Migration as Reparation: Climate Change and the Disruption of Borders, 66 LOY. L. REV. 401 (2020).

This Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Faculty Publications & Other Works by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.

MIGRATION AS REPARATION: CLIMATE CHANGE AND THE DISRUPTION OF BORDERS

Carmen G. Gonzalez*

INTRODUCTION

Climate-fueled disasters are displacing record numbers of people all over the world.¹ According to the International Organization for Migration (IOM), climate change is anticipated to displace anywhere from 25 million to 1 billion people by 2050.² The precise number of climate-displaced persons is difficult to predict because climate change amplifies pre-existing social, economic, environmental, and political vulnerabilities and is rarely the exclusive driver of migration.³

* Morris I. Leibman Professor of Law, Loyola University Chicago School of Law. Professor Emerita, Seattle University School of Law. This article is adapted from an article titled *Racial Capitalism, Climate Justice and Climate Displacement* to be published in the Oñati Socio-Legal Series. The author would like to thank María Pabón for helpful comments on an earlier draft of this article.

1. See Todd Miller, *The United States is Polluting the World and Locking Refugees Out*, THE NATION (Dec. 7, 2017), <https://www.thenation.com/article/archive/the-united-states-is-polluting-the-world-and-locking-refugees-out/>; see *Forced from Home: Climate-fueled Displacement*, OXFAM (Dec. 2, 2019), <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620914/mb-climate-displacement-cop25-021219-en.pdf>.

2. See INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM), IOM OUTLOOK ON MIGRATION, ENVIRONMENT AND CLIMATE CHANGE 38 (2014), https://publications.iom.int/system/files/pdf/mecc_outlook.pdf.

3. See *id.* (pointing out that the extent of migration will depend on many factors, including the rate of climate change, the adaptation measures adopted, and the many social, economic, and political factors that drive the decision to move). As the Intergovernmental Panel on Climate Change (IPCC) observes, “[c]limate change will amplify existing risks and create new risks for natural and human systems. Risks are unevenly distributed and are generally greater for disadvantaged people and communities in countries at all levels of development.” Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II, and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, at 13 (Rajendra K. Pachauri and Leo Meyer eds. 2014), https://ar5-syr.ipcc.ch/ipcc/ipcc/resources/pdf/IPCC_SynthesisReport.pdf.

Climate change is an injustice rather than a misfortune. Caused primarily by the world's most affluent populations, climate change wreaks havoc first and foremost on the states and peoples who contributed least to the problem.⁴ The United States, the European Union, China, Russia, and Japan are responsible for seventy percent of global carbon dioxide emissions between 1751 and 2017.⁵ However, the states and peoples who are most vulnerable to the impacts of climate change generated less than one percent of global emissions.⁶ Certain states that are currently high emitters, such as India and Brazil, are relatively minor historic contributors to climate change.⁷ This article will focus on the legal and moral responsibility to climate-displaced persons of the United States and other high-emitting states that contributed disproportionately to the climate crisis.

Climate change is occurring at a time of rising economic inequality and escalating racial tensions. According to a report published in 2020 by the United Nations Department of Economic and Social Affairs, economic inequality has grown significantly since 1990 in most affluent countries and in many middle-income countries, including China and India.⁸ As the gap between the rich and the poor widens, authoritarian leaders and right-wing social movements increasingly blame immigrants and racial, ethnic, and religious minorities for social and economic problems, not only in the United States and across much of Europe, but also in China, India, and Brazil.⁹ The result is mounting state and vigi-

4. See Carmen G. Gonzalez, *Energy Poverty and the Environment*, in INTERNATIONAL ENERGY AND POVERTY 113, 116-119 (Lakshman Guruswamy, ed. 2016) (discussing the disproportionate contribution to climate change by affluent countries and the resulting legal and moral obligations to take the lead in addressing the problem).

5. See Hannah Ritchie & Max Roser, *CO₂ and Greenhouse Gas Emissions*, Summary, OUR WORLD IN DATA (2017, revised 2019), <https://ourworldindata.org/co2-and-other-greenhouse-gas-emissions>.

6. See *id.*

7. See *id.*

8. U.N. Dep't of Int'l Econ. & Soc. Aff. (UNDESA), World Soc. Rep. 2020: Inequality in a Rapidly Changing World, U.N. Doc. ST/ESA/372, at 3 (2020).

9. See HOWARD WINANT, *Preface: New Racial Studies and Global Raciality*, in GLOBAL RACIALITY: EMPIRE, POSTCOLONIALITY, AND DECOLONIALITY viii-ix (Paola Bacchetta et al. eds, 2019); see generally, Max Bergmann et al., *The Rise of Far-Right Populism Threatens Global Democracy and Security*, CENTER FOR AMERICAN PROGRESS (Nov. 2, 2018, 9:04 AM), <https://www.americanprogress.org/issues/security/news/2018/11/02/460498/rise-far-right-populism-threatens-global-democracy-security/>; Zachary Basu, *It's Not Just the U.S.: Europe's Growing Anti-*

lante violence against minority populations, ongoing dispossession of Indigenous peoples, and mass detention and deportation of immigrants.¹⁰

Despite the deeply racialized nature of debates over migration, much of the scholarship on climate displacement sidesteps the role of race and racism in the climate crisis. This article breaks new ground by examining the racial dimensions of the climate crisis and its relationship to the fossil fuel-driven capitalist world economy (carbon capitalism). Using as an example the surge of migrants to the United States from El Salvador, Guatemala, and Honduras,¹¹ the article examines the complex ways that climate change and U.S. interventions have upended the lives and livelihoods of the region's inhabitants. The article then applies the insights from this analysis to the emerging legal and policy approaches to climate displacement.

The article proceeds in three parts. Part I defines key terms and concepts, including race, racialization, and racial capitalism. Part II applies these concepts to the life cycle of carbon capitalism and the ongoing displacement of Central Americans. Part III examines and critiques the emerging legal frameworks that address climate displacement, and proposes migration as a form of reparation for the ravages of carbon capitalism. In so doing, the article fills a gap in the climate change literature by integrating climate displacement into the larger debates over racial and postcolonial justice.

The article argues that affluent countries (the Global North) have an obligation to reduce their greenhouse gas emissions, provide adaptation assistance to climate-vulnerable countries, and provide reparations to climate-displaced persons, including the equitable sharing of responsibility for relocation and resettle-

Immigration Backlash, AXIOS (Aug. 24, 2018), <https://www.axios.com/migration-drives-populist-surge-across-europe-8a16ec3c-0c4c-4e0e-8f63-c4cff66b4936.html>.

10. See PAOLA BACCHETTA ET AL., INTRODUCTION: GLOBAL RACIALITY: EMPIRE, POSTCOLONIALITY, AND DECOLONIALITY, IN *GLOBAL RACIALITY: EMPIRE, POSTCOLONIALITY, AND DECOLONIALITY 2* (Paola Bacchetta et al. eds., 2019); Rana Ayyub, *Narendra Modi Looks the Other Way as New Delhi Burns*, TIME (Feb. 28, 2020), https://time.com/5791759/narendra-modi-india-delhi-riots-violence-muslim/?fbclid=IwAR2PzPavnIN9ZXVrSpucjf1RtV4Q3_0BtN0Ow2U0R8X3eJUtrQjQU4E9Ys.

11. See Amelia Cheatham, *Backgrounder: Central America's Turbulent Northern Triangle*, COUNCIL ON FOREIGN RELATIONS (Oct. 1, 2019), <https://www.cfr.org/backgrounder/central-americas-turbulent-northern-triangle>.

ment. This obligation arises from their disproportionate historic and current contribution to climate change as well as their role in exacerbating climate vulnerability through colonial and post-colonial military, economic, and political interventions that increased poverty and inequality in much of Asia, Africa, Latin America, and the Pacific (the Global South).

II. RACIAL CAPITALISM AND NATURE: FRAMING THE ISSUES

Capitalism is not simply a world-economy, but also a *world-ecology* that transforms human activity into commodified labor power, land into private property, and nature into an external object to be harnessed for the accumulation of capital.¹² Capitalism creates a divide between humanity and nature, and deploys science and technology in an endless quest for cheap energy, cheap food, cheap raw materials, and cheap labor power.¹³ Capitalism also creates racialized distinctions between superior and inferior humans; these distinctions were developed to justify the genocide of indigenous peoples, the enslavement of Africans, and the colonial and post-colonial domination of Asia, Africa, and the Americas.¹⁴

Political theorist Cedric Robinson coined the term racial capitalism to describe the symbiotic relationship between racism and capitalism.¹⁵ He argued that capitalism emerged from European feudal societies thoroughly infused with racial hierarchies, and then evolved into a world system that transformed regional and cultural differences into racial forms of domination.¹⁶

This article defines racism as the subordination and objectification of human beings based on physical characteristics (such

12. See JASON W. MOORE, *The Rise of Cheap Nature, in ANTHROPOCENE OR CAPITALOCENE? NATURE, HISTORY, AND CRISIS OF CAPITALISM* 78, 85-87 (Jason E. Moore, ed., 2016).

13. See *id.* at 86-87, 101-102, 112; JASON MOORE, *CAPITALISM IN THE WEB OF LIFE* 128 (2015).

14. See JOHN BELLAMY FOSTER & BRETT CLARK, *THE ROBBERY OF NATURE: CAPITALISM AND THE ECOLOGICAL RIFT* 48-49 (2020); see JASON MOORE, *supra* note 12, at 79; see GARGI BHATTACHARYYA, *RETHINKING RACIAL CAPITALISM: QUESTIONS OF REPRODUCTION AND SURVIVAL* 71-80 (2018).

15. See CEDRIC J. ROBINSON, *BLACK MARXISM: THE MAKING OF THE BLACK RADICAL TRADITION* 2 (2000).

16. See *id.* at 26-27, 66-68 (discussing the racialization of Slavs, Tartars, Muslims, Africans, and Asians).

as skin color) as well as ethnicity, indigeneity, culture, language, religion, geographic location, immigration status, and geographic origin.¹⁷ Racialization is the process through which human beings are classified as superior or inferior according to distinct racial indicators adopted in a particular region or nation at a particular time.¹⁸ Race is socially constructed rather than phenotypically predetermined; who is racialized and the narrative accompanying that racialization varies significantly across place and time based on changing economic and political conditions.¹⁹ For example, some groups that are currently deemed White (such as Jews and the Irish) have a long history of being classified as non-White.²⁰ Conversely, many light-skinned Arabs and Muslims who were once considered White are currently racialized as non-White.²¹

Euro-American elites deployed racial hierarchies to maintain control over specific populations and facilitate the appropriation of their labor, lands, and natural wealth. In the U.S., for example, the key function of anti-Black racism was labor exploitation.²² When slavery was abolished, other mechanisms of exploitation and control emerged, including share-cropping, convict-leasing, debt peonage, lynching, and segregation in low-wage occupations and industries.²³ By contrast, the underlying goal of anti-Native racism was the physical eradication or forced assimilation of Indigenous peoples in order to seize their lands.²⁴ Consequently, settler-colonial states like the U.S., Australia, and Canada sought to dissolve Indigenous nations and eliminate Indigenous land

17. See generally Ramon Grosfoguel, *What is Racism?*, 22 J. WORLD-SYS. RES. 9 (2016) (adopting a similarly expansive definition of racism).

18. See Ramon Grosfoguel et al., "Racism," *Intersectionality, and Migration Studies: Framing Some Theoretical Reflections*, 22 IDENTITIES: GLOBAL STUD. IN CULTURE AND POWER 1, 3 (2014).

19. See Adolph Reed, Jr., *Marx, Race, and Neoliberalism*, 22 NEW LAB. F. 49, 50 (2013).

20. See generally KAREN BRODKIN, *HOW JEWS BECAME WHITE FOLKS AND WHAT THAT SAYS ABOUT RACE IN AMERICA* (1998); see generally NOEL IGNATIEV, *HOW THE IRISH BECAME WHITE* (1995).

21. See generally Craig Considine, *The Racialization of Islam in the United States: Islamophobia, Hate Crimes, and "Flying While Brown,"* 8 RELIGIONS 1 (2017).

22. See PATRICK WOLFE, *TRACES OF HISTORY: ELEMENTARY STRUCTURES OF RACE* 2-5 (2016).

23. See id. at. 75-93; SASKIA SASSEN, *EXPULSIONS: BRUTALITY AND COMPLEXITY IN THE GLOBAL ECONOMY* 68 (2014); see generally DOUGLAS A. BLACKMON, *SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II* (2009).

24. See WOLFE, *supra* note 22, at 33.

claims through genocide, destruction of Indigenous culture, religious conversion, child abduction and re-education in boarding schools, and the conversion of Native title into individually-owned, alienable parcels of land.²⁵

Finally, the U.S. racialized Latinos and Latinas in order to justify the relentless expansion of White settlers into Mexico, Central America, and the Caribbean and the relegation to second class status of these regions' inhabitants.²⁶ For example, under the banner of Manifest Destiny (the inevitability of Euro-American expansion and domination of supposedly inferior races, including Latin Americans), the U.S. annexed Texas in 1845, waged war against Mexico, and acquired half of Mexico's territory pursuant to the 1848 Treaty of Guadalupe Hidalgo (including the present-day states of California, New Mexico, Nevada, and parts of Arizona and Utah).²⁷ The wealth extracted from these territories through the dispossession of Mexican landowners and the exploitation of Mexican labor contributed significantly to U.S. prosperity in the twentieth century.²⁸ In Central America and the Caribbean, racism and Manifest Destiny were likewise invoked to support armed interventions by White settlers and countless invasions and occupations by the U.S. military that enabled U.S. banks and corporations to dominate the key industries of the region by the early decades of the twentieth century.²⁹ "As U.S.-owned plantations spread rapidly into Mexico, Cuba, Puerto Rico,

25. PATRICK WOLFE, *TRACES OF HISTORY: ELEMENTARY STRUCTURES OF RACE* 33 (2016). In the U.S., Indian tribes were recognized as sovereign nations capable of entering into treaties with the United States (until 1871), but they were also regarded as a racially distinct, inferior group. See LAURA E. GÓMEZ, *MANIFEST DESTINIES: THE MAKING OF THE MEXICAN RACE* 1 (2nd ed. 2018); see generally ROBERT A. WILLIAMS, *THE AMERICAN INDIAN IN WESTERN LEGAL THOUGHT: THE DISCOURSES OF CONQUEST* (1990) (discussing the ideologies that justified the conquest of indigenous peoples). For an analysis of the contemporary tension between the status of tribes as sovereign nations and racialized groups, see Gloria Valencia-Weber, *Racial Equality: Old and New Strains and American Indians*, 80 NOTRE DAME L. REV. 333 (2004); see Carole Goldberg, *Descent into Race*, 49 UCLA L. REV. 1371 (2002).

26. See JUAN J. GONZALEZ, *HARVEST OF EMPIRE: A HISTORY OF LATINOS IN AMERICA* 28-29 (Revised ed. 2011); see PAUL FRYMER, *BUILDING AN AMERICAN EMPIRE: THE ERA OF TERRITORIAL AND POLITICAL EXPANSION* 172-219 (2017).

27. See GONZALEZ, *supra* note 26, at 29-30, 41-44; see also GÓMEZ, *supra* note 25, at 4 (describing Manifest Destiny as "a cluster of ideas that relied on racism to justify a war of aggression against Mexico").

28. See GONZALEZ, *supra* note 26, at 44-47.

29. See *id.* at 47-59.

the Dominican Republic, Honduras, and Guatemala, millions of peasants were displaced from their lands.”³⁰

Racial hierarchies are not relics of a bygone era. Latinos and Latinas, for example, continue to be portrayed in the U.S. media as racially subordinate, criminal, violent, uncivilized, foreign, and a menace to the “American way of life.”³¹ Racial hierarchies structure the national and international division of labor, relegating those constructed as non-White to the most precarious, dangerous, and least desirable forms of employment.³² They also intersect with gender hierarchies, consigning women to domestic labor (such as cooking, cleaning, and raising children)³³ and subjecting racialized poor women to additional forms of exploitation including trafficking, coerced sex work, and the low-paid domestic and care work that facilitates the participation of more privileged women in elite labor markets.³⁴ Finally, racial hierarchies influence which immigrants are welcomed with open arms and which immigrants are excluded, detained, and deported.³⁵

While racial constructs are applied to human bodies, racialized exclusion is also mapped onto space in the form of stigmatized geographic locations – including reservations, ghettos, export-processing zones, extractive zones, and the Third World – where the land and the people have been rendered expendable

30. JUAN J. GONZALEZ, *HARVEST OF EMPIRE: A HISTORY OF LATINOS IN AMERICA* 59 (Revised ed. 2011).

31. See GÓMEZ, *supra* note 25, at 187-188; see JOSÉ A. COBAS ET AL., *Introduction: Historical Background and Current Forms*, in *HOW THE UNITED STATES RACIALIZES LATINOS: WHITE HEGEMONY AND ITS CONSEQUENCES* 1, 7-8 (José A. Cobas et al. eds. 2009).

32. See BHATTACHARYYA, *supra* note 14, at 107-108; see Daniel Faber, *Global Capitalism, Reactionary Neoliberalism, and the Deepening of Environmental Injustices*, 29 *CAPITALISM, NATURE, SOCIALISM* 8, 14 (2018); see Nancy Fraser, *Expropriation and Exploitation in Racialized Capitalism: A Reply to Michael Dawson*, 3 *CRITICAL HIST. STUD.* 163, 175 (2016).

33. See BHATTACHARYYA, *supra* note 14, at 40.

34. See *id.* at 47; BACCHETTA ET AL., *supra* note 10, at 2-3.

35. See Ibram X. Kendi, *The Day “Shithole” Entered the Presidential Lexicon*, *THE ATLANTIC* (Jan. 13, 2019), <https://www.theatlantic.com/politics/archive/2019/01/shithole-countries/580054/> (analyzing President Trump’s hostility to immigrants from Haiti, El Salvador, and an assortment of African countries); see Leighton Akio Woodhouse, *Trump’s “Shithole Countries” Remark Is at the Center of a Lawsuit to Reinstate Protections for Immigrants*, *THE INTERCEPT* (June 28, 2018, 7:00 AM), <https://theintercept.com/2018/06/28/trump-tps-shithole-countries-lawsuit/> (discussing the lawsuit challenging the Trump administration’s revocation of relief from deportation for certain immigrants on the basis of racism).

and disposable.³⁶ Indeed, the current stage of racial capitalism is marked by growing expendability as people are expelled from gainful employment by contracting global labor markets,³⁷ expelled from society through mass incarceration,³⁸ and displaced from their homes in record numbers, not only by poverty and conflict, but also by extreme weather events triggered by climate change (such as hurricanes, drought, and floods) as well as the degradation of air, land and water.³⁹ Racialization renders exclusion and expulsion morally and legally acceptable because much of the burden is borne by “surplus” people and places.⁴⁰ The following section examines climate change through a racial capitalist lens.

III. RACIAL CAPITALISM AND CLIMATE CHANGE

An analysis of climate change through the framework of racial capitalism reveals that the domination of nature and the dispossession and exploitation of racialized human beings are deeply inter-connected. While most analyses of climate change focus on the catastrophic consequences of greenhouse gas emissions, Part A of this section looks at the life cycle of fossil fuels and its impact on stigmatized persons and places from cradle to grave. Part B uses Central America as a case study to illustrate the ways in which racism, capitalism, and climate change intersect to destroy lives and livelihoods.

A. THE LIFE CYCLE OF CARBON CAPITALISM

Carbon capitalism has produced racialized exclusion at every stage of its life cycle. First, the Industrial Revolution, which launched the age of fossil fuels, was made possible by the colonization of the Americas, the genocide of approximately 50 million indigenous peoples, and the abduction and enslavement of Africans.⁴¹ “Plantation agriculture and cotton in particular were key

36. See Levi Gahman & Elise Hjalmarson, *Border Imperialism, Racial Capitalism, and Geographies of Deracination*, 18 ACME: INT’L J. FOR CRITICAL GEOGRAPHIES 107, 115 (2019); Laura Pulido, *Flint, Environmental Racism, and Racial Capitalism*, 27 CAPITALISM, NATURE, SOCIALISM 1, 8 (2016).

37. See BHATTACHARYYA, *supra* note 14, at 63, 122-123.

38. See SASSEN, *supra* note 23, at 63-75.

39. See *id.* at. 149-210.

40. See Pulido, *supra* note 36, at 8.

41. See KATHRYN YUSOF, A BILLION BLACK ANTHROPOCENES OR NOT 14-16, 29-33 (2019); see Simon L. Lewis & Mark A. Maslin, *Defining the Anthropocene*, 519 NATURE 171, 175-177 (2015) (proposing 1610 as the beginning of the Anthropocene,

to the emergence of the industrial power of England first and quickly much of the rest of Europe.”⁴² The slave plantation colonies of the Americas supplied food, energy, industrial inputs, and markets for British manufactured goods.⁴³ Between 1600 and 1800, slaves in the Americas comprised less than one percent of the world’s population, but produced the commodities that dominated world trade.⁴⁴

Second, the “slow violence” inflicted by the fossil fuel industry on racialized and poor communities all over the world remains a defining feature of contemporary capitalism.⁴⁵ From petroleum development by Chevron/Texaco in Ecuador to Cancer Alley in Louisiana, the extraction, processing, transportation, refining, and combustion of fossil fuels has placed disproportionate environmental burdens on racialized communities in both affluent and poor countries. These burdens include pervasive contamination of land, air, and water; loss of subsistence fishing and hunting rights; eviction from ancestral lands; fires, explosions, and industrial accidents; violation of indigenous treaty rights and land ethics; and exposure to toxic chemicals.⁴⁶

Third, fossil fuel reserves are concentrated in particular countries and regions, such as the Middle East, that have been

the contemporary era where humans dictate the future of the planet, due to the significant environmental impacts of the deaths of 50 million indigenous peoples, including the collapse of farming, the rebounding of forests, and the resulting steep decline in atmospheric carbon dioxide levels); see SIMON L. LEWIS & MARK A. MASLIN, *THE HUMAN PLANET* 326-327 (2018) (“If the Anthropocene is pinned to the Columbian Exchange, the deaths of 50 million people, and the beginnings of the modern world, then it is a deeply uncomfortable story of colonialism, slavery and the birth of the profit-driven capitalist mode of living being intrinsically linked to long-term planetary environmental change”).

42. Simon Dalby, *Environmental Geopolitics in the Twenty-First Century*, 39 *ALTERNATIVES: GLOBAL, LOCAL, POLITICAL* 3, 6 (2014).

43. See YUSOF, *supra* note 41, at 40-41; see LEWIS & MASLIN, *supra* note 41, at 193-194; see ROBIN BLACKBURN, *THE MAKING OF THE NEW WORLD SLAVERY* 375 (1997); see ERIC WILLIAMS, *CAPITALISM AND SLAVERY* 51-85 (1994); see Heather Davis & Zoe Todd, *On the Importance of a Date, or Decolonizing the Anthropocene*, 16 *ACME: ACME: INT’L J. FOR CRITICAL GEOGRAPHIES* 761, 770-772 (2017).

44. SVEN BECKERT, *EMPIRE OF COTTON: A GLOBAL HISTORY* 21 (2015).

45. See ROB NIXON, *SLOW VIOLENCE AND THE ENVIRONMENTALISM OF THE POOR* 68-102 (2013).

46. See NAOMI KLEIN, *THIS CHANGES EVERYTHING: CAPITALISM VS THE CLIMATE* 302-334 (2014); BRIAN C. BLACK, *CRUDE REALITY* 172-178 (2012); see JEANETTE WOLFFLEY, *Mni Wiconi, Tribal Sovereignty, and Treaty Rights: Lessons from the Dakota Access Pipeline*, in *ENERGY JUSTICE: U.S. AND INT’L PERSPECTIVES* 141-165 (Raya Salter et al. eds. 2018).

repeatedly invaded, occupied, and exploited.⁴⁷ The bloody resource wars instigated by Europe and the United States and the resulting death and displacement of racialized Arab and Muslim populations are among the cruelest manifestations of carbon capitalism.⁴⁸ Furthermore, when persons displaced by these conflicts seek refuge in the Global North, they are often branded as potential terrorists and subjected to restrictive border controls, including the notorious “Muslim ban” on travel to the U.S. from certain predominantly Muslim countries.⁴⁹

Fourth, the world’s most climate-vulnerable people are overwhelmingly persons classified as non-White.⁵⁰ They inhabit geographic locations (such as the small island states, low-lying coastal zones, and agriculture-dependent nations) disproportionately exposed to drought, desertification, hurricanes, floods, and rising sea levels.⁵¹ In addition, they have been *rendered* socially and economically vulnerable to climate change by the North’s economic, political, and military interventions.⁵² The North’s “under-development” of the Global South during the colonial and postcolonial era, described so clearly in the works of Walter Rodney⁵³ and Eduardo Galeano,⁵⁴ has been intensified by decades of neoliberal economic reforms imposed initially by the World Bank and the International Monetary Fund (IMF), and later through regional and multilateral trade agreements and bilateral invest-

47. BRIAN C. BLACK, *CRUDE REALITY* 134-147, 183-198 (2012).

48. See generally Naomi Klein, *Let Them Drown: The Violence of Othering in a Warming World*, 11 LONDON REV. BOOKS 1 (2016) <https://www.lrb.co.uk/the-paper/v38/n11/naomi-klein/let-them-drown>; MICHAEL T. KLARE, *BLOOD AND OIL: THE DANGERS AND CONSEQUENCES OF AMERICA’S GROWING DEPENDENCE ON IMPORTED PETROLEUM* (2004).

49. See Adam Liptak and Michael D. Shear, *Trump’s Travel Ban is Upheld by Supreme Court*, N.Y. TIMES (June 26, 2018), <https://www.nytimes.com/2018/06/26/us/politics/supreme-court-trump-travel-ban.html>; see Andrew Telford, *A Threat to Climate-Secure European Futures? Exploring Racial Logics and Climate-Induced Migration in US and EU Climate Security Discourses*, 96 GEOFORUM 268, 268-277 (2018).

50. See Pulido, *supra* note 36, at 117-118; see HAAS INSTITUTE, *MOVING TARGETS: AN ANALYSIS OF GLOBAL FORCED MIGRATION* 28-31 (2017), <https://belonging.berkeley.edu/moving-targets-analysis-global-forced-migration>.

51. See RUCHI ANAND, *INTERNATIONAL ENVIRONMENTAL JUSTICE: A NORTH-SOUTH DIMENSION* 35-39 (2004).

52. See HAAS INSTITUTE, *supra* note 50.

53. See generally WALTER RODNEY, *HOW EUROPE UNDERDEVELOPED AFRICA* (1972).

54. See generally EDUARDO GALEANO, *OPEN VEINS OF LATIN AMERICA: FIVE CENTURIES OF THE PILLAGE OF A CONTINENT* (1971).

ment treaties.⁵⁵ These reforms increased poverty; reduced access to health care, education, and other social services; undermined the development of climate-resilient urban and rural infrastructure; created mass displacement; and deprived states and communities of the resources necessary for climate adaptation and disaster response and recovery.⁵⁶

Fifth, climate change itself exacerbates poverty and inequality. A Stanford University study published in 2019 concluded that climate change has enhanced economic output in affluent countries (such as Norway and Sweden) while depressing economic output in poorer countries (such as Nigeria and India).⁵⁷ As a recent U.N. report confirms, “[r]ising temperatures have adversely affected economic growth in countries located in the tropics, which tend to be poorer than countries located in more temperate climate zones. They have made the world’s poorest countries poorer.”⁵⁸

Finally, racialized migrants fleeing climate change, poverty, and conflict continue to face death, detention, and deportation when they attempt to cross the militarized borders of the Global North.⁵⁹ The U.S. government has portrayed Central Americans seeking refuge in the United States as criminals, separated migrant children from their parents, and confined nearly 70,000

55. See Carmen G. Gonzalez, *Environmental Justice, Human Rights, and the Global South*, 13 SANTA CLARA J. INT’L L. 151, 167-172 (2015); see generally JOHN LINARELLI ET AL., *THE MISERY OF INTERNATIONAL LAW: CONFRONTATIONS WITH INJUSTICE IN THE GLOBAL ECONOMY* (2018).

56. See JOHN LINARELLI ET AL., *supra* note 55, at. 11-17; see HAAS INSTITUTE, *supra* note 50, at 29-30; see Michael Thomson et al., *Structural Adjustment Programmes Adversely Affect Vulnerable Populations: A Systematic-Narrative Review of Their Effect on Child and Maternal Health*, 13 PUB. HEALTH REV. 1, 1-18 (2017); see Myanna Lahsen, et al., *Impacts, Adaptation and Vulnerability to Global Environmental Change: Challenges and Pathways for an Action-Oriented Research Agenda for Middle-Income and Low-Income Countries*, 2 CURRENT OPINION ENVTL. SUSTAINABILITY 364, 364-374 (2010).

57. See generally Noah S. Diffenbaugh & Marshall Burke, *Global Warming Has Increased Global Economic Inequality*, 116 PROC. NAT’L ACAD. SCI. 9808 (2019), <https://www.pnas.org/content/pnas/116/20/9808.full.pdf>.

58. U.N. Dep’t of Int’l Econ. & Soc. Aff. (UNDESA), *World Soc. Rep. 2020: Inequality in a Rapidly Changing World*, U.N. Doc. ST/ESA/372, at 7 (2020).

59. Carmen G. Gonzalez, *Climate Justice and Climate Displacement: Evaluating the Emerging Legal and Policy Responses*, 36 WIS. INT’L L. J. 366, 367-369, 381 (2019).

children in detention centers, often in kennel-like, ice-cold cells.⁶⁰ European states are adopting increasingly draconian methods to prevent the entry of African and Middle Eastern migrants, such as increasing border surveillance, prosecuting people who assist asylum seekers, and shutting down search-and-rescue operations by non-governmental organizations in the Mediterranean.⁶¹ As a result of these policies, more than 20,000 migrants have died attempting to cross the Mediterranean since 2014,⁶² as smugglers select more dangerous routes and less sea-worthy vessels to avoid detection.⁶³ Finally, Australia continues to indefinitely detain migrants and refugees in offshore processing centers located in Nauru and on Manus Island in Papua New Guinea under conditions that Amnesty International has denounced as “a human rights catastrophe.”⁶⁴

60. See Bart Jansen & Alan Gomez, *President Trump Calls Caravan Immigrants ‘Stone Cold Criminals.’ Here’s What We Know*, USA TODAY (Nov. 26, 2018), <https://www.usatoday.com/story/news/2018/11/26/president-trump-migrant-caravan-criminals/2112846002/>; see Elliot Hannon, *The US Detained a Record 69,550 Migrant Children this Year*, SLATE, (Nov. 12, 2019), <https://slate.com/news-and-politics/2019/11/u-s-detained-record-migrant-children-separated-parents-2019.html>; see *UN says US must stop separating migrant children from parents*, THE GUARDIAN (June 5, 2018), <https://www.theguardian.com/us-news/2018/jun/05/un-says-us-must-stop-separating-migrant-children-from-parents>; see Edwin Delgado, *Trump Administration Still Separating Families at Border, Advocates Say* (Feb. 12, 2019), <https://www.theguardian.com/us-news/2019/feb/12/trump-el-paso-family-separations-migrants-immigration>; see generally STEPHANIE J. NAWYN, *Refugees in the United States and the Politics of Crisis*, in THE OXFORD HANDBOOK OF MIGRATION CRISES 163-180 (Cecilia Menjivar et al. eds. 2019).

61. See generally Telford, *supra* note 49; Encarnación Gutiérrez Rodríguez, *The Coloniality of Migration and the “Refugee Crisis”: On the Asylum-Migration Nexus, the Transatlantic White European Settler Colonialism-Migration and Racial Capitalism*, 34 REFUGEE 16, 19 (2018); Priyanka Boghani, *The “Human Cost” of the EU’s Response to the Refugee Crisis*, FRONTLINE (Jan. 23, 2018), <https://www.pbs.org/wgbh/frontline/article/the-human-cost-of-the-eus-response-to-the-refugee-crisis/>; Patrick Dehan, *The EU Claims the Migrant Crisis is Over – That Doesn’t Mean it’s Over*, QUARTZ (Mar. 18, 2019), <https://qz.com/1570617/refugees-in-africa-struggle-to-reach-europe-as-the-eu-says-migrant-crisis-is-over/>.

62. *United Nations: More Than 20,000 Migrants Have Died Crossing Mediterranean Sea Since 2014*, ASSOCIATED PRESS (March 6, 2020), <https://apnews.com/0f673e8410a70dd6b52e0a925848758a>.

63. See Michael Birnbaum, *Could the Flow of Migrants to Europe Be Stopped?*, WASH. POST (Oct. 3, 2017), https://www.washingtonpost.com/world/europe/could-the-flow-of-migrants-to-europe-be-stopped/2017/10/02/e76ac66e-a2ce-11e7-b573-8ec86cdfel1ed_story.html?noredirect=on&utm_term=.8b9b2aff2822.

64. See Helen Davidson, *Offshore Detention: Australia’s Recent Immigration History A “Human Rights Catastrophe,”* THE GUARDIAN (Nov. 13, 2016), <https://www.theguardian.com/australia-news/2016/nov/13/offshore-detention-nauru-immigration-history-human-rights>.

In Europe, the U.S., and other affluent nations, the population is generally divided “between those whose movement is a manifestation of liberty, and should therefore be maximized, and those whose freedom is a problem, and should therefore be tightly regulated.”⁶⁵ While corporations freely roam the world, racialized bodies are policed, detained, incarcerated, and deported. Ironically, even though the mobility of the affluent (including air travel) contributes disproportionately to climate change,⁶⁶ it is the mobility of the non-White poor that states restrict.⁶⁷ The North’s exclusionary immigration policies do not bode well for climate-displaced racialized communities.

B. CENTRAL AMERICA: IN THE VORTEX OF CLIMATE CHANGE AND EMPIRE

Central American migration to the United States is driven by poverty, conflict, and climate change.⁶⁸ Despite its minimal contribution to climate change, Central America is one of the world’s most climate-vulnerable regions.⁶⁹ According to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC), Central America is particularly vulnerable to climate-related extreme weather events (such as droughts, hurricanes, floods, and storms) due to its geographic location and to

65. HAGAR KOTEF, MOVEMENT AND THE ORDERING OF FREEDOM: ON LIBERAL GOVERNANCE OF MOBILITY 100 (2015).

66. See Michael Le Page, *It Turns Out Planes Are Even Worse for the Climate Than We Thought*, NEW SCIENTIST (June 27, 2019), https://www.newscientist.com/article/2207886-it-turns-out-planes-are-even-worse-for-the-climate-than-we-thought/?utm_medium=NLC&utm_source=NSNS&utm_campaign=2019-0628-GLOBAL-NSDAY&utm_content=NSDAY&fbclid=IwAR0XZyNUfeCW7oNqC_76vVN-B3xySh8hO0W4BEqdhZfgrKhcAjUwuBm-EX4; Josh Gabbatiss, *Tourism Is Responsible for Nearly One Tenth of the World’s Carbon Emissions*, THE INDEPENDENT (May 7, 2018), <https://www.independent.co.uk/environment/tourism-climate-change-carbon-emissions-global-warming-flying-cars-transport-a8338946.html>.

67. See MIMI SELLER, MOBILITY JUSTICE: THE POLITICS OF MOVEMENT IN AN AGE OF EXTREMES 135 (2018).

68. See Jeff Masters, *Fifth Straight Year of Central American Drought Helping to Drive Migration*, SCIENTIFIC AMERICAN (Dec. 23, 2019), <https://blogs.scientificamerican.com/eye-of-the-storm/fifth-straight-year-of-central-american-drought-helping-drive-migration/>; Todd Miller, *Why the Migrant Caravan Story is a Climate Change Story*, YES MAGAZINE (Nov. 27, 2018), <https://www.yesmagazine.org/social-justice/2018/11/28/why-the-migrant-caravan-story-is-a-climate-change-story/>.

69. See ECONOMIC COMMISSION FOR LATIN AMERICA AND THE CARIBBEAN (ECLAC) ET AL., CLIMATE CHANGE IN CENTRAL AMERICA: POTENTIAL IMPACTS AND POLICY OPTIONS 15-16 (2018), https://repositorio.cepal.org/bitstream/handle/11362/39150/7/S1800827_en.pdf [hereinafter, ECLAC].

pography (including steep terrain and porous soils prone to mudslides) and its elevated levels of poverty and social exclusion.⁷⁰ Indeed, approximately half the population of Central America lives below the poverty line.⁷¹

Guatemala, Honduras and El Salvador—the countries experiencing the highest levels of migration to the United States—are located in a stretch of Central America known as the “dry corridor” that suffers frequent and intense droughts.⁷² In 2014-2015, for example, drought-related crop losses in the region left more than half a million families on the brink of starvation, sparking mass migration.⁷³ Scientists predict that the region’s aridity will only increase in the coming decades.⁷⁴ Climate change will exacerbate food insecurity among the poorest people in the region, especially in Guatemala where more than thirty percent of the population is already food insecure.⁷⁵ It will depress the yields of staple crops cultivated for domestic consumption (such as maize, beans, and rice) and will also decrease coffee production, which provides employment for at least 1.4 million people in Honduras, El Salvador, Guatemala, and Nicaragua.⁷⁶

The United States is deeply implicated in the economic precarity that renders Central America particularly susceptible to climate change. Central Americans are fleeing to the United States in record numbers to escape conflict and poverty that the U.S. government helped create through countless military, economic, and political interventions.⁷⁷ “US-backed military coups,

70. See GRACIELA O. MAGRIN ET AL., *Central America and South America, in CLIMATE CHANGE 2014: IMPACTS, ADAPTATION, AND VULNERABILITY. PART B: REGIONAL ASPECTS. CONTRIBUTION OF WORKING GROUP II TO THE FIFTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE 1508* (2014), https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-Chap27_FINAL.pdf [hereinafter, IPCC, *Central and South America*]. “In November 2020, Hurricanes Eta and Iota devastated Honduras and Guatemala displacing hundreds of thousands of people and potentially triggering a new wave of migration,” See Natalie Kitroeff, *2 Hurricanes Devastate Central America*, N.Y. TIMES, Dec. 4, 2020, <http://nytimes.com/2020/12/04/world/americas/guatemala-hurricanes-mudslide-migration.htm>.

71. See ECLAC, *supra* note 69, at 18.

72. See *id.* at 48.

73. See *id.* at 49-50.

74. See *id.* at 55-56, 58.

75. See IPCC, *Central and South America, supra* note 70, at 1530.

76. See GRACIELA O. MAGRIN ET AL., *supra* note 70, at 1530.

77. See, e.g., Mark Tseng-Putterman, *A Century of Intervention Created the Immigration Crisis*, MEDIUM (June 20, 2018), <https://medium.com/s/story/timeline-us>

corporate plundering, and neoliberal sapping of resources” destabilized the region and spawned the violence and economic deprivation that continue to drive people from their homes.⁷⁸

While this article focuses on the most recent U.S. interventions in Central America, it is important to keep in mind the long legacy of U.S. military and political incursions that have disrupted and impoverished the region. As Eduardo Galeano explains:

In the middle of the nineteenth century the filibusterer William Walker, operating on behalf of bankers Morgan and Garrison, invaded Central America at the head of a band of assassins. With the obliging support of the U.S. government, Walker robbed, killed, burned, and in successive expeditions proclaimed himself president of Nicaragua, El Salvador, and Honduras. He restored slavery in the areas that suffered his devastating occupation He was welcomed back to the United States as a national hero. From then on, the invasions, bombardments, forced loans, and gun-point treaties followed one after the other.⁷⁹

These interventions were justified by racist ideologies, including the doctrine of Manifest Destiny that portrayed “Latin Americans as inferior in cultural makeup and bereft of democratic institutions.”⁸⁰ Ironically, when democratically-elected leftist leaders did come to power in Latin America, the U.S. government supported their overthrow and backed their right-wing opponents in order to maintain a business climate favorable to U.S. corporations.⁸¹

In 1954, for example, the U.S. government overthrew the democratically-elected president of Guatemala, Jacobo Arbenz, whose land reform legislation threatened the interests of United Fruit.⁸² “For the next four decades, [Guatemala’s] people suffered

intervention-central-america-a9bea9ebc148; Miles Culpepper, *The Debt We Owe Central America*, JACOBIN (Nov. 1, 2018), <https://jacobinmag.com/2018/11/central-america-migrant-caravan-trump>.

78. See Tseng-Putterman, *A Century of Intervention*, *supra* note 77.

79. GALEANO, *supra* note 54, at 107.

80. GONZALEZ, *supra* note 26, at 43. Indeed, U.S. Preside James Buchanan, an ardent believer in Manifest Destiny, welcomed Walker to the White House. See *id.* at 50.

81. *Id.* at 77.

82. JUAN J. GONZALEZ, *HARVEST OF EMPIRES: A HISTORY OF LATINOS IN AMERICA 136-37* (Revised ed. 2011) (Revised ed. 2011); ALAN MCPHERSON, *A SHORT HISTORY OF U.S. INTERVENTION IN LATIN AMERICA AND THE CARIBBEAN 139-146* (2016). For a detailed analysis of the U.S.’s role in the overthrow of the Arbenz government, see

government terror without equal in the modern history of Latin America.”⁸³ As opposition to the regime grew, the U.S. government financed the authoritarian regime’s scorched earth military campaign.⁸⁴ By the mid-1980s, the Guatemalan civil war had killed 150,000 civilians and produced 250,000 refugees.⁸⁵ Military leaders would later be tried for genocide and crimes against humanity in connection with the mass killings of Mayan people during the country’s thirty-six-year civil war (1960-1996).⁸⁶

In El Salvador, the U.S.-allied General Maximiliano Hernández Martínez slaughtered approximately 30,000 Indigenous peasants in 1932 when they rebelled against local landlords with the assistance of the country’s small Communist Party.⁸⁷ Party leader Agustín Farabundo Martí was executed amid violence so widespread that it crushed popular opposition for decades.⁸⁸ When grassroots opposition re-emerged in the 1970s and threatened electoral victory, a series of military coups and election-rigging by the Salvadoran oligarchy triggered a full-scale civil war.⁸⁹ U.S. military assistance to the country’s right-wing authoritarian government during the 1980-1992 civil war was so massive that El Salvador became the largest recipient of U.S. military aid in all of Latin America.⁹⁰ The civil war killed over 75,000 people,⁹¹ and caused at least 334,000 Salvadorans to flee to the United States.⁹²

In Honduras, U.S. entrepreneurs and government officials helped launch a 1911 coup against President Miguel Dávila, pav-

STEPHEN SCHLESINGER ET AL., *BITTER FRUIT: THE STORY OF THE AMERICAN COUP* (2nd ed. 2005); see also, Roberto Garcia Ferreira, *The CIA and Jacobo Arbenz: History of a Disinformation Campaign*, 25 J. THIRD WORLD STUD. 59 (2008).

83. GONZALEZ, *supra* note 26, at 137.

84. See MCPHERSON, *supra* note 82, at 146.

85. See Tseng-Putterman, *A Century of Intervention*, *supra* note 77.

86. See Sofia Menchu, *Guatemala to Try More Former Top Military Officials for Maya Genocide*, REUTERS (Nov. 29, 2019), <https://www.reuters.com/article/us-guatemala-justice/guatemala-to-try-more-former-top-military-officials-for-maya-genocide-idUSKBN1Y402K>.

87. See GONZALEZ, *supra* note 26, at 133.

88. See *id.* at 133.

89. See *id.* at 134.

90. See *id.* at 134-35.

91. *El Salvador’s Funes Apologizes for Civil War Abuses*, REUTERS (Jan. 16, 2010), <https://www.reuters.com/article/us-elsalvador-idUSTRE60F26M20100116>.

92. See Sara Gammage, *El Salvador: Despite End of Civil War, Emigration Continues*, MIGRATION POLICY INST. (July 26, 2007), <https://www.migrationpolicy.org/article/el-salvador-despite-end-civil-war-emigration-continues>.

ing the way for decades-long domination of the national economy by United Fruit and other U.S. companies⁹³ and strong U.S. ties to the Honduran military.⁹⁴ In the 1980s, the U.S. stationed thousands of troops in Honduras to train right-wing Contra rebels in their guerrilla insurgency against Nicaragua's Sandinista government.⁹⁵ In 2009, when left-leaning, democratically-elected president Manuel Zelaya was overthrown in a military coup, the U.S. refused to join the calls for Zelaya's immediate and unconditional reinstatement.⁹⁶ The U.S.-backed regime "proceeded to persecute progressive social movements and severely damage the country's democratic institutions," producing a wave of migrants fleeing the violence instituted by the government.⁹⁷

The end of the Central American civil wars in the 1990s inaugurated new forms of intervention and dispossession. "Having barely survived Reagan's escalation of the Cold War in the 1980s, countries in Central America were pushed by Washington in the 1990s to open up their economies to mining, large-scale biofuel production, and transnational agricultural corporations."⁹⁸ In Honduras and Guatemala, transnational agricultural corporations and local elites have converted large parcels of land into oil palm plantations, expelling peasant, Indigenous, and Afro-descendant communities.⁹⁹ Guatemala, Honduras, and El Salvador have been wracked by conflicts with local communities over mining, oil and gas development, and large-scale dams.¹⁰⁰ As a consequence of the Central American Free Trade Agreement (CAFTA), highly subsidized U.S. agricultural products have entered Central American markets at prices well below the local cost of production, devastating the livelihoods of small subsist-

93. See Tseng-Putterman, *A Century of Intervention*, *supra* note 77.

94. See Joseph Nevins, *How US Policy in Honduras Set the Stage for Today's Migration*, THE CONVERSATION (Oct. 25, 2018), <https://theconversation.com/how-us-policy-in-honduras-set-the-stage-for-todays-migration-65935>.

95. See *id.*; see Tseng-Putterman, *A Century of Intervention*, *supra* note 77.

96. See *id.*; *Dangerous Complacencies: Obama, Latin America, and the Misconception of Power*, 38 LATIN AM. PERSPECTIVES 14, 14-15 (2011).

97. Culpepper, *supra* note 77; see generally DANA FRANK, *THE LONG HONDURAS NIGHT: RESISTANCE, TERROR, AND THE UNITED STATES IN THE AFTERMATH OF THE COUP* (2018).

98. GREG GRANDIN, *THE END OF THE MYTH: FROM THE FRONTIER TO THE BORDER WALL IN THE MIND OF AMERICA* 244-245 (2019).

99. See William Robinson, *The Second Implosion of Central America*, NACLA (Jan. 28, 2019), <https://nacla.org/news/2019/01/28/second-implosion-central-america>.

100. See *id.*

ence farmers and driving rural-to-urban migration.¹⁰¹ The entire region experiences low levels of employment in the formal sector, high levels of government corruption, and escalating drug trafficking, violence, and government repression of popular resistance.¹⁰²

Much of the violence that currently plagues El Salvador, Honduras, and Guatemala has its origins in U.S. mass incarceration, drug enforcement, and counterinsurgency policies.¹⁰³ The U.S. government's mass incarceration of young Central American immigrants in the 1980s during the so-called "war on drugs" created the training ground for the militarized, hierarchical gangs that currently threaten the region.¹⁰⁴ When these gang members were deported in large numbers in the 1990s, they began to terrorize the local population, initially in El Salvador and later in Honduras and Guatemala.¹⁰⁵ The atrocities committed by U.S.-trained soldiers and U.S.-aligned paramilitaries during the Salvadoran and Guatemalan civil wars, including executions of targeted populations and the use of rape as a tool of social control, have left a lingering legacy.¹⁰⁶ Today, death squads that include military, police, and civilians inflict extralegal violence, including execution of suspected gang members.¹⁰⁷ Human rights activists, trade unionists, and journalists face high levels of harassment, repression, and death.¹⁰⁸ "This lawlessness is both a cause and ef-

101. See Ben Lilliston, *Climate Change, CAFTA and Forced Migration*, INSTITUTE FOR AGRICULTURAL TRADE POL'Y (May 16, 2019), <https://www.iatp.org/blog/201908/climate-change-cafta-and-forced-migration>.

102. See *id.*

103. See Sara Knopp, *There is No Private Violence*, JACOBIN (Nov. 27, 2018), <https://jacobinmag.com/2018/11/central-america-migrants-asylum-ms13-gang-violence>; Eric Levitz, *We Owe Central American Migrants Much More Than This*, N.Y. INTELLIGENCER, June 21, 2018, <https://nymag.com/intelligencer/2018/06/we-owe-central-american-migrants-much-more-than-this.html>.

104. See Knopp, *supra* note 103.

105. See *id.*

106. See *id.*

107. See Sara Knopp, *There is No Private Violence*, JACOBIN (Nov. 27, 2018); Brett Wilkins, *The Salvadoran Option: the US is Once Again Supporting Death Squads in Central America*, COUNTERPUNCH (June 5, 2018), <https://www.counterpunch.org/2018/06/05/the-salvador-option-the-us-is-once-again-supporting-death-squads-in-central-america/>.

108. See Christine Wade, *Activists' Murder Show Human Rights under Assault in Latin America*, WORLD POL. REV. (Mar. 21, 2016), <https://www.worldpoliticsreview.com/articles/18262/activists-murders-show-human-rights-under-assault-in-latin-america> (discussing the murder of human rights and environmental activists in Latin America, including indigenous environmental activist Berta Cáceres in Hondu-

fect of widespread public distrust in state police forces, which are largely non-professionalized, frequently penetrated by criminal gangs, and historically associated with atrocities carried out in times of political unrest and civil war.”¹⁰⁹ Finally, the criminalization of drug use, production, and distribution in the United States, combined with high U.S. drug consumption, inflates the profitability of the drug trade and creates incentives for the proliferation of extremely violent drug cartels.¹¹⁰ Many Central American women and children have fled to the United States because Honduras, Guatemala, and El Salvador have the highest rates of gender-based violence in the world (except for war zones) and because the gangs routinely target young people for forcible recruitment.¹¹¹

At the vortex of climate change and empire, Central Americans continue to flee poverty, drought, and violence.¹¹² Instead of recognizing the debt that it owes to Central America for its military, economic, and political interventions in the region and for its failure to tackle climate change, the United States continues to detain, deport, and demonize Central American migrants, including children.¹¹³ Held in ice-cold, filthy detention centers, Central American migrants face grim conditions, including overcrowding, inadequate food, poor or nonexistent medical care, cruel and inhumane guards, and lack of blankets, toothbrushes, toothpaste, toilet paper and potable drinking water.¹¹⁴ In addition

ras and Walter Méndez Barrios in Guatemala); Tula Connell, *Trade Unionists Face Death, Attacks in Central America*, AFL-CIO SOLIDARITY CTR. (Aug. 7, 2019), <https://www.solidaritycenter.org/report-unionists-face-death-attacks-in-central-america/>.

109. Levitz, *supra* note 103.

110. *See id.*

111. Knopp, *supra* note 103; see Stephen Kinzer, *How “Femicide” Drove the Caravan*, BOSTON GLOBE (Dec. 5, 2018), <https://www.bostonglobe.com/opinion/2018/12/05/how-femicide-drove-caravan/EKlQC9gBIPQM55yv45UFiK/story.html>.

112. *See* Allison O’Connor et al., *Central American Immigrants in the United States*, MIGRATION POL’Y INST. (Aug. 15, 2019), <https://www.migrationpolicy.org/article/central-american-immigrants-united-states>.

113. Zolan Kanno-Youngs, *In Shift, US Vows to More Aggressively Deport Migrant Families*, N.Y. TIMES (June 4, 2019), <https://www.nytimes.com/2019/06/04/us/politics/ice-migrant-families.html>; Amelia Cheatham, *U.S. Detention of Child Migrants*, COUNCIL OF FOREIGN REL. BACKGROUNDER (Feb. 10, 2020), <https://www.cfr.org/backgrounder/us-detention-child-migrants>.

114. *See* Andrew Gumbel, *“They were laughing at us”: Immigrants Tell of Cruelty, Illness and Filth in US Detention*, THE GUARDIAN (Sept. 12, 2018), <https://www.theguardian.com/us-news/2018/sep/12/us-immigration-detention-facilities>.

to the trauma of being separated from their parents,¹¹⁵ thousands of detained children have also reported sexual abuse by adult staff members and by other detainees.¹¹⁶ Migrants who are deported face even worse outcomes. According to Human Rights Watch, hundreds of deportees have been killed, raped, or tortured when they were returned to their country of origin.¹¹⁷

President Trump has deployed racist, dehumanizing language to rationalize his administration's cruel and punitive immigration policies, referring to Central American migrants as "animals," just as he had earlier depicted Mexican migrants as "drug dealers, criminals, rapists."¹¹⁸ While the Trump administration's treatment of Central American migrants has garnered well-deserved national and international condemnation,¹¹⁹ it is important to recognize that U.S. immigration law has consistently been driven by racial animus against communities of color.¹²⁰ From the Chinese exclusion acts of the late nineteenth century to the racially discriminatory national origin quotas that favored Northern European migrants (which were not repealed until 1965), racialized communities have long been singled out for harsh treatment under U.S. immigration law.¹²¹

115. See generally Martin H. Teicher, *Childhood Trauma and the Enduring Consequences of Forcibly Separating Children from Parents at the United States Border*, 16 BMC MEDICINE 146 (2018).

116. Matthew Haag, *Thousands of Immigrant Children Said They Were Sexually Abused in U.S. Detention Center, Report Says*, N.Y. TIMES (Feb. 27, 2019), <https://www.nytimes.com/2019/02/27/us/immigrant-children-sexual-abuse.html>.

117. Nina Lakhani, *Hundreds of Salvadorans Deported by US Were Killed or Abused, report reveals*, THE GUARDIAN (Feb. 5, 2020), <https://www.theguardian.com/world/2020/feb/05/salvadorans-deported-us-killed-abused-report>; see Sybilla Brodzinsky & Ed Pilkington, *US Government Deporting Central American Migrants to Their Deaths*, THE GUARDIAN (Oct. 12, 2015), <https://www.theguardian.com/us-news/2015/oct/12/obama-immigration-deportations-central-america>.

118. See Nicole Austin-Hillery, *Trump's Racist Language Serves Abusive Immigration Policies*, HUM. RTS. WATCH DISPATCHES (May 22, 2018), <https://www.hrw.org/news/2018/05/22/trumps-racist-language-serves-abusive-immigration-policies#>.

119. See, e.g., Joel Rose & Laura Smitherman, *Fear, Confusion and Separation as Trump Administration Sends Migrants Back to Mexico*, NAT'L PUB. RADIO (NPR) (July 1, 2019), <https://www.npr.org/2019/07/01/736908483/fear-confusion-and-separation-as-trump-administration-sends-migrants-back-to-mex>.

120. See Kevin R. Johnson, *Race, the Immigration Laws, and Domestic Race Relations: A "Magic Mirror" into the Heart of Darkness*, 78 IND. L. J. 1111 (1998); Kelly Lytle Hernandez, *America's Mass Deportation System is Rooted in Racism*, THE CONVERSATION (Feb 26, 2017), <https://theconversation.com/americas-mass-deportation-system-is-rooted-in-racism-73426>.

121. See KEVIN R. JOHNSON, *The New Nativism: Something Old, Something New, Something Borrowed, Something Blue*, in IMMIGRANTS OUT! THE NEW NATIVISM AND

An analysis of climate change grounded in racial capitalism reveals a key thread that unites the abuses described in Parts A and B of this section—the classification of a significant segment of humanity as inferior, expendable, exploitable, and disposable. Racialization justifies and naturalizes violence and dispossession—in war zones, in resource extraction zones, and in the refugee camps and migrant detention centers of the Global North. As geographer Ruth Wilson Gilmore explains, racism is not simply prejudice or discrimination, but “state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death.”¹²²

IV. MIGRATION AS REPARATION

Drawing upon the lessons of racial capitalism and the Central American case study, this section examines the emerging international legal and policy responses to climate displacement. Specifically, this section discusses the ways that racialized discourses permeate many of these approaches and obscure who actually benefits from harsh and abusive migration policies. The section concludes by proposing a different approach: migration as reparation.

A. CLIMATE DISPLACEMENT AND INTERNATIONAL LAW

Climate-displaced persons who cross national borders are not accorded legal recognition and protection as refugees under international law.¹²³ The only treaty applicable to cross-border displacement is the 1951 Geneva Convention Relating to the Status of Refugees (hereinafter, the 1951 Refugee Convention), which prohibits states from deporting refugees to a place where their life or freedom would be threatened.¹²⁴ However, the treaty de-

THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES 165, 167-176 (Juan Perea ed. 1997).

122. RUTH WILSON GILMORE, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA* 28 (2007).

123. See Carmen G. Gonzalez, *Climate Justice and Climate Displacement: Evaluating the Emerging Legal and Policy Responses*, 36 WIS. INT'L L. J. 366, 380 (2019); Sumudu Atapattu, *Climate Change: Disappearing States, Migration, and Challenges for International Law*, 4 WASH. J. ENVTL. L. & POL'Y 1, 25-26 (2014).

124. See Convention Relating to the Status of Refugees, art. 1, art. 33 ¶1, July 28, 1951, 189 U.N.T.S. 150 [hereinafter 1951 Refugee Convention]. Although the treaty was initially limited to refugees displaced during World War II, the Convention's 1967 Protocol extended its protections to all political refugees. See Protocol Relating to the Status of Refugees, Oct. 4 1967, 606 U.N.T.S. 267.

defines refugees as persons outside their country of origin who are unable or unwilling to return due to a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”¹²⁵ Climate-displaced persons do not generally fit this definition.¹²⁶ Furthermore, even migrants who arguably meet this restrictive legal standard are frequently confined in detention facilities, and required to prove their well-founded fear of persecution without the benefit of legal representation.¹²⁷ In the United States, for example, migrant children as young as three years old have been compelled to represent themselves in deportation proceedings without legal counsel and without their parents who could explain the conditions in their home country that caused them to flee.¹²⁸

Some scholars have proposed amending or liberally reinterpreting the 1951 Refugee Convention to protect climate-displaced persons.¹²⁹ However, this idea has encountered resistance on the ground that it “might undermine what little legal protection is available to political refugees.”¹³⁰ States have generally rejected proposals to treat climate-displaced persons as refugees due to the increasingly contentious nature of migration poli-

125. 1951 Refugee Convention, art. 1.

126. See Thea Philip, *Climate Change Displacement and Migration: An Analysis of the Current International Regime's Deficiency, Proposed Solutions and a Way Forward*, 19 MELBOURNE J. INT'L L. 639, 644-648 (2018) (discussing the unsuccessful refugee applications in Australia and New Zealand by persons seeking protection from the impacts of climate change). Acknowledging that climate displaced persons face “xenophobia, difficulty in their access to food, water, health care and housing, and the ever-present threats of arbitrary detention, human trafficking, violent attack, rape and torture, among others,” the United Nations Human Rights Council has urged states to take action to protect their rights even though climate displaced persons do not generally qualify as refugees. See Rep. of the U.N. High Comm'r for Hum. Rts., *Summary of the Panel Discussion on Human Rights, Climate Change, Migrants and Persons Displaced across International Borders*, ¶¶ 7-8 U.N. Doc. A/HRC/37/37 (Nov. 14, 2017).

127. ASHLEY DAWSON, *EXTREME CITIES: THE PERIL AND PROMISE OF URBAN LIFE IN THE AGE OF CLIMATE CHANGE* 197, 202 (2017).

128. Christina Jewett & Shefali Luthra, *Immigrant Toddlers Ordered to Appear in Court Alone*, TX. TRIB. (June 27, 2018), <https://www.texastribune.org/2018/06/27/immigrant-toddlers-ordered-appear-court-alone/>.

129. See Beatriz Felipe Pérez, *Beyond the Shortcomings of International Law: A Proposal for the Legal Protection of Climate Migrants*, in “CLIMATE REFUGEES”: BEYOND THE LEGAL IMPASSE? 218-219 (Simon Behrman & Avidan Kent eds., 2018).

130. Uwe Lübken, *Introduction: Chasing a Ghost? Environmental Change and Migration in History*, 5 GLOBAL ENV'T. 4, 8 (2012).

cy¹³¹ and due to the unwillingness of states to assume the socio-economic burden of accepting large numbers of displaced persons.¹³² Furthermore, even if states did grant refugee-like protection to climate-displaced persons, these “climate refugees” would undoubtedly encounter the same obstacles enumerated above—increasingly militarized borders, confinement in detention centers, denial of legal representation, and the insurmountable burden of proving that their multi-faceted and complex decision to migrate can be attributed exclusively to climate change.

Several states have offered temporary protection from deportation on humanitarian grounds to disaster-displaced persons who do not face individual persecution.¹³³ However, temporary protection is discretionary, may not be an adequate remedy for climate-displaced persons whose countries become permanently uninhabitable, and may not be available in an era of intensifying xenophobia.¹³⁴

International human rights law imposes additional obligations on states, including the prohibition on deporting persons “at risk of arbitrary deprivation of life, torture, or cruel, inhuman, or degrading treatment or punishment” even though these persons may not be eligible for refugee status.¹³⁵ Known as *non-refoulement* or complementary protection,¹³⁶ this obligation may provide at least limited relief to climate-displaced persons. In a ground-breaking decision issued in January 2020, the United Na-

131. See ELIN JAKOBSSON, *Norm Formalization in International Policy Formulation: A Framework for Analysis*, in “CLIMATE REFUGEES”: BEYOND THE LEGAL IMPASSE? 63-64 (Simon Behrman & Avidan Kent eds., 2018).

132. See Tarja Ketola, *Climigration: How to Plan Climate Migration by Learning from History?* 8 GLOBAL ENV'T. 410, 412 (2015).

133. See MADELINE GARLICK ET AL., *Enhancing Legal Protection for People Displaced in the Context of Disasters and Climate Change: Challenges and Opportunities*, in “CLIMATE REFUGEES”: BEYOND THE LEGAL IMPASSE? 118, 121-122 (Simon Behrman & Avidan Kent eds., 2018); Theki Anastasiou, *Public International Law's Applicability to Migration as Adaptation: Fit for Purpose?* in “CLIMATE REFUGEES”: BEYOND THE LEGAL IMPASSE? 172, 182-183 (Simon Behrman & Avidan Kent eds., 2018).

134. See Anastasiou, *Migration as Adaptation* at 183; GARLICK ET AL. CLIMATE REFUGEES at 122; see *Europe's Hostile Environment Deters Asylum Seekers*, THE WEEK (June 19, 2018), <http://www.theweek.co.uk/94383/is-europe-s-hostile-environment-turning-off-asylum-seekers>.

135. JOLANDA VAN DER VLIET, “Climate Refugees”: A Legal Mapping Exercise, in “CLIMATE REFUGEES”: BEYOND THE LEGAL IMPASSE? 16, 22 (Simon Behrman & Avidan Kent eds., 2018).

136. See *id.*

tions Human Rights Committee determined that the adverse impacts of climate change may violate Article 6 (right to life) and Article 7 (prohibition on torture or cruel and degrading treatment) of the International Covenant on Civil and Political Rights (ICCPR) – thereby triggering the prohibition on deportation.¹³⁷ Nevertheless, the Committee decided that New Zealand's deportation of the petitioner was lawful because his home country of Kiribati is not predicted to become uninhabitable for ten to fifteen years, allowing sufficient time for the government of Kiribati, with international support, to protect its population.¹³⁸ While this case constitutes a landmark ruling on the obligations of states to climate-displaced persons, the decision raises questions about how dire conditions must be in climate-vulnerable countries before *non-refoulement* or complementary protection are legally required.

Finally, international environmental law has begun to focus on the plight of climate-displaced persons. The Paris Agreement, adopted in 2015 pursuant to the United Nations Framework Convention on Climate Change (UNFCCC), explicitly recognizes the need to address climate-induced harms that cannot be avoided through mitigation and adaptation (such as displacement) – a concept known as loss and damage.¹³⁹ The decision adopting the Paris Agreement specifically requires the development of “recommendations for integrated approaches to avert, minimize, and address displacement related to the adverse impacts of climate change.”¹⁴⁰ Because the formal incorporation of loss and damage into the climate regime is relatively new, it is difficult to predict how this regime will contend with climate displacement.¹⁴¹

137. United Nations Human Rights Committee, CCPR/C/127/D/2728/2016, at ¶ 9.11 (Jan. 7, 2020).

138. *Id.* at ¶ 9.12.

139. See Carmen G. Gonzalez, *Climate Justice and Climate Displacement: Evaluating the Emerging Legal and Policy Responses*, 36 WIS. INT'L L. J. 366, 378 (2019); See U.N. Framework Convention on Climate Change Conference of Parties, Twenty-First Session, Adoption of the Paris Agreement, ¶¶ 48-50, art. 8(1)-(3), U.N. Doc. FCCC/CP/2015/L.9/Rev.1 (Dec. 12, 2015) [hereinafter Paris Agreement] (includes the Warsaw International Mechanism for loss and damage in article 8 of the Paris Agreement and instructing the mechanism's Executive Committee to address climate displacement).

140. Paris Agreement, *supra* note 139, at ¶ 50.

141. See Gonzalez, *supra* note 59, at 378-379.

In the absence of an established legal framework for climate-displaced persons, several legal and policy approaches are emerging. Each approach is discussed and critiqued below.

1. THE NATIONAL SECURITY RESPONSE

The Department of Homeland Security (DHS) has portrayed climate change as a “threat-multiplier” that endangers national security.¹⁴² Indeed, as early as 2003, a Pentagon-commissioned report predicted that climate change could destabilize less prosperous regions of the world by disrupting access to food, water, and energy—thereby escalating conflict and triggering the “mass emigration” of “desperate people” to the United States.¹⁴³ In 2014, DHS concluded:

[C]limate change and associated trends . . . aggravate stressors abroad that can enable terrorist activity and violence, such as poverty, environmental degradation, and social tensions. More severe droughts and tropical storms, especially in Mexico, Central America, and the Caribbean, could also increase population movements, both legal and illegal, across the U.S. border.¹⁴⁴

The national security response reinforces “deep-seated fears and stereotypes of the dark-skinned, overbreeding, dangerous poor” penetrating U.S. borders or arriving on European shores.¹⁴⁵ Instead of promoting compassion for climate-displaced persons or recognition of the responsibility of high-emitting powerful states for causing climate change and exacerbating climate vulnerability, the national security approach reinforces racialized distinctions between “us and them, citizen and foreigner, friend and en-

142. Caitlin Werrell & Francesco Femia, *DHS to Congress: Climate Change a Threat Multiplier to Global Security*, CLIMATE AND SEC. (July 9, 2015), <https://climateandsecurity.org/2015/07/09/dhs-to-congress-climate-change-a-threat-multiplier-to-global-security/>.

143. Peter Schwarz & Doug Randall, *An Abrupt Climate Change Scenario and Its Implications for United States National Security* 2-5 (2003), https://www.iatp.org/sites/default/files/An_Abrupt_Climate_Change_Scenario_and_Its_Impl.pdf; Miller, *supra* note 1.

144. 2014 QUADRENNIAL HOMELAND SECURITY REVIEW 22 (2014), <https://www.dhs.gov/sites/default/files/publications/qhsr/2014-QHSR.pdf>.

145. Betsy Hartmann, *Rethinking Climate Refugees and Climate Conflict: Rhetoric, Reality and the Politics of Policy Discourse*, 22 J. INT'L DEV. 233, 238 (2010).

emy,¹⁴⁶ and produces fear, hatred, and the militarization of borders.¹⁴⁷

The threat of mass relocation from South to North is also at odds with historic patterns of migration and displacement. For example, in 2017, 68.5 million people were forcibly displaced worldwide, but the vast majority—approximately 40 million—remained within their country of origin.¹⁴⁸ Most displaced persons who did cross national borders settled in neighboring countries in the Global South, which host eighty-five percent of the world's refugees.¹⁴⁹ “Only a relatively small, albeit increasing proportion of refugees worldwide have managed to come to the Global North, mostly to Germany, France, Italy, Sweden, and the United States.”¹⁵⁰ Thus, the burden of caring for the world's displaced persons has fallen disproportionately on the Global South.

2. THE HUMANITARIAN RESPONSE

A second response to climate displacement depoliticizes climate change by framing it through a humanitarian and charitable lens. The humanitarian response to climate displacement depicts climate-displaced persons as passive and helpless victims who need to be rescued by the benevolence of affluent countries.¹⁵¹ Instead of requiring the North to compensate displaced persons for the harms caused by the North's profligate greenhouse gas emissions and its colonial and post-colonial plunder of Southern resources, the humanitarian approach portrays Northern assistance to climate-vulnerable states and peoples as a form of charity.¹⁵²

146. Hedda Ransan-Cooper et al., *Being(s) Framed: The Means and Ends of Framing Environmental Migration*, 35 GLOBAL ENVTL. CHANGE, 106, 110 (2015).

147. Mark Karlin, *Climate Change Refugees Face Militarized Borders*, TRUTHOUT (Oct. 1, 2017), <https://truthout.org/articles/climate-change-refugees-face-militarized-borders/>.

148. See United Nations High Comm'r for Refugees, Rep. on Global Trends: Forced Displacement in 2017, 2 (June 25, 2018), <http://www.unhcr.org/5b27be547.pdf> [hereinafter *Global Trends*].

149. See *id.* at 2.

150. André Bank & Christiane Fröhlich, *Forced Migration in the Global South: Reorienting the Debate*, GER. INST. OF GLOB. & AREA STUD., at 3 (June 2018), https://www.giga-hamburg.de/en/system/files/publications/gf_global_03_en.pdf.

151. See Hedda Ransan-Cooper et al., *Being(s) Framed: The Means and Ends of Framing Environmental Migration*, 35, GLOBAL ENVTL. CHANGE, 106, 109 (2015).

152. *Id.*

The Nansen Initiative is an example of a legal framework for disaster displacement based on the humanitarian approach. Spearheaded by Norway and Switzerland in 2012, the Nansen Initiative is a state-led intergovernmental process that sets out a series of principles to provide protection and assistance to displaced persons who cross national borders due to disasters.¹⁵³ These principles are currently being implemented by the Nansen Initiative's successor, the Platform on Disaster Displacement,¹⁵⁴ which seeks to integrate best practices on cross-border disaster displacement into existing legal frameworks in lieu of negotiating a new treaty.¹⁵⁵

The Nansen Initiative represents a significant improvement over the national security approach, but it is flawed in several important respects. First, the Nansen Initiative's emphasis on charity rather than historic responsibility obscures the North's responsibility for climate change and for colonial and post-colonial policies that impoverished the Global South and increased its climate vulnerability. Second, the Nansen initiative's emphasis on voluntary implementation is likely to flounder in an era of escalating racialized hostility toward migrants and refugees. Third, the Nansen Initiative's state-led approach may obscure the priorities and perspectives of climate migrants, thereby inflicting procedural injustice.¹⁵⁶ Finally, the Nansen Initiative is limited to disaster-related displacement, and may not offer pro-

153. See generally THE NANSEN INITIATIVE, AGENDA FOR THE PROTECTION OF CROSS-BORDER DISPLACED PERSONS IN THE CONTEXT OF DISASTERS AND CLIMATE CHANGE (2015), <https://nanseninitiative.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf>; Francois Gemenne and Pauline Brucker, *From Guiding Principles on Internal Displacement to the Nansen Initiative: What the Governance of Environmental Migration Can Learn from the Governance of Internal Displacement*, 27 INT'L J. REFUGEE L. 245, 258 (2015).

154. See PLATFORM ON DISASTER DISPLACEMENT, *State-led, Regional, Consultative Processes: Opportunities to Develop Legal Frameworks on Disaster Displacement*, in "CLIMATE REFUGEES": BEYOND THE LEGAL IMPASSE? 126, 127-128 (Simon Behrman & Avidan Kent eds., 2018).

155. See *id.* at 136; Jane McAdam, *From the Nansen Initiative to the Platform on Disaster Displacement: Shaping International Approaches to Climate Change, Disasters and Displacement*, 39 UNIV. N.S.W. L. J. 1518, 1520 (2016).

156. See MAXINE BURKETT, *Justice and Climate Migration*, in "CLIMATE REFUGEES": BEYOND THE LEGAL IMPASSE? 73, 82 (Simon Behrman & Avidan Kent eds. 2018).

tection to persons who migrate due to slow-onset events such as desertification, sea level rise, and chronic flooding.¹⁵⁷

Another humanitarian approach, the Sendai Framework for Disaster Risk Reduction, fosters international cooperation to mitigate disaster risks, including climate displacement, *before* they occur.¹⁵⁸ While this framework introduces important innovations, including its bottom-up approach to disaster risk reduction and its emphasis on socio-economic vulnerability, the Sendai Framework, like its predecessor the Hyogo Framework, is also grounded in Northern charity rather than historic responsibility¹⁵⁹ and therefore replicates many of the flaws of the Nansen Initiative.

3. THE MIGRATION MANAGEMENT RESPONSE

The third response to climate displacement consists of state-governed human mobility to avoid disruptive, unauthorized mass migration.¹⁶⁰ The migration management approach promotes migrant worker programs in the Global North as a means of enhancing climate resilience in the Global South.¹⁶¹ Instead of depicting climate-displaced persons as threats to national security or helpless victims dependent on state protection, the migration management response recognizes the agency, ingenuity and innovation of migrant workers.¹⁶² Temporary labor migration is framed as a form of entrepreneurship that generates remittances with which to finance climate change adaptation in the migrant's

157. See SUMUDU ANOPAMA ATAPATTU, *A New Category of Refugees?: "Climate Refugees" and a Gaping Hole in International Law*, in CLIMATE REFUGEES: BEYOND THE LEGAL IMPASSE? 34, 43, 45 (Simon Behrman & Avidan Kent eds., 2018)

158. See G.A. Res. 69/283, Sendai Framework for Disaster Risk Reduction at 17-18 (June 3, 2015), https://www.preventionweb.net/files/43291_sendaiframeworkfordrren.pdf. The Sendai Framework was endorsed by the UN General Assembly in 2015. G.A. Res. 69/283, at 2 (June 3, 2015).

159. See generally PAUL J. GOVIND & ROBERT R.M. VERCHICK, *Natural Disaster and Climate Change*, in INTERNATIONAL ENVIRONMENTAL LAW AND THE GLOBAL SOUTH 491, 494 (Shawkat Alam et al. eds, 2015) (discussing the predecessor to the Sendai Framework).

160. See Dayna Scott & Adrian A. Smith, *The Abstract Subject of the Climate Migrant: Displaced by the Rising Tides of the Green Energy Economy*, 8 J. HUM. RTS. AND ENV'T 30, 43 (2017).

161. See Romain Felli, *Managing Climate Insecurity by Ensuring Continuous Capital Accumulation: "Climate Refugees" and "Climate Migrants,"* 18 NEW POL. ECON. 337, 339 (2013).

162. *Id.* at 350; Chris Methmann & Angela Oels, *From "Fearing" to "Empowering" Climate Refugees: Governing Climate-Induced Migration in the Name of Resilience* 46 SEC. DIALOGUE 51, 59 (2015).

country of origin.¹⁶³ Rather than treating climate displacement as a tragedy to be prevented at all costs, the migration management response transforms adversity into an opportunity to foster “climate-smart development” in communities left behind, provided that the migration process takes place under the watchful eye and careful management of states and institutions of global governance.¹⁶⁴

The migration management response relies on remittances by migrants—instead of financial contributions by affluent, high-emitting states—to finance climate change adaptation and disaster risk reduction in climate-vulnerable Southern states.¹⁶⁵ Roman Felli summarizes the flaws in this approach:

Rather than understanding ‘climate refugees’ as victims of climate change produced by industrialized countries, and thus as in need of justice (which could take the form of funding for adaptation), these individuals are turned, through a ‘positive story,’ into entrepreneurial migrants who not only can lift themselves out of poverty but may also contribute to the ‘resilience’ of their ‘vulnerable’ communities.¹⁶⁶

By portraying climate-displaced persons as entrepreneurs rather than victims of injustice, the migration management response absolves the North of its responsibility for climate change and for the military, economic, and political interventions that exacerbated the climate vulnerability of the Global South.¹⁶⁷

The migration management response is problematic for several additional reasons. First, it is premised on the authority of states to contain, control, and limit migration, and does not impose an affirmative obligation to accept climate-displaced persons.¹⁶⁸ Indeed, the migration management response invites Northern states to cherry pick “desirable” migrants and exclude

163. See Felli, *supra* note 161, at 339; Giovanni Bettini et al., *One Step Forward, Two Steps Back? The Fading Contours of (In)justice in Competing Discourses on Climate Migration*, 183 *GEOGRAPHICAL J.* 348, 352–353 (2017).

164. See Methmann & Oels, *supra* note 162, at 59, 62.

165. See *id.* at 63; Bettini et al., *supra* note 163, at 354.

166. See Felli, *supra* note 161, at 350.

167. See Giovanni Bettini et al., *One Step Forward, Two Steps Back? The Fading Contours of (In)justice in Competing Discourses on Climate Migration*, 183 *GEOGRAPHICAL J.* 348, 353–354 (2017).

168. See Methmann & Oels, *supra* note 162, at 61.

those deemed “undesirable.”¹⁶⁹ Given the racialized nature of migration, desirable migrants are likely to be young, able-bodied, skilled, educated, and light-skinned; undesirable migrants consigned to “illegality,” informality, and expendability, will likely consist of those who are darker-skinned, older, poorer, unskilled, or disabled.¹⁷⁰ Second, the migration management response does not require Northern States to grant these “entrepreneurial” migrants labor rights, social safety nets, and the ability to protest dangerous or abusive working conditions without facing deportation.¹⁷¹ While there is a human rights treaty that protects migrant workers—the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families—not a single affluent, labor-importing Northern country has thus far ratified this treaty.¹⁷² Finally, the migration of able-bodied workers can intensify the vulnerability of “trapped populations” who do not have the skills or the resources to compete in international labor markets.¹⁷³ Women are likely to be over-represented among these “trapped populations” because they generally have less education, fewer employment opportunities, greater family care obligations, and higher vulnerability to trafficking and interpersonal violence.¹⁷⁴

169. See Bettini et al., *supra* note 163, at 353.

170. See, e.g., SUKETU MEHTA, THIS LAND IS OUR LAND: AN IMMIGRANT'S MANIFESTO at 129-135 (describing the preference for White immigrants and the exclusion of non-White immigrants).

171. See Felli, *supra* note 161, at 354.

172. See G.A. Res. 45/158, Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families (Dec. 18, 1992), <https://www.ohchr.org/Documents/ProfessionalInterest/cmw.pdf>; (entered into force July 1, 2003) [hereinafter UN Convention on Migrant Workers]; United Nations, U.N. High Comm'r for Hum. Rts., *Status of Ratification*, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4 (last visited, March 19, 2020). [https://treaties.un.org/doc/Publication/MTDSG/Volume I/Chapter IV/IV-13.en.pdf](https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-13.en.pdf).

173. See Chris Methmann & Angela Oels, *From “Fearing” to “Empowering” Climate Refugees: Governing Climate-Induced Migration in the Name of Resilience* 46 SEC. DIALOGUE 51, 61 (2015); Susannah Willcox, *Climate Change Inundation, Self-Determination, and Atoll Island States*, 38 HUM. RTS. QUARTERLY 1022, 1023-1024 (2016).

174. See Cecilia Sorensen, et al, *Climate change and women's health: Impacts and policy directions*. 15 PLOS MED. 1, 4, 6-7 (2018), <https://journals.plos.org/plosmedicine/article/file?id=10.1371/journal.pmed.1002603&type=printable>.

4. THE SELF-DETERMINATION RESPONSE

In order to develop alternatives to the legal and policy frameworks favored by the Global North, this section considers the perspectives and priorities of those who face actual or imminent displacement. As critical race scholar Mari Matsuda observes, “looking to the bottom”—to those who experience the greatest disadvantage from the contemporary legal order—can help us understand law’s operation and define just solutions.¹⁷⁵ “Those who are oppressed in the present world can speak most eloquently of a better one. Their language will not be abstracted, detached, or inaccessible; their program will not be undefined.”¹⁷⁶ Looking to the bottom will provide insights that may be overlooked by legal scholars and policymakers.¹⁷⁷

One response to climate displacement that has been articulated by Southern states and peoples is the right of displaced persons to migrate collectively as a form of self-determination.¹⁷⁸ The right of peoples to self-determination is recognized in several legal instruments, including common Article 1 of the International Covenant on Civil and Political Rights (ICCPR)¹⁷⁹ and the International Covenant on Economic, Social and Cultural Rights (ICESCR);¹⁸⁰ the United Nations General Assembly Declaration of the Granting of Independence to Colonial Countries and Peo-

175. See Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 400 (1987).

176. *Id.* at 346-347.

177. *See id.* at 325-326.

178. *See generally* Willcox, *supra* note 173; Sophie Pascoe. *Sailing the Waves on Our Own: Climate Migration, Self-Determination, and the Carteret Islands*. 15 QUEENSLAND UNIV. TECH. L. REV. 72 (2015); Amy Maguire and Jeffrey McGee, *A Universal Human Right to Shape Responses to a Global Problem? The Role of Self-Determination in Guiding the International Legal Response to Climate Change*. 26 REV. EURO. COMMUNITY AND INT’L ENVTL. L. 54 (2017).

179. *See* International Covenant on Civil and Political Rights, art. 1, 16 December 1966, 999 U.N.T.S. 171 (entered into force, Mar. 23, 1976).

180. *See* International Covenant on Economic Social and Cultural Rights, art. 1, 16 December 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976).

ples;¹⁸¹ and the United Nations Declaration on the Rights of Indigenous Peoples.¹⁸²

Self-determination is the right of subordinated peoples to determine their own destiny rather than having it imposed on them by foreign powers.¹⁸³ It is a collective right held by members of a nation-state as well as a right of certain territorially-defined people within a nation-state, such as Indigenous peoples.¹⁸⁴ Climate vulnerable states and peoples, spearheaded by the small island developing states (SIDS) in the Pacific, are demanding the right to collectively determine their own fates in order to preserve community cohesion, cultural integrity, political agency, and self-governance.¹⁸⁵ Emphasizing that active travel among the islands was the norm in Oceania prior to the imposition of colonial borders, they are calling for new forms of transnational solidarity and new concepts of citizenship that transcend “the model of citizenship of the Peace of Westphalia.”¹⁸⁶ Procedurally, the self-determination response calls for consultative, participatory, place-based, and culture-specific approaches that allow people to collectively decide whether, when, where, and how they will migrate.¹⁸⁷ Substantively, the self-determination approach requires

181. G.A. Res. 1514 (XV), Declaration on the Granting of Independence to Colonial Countries and Peoples, U.N. Doc. A/RES/1514(XV), at ¶ 2 (Dec. 14, 1960) (“All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”).

182. G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples, U.N. Doc. A/RES/61/295, at art. 3 (Sept. 13, 2007) (“Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”).

183. Robert A. Williams, *Columbus's Legacy: Law as an Instrument of Racial Discrimination against Indigenous Peoples' Rights of Self-Determination*, 8 ARIZ. J. INT'L AND COMP. L. 51, 51 (1991).

184. See generally JAMES CRAWFORD, *THE RIGHTS OF PEOPLES* (1988); S. JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* 97-115 (2nd ed. 2004) (describing self-determination as a foundational principle of international treaty and customary law applicable to indigenous peoples).

185. See generally Ransan-Cooper et al, *supra* note 146; see generally Silja Klepp & Johannes Herbeck, *The Politics of Environmental Migration and Climate Justice in the Pacific Region*, 7 J. HUM. RTS. AND ENV'T. 54 (2016). See Maxine Burkett, *The Nation Ex-Situ: On Climate Change, Deterritorialized Nationhood and the Post-Climate Era*, 2 CLIMATE L. 345 (2011); Rosemary Rayfuse, *International Law and Disappearing States: Maritime Zones and the Criteria for Statehood*, 41 ENVTL. POL'Y AND L. 281 (2011).

186. See Silja Klepp & Johannes Herbeck, *The Politics of Environmental Migration and Climate Justice in the Pacific Region*, 7 J. HUM. RTS. AND ENV'T. 54, 71 (2016).

187. See Ransan-Cooper et al., *supra* note 146, at 112.

affluent states to cede territory and make resources available to facilitate the collective migration of climate-displaced persons as a form of compensation for climate change.¹⁸⁸ Concerned that a multilateral treaty on climate displacement may not respond to community values and concerns, several climate-vulnerable states and Indigenous peoples are pursuing bilateral and regional accords that address unique local needs, reflect common histories and traditions, and respect the right of displaced persons to reconstitute themselves as self-governing communities on the territory of another state.¹⁸⁹

The self-determination response will encounter various forms of resistance. High-emitting former colonial powers will undoubtedly oppose any demand that requires them to cede territory or provide resources to accommodate climate-displaced persons. The self-determination response will also require mechanisms to resolve conflicts among heterogeneous climate-displaced communities regarding adaptation and migration pathways (such as diverging views based on gender, class, religion, ethnicity and other divisions). Finally, in order to ensure justice for *all* climate-displaced persons, the self-determination response must be complemented by a mechanism that will require Northern states to admit climate-displaced persons who elect to migrate individually, such as the issuance of passports for the territorially dispossessed (modeled on the Nansen passports used by the League of Nations in the aftermath of World War I) that permit migrants to become naturalized citizens of the countries to which they relocate.¹⁹⁰

The self-determination approach recognizes the agency and creativity of climate-displaced persons rather than reinforcing racialized images that portray them as savages (the national security response), victims (the humanitarian response), or exploitable workers (the migration management response). If embedded in a legal framework that imposes obligations on states to accept cli-

188. See Katrina M. Wyman, *Limiting the National Right to Exclude*. 72 UNIV. MIAMI L. REV. 425, 453-455 (2017).

189. See Cosmin Corendea, *Regionalism, Human Rights and Migration in Relation to Climate Change*, THE CONVERSATION (February 28, 2018), <http://theconversation.com/regionalism-human-rights-and-migration-in-relation-to-climate-change-90129>.

190. See CLARE HEYWARD & JÖRGEND ÖDALEN, *A Free Movement Passport for the Territorially Dispossessed*, in CLIMATE JUSTICE IN A NON-IDEAL WORLD (Clare Heyward and Dominic Roser, eds. 2016).

mate-displaced persons and provide resources for resettlement, this approach may permit people to shape their own destinies and transcend the colonial borders that impose immobility and exacerbate climate vulnerability.

The self-determination response challenges traditional notions of sovereignty and calls for a deeper doctrinal and philosophical engagement with the rights of migrants under international law, especially as these intersect with the North's responsibility for climate change and for the colonial and post-colonial domination of the Global South. In order to implement the self-determination approach, it is necessary to articulate the legal and moral obligations of affluent countries to persons displaced by climate change that trigger a duty to provide resettlement assistance, to accept individual migrants, and to facilitate collective migration. Returning to the life cycle analysis of carbon capitalism and the Central American case study, the next section provides a preliminary sketch of an approach to climate displacement that treats migration as a form of reparation.

B. MIGRATION AS REPARATION

A just solution to climate displacement must take into account the responsibility of high-emitting countries for climate change as well as the need for reparation for the historic and contemporary ravages of racial capitalism. Climate vulnerability is co-constituted by natural and social processes. As one observer succinctly points out:

The nature of the wrong here is that the ability of some actors to adapt to climate change is low due to historical legacies of injustice, which would include those of colonial policy (economic underdevelopment, weak governance structures, arbitrary borders, poor infrastructure), Cold War politics (e.g., destabilizing and/or deposing democratically elected regimes, proxy wars, small arms proliferation), and neoliberal structural adjustment programs (defunding of the public sector, structurally disadvantageous trade agreements that lock in underdevelopment).¹⁹¹

Regrettably, the literature on climate displacement often suffers from environmental determinism—a tendency to neglect the

191. Aaron Saad, *Toward a Justice Framework for Understanding and Responding to Climate Migration and Displacement*, 10 ENVTL. JUST. 98, 100 (2017).

complex social and economic factors that drive the decision to migrate.¹⁹² Climate law scholars tend to focus on the environmental factors that trigger displacement—such as rising sea levels, hurricanes, floods, and drought caused by the historic and current greenhouse gas emissions of the world’s most affluent countries.¹⁹³ For example, in a provocative op-ed in the *Washington Post*, climate law scholar Michael Gerrard argues that high-emitting states should accept climate-displaced persons into their territory in proportion to each country’s historic contribution to climate change.¹⁹⁴ Based on carbon dioxide emissions from 1850 to 2011, he concludes that the U.S. would be responsible for resettling 27 percent of climate-displaced persons; “the European Union, 25 percent; China, 11 percent; Russia, 8 percent; and Japan, 4 percent.”¹⁹⁵

By contrast, scholars who write on international refugee law typically emphasize the social, economic, and political drivers of migration, but do not consider the impacts of climate change. For example, political scientist James Souter maintains that powerful states that impose damaging economic policies on other states, intervene militarily, or support oppressive regimes should have an obligation to accept as refugees persons whose peril these powerful states have caused.¹⁹⁶ Granting political asylum is one way of rectifying the harm.¹⁹⁷ He criticizes refugee law for focusing on the immediate plight of refugees and migrants rather than the historical circumstances and processes that deprived them of state protection.¹⁹⁸

192. See FRIEDERIKE GESING ET AL., *Introduction*, in DENATURALIZING CLIMATE CHANGE: MIGRATION, MOBILITIES, AND SPACE 5-6 (Friederike Gelsing, Johannes Herbeck, and Silja Klepp, eds. 2014), https://www.uni-bremen.de/fileadmin/user_upload/sites/artec/Publikationen/artec_Paper/200_paper.pdf.

193. See, e.g., Michael B. Gerrard, *Climate Change and Human Trafficking After the Paris Agreement*, 22 UNIV. MIAMI L. REV. 345 (2018).

194. Michael B. Gerrard, *America Is the Worst Polluter in the History of the World. We Should Let Climate Change Refugees Settle Here*, WASH. POST (June 25, 2015), https://www.washingtonpost.com/opinions/america-is-the-worst-polluter-in-the-history-of-the-world-we-should-let-climate-change-refugees-resettle-here/2015/06/25/28a55238-1a9c-11e5-ab92-c75ae6ab94b5_story.html.

195. *Id.*

196. See James Souter, *Towards a Theory of Asylum as Reparation for Past Injustice*, 62 POL. STUD. 326, 326-327 (2014).

197. *See id.*

198. *See id.* at 327-328.

Migration law scholar E. Tendayi Achiume echoes these concerns and takes this position one step further, arguing that Northern states have an obligation to admit so-called “economic migrants” from the Global South as a form of compensation for the North’s political and economic subordination of the South, including the plunder of land, labor, and natural resources.¹⁹⁹ Achiume challenges the notion that economic migrants are “political strangers” who may be excluded by sovereign states unless they qualify for refugee status.²⁰⁰ Instead, she contends that the North’s exploitation and domination of the South from the colonial era to the present deprived Southern states and peoples of any meaningful capacity for self-determination and created an inextricable bond between North and South.²⁰¹ For example, as Eduardo Galeano observed long ago in connection with U.S. intervention in Latin America, “[i]n the geopolitical concept of imperialism, Central America is no more than a natural appendage of the United States.”²⁰² Achiume maintains that the North’s exclusion of economic migrants from the South is fundamentally unjust given the imperial interconnection and interdependence that binds Northern and Southern states, systematically extracting resources from the latter to benefit the former.²⁰³ She concludes that migration (both authorized and unauthorized) in search of a better life should be regarded as the “personal pursuit of enhanced self-determination,”²⁰⁴ and that economic migrants should be admitted and included as a matter of “sovereign responsibility for the unequal relations forged by sovereign intervention.”²⁰⁵

The combined insights of Gerrard, Souter, and Achiume underscore the importance of integrating the environmental, social, and economic factors that drive migration in order to avoid envi-

199. See generally E. Tendayi Achiume, *Migration as Decolonization*, 71 STANF. L. REV. 1509 (2019).

200. See *id.* at 1515-1517.

201. See *id.*

202. Galeano *supra* note 54.

203. Achiume, *supra* note 199, at 1521.

204. Tendayi Achiume, *Migration as Decolonization*, 71 STANF. L. REV. 1509, 1522 (2019).

205. E. Tendayi Achiume, *The Postcolonial Case for Rethinking Borders*, DISSENT MAGAZINE (Summer 2019), <https://www.dissentmagazine.org/article/the-postcolonial-case-for-rethinking-borders>. While Galeano’s quote refers specifically to U.S. imperial expansion into Central America in the late nineteenth century, his observations are equally applicable to contemporary U.S.-Central American relations.

ronmental determinism and to “situate the historic responsibility of industrialized countries for global emissions within the wider context of debates around postcolonial justice, resource distribution and identity.”²⁰⁶ This integrated framework also disrupts traditional notions of bounded autonomous sovereign states by highlighting the contemporary and historic interconnectedness of states and peoples—political, economic, and ecological. The notion of states as independent, territorially bounded, and autonomous entities is particularly problematic in a time of global ecological crisis because it “undermines the importance of building mutually supportive relationships that acknowledge the reality of our ecological interdependence.”²⁰⁷ This legal fiction also obscures the economic and political interconnectedness of states that Achiume calls neocolonial imperialism.²⁰⁸

Migration as reparation is consistent with the customary international law obligation to refrain from causing transboundary harm.²⁰⁹ The harm in question is the injury to the global commons (the climate system) caused by the greenhouse gas emissions of the world’s most affluent states.²¹⁰ In addition, as I have argued in this article, this harm have been compounded by Northern economic, political, and military interventions that undermine the resilience of the Global South and wreak havoc on “wages, prices, employment, social services, . . . human health, and access to environmental necessities such as food and wa-

206. See GESING ET AL., *supra* note 189, at 6.

207. SARA L. SECK, *Moving Beyond the E-Word in the Anthropocene*, in THE EXTRATERRITORIALITY OF LAW: HISTORY, THEORY, POLITICS, 49, 57-58 (Daniel Margulies et al, eds. 2019).

208. See Achiume, *supra* note 199, at 1541-1542.

209. See, e.g., PHILLIPPE SANDS & JACQUELINE PEEL, PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW (2012); Trail Smelter Arbitration (U.S. v. Can.), 3 UNRIAA 1905 (1941); U.N. Conference on Human Environment, *Declaration of the United Nations Conference on the Human Environment*, U.N. Doc. A/Conf.48/14/Rev.1, principle 21 (1972); U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26 (Vol. 1), principle 2 (1992); International Court of Justice, *The Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, 226 ICJ REP. 241-42 (1996); Pulp Mills on the River Uruguay (Arg. v. Uru.), 2010 ICJ Rep. 1, 45, ¶ 101 (2010).

210. See generally, Benoit Mayer, *State Responsibility and Climate Change Governance: A Light through the Storm*, 13 CHINESE J. INT’L L. 539 (2014); Christina Voigt, *State Responsibility for Climate Change Damages*, 77 NORDIC J. INTL. L. 1 (2008).

ter.”²¹¹ Indeed, the Central American case study is a compelling example of the interrelated injustices of climate change and imperial intervention that call for migration as a form of reparation.

Finally, migration as reparation is also consistent with the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC), recognized in the 1992 United Nations Framework Convention on Climate Change (UNFCCC).²¹² The CBDR-RC principle imposes a common obligation on all states to address global environmental degradation while taking into account each state’s contribution to the environmental problem and its ability to prevent, minimize or remedy the harm.²¹³ Consistent with CBDR-RC, the UNFCCC acknowledges “that the largest share of historical and current global emissions has originated in developed countries,”²¹⁴ directs the Global North to “take the lead in combating climate change and the adverse effects thereof,”²¹⁵ and requires Northern states to provide financing and technology transfer to the countries of the Global South.²¹⁶ The Paris Agreement, adopted in 2015 under the auspices of the UNFCCC, reaffirms the principle of CBDR-RC in article 2(2), and contains references to climate justice and human rights (including the rights of migrants) in its preamble.²¹⁷ Thus, CBDR-RC could be used to justify migration as reparation for climate displacement.²¹⁸

211. Carmen G. Gonzalez, *An Environmental Justice Critique of Comparative Advantage: Indigenous Peoples, Trade Policy, and the Mexican Neoliberal Economic Reforms*, 32 U. PENN. J. INT’L L. 723, 787 (2011).

212. See U.N. Framework Convention on Climate Change, Preamble, art. 3(1), May 9, 1992, 1771 U.N.T.S. 107 [hereinafter UNFCCC].

213. Sam Adelman, *Climate Justice, Loss and Damage and Compensation for Small Island Developing States*, 7 J. HUMAN RIGHTS AND ENVNT. 32, 40 (2016).

214. UNFCCC, *supra* note 212, Preamble.

215. *Id.*, art. 3(1).

216. *Id.*, art. 4(1)(c).

217. Paris Agreement, *supra* note 139, Preamble, art. 2(2).

218. As noted previously, the Paris Agreement incorporates loss and damage into the climate regime. See Paris Agreement, *supra* note 139, art. 8. Loss and damage consist of harms that cannot be averted through mitigation and adaptation, such as displacement. See Adelman, *supra* note 213, at 32. However, the decision adopting the Paris Agreement specifies that Article 8 “does not involve or provide a basis for any liability or compensation.” G.A. Dec. -/Cp.21, U.N. Doc. FCCC/CP/2015/L.9/Rev.1 (Dec. 12, 2015). Scholars have noted that this language is contained in an interpretive statement and not in a legally binding provision, and therefore does not foreclose subsequent agreements on liability and compensation. Furthermore, this interpretive statement does not “alter or waive general rules of customary international law” including as the no-harm principle. See M.J. Mace and Roda Verheyen, *Loss, Damage*

Migration as reparation is one means of fulfilling the aspiration of climate-displaced persons for self-determination and of providing compensation for climate change and for the North's colonial and post-colonial domination of the South. Affluent countries have an obligation to reduce their greenhouse gas emissions, to finance climate change adaptation, mitigation and disaster preparation and response in the Global South, and to take responsibility for the complex and multi-faceted ways that their policies have triggered poverty, violence, and displacement. In the words of award-winning author and journalist Suketu Mehta:

If the rich countries don't want the poor countries to migrate, then there's another solution. Pay them what they're owed. Pay the costs of colonialism, of the wars you imposed on them, of the inequality you've built into the world order, and the carbon you've put into the atmosphere. Settle the account, and the creditors will have no reason to come to your house. Reparations or migration: you choose. . . . Migration today is a form of reparations. But the countries that are paying aren't necessarily the ones that are directly linked with the people they are absorbing; the vast majority of migrants move from a poor to a less-poor country, not a rich one. Fair immigration quotas should be based on how much the host country has ruined other countries.²¹⁹

This article does not contend that migration is a magic bullet that will address all of the injustices of carbon capitalism. The International Law Commission recognizes three distinct components of reparation: restitution, compensation, and satisfaction.²²⁰ Restitution is designed to restore the situation that existed before the harm was inflicted.²²¹ Migration cannot restore the lands rendered uninhabitable by climate change or erase the trauma caused by displacement or by centuries of colonial and post-colonial domination. Where restitution is inadequate or unavailable, compensation can address financially assessable losses.²²² Migration can play a compensatory role by providing climate-displaced persons with lands, livelihoods, and resources to facili-

and Responsibility after COP21: All Options Open for the Paris Agreement, 25 REV. EURO. COMMUNITY AND INT'L ENVTL. L. 197, 205-206 (2016).

219. Mehta, *supra* note 170, at 208-209.

220. See Int'l Law Comm'n Rep. on the Work of Its Fifty-Third Session, U.N. Doc. A/56/10, at 94-95 (2001).

221. See *id.* at 96.

222. See *id.* at 98-105.

tate their mobility as well as valuable intangible benefits such as pathways to citizenship and the opportunity to reconstitute themselves on the territory of another state as a self-governing community. Satisfaction consists of the culpable state's "acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality."²²³ Migration as reparation will provide satisfaction if accompanied by an acknowledgement from Northern states of their responsibility for climate change and for the political, economic, and military interventions that impoverished and destabilized the Global South. Northern states are in dire need of a truth and reconciliation process to promote a public reckoning with this history. Finally, migration is only one element of a larger package of reforms to provide reparation for the cradle-to-grave impacts of carbon capitalism, including genocide, slavery, resource wars, and the "slow violence" of the petrochemical industry.²²⁴

Using Central America as an example, this article lays the groundwork for future scholarship on migration as reparation by articulating the moral and legal basis for this demand and by highlighting the synergies between the work of climate law and migration law scholars. Regrettably, these bodies of law generally operate in parallel universes—perpetuating a false dichotomy between environmental and socio-economic problems. One of the goals of this article is to foster ongoing conversation and collaboration between climate law and migration law scholars, activists, and policymakers in order to develop just and holistic solutions to the intersecting social, economic, and ecological crises of our time.

C. RACE, RACISM, AND CROSS-RACIAL SOLIDARITY

From the colonial era to the present, the North's devastating interventions in the Global South have been justified by a series of racist ideologies that cast the Global South as inferior, uncivilized, savage, backward, and in need of "modernization" and "de-

223. *Id.* at 105.

224. For scholarship addressing reparations for colonialism and slavery, see Catherine Lu, *Colonialism as Structural Injustice: Historical Responsibility and Contemporary Redress*, 19 J. POL. PHIL. 261 (2011); see Alfred Brophy, REPARATIONS: PRO & CON (2006); see Ali Mazrui, *Global Africa: From Abolitionists to Reparationists*, 37 AFR. STUD. REV. 1 (1994); see Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987); see also, Caricom Ten-Point Plan for Reparatory Justice, CARICOM, <https://caricom.org/caricom-ten-point-plan-for-reparatory-justice/> (last visited Feb. 26, 2020) (outlining a ten-point plan for reparations for slavery, genocide, and colonialism).

velopment.”²²⁵ Racist ideologies are now being deployed to justify increasingly restrictive border controls—portraying Southern migrants as criminals and invaders who threaten to overwhelm Northern states.²²⁶

A racial capitalist analysis of climate displacement must identify who benefits from the North’s exclusionary migration policies. The primary beneficiaries are the corporations that operate private immigration prisons, construct border walls, and provide security and surveillance.²²⁷ A second beneficiary is the state bureaucracy, whose staff and budget increase in order to administer the policing, imprisonment, and expulsion of migrants.²²⁸ A third group of beneficiaries consists of businesses that profit when detained migrants are obligated to provide low-paid industrial labor similar to that performed by individuals incarcerated for criminal offenses.²²⁹ A fourth group of beneficiaries consists of the criminal enterprises that traffic undocumented migrants and can deploy the threat of detention and deportation to exert greater control over their victims.²³⁰ Finally, the North’s restrictive immigration policies benefit right-wing populist politicians who stoke racialized hostility against migrants and other people of color to obtain the support of working class Whites for

225. See generally, ANTHONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* (2005) (describing the doctrines that justified the North’s subordination of the Global South, including the doctrine of discovery, terra nullius, the mandate system, the trusteeship system, modernization, and development); see Gonzalez, *supra* note 55, at 161-163.

226. See Samuel Berhanu Woldemarian, Amy Maguire, and Jason von Meding, *Forced Human Displacement, the Third World and International Law: A TWAAIL Perspective*, 20 MELBOURNE J. INT’L L. 1, 7 (2019).

227. See BHATTACHARYYA, *supra* note 14, at 128-139; CÉSAR CUAUHTÉMOC GARCÍA HERNÁNDEZ, *MIGRATING TO PRISON: AMERICA’S OBSESSION WITH LOCKING UP IMMIGRANTS*, 119-133 (2019).

228. See BHATTACHARYYA, *supra* note 14, at 129-130.

229. See *id.* at 138-139; see Shamelle Richards and Devon C. Peña, *An Environmental Justice Critique of Carceral Anti-ecology*, in ADDRESSING ENVIRONMENTAL AND FOOD JUSTICE TOWARD DISMANTLING THE SCHOOL-TO-PRISON PIPELINE 115, 123-126 (Anthony J. Nocella II et al, eds., 2016) (discussing the origins and contemporary operation of the penal labor system).

230. See generally, Stephen Wood, *The Intersection of Human Trafficking and Immigration*, HARVARD LAW SCHOOL PETRIE-FLOM CENTER, BILL OF HEALTH, (Jun. 27, 2018), <http://blog.petrieflom.law.harvard.edu/2018/06/27/the-intersection-of-human-trafficking-and-immigration>.

policies that intensify economic inequality and hasten catastrophic climate change.²³¹

In his insightful book, *Dying of Whiteness*, Jonathan Metzler explains how racism persuades working class Whites to support policies that are literally killing them and to oppose policies that would significantly enhance their quality of life—such as gun control, health care reform, stronger social safety nets, and better environmental protection.²³² In an equally thought-provoking book, sociologist Arlie Russell Hochschild explains that working class Whites in Cancer Alley oppose government regulation of the petrochemical industry because they feel that the government has betrayed them and has enabled people of color to “cut in line” and get ahead at their expense.²³³

Racialized communities in the sacrifice zones of carbon capitalism and U.S. imperialism are the first to suffer the ravages of climate change and predatory economic policies that disrupt lives and livelihoods. Their plight is a harbinger of the harm that will ultimately befall everyone. Racism creates divisions between groups of people whose vulnerability to carbon capitalism should serve as the basis for solidarity. As economic inequality increases and the planet’s ecosystems are brought to the brink of collapse, all but the very affluent will become frontline communities in an increasingly damaged and dangerous world. As Achille Mbembe observes: “Nearly everywhere the political order is reconstituting itself as a form of organization for death.”²³⁴

CONCLUSION

A race-conscious analysis of carbon capitalism has the potential to foster collaboration among scholars in diverse areas of law, including those who write on climate law, migration law, human rights law, critical race theory, and economic law. It also has the potential to unite social justice movements that are often fragmented and compartmentalized, including movements to combat extractivism, neoliberalism, militarism, police brutality, mass in-

231. See generally JONATHAN M. METZLER, *DYING OF WHITENESS; HOW THE POLITICS OF RACIAL RESENTMENT IS KILLING AMERICA’S HEARTLAND* (2019); ARLIE RUSSELL HOCHSCHILD, *STRANGERS IN THEIR OWN LAND: ANGER AND MOURNING ON THE AMERICAN RIGHT* (2018).

232. See generally METZLER, *supra* note 231.

233. See HOCHSCHILD, *supra* note 231.

234. ACHILLE MBEMBE, *NECROPOLITICS* 7 (2019).

carceration, mass deportation, economic inequality, and racism. As Naomi Klein observes:

[T]he anti-austerity people rarely talk about climate change, the climate change people rarely talk about war or occupations. We rarely make the connection between the guns that take black lives on the streets of US cities and in police custody and the much larger forces that annihilate so many black lives on arid land and in precarious boats around the world.²³⁵

The objectification and degradation of humans and nature in an endless quest for profit is the cross-cutting theme that unites these struggles. Racism makes injustice acceptable by portraying large segments of humanity as unworthy, expendable, and disposable. It generates fear and mistrust and creates a wedge between communities that should work in alliance to create a more just and sustainable world.

As I write these words, the world is in the throes of a coronavirus pandemic and demonstrations against racial injustice, inspired by the murder of George Floyd by police in Minneapolis.²³⁶ In the U.S., right-wing populist politicians have weaponized the COVID-19 pandemic to stoke racism against persons of Asian descent (by referring to COVID-19 as the “Chinese virus”) and to justify the closing of borders and the curtailment of “undesirable” migration.²³⁷ Some government officials are urging that older people and persons with pre-existing medical conditions be sacrificed in order to protect the national economy from the harms occasioned by public health restrictions.²³⁸ The Black and Latina/o

235. Klein, *supra* note 48.

236. See Suyin Haynes, *As Protesters Shine a Spotlight on Racial Injustice in America, the Reckoning is Going Global*, TIME (June 11, 2020), <https://time.com/5851879/racial-injustice-protests-europe/>.

237. See Natalia Banulescu-Bogdan, Meghan Benton, and Susan Fratzke, *Coronavirus Is Spreading across Borders, But It Is Not a Migration Problem*, MIGRATION POL’Y INST. (Mar. 20 2020), <https://www.migrationpolicy.org/news/coronavirus-not-a-migration-problem>; Kurt Bardella, *Trump’s “Chinese Virus” Coronavirus Tweets Echo His Mexico Insults — with Similar Results*, NBC NEWS, THINK: OPINION, ANALYSIS, ESSAYS (Mar. 18, 2020) <https://www.nbcnews.com/think/opinion/trump-s-chinese-virus-coronavirus-tweets-echo-his-mexico-insults-ncna1162261?fbclid=IwAR3mZ6cq431aAgmrAiD3lrYtgEwg9YWih-qVS2wohGWp36QFokHnxui4CKI>.

238. See Katie Shepherd, *“I Would rather die than kill the country”: The Conservative Chorus Pushing Trump to End Social Distancing*, WASH. POST, March 25, 2020; Lois Beckett, *Older People Would Rather Die Than Let Covid-19 Harm US Economy — Texas Official*, THE GUARDIAN (Mar, 24, 2020); Noah Millman, *The Con-*

communities battered by police brutality, mass incarceration, and the “slow violence” of polluting industry are experiencing disproportionately high levels of COVID-19 infection and death.²³⁹ The pandemic is intensifying divisions but also creating new alliances as communities come together to demand universal healthcare, more robust social safety nets, cancellation of medical and student loan debt, a moratorium on evictions, the dismantling of racist policing, and the release of migrants in detention facilities and of incarcerated elderly, terminally ill, and non-violent offenders.²⁴⁰ Like the global pandemic, climate change is a cataclysmic shock that upends daily life, intensifies pre-existing inequities, and will transform the world as we know it. In order to promote equitable solutions to the problem of climate displacement, it is essential to articulate a historically grounded and morally compelling narrative that illuminates the structural injustices of racial capitalism and fosters solidarity among social justice movements.

servatives Who Would Sacrifice the Elderly to Save the Economy, THE WEEK, (Mar. 17, 2020), <https://theweek.com/articles/902582/conservatives-who-sacrifice-elderly-save-economy>; Robyn Powell, *The Coronavirus Pandemic Has Brought Out Society's Alarming Disregard for People with Disabilities*, THE APPEAL, (Mar. 25, 2020), https://theappeal.org/coronavirus-disabilities/?fbclid=IwAR3tutuTSpi8thKFmayfiwn-EPR192TYgA_Owi6nHdf6MEdapKPRLSL9to.

239. See Richard A. Opiel, Jr. et al, *The Fullest Look Yet at the Racial Inequity of Coronavirus*, N.Y. TIMES (July 5, 2020), <https://www.nytimes.com/interactive/2020/07/05/us/coronavirus-latinos-african-americans-cdc-data.html>; Tamara Toles O'Laughlin, *If You Care about the Planet, You Must Dismantle White Supremacy*, GRIST, June 15, 2020, <https://grist.org/fix/opinion-if-you-care-about-the-planet-you-must-dismantle-white-supremacy/>.

240. See David A. Love, *The Pandemic Could Be an Opportunity for Change in the US*, ALJAZEERA, (Mar. 21, 2020), https://www.aljazeera.com/indepth/opinion/pandemic-opportunity-change-200319145424050.html?fbclid=IwAR2MjqXCkuIYZZnbaAWge4aPUiOamYu4x7pzp6lboiffgVTFo9_GvSPSWJI; Kimberly Kindy, “Disaster waiting to happen”: Thousands of Inmates Released as Jails and Prisons Face Coronavirus Threat, WASH. POST (Mar. 24, 2020), https://www.washingtonpost.com/national/disaster-waiting-to-happen-thousands-of-inmates-released-as-jails-face-coronavirus-threat/2020/03/24/761c2d84-6b8c-11ea-b313-df458622c2cc_story.html; Alejandro Lazo, *Fear of Coronavirus in Immigrant Detention Leads to Preparation, Calls for Release*, WALL ST. J. (Mar. 21, 2020), <https://www.wsj.com/articles/fear-of-coronavirus-in-immigrant-detention-leads-to-preparation-calls-for-release-11584810004>; see generally Toles O'Laughlin, *supra* note 239.