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Climate Change, Race, and Migration

Abstract:

This article examines the relationship among climate change, racial subordination, and the capitalist world economy through the framework of racial capitalism. It argues that climate change is a logical consequence of an economic system based on extraction, accumulation through dispossession, and white supremacy. Climate change imposes disproportionate burdens on racialized communities all over the world, many of whom will be expelled from their homes in record numbers as the climate emergency intensifies. International law has been deeply complicit in the project of racial capitalism and is now being deployed to address climate change-induced displacement. This article evaluates the emerging legal and policy responses to climate displacement, and proposes alternative approaches based on the perspectives of states and peoples facing imminent displacement, including their demand for self-determination. Climate change is not an isolated crisis, but a symptom of an economic (dis)order that jeopardizes the future of life on this planet. Through a race-conscious analysis of climate change grounded in political economy, this article seeks to engage scholars in a variety of disciplines in order to develop more robust critiques of the laws, institutions, and ideologies that maintain racial capitalism and pose an existential threat to humanity.

Keywords: racial capitalism, climate change, migration, racism, international law, climate displacement

I. Introduction

The fear of Black and Brown bodies crossing national borders and sparking “crime waves, epidemics, and economic catastrophe” haunts public debates over climate change in Europe and the United States (Shah 2020, 40). Climate change is anticipated to displace between 25 million and one billion people by 2050 (Kamal 2017). The precise number of displaced persons is difficult to predict because climate change generally intensifies the various economic, ecological, and political drivers of human mobility and is rarely the sole cause of migration (IOM 2014).

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International law provides very limited protection to persons who flee their country of origin to escape climate change-related disasters and slow-onset events (such as rising sea levels, drought, and desertification). Neither the 1951 Refugee Convention nor the treaties governing climate change requires countries to admit climate-displaced persons (Atapattu 2018).¹ Climate change is occurring at a time of growing economic inequality and rising hostility toward immigrants and racial, ethnic, and religious minorities not only in Europe and the United States, but also in Brazil, China, India, and South Africa (Winant 2019; Bergmann et al. 2018). The threat of climate change-induced migration has sparked xenophobic, militarized responses, including the construction or expansion of border walls—especially in the affluent countries whose high greenhouse gas emissions contribute disproportionately to climate change (Miller 2017; Klepp 2017).

This article breaks new ground by analyzing climate change and climate change-induced displacement through the framework of racial capitalism. Inspired by the works of W.E.B. Du Bois (2017 [1935], 1947), Eric Williams (1994 [1944]), Frantz Fanon (1963), Stuart Hall (1986), Angela Davis (1983), and Cedric Robinson (2000 [1983]), the article examines the racialized nature of the fossil fuel-based capitalist world economy (carbon capitalism) from its origins in slavery and colonialism to its present day threat to the planet’s most climate-vulnerable states and peoples.

The term carbon capitalism is used in this article to emphasize the relationship among capitalism, fossil fuels, and climate change. Capitalism gave birth to the contemporary carbon-intensive global economy in the nineteenth century when fossil energy fueled the Industrial Revolution (Malm 2016). The industrialization of Europe is linked to colonization and slavery because it depended on labor and raw materials extracted from the colonies, including cotton for European factories and energy-rich foods, such as sugar, for the industrial workforce (Mitchell 2011). The transition to fossil energy sparked exponential economic growth initially in Europe and later all over the world while generating intense conflicts over energy supplies (especially in the Middle East) as well as unprecedented environmental degradation (Gordon 2015; Mitchell 2011). Carbon capitalism currently poses an existential threat to humanity due to its unbridled emission of climate-disrupting greenhouse gases, including carbon dioxide. Because carbon dioxide resides in the atmosphere for hundreds of years after it is released, efforts to allocate responsibility among states and corporate actors for climate change must take into account both historic and current emissions (Malm 2016). As Malm explains:

[T]he advanced capitalist countries of the “North” . . . were behind 86 of the 107 parts per million by which the CO₂ concentration rose from 1850 to 2006 In the early twenty-first century, the poorest 45 percent of humanity generated 7 percent of current CO₂ emissions, while the richest 7 percent produced 50 percent (Malm 2016, 268).

The thesis of this article is threefold. First, the article argues that a race-conscious analysis of carbon capitalism grounded in political economy can foster alliances among scholars and social movements that seek systemic change by highlighting common patterns and sources of oppression. Second, it contends that such an analysis can provide useful tools to critique the emerging legal and policy responses to climate change-induced displacement. Third, the article argues that a just approach to climate displacement should respect the perspectives and priorities of states and peoples who face actual or imminent displacement, including their demands for self-determination with respect to migration pathways and for resources to support their mobility decisions.

¹ Convention Relating to the Status of Refugees (Geneva, 28 July 1951) 189 U.N.T.S. 137, *entered into force* 22 April 1954.

The article proceeds in five parts. Part II examines the ways that carbon capitalism deploys race and racism as techniques of exclusion and control, creating expendable geographic locations (sacrifice zones) and expendable (surplus) people. Part III lays bare the violence inflicted by carbon capitalism on racialized communities in both affluent and poor countries throughout the life cycle of fossil fuels—from cradle (extraction) to grave (climate change). Part IV introduces the concept of climate justice, discusses the legal regime that governs climate change, and applies the insights of racial capitalism to the emerging legal and policy frameworks governing climate change-induced displacement. Although all nations bear some responsibility for climate change, the article focuses on the obligations of the world's most affluent nations (the Global North) to climate-displaced persons because they disproportionately contribute to the disruption of the planet's climate. Part V discusses the common pitfalls of the approaches analyzed in Part IV and describes and evaluates alternative approaches to climate displacement proposed by climate-vulnerable states and peoples.

One of the article's major contributions is to emphasize the importance of analyzing climate change through a racial justice lens rather than viewing it as a technical issue divorced from other forms of social and economic injustice. From Cancer Alley in Louisiana to the Pacific islands threatened by rising sea levels, carbon capitalism creates sacrifice zones populated by racialized communities whose plight is a harbinger of the harm that will eventually befall the vast majority of the world's population as the planet is rendered increasingly uninhabitable. Although greenhouse gases do not respect national borders, national elites deploy racialized systems of border control to perpetuate the illusion that persons who are classified as white can somehow escape the economic and ecological ravages of carbon capitalism by erecting walls and fortresses. Racism renders oppression socially acceptable, creates divisions between groups of people whose vulnerability to carbon capitalism should serve as the basis for solidarity, and enables states and corporations to pursue policies catastrophic to the planet and its inhabitants because the worst and most immediate consequences are borne by racialized populations. While focusing on the problem of climate displacement, the article uses the framework of racial capitalism to highlight how the struggles for racial, economic, and climate justice are interconnected and interdependent.

Climate change will touch every area of law, including land use, energy, real estate, insurance, securities, banking, civil rights, immigration, trade, and investment (Vizcarra 2020; Ruhl 2010). It will inflict widespread death and destruction—especially but not exclusively on poor people, Indigenous peoples, and racial and ethnic minorities (Haas Institute 2017). Moreover, climate change is not an isolated crisis but a symptom of an unsustainable and inequitable economic order that exceeds a variety of ecological limits and jeopardizes the future of life on this planet (Crutzen and Stoermer 2000; Gonzalez 2017). Overcoming ecological crises and their interrelated economic and racial injustices will require the collective wisdom of scholars, activists, and policymakers with diverse insights and transformative visions. However, climate change is usually relegated to the purview of environmental law experts. Racial injustice is the domain of critical race scholars. The colonial underpinnings of international law are analyzed primarily by scholars of Third World Approaches to International Law (TWAIL). Economic analyses of law are most frequently conducted by law and economics specialists influenced by neoclassical economics. This article seeks to break the silos in order to lay the foundation for more robust critiques of the laws, institutions, and ideologies that maintain racial capitalism and to build the alliances necessary to forge emancipatory alternatives.

II. Racism, Capitalism, and Migration: Framing the Issues

In this article, the term racism refers to the degradation and objectification of human beings based for the most part on physical characteristics (such as skin color), but also on ethnicity, indigeneity, culture, caste, language, religion, geographic location, immigration status, and geographic origin (Grosfoguel 2016; Grosfoguel, Oso, and Christou 2014; Das 2014). Racialization is the process through which some bodies are privileged while others are classified as inferior or deficient on the basis of the distinct set of markers adopted in a particular region or nation at a particular time (Grosfoguel, Oso, and Christou 2014). The racialization of particular groups and the narratives that accompany these processes vary substantially across place and time in relation to changing economic and political conditions (Reed 2013). For example, some groups that are currently recognized as white (such as Jews and the Irish) have a long history of being classified as non-white (Ignatiev 1995; Brodtkin 1998).

Drawing upon the work of political theorist Cedric Robinson (2000 [1983]) and sociologist Aníbal Quijano (2000, 2007, 2014), this article recognizes that racism is foundational to capitalism. Robinson argues that capitalism emerged from a feudal order thoroughly infused with racial hierarchies, which evolved into a world system that continues to transform regional and cultural differences into racial forms of domination (Robinson 2000 [1983]). Quijano identifies Europe's violent conquest of the Americas as the pivotal event that globalized white supremacy and established the capitalist world economy (Quijano 2000). He argues that Europeans deployed racial hierarchies to justify genocide, land theft, slavery, the colonization of Asia and Africa, and the reorientation of the subsistence economies of the colonized territories toward capitalist commodity production (*ibid.*). Indeed, Europeans maintained control over vast empires by constructing racial categories that became the "fundamental criterion for the distribution of the world's population into ranks, places, and roles in the new society's structure of power" (*ibid.*, 535).

Racial capitalism is not monolithic, and different economic arrangements result in different forms of racialization. As Patrick Wolfe observes, "Colonizers did not set out to create a racial doctrine. They set out to create wealth" (Wolfe 2016, 52). Europeans racialized particular groups in different ways in order to achieve distinct economic objectives and population-specific forms of control. In the US, the founding logic of anti-Black racism was labor exploitation (Wolfe 2016). Euro-Americans depicted Africans as subhuman to justify their enslavement, the appropriation of their labor, and their legal status as chattel property (Saito 2020). When slavery was abolished, other mechanisms of exploitation and control became dominant, including sharecropping, debt peonage, convict labor, lynching, mass incarceration, and segregation in low-wage jobs and industries (Wolfe 2016; Saito 2014). By contrast, the logic of anti-Native racism was the elimination of the Native in order to distribute Indigenous lands to white settlers (Hixson 2013). European colonizers portrayed Indigenous peoples as a savage and inferior race to justify aggressive warfare and expropriation of Indigenous lands (Saito 2014). Instead of exploiting Indigenous peoples, Euro-Americans attempted to eradicate them through genocide and compulsory assimilation, including "compulsory religious conversions, forced reconfiguration of gender roles, child removal, and often-indiscriminate killing" (Hixson 2013, 197). Finally, the US government racialized Mexicans, Hawaiians, Filipinos, and Puerto Ricans to justify territorial expansion, dispossession of conquered populations, and exploitation of disenfranchised peoples as cheap, disposable labor (Saito 2020).

Europeans created systems of racialized privilege and subordination through what Antony Anghie (2004) calls the “dynamic of difference”—positing a cultural gap between supposedly “universal” civilized Europeans and “particular” uncivilized colonized peoples, and then “seeking to bridge the gap by developing techniques to normalize the aberrant society” (ibid., 4). These techniques included the Doctrine of Discovery, *terra nullius*, the mandate system after World War I, trusteeship after World War II, humanitarian intervention, pre-emptive self-defense, austerity under the auspices of the World Bank and the International Monetary Fund (IMF), and Eurocentric notions of modernization and development (ibid.). The colonial enterprise eviscerated the identities of colonized peoples “by the pervasive control exercised over all aspects of their lives and societies” (Saito 2020, 47). Colonizers displaced local systems of law and governance and imposed arbitrary colonial boundaries without the consent of local communities (Saito 2020). In the aftermath of political independence, the formerly colonized territories of Asia, Africa, and Latin America (the Global South) were integrated into the world economy on disadvantageous terms through legal regimes and institutions dominated by the North, including the World Bank, the IMF, the 1947 General Agreement on Tariffs and Trade (GATT), the World Trade Organization (WTO), and thousands of bilateral investment treaties. These institutions deprived the South of economic sovereignty and enabled Northern states to continue to exploit the South’s natural resources, “trapping Southern countries in vicious cycles of poverty and environmental degradation and widening the North-South economic divide” (Atapattu and Gonzalez 2015, 6). “Nations that have been the victims of European colonial projects, often in the nineteenth to twentieth centuries, fall among the very poorest of all nations in the twenty-first century” (Bhattacharyya 2018, 79).

Quijano introduces the term “coloniality of power” to refer to the Eurocentric racial and cultural hierarchies and institutional forms of domination (such as the nation-state) imposed through colonialism that constitute the contemporary capitalist world system, including the North-South divide (Quijano 2000; Quijano 2007). These hierarchies persist long after the departure of the colonial administration and continue to structure economic and social relations (Quijano 2014). The coloniality of power encompasses interlocking systems of oppression, including those that privilege core (North) over periphery (South), men over women, Christians over non-Christians, Europeans over non-Europeans, heterosexuals over homosexuals, and Western knowledge over non-Western knowledge (Grosfoguel 2006). Race and racism are central to Quijano’s analysis because they are cross-cutting tools of domination deployed in the capitalist world system that intersect with all of these other forms of oppression (Grosfoguel 2016). Indeed, Southern elites often internalize and deploy racist practices and ideologies to subordinate groups who are constructed as “inferior” due to religious, ethnic, cultural, color, or other markers of difference. (Gonzalez 2013; Grosfoguel 2016).

Racism “is not just a question of prejudice or stereotypes, but above all an institutional/structural hierarchy related to the materiality of domination” (Grosfoguel 2016, 11). Racial hierarchies shape the national and international division of labor, consigning those constructed as non-white to the most precarious, dirty, dangerous, and least desirable forms of employment (Bhattacharyya 2018; Faber 2018; Fraser 2016). Similarly, gender hierarchies relegate women to the unpaid domestic labor that reproduces the workforce, including cleaning, cooking, and raising children (Bhattacharyya 2018). However, hyper-exploited racialized women frequently perform the waged domestic and care work that enables more privileged women to enter elite labor markets (ibid.), and they are also vulnerable to trafficking and coerced sex work (Bacchetta, Maira, and Winant 2019). In other words, racial and gender hierarchies intersect, conferring greater status on some white women than many non-white

men and generally placing non-white women in a subordinate position in relation to both groups (Crenshaw 1989; Grosfoguel 2006).

Eurocentric racial and cultural hierarchies correspond, at least in part, to Boaventura de Sousa Santos' notion of the "abyssal line" demarcating persons presumptively entitled to liberty, equality, and autonomy from those relegated to zones of violence and dispossession. (Santos 2014; Grosfoguel 2016). This article focuses on the degradation of those below the abyssal line while recognizing that abyssal and nonabyssal exclusions exist on a continuum and that some groups cross between these two forms of exclusion in their daily lives. Paraphrasing the examples cited by Santos (2018, 22-23), an African-American student attending a predominantly white university may experience bias from fellow students who do not include him in their study groups or socialize with him. He may also feel alienated by a curriculum that omits or distorts the history of persons of African descent. His exclusion is painful, but he still possesses certain rights as a student, including the ability to organize with like-minded students to demand institutional change. When that student is racially profiled and subjected to violence by the police on his way home, he has crossed the abyssal line. The distinction between abyssal and nonabyssal exclusion is not grounded in the intensity of the pain and deprivation experienced by individual or collective bodies, but "refers to the indifference with which suffering is inflicted, indifference meaning both cold-bloodedness and impunity" (ibid., 95).

The racialized abyssal line is mapped onto space in the form of stigmatized geographic locations, including inner cities, reservations, the barrio, *el campo*, prisons, refugee camps, and the Third World—where the land and the people have been rendered expendable and, in the words of Fanon (1963), "wretched" (Gahman and Hjalmarson 2019; Pulido 2016). The stigmatized locations are expanding as racialized people are expelled from gainful employment by contracting global labor markets, banished from society through mass incarceration, and displaced from their homes in record numbers not only by poverty, predatory lending, gentrification, and conflict but also by extreme weather events triggered by climate change (Bhattacharyya 2018; Sassen 2014). Racialization makes abyssal exclusions "socially and legally acceptable" (Sundberg 2008, 570), and "allows both capital and the state to pursue policies and practices that are catastrophic to the planet and its many life forms because much of the cost is borne by 'surplus' people and places" (Pulido 2016, 8). Thus, "[t]o be rendered surplus is not to be paid less, it is to be left dying or for dead" (Bhattacharyya 2018, 20).

The abyssal line operates on a global scale between centers and peripheries, divides the North and the South, and also operates within nations. In the Global North, Indigenous peoples, racial and ethnic minorities, and immigrants from the Global South are disproportionately subject to abyssal exclusion (Grosfoguel, Oso, and Christou 2014). In the Global South, Westernized elites frequently engage in internal colonialism, exploiting, dispossessing, and abusing their own Indigenous populations and other racialized groups (ibid.; Gonzalez 2015). The abyssal line is perhaps most visible in the zones of extreme violence and degradation—such as Guantánamo, Darfur, Iraq, Palestine, and Yemen. It is also evident in the prisons, migrant detention camps, and over-policed ghettos and *banlieus* of the Global North.

The regulation of migration is "among the most consistently racialized practices of most contemporary states" (Bhattacharyya 2018, 129). European nations and settler-colonial states historically encouraged the mobility of persons regarded as white while restricting the movement of those classified as non-white. Between 1800 and 1925, for example, approximately 48 million Europeans migrated to Argentina, New Zealand, Australia, South Africa, and the United States as a consequence of migration

policies designed to “whiten” these states and territories (Massey 2000; Gutiérrez Rodríguez 2018). During the same period, the newly sovereign states in the Americas adopted a series of laws and policies to reduce the migration of racialized populations, including head taxes, outright prohibitions (such as the United States’ 1882 Chinese Exclusion Act), and racially coded naturalization and immigration policies (Gutiérrez Rodríguez 2018). Australia adopted a “White Australia Policy” in 1904, and banned migration from Africa, Southeast Asia, and South Asia (*ibid.*).

In the decades following World War II, the demographic composition of Europe and the United States changed due to migratory flows from the Global South in the aftermath of decolonization, challenging Euro-American white national identity (*ibid.*). Until the 1960s, the United States imposed racially discriminatory national origin quotas on new migrants that favored Northern Europeans (Tichenor 2002). After these quotas were lifted in response to pressure from the growing civil rights movement, migration from Asia, Africa, and Latin America increased significantly—triggered by war, poverty, and neoliberal economic reforms (J. Gonzalez 2011). European states also grew more racially and ethnically diverse due to the influx of racialized citizens from the former colonies and migrant laborers recruited from Turkey, Morocco, and other countries (Telford 2018; Gutiérrez Rodríguez 2018).

Notwithstanding these demographic changes, the response of affluent countries to migrants fleeing poverty and conflict has confirmed the profound and persistent racial animus against persons classified as non-white. The Trump administration has portrayed the Central American families seeking refuge in the United States as “social parasites and criminals” (Chen 2018, n.p.), and has threatened to close the US-Mexican border (Collinson 2019). The US government has criminally prosecuted migrants, separated migrant children from their families, and confined thousands of migrant children in kennel-like, ice-cold cells (Delgado 2019; Nawyn 2019; Cummings-Bruce 2018; Chalabi 2018). European states continue to adopt increasingly aggressive measures to deter the entry of African and Middle Eastern migrants, who are depicted as violent, patriarchal, and likely to commit acts of terrorism (Boghani 2018; Gutiérrez Rodríguez 2018; Telford 2018). These policies have resulted in the death of thousands of migrants at sea (Birnbaum 2017). Finally, Australia continues to indefinitely detain migrants and refugees in offshore processing centers located in Nauru and on Manus Island in Papua New Guinea. Due to the inhumane and harsh conditions of these facilities, Amnesty International has denounced them as “a human rights catastrophe” (Davidson 2016, n.p.).

In Europe, the United States, Australia, and Canada, 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” (Kotef 2015, 100). While corporations freely roam the world, racialized bodies are policed, detained, incarcerated, and deported. Although the mobility of the affluent (including air travel) contributes disproportionately to climate change (Le Page 2019; Gabbatiss 2018), states impose stringent restrictions on the mobility of the non-white poor (Sheller 2018). As discussed more fully in the next section, racialized communities deemed surplus and expendable have long borne the burdens of carbon capitalism and will experience the greatest vulnerability to climate change-induced displacement.

III. Carbon Capitalism and the Abyssal Line

Race is inscribed in the history of capitalism and in the sacrifice zones of both the fossil fuel economy and the emerging green energy economy. From its colonial underpinnings to its contemporary

manifestations, carbon capitalism has brutalized, poisoned, and dispossessed communities below the abyssal line.

First, the colonization of the Americas and the transatlantic slave trade established the material and ideological foundations of capitalism—a system based on extraction, accumulation through dispossession, and white supremacy (Yusoff 2018; Davis and Todd 2017; Fraser and Jaeggi 2018). Capitalism has left such profound physical imprints that the planet’s geologic strata now contain radionuclides, plastic, and concrete, as well as physical evidence of the sixteenth-century genocide of the Indigenous peoples of the Americas (Davis and Todd 2017). This genocide was so massive (nearly 50 million deaths) that farming collapsed and forests rebounded (Lewis and Maslin 2015). The explosive growth of forests removed enormous amounts of carbon dioxide from the atmosphere in the 1600s, and these changes in atmospheric carbon dioxide levels are observable in Antarctic ice cores (*ibid.*). Due to the magnitude of this early human modification of the environment, some scholars have proposed 1610 as the beginning of the Anthropocene (Lewis and Maslin 2018), the contemporary epoch in Earth history marked by unprecedented human-driven environmental disruption (Crutzen and Stoermer 2000; Gonzalez 2017).

While Indigenous genocide enabled Europeans to seize vast swaths of land for mining and agriculture, the transatlantic slave trade supplied the workforce that fueled carbon-based industrialization. The labor of enslaved Africans provided the capital and raw materials that launched the Industrial Revolution, including gold, copper, and silver as well as sugar and cotton (Yusoff 2018). “Plantation agriculture and cotton in particular were key to the emergence of the industrial power of England first and quickly much of the rest of Europe” (Dalby 2014, 6). The slave plantation colonies of the Americas supplied not only food and industrial inputs but also markets for British manufactured goods (Lewis and Maslin 2018; Blackburn 1997; Williams 1994 [1944]). Between 1600 and 1800, enslaved peoples in the Americas comprised less than one percent of the world’s population, but they produced commodities that dominated world trade (Beckert 2015). Slavery, genocide, and colonialism were thus central, rather than peripheral, to the Industrial Revolution and the birth of carbon capitalism (Lewis and Maslin 2018; Yusoff 2018; Davis and Todd 2017).

Second, the “slow violence” inflicted by the fossil fuel industry on racialized and poor communities throughout the world remains a central feature of contemporary capitalism (Nixon 2013). The extraction, processing, transportation, refining, and combustion of fossil fuels has placed disproportionate environmental burdens on racialized communities in both the Global North and the Global South. From the Niger Delta to the Canadian tar sands to the countless communities living in the shadow of polluting petrochemical facilities and power plants, the life cycle impacts of fossil fuels include eviction from ancestral lands; desecration of sacred sites; poisoning of air, land, and water; fires, explosions, and industrial accidents; loss of subsistence fishing and hunting rights; and exposure to significant health hazards (Scott 2013; Klein 2014). Thus, local and transnational environmental justice struggles against coal mining, petroleum drilling, fracking, oil and gas pipelines, and polluting refineries and power plants are essential elements of the global movement for climate justice.

Third, fossil fuels are concentrated in particular countries and regions, such as the Middle East, that have been targeted over and over for invasion, occupation, and exploitation. The North’s bloody resource wars, its collusion with despotic petro-states, and the resulting death, destruction, and displacement of racialized Muslim and Arab populations are among the most violent ongoing manifestations of climate injustice (Klein 2016; Natarajan 2012; Klare 2004). 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, as exemplified by the 2017 “Muslim ban,”² which banned travel to the US from certain predominantly Muslim countries (Liptak and Shear 2018; Telford 2018).

Fourth, those most susceptible to climate-related disasters and slow-onset events are overwhelmingly persons classified as non-white (Haas Institute 2017; Pulido 2018). They reside in geographic locations (such as low-lying coastal zones, small island states, and agriculture-dependent nations) disproportionately exposed to hurricanes, floods, drought, desertification, and rising sea levels (Anand 2004). In addition, they have been *rendered* socially and economically vulnerable to climate change by the North’s economic and military interventions. The North’s “under-development” of the Global South during the colonial and postcolonial era, so masterfully explained by Walter Rodney (1972) and Eduardo Galeano (1997), has been exacerbated by decades of neoliberal economic reforms imposed initially by the World Bank and the International Monetary Fund (IMF) and subsequently through regional and multilateral trade agreements and bilateral investment treaties (Gonzalez 2015). 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 (Haas Institute 2017; Saad 2017; Parenti 2011).

Finally, racialized communities in the Global South are being displaced not only by climate change, military interventions, and neoliberal economic policies, but also by the measures deployed to mitigate greenhouse gas emissions. For example, wind farms are being developed in Oaxaca, Mexico on Indigenous lands to provide energy to Walmart, Coca-Cola, Heineken, and Cemex (a Mexican cement manufacturer) without public debate; adequate compensation; free, prior, and informed consent; equitable sharing of benefits with local communities; and mechanisms to provide compensation for damage and loss of land (Baker 2015; Zárate-Toledo, Patiño, and Fraga 2019; Velasco-Herrejon and Savaresi forthcoming). In Canada, a controversial proposal to build an enormous hydroelectric dam on the Peace River threatens to displace Indigenous peoples and replicate the sacrifice zones of carbon capitalism—but this time in the name of “green energy” (Scott and Smith 2017). In Brazil and throughout the Global South, forest conservation schemes developed through the climate regime’s Reducing Emissions from Deforestation and Forest Degradation (REDD+) program are interfering with the rights of local and Indigenous communities to harvest plants, timber, or fish in their ancestral territories (Kronk Warner 2015; Klein 2014). Lastly, the legislation in the United States and the European Union requiring the blending of biofuels into transportation fuels has increased food prices and incentivized large-scale land transactions in the Global South that destroy forests and displace rural dwellers in order to make way for large plantations to cultivate biofuel feedstocks (such as oil palm). These requirements remain in place even though the life-cycle greenhouse gas emissions of many biofuels exceed those of the fossil fuels they replace (Gonzalez 2016a).

A race-conscious analysis of climate change grounded in political economy reveals a key thread that unites these abuses—the racialized abyssal line. While everyone is vulnerable to climate change, those who occupy the sacrifice zones of racial capitalism are particularly susceptible to harm due to their classification as surplus and disposable. Racialization justifies and naturalizes violence and dispossession—in war zones, in resource extraction zones, in the green energy economy, and in the refugee camps and migrant detention centers of the Global North. As Naomi Klein observes:

² Protecting the Nation from Foreign Terrorist Entry into the United States, Exec. Order No. 13,769, 82 F.R. 8977 (2017).

A culture that places so little value on black and brown lives that it is willing to let human beings disappear beneath the waves, or set themselves on fire in detention centres, will also be willing to let the countries where black and brown people live disappear beneath the waves, or desiccate in the arid heat. When that happens, theories of human hierarchy—that we must take care of our own first—will be marshalled to rationalize these monstrous decisions (Klein 2016, 9).

Even though they have uprooted “the darker races” (Du Bois 1900, n.p.) throughout the world through the ecological and economic crises of colonialism, militarism, and predatory capitalism, Northern governments use a variety of border controls to exclude “those whose very recourse to migration results from the ravages of capital and military occupations” (Walia 2013, 5). These military occupations have, in turn, influenced domestic policing in the Global North, filling police departments with veterans trained in combat and counterinsurgency and supplying them with surplus military hardware, such as rifles, body armor, helmets, and armored vehicles (Schrader 2019). Modern policing, which has its origins in the slave patrols of the American South and in the British occupation forces that maintained colonial rule in Ireland, continues to facilitate the control and repression of racialized surplus populations (Vitale 2018). For those below the abyssal line, racism is not simply prejudice or discrimination, but “state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death” (Gilmore 2007, 28).

International law has been deeply complicit in the project of racial capitalism. As Antony Anghie (2004) explains, international law originates in the colonial encounter and has justified successive Northern interventions in the Global South through a variety of doctrines—including *terra nullius*, the Doctrine of Discovery, the mandate system, trusteeship, modernization, development, humanitarian intervention, and pre-emptive self-defense. International law has depicted Southern peoples as so primitive, savage, uncivilized, backward, and under-developed that their lives, livelihoods, and cultures are unworthy of protection (ibid.; Gonzalez 2015). International law has also created the rules and institutions of the capitalist world system through which Northern states and transnational corporations maintain a stranglehold on the states and peoples of the Global South, including trade law, foreign investment law, and finance law (Linarelli, Salomon, and Sornarajah 2018). Even human rights law, which has been invoked by grassroots movements in environmental justice struggles, mitigates specific abuses, but leaves the larger system intact (Gonzalez 2015). This history raises serious questions about the ability of the legal regimes that govern climate change to deliver justice for racialized communities who are displaced by climate change.

IV. Climate Change and the Plight of Climate-Displaced Persons

This section applies the insights of racial capitalism to the problem of climate change-induced displacement. After introducing the concept of climate justice and explaining the legal regime that governs climate change, the section describes and critiques the legal frameworks that have been proposed to govern climate change-induced displacement.

A. Climate Justice and the Climate Regime

The concept of climate justice has been deployed by climate-vulnerable states and peoples as a means of holding affluent countries accountable for the impacts of their historic and current greenhouse emissions. From the colonial era to the present, the Global North achieved economic prosperity by

exploiting the resources of the Global South (including fossil fuels) and by emitting prodigious amounts of greenhouse gases (Mickelson 2005). Although China is now the world's top carbon dioxide emitter, the per capita emissions of the Northern states continue to dwarf those of their Southern counterparts (Union of Concerned Scientists 2020; World Bank 2014). While the North reaped the economic benefits of a consumption-driven, fossil fuel-based economic development model, the consequences are being borne disproportionately by Southern states and poor and racialized communities in both the North and the South who reside in vulnerable geographic locations and lack the resources for climate change adaptation, disaster risk reduction, and disaster response (Anand 2004; UN Secretary General GSP 2012).

In light of the imbalance between those who benefited from the exploitation of fossil fuels and those who will suffer and die as a consequence of climate change, climate justice advocates have called upon Northern states to significantly reduce their own greenhouse gas emissions, to finance climate change mitigation and adaptation in the Global South, and to compensate the South for climate change-induced harms that cannot be avoided through adaptation (Dehm 2016; Gonzalez 2016b; Schlosberg and Collins 2014). The 1992 United Nations Framework Convention on Climate Change (UNFCCC) implicitly incorporates the concept of climate justice by recognizing “that the largest share of historical and current global emissions has originated in developed countries” (preamble) and expressly adopting the principle of common but differentiated responsibility (CBDR) (Article 3(1)).³

The CBDR 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 ability to prevent, minimize, or remedy the problem (Adelman 2016). In accordance with the CBDR principle, UNFCCC directs the Global North to “take the lead in combating climate change and the adverse effects thereof” (Art. 3(1)) and requires the North to provide financing and technology transfer to the countries of the Global South (Art. 4).

The Paris Agreement, adopted in December 2015 under the auspices of the UNFCCC, reaffirms the principle of CBDR in Article 2(2), and includes references to climate justice and human rights (including the rights of migrants) in its preamble. However, despite these justice-friendly provisions, the Paris Agreement may not be sufficient to avoid catastrophic climate displacement. The objective of the Paris Agreement is to limit global temperature increases to well below 2°C in excess of pre-industrial levels and strive to limit the temperature increase to 1.5°C (Art. 2). To achieve this objective, the agreement adopts a “bottom up” approach that requires each country to determine and communicate its greenhouse gas reduction pledge, known as Nationally Determined Contributions (NDCs) (Art. 3). Beginning in 2023, each country must revise and ratchet up its pledge every five years, taking into account periodic assessments of the collective progress of the parties towards the Paris Agreement's objectives (Arts. 4, 14).

Studies have concluded that compliance by all nations with their NDCs will result in an average global temperature increase of 3°C (Raftery et al. 2017; Rogelj et al. 2016). According to the Intergovernmental Panel on Climate Change (IPCC), an increase of 3°C above pre-industrial levels will likely inundate many small island states, as well as submerge substantial portions of low-lying regions, including Bangladesh, the Nile Delta, and the Mekong Delta (IPCC 2014; Glennon 2017). It

³ United Nations Framework Convention on Climate Change (New York, 9 May 1992) 1771 U.N.T.S. 107, 31 I.L.M. 849 (1992), *entered into force* 21 March 1994.

could also flood many of the world's mega-cities (including Mumbai, New York, and Shanghai) by hastening the melting of the Antarctic and Greenland ice sheets (IPCC 2014).

Furthermore, the IPCC's 2018 special report, *Global Warming of 1.5°*, warned that even a temperature increase of 2°C above pre-industrial levels would be catastrophic. The report concluded that temperatures must remain below the 1.5°C threshold in order to avoid the most serious climate-related risks. This would require nations to reduce global carbon emissions by a massive 45 percent (from 2010 levels) by 2030 and achieve net zero carbon emissions by 2050 (IPCC 2018).

Unless states take aggressive action to reduce the major gap between the emissions reductions pledged and what is required to avert catastrophic climate change, the world could experience one of the largest waves of migration and displacement in modern history. Climate change is anticipated to displace as many as one billion people by 2050, both within and across national borders (Kamal 2017). The Small Island Developing States (SIDS) are especially vulnerable to slow-onset climate-related events (such as sea level rise, flooding, and recurring drought) as a consequence of their small land mass, low elevation, and limited freshwater resources. Many are projected to vanish completely due to rising sea levels (Bank and Frölich 2018; Burkett 2018). If climate change renders the SIDS uninhabitable, these states alone will contribute 65 million people to the world's total number of climate-displaced persons (Bank and Frölich 2018).

For the first time in the history of the climate regime, the Paris Agreement includes a separate provision on loss and damage to address the harms that cannot be avoided through adaptation, such as displacement caused by climate-related disasters (Verchick 2018). The decision adopting the Paris Agreement calls for the creation of a task force to “develop recommendations for integrated approaches to avert, minimize, and address displacement related to the adverse impacts of climate change.”⁴ Because this task force is in its infancy, the strategies it will propose to address climate displacement have yet to be defined (Chazalnoel and Ionesco 2018). In order to guide the future development of the Paris Agreement's loss and damage mechanism, the next section examines and critiques the leading approaches to climate displacement.

B. *Legal and Policy Approaches to Climate Displacement*

The lack of political will to achieve the emissions reductions necessary to avert catastrophic climate change increases the likelihood of widespread climate displacement. Because there is no binding legal framework that comprehensively addresses climate displacement across international borders (Atapattu 2018), persons who seek admission to another country to escape the ravages of climate change face detention, deportation, and criminal prosecution. This section examines the emerging legal and policy responses to climate displacement and evaluates them through a race-conscious decolonial climate justice perspective.

1. The National Security Response

Climate activists and government officials in affluent countries have depicted climate-displaced persons as threats to national security in order to exhort states to adopt aggressive climate change

⁴ Paris Agreement to the U.N. Framework Convention on Climate Change, 12 December 2015, 1771 U.N.T.S. 107, at ¶ 49, *entered into force* 4 Nov. 2016.

mitigation measures (Dawson 2017; Methmann and Oels 2015). Regrettably, this approach stokes “deep-seated fears and stereotypes of the dark-skinned, overbreeding, dangerous poor” scrambling over US border fences or landing on European or Australian shores (Hartmann 2010, 238). The national security approach sparks fear and hatred, resulting in the militarization of borders and the construction of walls (Karlin 2018; Miller 2017; Klepp 2017; Baldwin 2013). Instead of promoting compassion for climate-displaced persons or recognition of common but differentiated responsibility for climate change, the national security response classifies “climate refugees” as barbarians crashing the gates of civilization, and reinforces racialized distinctions between “us and them, citizen and foreigner, friend and enemy” (Ransan-Cooper et al. 2015, 110).

The specter of climate-displaced persons crossing en masse from South to North also conflicts with documented patterns of displacement in recent years. According to the United Nations High Commissioner for Refugees (UNHCR), of the 68.5 million persons forcibly displaced worldwide in 2017, approximately 40 million remain in their country of origin (UNHCR 2018). When they migrate internationally, most displaced persons settle in neighboring countries in the Global South, which currently host 85 percent of the world’s refugee population (Bank and Fröhlich 2018). Turkey provides refuge to the largest number of forcibly displaced persons, followed by Pakistan, Uganda, Lebanon, Iran, Bangladesh, and Sudan (UNHCR 2018). “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” (Bank and Fröhlich 2018, 3).

International law provides very limited protection to persons who cross national borders to escape the impacts of climate change (Atapattu 2014, 2018). The 1951 Refugee Convention defines a refugee as a person who is outside their country of origin and unwilling or unable 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.”⁵ This definition does not encompass climate-displaced persons (Van der Vliet 2018). While some states have provided temporary protection on humanitarian grounds to persons fleeing conflict or natural disasters who do not individually face persecution (Van der Vliet 2018; Atapattu 2018; Platform on Disaster Displacement 2018), temporary protection may not be an adequate remedy for climate-displaced persons whose countries will soon become permanently uninhabitable. Furthermore, it is unlikely that most states will extend this status to climate-displaced persons given the current climate of xenophobia in Europe and elsewhere (Europe’s Hostile Environment 2018).

International human rights law expands countries’ obligations beyond the refugee category by prohibiting the deportation of persons “at risk of arbitrary deprivation of life, torture, or cruel, inhuman, or degrading treatment or punishment” if they are returned to their home countries (Van der Vliet 2018, 22). Known as the principle of *non-refoulement*, this obligation may provide limited protection to climate-displaced persons. In a ground-breaking decision issued in January 2020, the United Nations Human Rights Committee concluded that the adverse effects 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.⁶ However, the Committee found that the petitioner’s deportation from New Zealand did not violate his rights because his home country of Kiribati will not become

⁵ Convention relating to the Status of Refugees (Geneva, 28 July 1951) 189 U.N.T.S. 137, *entered into force* 22 April 1954.

⁶ Views Adopted by the Committee under Article 5(4) of the Optional Protocol, Concerning Communication No. 2728/2016, 7 January 2020, CCPR/C/127/D/2728/2016, *at* ¶ 9.11.

uninhabitable for ten to fifteen years, making it possible for the government of Kiribati, with international assistance, to protect its population.⁷ While this case is a landmark ruling on the responsibility of states to climate-displaced persons, the decision raises questions about how desperate conditions must be in climate-vulnerable countries before the *non-refoulement* obligation applies.

Instead of providing a safe haven for refugees, the United States, Europe, and Australia are increasingly criminalizing migration and erecting greater barriers to entry, including enhanced sea, air, and land patrols; drone surveillance; and President Trump's infamous border wall (Dawson 2017; Karlin 2018). Thousands of migrants from Africa and the Middle East have perished trying to cross the Mediterranean to Europe since 2014 (Dawson 2017). Migrants who do manage to traverse the North's militarized borders are frequently locked up in detention facilities, denied legal representation, and required to prove their eligibility for political asylum by documenting their well-founded fear of persecution in their country of origin (Dawson 2017).

Some scholars have proposed amending or liberally re-interpreting the 1951 Refugee Convention to cover climate-displaced persons (Pérez 2018). However, states have generally resisted this approach as migration policy grows more contentious (Jakobsson 2018). Furthermore, people rarely migrate exclusively for environmental reasons (Atapattu 2014). Even if states agreed to provide refugee-like protection to climate-displaced persons, these "climate refugees" would undoubtedly encounter the obstacles described above—increasingly militarized borders, confinement in detention centers, lack of legal representation, and the impossible burden of demonstrating that their multi-faceted and complex decision to migrate can be attributed solely to climate change.

An analysis of climate displacement grounded in racial capitalism must interrogate who benefits from the policies that stoke racism and militarize borders. There appear to be at least six distinct groups of beneficiaries. The most immediate beneficiaries are the corporations that contract with governments to provide highly lucrative security, surveillance, border wall construction, and privately operated prisons and detention facilities (Bhattacharyya 2018; Olivares 2016; Loewenstein 2015). A second beneficiary is the security apparatus of the state, whose staff and budget swell in order to administer the detention and expulsion of ever-growing numbers of migrants (Bhattacharyya 2018). A third group of beneficiaries consists of businesses that gain economically when detained migrants are obligated to provide low-paid industrial labor akin to that performed by persons incarcerated for criminal offenses (Richards and Peña 2017). These businesses also benefit from temporary migration schemes and undocumented migration that supply cheap, exploitable labor. A fourth group of beneficiaries consists of states in geographical proximity to Northern states (such as the transit states of Mexico, Libya, and Morocco) that can obtain monetary compensation, political concessions, or trade benefits by agreeing to limit the movement of migrants (Bhattacharyya 2018). A fifth group of beneficiaries is comprised of criminal enterprises that specialize in the trafficking of undocumented migrants, using the threat of deportation to exert greater control over their victims (Wood 2018). Finally, authoritarian populists in the Global North benefit by scapegoating migrants and other racialized communities for the ills of capitalism, thereby persuading working class whites to vote against their economic self-interests and to support policies that intensify economic inequality and hasten catastrophic climate change (Bhattacharyya 2018; Metzl 2019).

⁷ Views Adopted by the Committee under Article 5(4) of the Optional Protocol, Concerning Communication No. 2728/2016, 7 January 2020, CCPR/C/127/D/2728/2016, at ¶ 9.12.

The national security response fosters the illusion that the Global North can escape the most severe impacts of climate change by constructing border walls and expelling migrants and refugees (Whyman 2019; Mann and Wainwright 2018; Davis 2010). As a recent book on climate politics explains:

Despite the many dire signals, most people in the global North still find comfort in the belief that the worst consequences—scarcity of food and water, political unrest, inundations and other so-called “natural disasters”—are far enough away or far enough in the future that they will not live to experience them (Mann and Wainwright 2018, 7).

However, runaway climate change knows no borders. Although its impacts are uneven, climate change is accelerating and may already be irreversible. The vast majority of the world’s population will soon experience a never-ending cascade of disasters, including hurricanes, wildfires, floods, mega-droughts, heat waves, rising sea levels, and pandemics (Wallace-Wells 2019). When these disasters strike, Northern elites will undoubtedly abandon their compatriots and seek refuge in “green and gated oases of permanent affluence on an otherwise stricken planet” (Davis 2010, 38). Indeed, the super-rich have already purchased real estate and constructed bunkers in New Zealand and other locations to escape climate change, pandemics, civil unrest, and the potential collapse of governments (Whyman 2019; Osnos 2017; Donnell 2017). In 2020, many relocated to their homes in New Zealand to flee the COVID-19 pandemic (Woodward 2020).

The national security response reinforces the abyssal divide by stoking fear, racism, and xenophobia. It constructs climate-displaced persons as threats to the public order and increases their vulnerability to state-sanctioned premature death—in detention camps, on the high seas, and in desolate and dangerous border crossings. Its politics of nationalism, border control, and surveillance stimulate the “desire for an enemy, the desire for apartheid, for separation and enclosure” and ultimately “the phantasy of extermination” (Mbembe 2016). The national security response neutralizes potential opposition to carbon capitalism by manufacturing scapegoats so that “the rising fury of a betrayed population will vent against a demonized target” (Hedges 2019, n.p.).

2. The Humanitarian Response

A second response to climate displacement often depicts displaced persons as passive and helpless victims of natural disasters who need to be rescued by the international community as a form of charity rather than common but differentiated responsibility for climate change (Ransan-Cooper et al. 2015). The paradigmatic example is the portrayal of the Small Island Developing States (SIDS) as vulnerable, isolated, poor, helpless, under-developed, and in danger of imminent extinction (Bank and Fröhlich 2018; Walshe and Stancioff 2018).

The humanitarian response exacerbates climate injustice by creating an “eco-colonial” narrative that casts the Global North as the savior of the world’s downtrodden while ignoring the North’s current and historic contribution to poverty and environmental degradation (Ransan-Cooper et al. 2015; Kelman 2018). A community’s susceptibility to climate-related disasters is a function of its exposure to environmental hazards and its social and economic vulnerability (Govind and Verchick 2015). The North increased the South’s exposure to environmental hazards through its profligate emission of greenhouse gases. It impoverished the South and created the social and economic conditions for mass displacement through genocide, slavery, colonialism, and a variety of post-World War II military, political, and economic interventions, including decades of austerity under the auspices of IMF and

World Bank structural adjustment programs. Instead of questioning the economic system that subordinates large segments of the world's population, the humanitarian response depicts the South as primitive, backward, and in need of rescue—an object of charity rather than a victim of injustice. In so doing, the humanitarian approach reinforces the abyssal line.

The humanitarian frame also disregards how migrants understand their own experience and may deprive them of the opportunity to exercise self-determination with respect to potential strategies for responding to climate change (Ransan-Cooper et al. 2015; Bank and Fröhlich 2018). For example, Pacific Islanders have generally rejected the label of helpless victims or climate refugees, and have emphasized their long history of resilience in the face of social and environmental challenges, their preference for *in situ* adaptation, and their right to determine when, whether, where, and on what terms they will migrate (Walshe and Stancioff 2018; Kelman 2018).

The Nansen Initiative (2015) is an example of a voluntary framework for disaster displacement based on the humanitarian approach. The Nansen Initiative is the only legal framework that sets out a series of principles to protect and assist displaced persons who cross international borders due to disasters, including those related to climate change (Atapattu 2018). Introduced by Norway and Switzerland in 2012, the Nansen Initiative was endorsed by more than one hundred governmental delegates in Geneva in 2015 (Platform on Disaster Displacement 2018). The Nansen Initiative's recommendations are currently being implemented by its successor, the Platform on Disaster Displacement, which focuses on integrating effective practices on cross-border disaster displacement into existing legal frameworks rather than developing a new treaty (Platform on Disaster Displacement 2019; McAdam 2016).

While the Nansen Initiative is a significant advance relative to the national security response, its approach to climate displacement is problematic in several respects. First, the Nansen Initiative's charity-based approach is inconsistent with climate justice because it depoliticizes climate displacement by obscuring the North's historic responsibility for climate change and its ongoing obligation to mitigate its emissions and provide reparation for the resulting harms. Climate displacement is an injustice, "not a random, faultless act of God" (Burkett 2018, 82). Second, the Nansen Initiative's reliance on voluntary implementation by states of humanitarian protection measures will likely fail at a time when Northern states are turning away large numbers of displaced persons, including refugees fleeing conflicts in Afghanistan, Iraq, and Syria that were initiated or supported by the North. Third, the Nansen Initiative's state-led approach may neglect the priorities and perspectives of climate migrants (such as loss of land, community cohesion, and cultural identity), thereby raising procedural justice issues (Burkett 2018; McAdam 2012). Finally, the Nansen initiative applies only to displacement caused by severe weather events, and may therefore not protect those who migrate due to slow-onset events such as desertification, flooding, and sea level rise (Atapattu 2018).

Whereas the Nansen Initiative addresses the plight of displaced persons *after* the disaster has occurred, another humanitarian initiative—the Sendai Framework for Disaster Risk Reduction—fosters international cooperation to mitigate disaster risks, including climate displacement, *before* they occur (Sendai Framework 2015). While this framework introduces certain important innovations, including its community-based, bottom-up approach to disaster risk reduction and its emphasis on socio-economic vulnerability, the Sendai Framework, like its predecessor Hyogo Framework, is also based

on the Northern charity approach rather than historic responsibility and is therefore inconsistent with a climate justice approach (Govind and Verchick 2015).

3. The Migration Management Response

The third response to climate displacement is migration management, which consists of state-governed regulation of mobility to prevent the disruptive threats posed by mass migration (Scott and Smith 2017). This approach is advocated by the International Organization for Migration (IOM), whose mission includes “meeting the growing operational challenges of migration management” while upholding “the human dignity and well-being of migrants” (IOM 2014).

The migration management response promotes temporary migrant worker programs in the Global North as a means of fostering economic development and climate resilience in the Global South. Instead of depicting climate-displaced persons as helpless victims or threats to national security, the migration management approach portrays them as entrepreneurs engaged in self-help who enhance the resilience of their communities by taking jobs abroad and sending home remittances (Felli 2013; Methmann and Oels 2015). Rather than treating displacement as a tragedy to be avoided, temporary labor migration is celebrated as a climate adaptation strategy that improves the lives of family members left behind and promotes “climate-smart” development as long as the migration process is carefully controlled by states and by institutions of global governance (Bettini, Nash, and Gioti 2017; Methmann and Oels 2015).

The migration management approach imposes the burden of climate change adaptation on the planet’s most climate-vulnerable populations instead of requiring the North to finance climate change adaptation and prevent displacement in the Global South (Bettini, Nash, and Gioti 2017; Methmann and Oels 2015). As one scholar pointedly observes:

Whereas climate refugees were depicted as (potential) helpless victims of climate change-induced *forced* migration, the language of climate migration as adaptation radically transforms the location of social agency and, consequently, the responsibility for climate change consequences. 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 (Felli 2013, 350).

Furthermore, as noted by the UN Special Rapporteur on the Situation of Human Rights Defenders in his special report on people on the move, the migration management response treats climate displaced persons as “commodities to be exploited in the national labour market . . . on terms not dissimilar to other inputs in the production process” (UN Human Rights Council 2018, 9, ¶ 27). Because the migration management approach does not *obligate* the North to open its borders to climate-displaced persons, this approach may subject climate migrants to the vicissitudes of Northern labor markets. Migrants who are young, light-skinned, able-bodied, and skilled will be favored while the vast majority (darker-skinned, poorer, older, disabled) will be classified as “illegal,” treated as disposable, and thrust below the abyssal line. Since the migration management approach does not require Northern states to grant these migrants labor rights and social safety nets (including the right to complain or protest without running the risk of deportation), there is a risk that both temporary

workers with legal status and undocumented workers will be abused, cheated, and exposed to unsafe and exploitative working conditions (Felli 2013; UN Human Rights Council 2018). While there is a human rights treaty that protects the rights of migrant workers—the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families⁸—the affluent, labor-importing states of the Global North have neither signed nor ratified this treaty (UNHCHR 2020).

Finally, migration can intensify climate vulnerability in the migrants' home countries to the extent that the exodus of able-bodied workers produces a brain drain, labor shortages, and reliance on erratic remittance flows (Ransan-Cooper et al. 2015). Indeed, the migration management approach may exacerbate the vulnerability of “trapped populations” who do not have the resources to participate in international labor markets or to move from vulnerable geographic locations (Methmann and Oels 2015). These “trapped populations” are likely to include a disproportionate number of women, children, the elderly, the poor, and the disabled (Willcox 2016; Sorensen et al. 2018).

Proponents of the migration management approach have offered planned relocation as one solution to the potential immobility of climate-vulnerable communities (Methmann and Oels 2015). Planned relocation consists of the voluntary or compulsory resettlement of persons living in hazardous locations to prevent displacement or to relocate those who have already been displaced (Scott and Smith 2017). In 2010, at the UNFCCC Conference of the Parties (COP) in Cancun, the parties adopted the Cancun Climate Adaptation Framework, which endorses the migration management approach, including planned relocation (Warner 2012). At the insistence of the United States, the parties replaced the term “climate refugees” as a subject of adaptation-related cooperation among the parties with the phrase “climate change induced displacement, migration and planned relocation” (Warner 2012, 1065-1067). The reference to planned relocation, which is itself a form of displacement, suggests that states increasingly approve of compulsory resettlement as a form of climate change adaptation.

Planned relocation raises significant human rights concerns. Racialized communities in the Global South have frequently been compelled to relocate in order to accommodate large-scale infrastructure projects, such as hydroelectric dams, highways, and mines (Bank and Fröhlich 2018; Scott and Smith 2017). “The impacts on the lives of people driven from their homes by such ventures can be just as severe in scope and duration as those experienced by people displaced by conflict, violence and disasters” (Walicki and Swain 2016, 8). These impacts include not only the loss of lands, livelihoods, and social cohesion, but also the forfeiture of connections to places essential to the community's spiritual and cultural identity (Scott and Smith 2017). This history of planned relocation should serve as a cautionary note about the dangers of top-down governmental decision-making and the importance of ensuring that community members are well-informed of the options; have a sense of control over the destination and the process of movement; and provide their full, prior, and informed consent. Whether the benefits of moving outweigh the costs is a highly political decision best left to the affected community (Methmann and Oels 2015).

In sum, the migration management approach enables the North to control and exploit climate-displaced persons by portraying temporary labor migration as an economic opportunity for a select group of “entrepreneurial” migrants. This approach absolves the North of responsibility for climate

⁸ U.N. General Assembly, Resolution 45/158, 18 December 1990, Convention for the Protection of the Rights of All Migrant Workers and Members of their Families, 45 U.N. GAOR Supplement (No. 49A) at 262, U.N. Doc. A/45/49, Annex, *entered into force* 1 July 2003.

change and for the structural injustices caused by racial capitalism that increase vulnerability to displacement. The migration management approach reinforces the abyssal line by allowing the North to selectively admit a small number of “worthy” migrants while consigning the vast majority to “illegality,” immobility, or forced relocation.

The final section of this article examines the common pitfalls of all three approaches through a race-conscious decolonial lens and discusses an alternative approach that emerges from climate-vulnerable states and peoples.

V. Self-Determination: A Just Approach to Climate Displacement?

The national security, humanitarian, and migration management approaches reinforce the governance strategies of carbon capitalism by creating very narrow and largely discretionary exceptions to the North’s broad authority to exclude climate-displaced persons. While international trade, finance, and investment law promote the movement of capital and goods across national borders, the legal frameworks governing migration restrict the mobility of the racialized poor. As Jones observes:

Borders are not natural divisions between people or benign lines on a map. They are mechanisms for some groups of people to claim land, resources, and people, while fundamentally excluding other people from access to those places. They create and exacerbate inequalities and they protect the economic, political, and cultural privileges that have accrued over the past few hundred years through the spoils of colonialism, capitalism, and most recently economic globalization (Jones 2016, vii).

In other words, Northern states deploy borders as technologies of governance that entrench the concentration of wealth in the hands of white elites (Jones 2016). These racialized borders create an enormous pool of cheap, exploitable labor in the Global South whose low wages and dangerous working conditions enhance the profit margins of Northern corporations and supply Northern consumers with inexpensive goods (*ibid.*). By excluding persons whose lands, lives, and livelihoods have been ravaged by the North’s petro-wars, unbridled resource extraction, and copious carbon emissions, these borders reinforce the injustices of carbon capitalism.

The national security, humanitarian, and migration management approaches also advance the racist ideologies that justify carbon capitalism by casting the North as superior and civilized while invoking the specter of disorderly, disruptive, dark-skinned migrants who threaten Northern borders. These frameworks reflect a “desire to preserve the apparent normalcy of an imagined social order that the monstrous, future-conditional climate change migrant threatens to overwhelm” (Baldwin 2016, 81). Without making an explicit reference to race, these approaches suggest that the future of white supremacy depends on its ability to manage and contain the teeming masses from the South that climate change threatens to unleash. Indeed, some scholars have observed that the discourse on climate change and migration weaponizes fear and could produce a “pre-emptive race war in which the survival of one population is pursued at the expense of another” (*ibid.*, 86). Arguably, elements of this race war have already begun on the borders of the United States, Australia, and the European Union.

To achieve climate justice, it is necessary to develop legal approaches to climate displacement around which social movements and climate-vulnerable states and peoples can coalesce. Scholars have long

recognized that international law is constrained as a tool of resistance due to its epistemological complicity with structural violence against humans and non-human nature (Lindgren 2018). Influenced by Enlightenment philosophers, international law universalized the idea that humans are obligated to dominate nature, and created racial hierarchies that justify the objectification, dispossession, and exploitation of societies that differ from Euro-American norms. In addition, the Western legal model's individualistic focus is ill-equipped to recognize and remedy systemic injustice (Gonzalez 2015).

Despite these limitations, international law has been used in counterhegemonic ways by social movements in the Global South (Rajagopal 2003). Indeed, decolonial theory's emphasis on the "critical anti-Eurocentric epistemological standpoint of colonial migrants and subjects" (Grosfoguel, Oso, and Christou 2014, 13) suggests that solutions to the problem of climate displacement are best developed by listening to and critically engaging with those who are displaced. For example, the Peoples Agreement that emerged from the 2010 World People's Conference on Climate Change and the Rights of Mother Earth in Cochabamba, Bolivia, unequivocally calls upon Northern states to "assume responsibility for the hundreds of millions of people that will be forced to migrate due to the climate change caused by these countries, and eliminate their restrictive immigration policies, offering migrants a decent life with full human rights guarantees in their countries" (Peoples Agreement 2010, n.p.).

One approach to climate displacement that has emerged from Southern states and peoples is the collective right of displaced persons to self-determination and legal continuity as self-governing communities (Willcox 2016; Pascoe 2015; Maguire and McGee 2017). The right of peoples to self-determination is recognized in common Article 1 of the International Covenant on Civil and Political Rights (ICCPR)⁹ and the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹⁰ the 1950 United Nations General Assembly Declaration on the Granting of Independence to Colonial Countries and Peoples,¹¹ and the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)¹² (Daes 2008). At its core, self-determination is a collective right of subordinated peoples to determine their own fate rather than having it imposed on them by foreign powers (Williams 1991). Faced with the physical disappearance of their territory, climate-vulnerable states and peoples are invoking the right to self-determination as a means of preserving their cultural integrity, community cohesion, political agency, and collective self-governance so as to migrate with dignity (Ransan-Cooper et al. 2015; Klepp and Herbeck 2016). Rejecting the stigmatizing "climate refugee" label (Adelman 2016), they are demanding reconstitution of their states outside the confines of their territories if their lands become uninhabitable due to climate change—a concept known as "ex situ sovereignty" or "deterritorialized nationhood" (Burkett 2011; Rayfuse 2011). As Ross explains in connection with the potential migration of I-Kiribati and Tuvaluans to New Zealand:

⁹ International Covenant on Civil and Political Rights (New York, 16 December 1966) 999 U.N.T.S. 171 and 1057 U.N.T.S. 407, *entered into force* 23 March 1976 [the provisions of Article 41 (Human Rights Committee) entered into force 28 March 1979].

¹⁰ International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966) 993 U.N.T.S. 3, *entered into force* 3 January 1976.

¹¹ U.N. General Assembly, Resolution 1514 (XV) of 14 December 1960 (Declaration on the Granting of Independence to Colonial Countries and Peoples).

¹² U.N. General Assembly, Resolution 61/295, Declaration on the Rights of Indigenous Peoples (UNDRIP), U.N. Document A/RES/61/295 (13 September 2007).

Being forced to move to New Zealand might end up as a kind of inverse colonisation: instead of the coloniser coming to peoples and forcing them to assimilate the coloniser's culture, peoples now have to come to another society and integrate into that society's culture (Ross 2017, n.p.)

The resistance to reverse colonization or compulsory assimilation is particularly strong among climate-vulnerable Indigenous peoples who have survived genocide and ethnocide and now face imminent displacement. For example, in October 2018, Indigenous peoples from the United States, Bangladesh, and the Pacific (including Fiji, Kiribati, Palau, Papua New Guinea, Republic of the Marshall Islands, Samoa, Solomon Islands, and Tuvalu) gathered in Alaska for the inaugural First Peoples' Convening on Climate-Forced Displacement (UUSC 2019). The participants emphasized that climate displacement threatens Indigenous peoples' right to self-determination under international law by forcing them from their ancestral homelands, which are deeply connected to their cultural, spiritual, and livelihood practices. Most of the communities represented at the convening viewed relocation as a last resort and demanded that states and international institutions "support their right to remain and build protections for their homes, infrastructure, subsistence lands and waters, and cultural heritage sites" (ibid., 37). In order to protect the right to self-determination, they called for legal frameworks that place Indigenous peoples at the center of climate change planning so as to enable them to decide for themselves when and whether they will relocate (UUSC 2019).

Self-determination is a process rather than a pre-determined outcome. It emphasizes the collective right of peoples to determine their own destiny based on their diverse place-based perspective and priorities. In the South Pacific, for example, post-colonial thinkers have pointed out that active travel among the islands was the norm in Oceania prior to the imposition of colonial borders, and have called for new forms of transnational solidarity and new models of citizenship that transcend "the model of citizenship of the Peace of Westphalia" (Klepp and Herbeck 2016, 71). This means that *in situ* adaptation and labor migration to nearby states should not be the only options available to small island communities. Other options include *ex situ* reconstitution of the state on the territory of another state; self-government as an autonomous administrative unit of another state (akin to a province); and self-governance as a minority group within the territory of another state—all premised on the willingness of states to cede territory to displaced peoples (McAdam 2012). The self-determination approach calls for consultative, inclusive, place-, and culture-specific processes that provide resources to support migrants' mobility decisions (Ransan-Cooper et al. 2015).

The demand for self-determination challenges abyssal exclusion by empowering climate-displaced persons and facilitating collective decision-making on migration. Concerned that a multilateral treaty on climate displacement "may not respond to communities' human rights concerns, especially those relating to cultural integrity, self-determination, and statehood" (McAdam 2012, 199), many climate-vulnerable states and Indigenous peoples are calling for bilateral and regional approaches to climate change-related migration that respond to unique local needs; reflect common histories, traditions, and social structures; and respect their right to exist as self-governing communities (McAdam 2012; Corendea 2018). The regional negotiations taking place in the Pacific could inaugurate new migration-friendly approaches based on self-determination that question traditional conceptions of sovereignty and the nation-state and call for greater fluidity of borders (Klepp and Herbeck 2016).

The self-determination approach is not limited to the small island states, whose entire territory may be rendered uninhabitable by climate change-related environmental changes. It can also be adopted

by climate-displaced persons in low-lying states like Bangladesh that could lose large portions of territory as sea levels rise, and by persons in other regions displaced by drought and desertification. The right to self-determination gives climate-vulnerable communities the option to migrate collectively in order to preserve their language, culture, customs, and self-governing political community (Wyman 2017).

The collective right to self-determination is by no means a panacea for climate displacement. It implies a correlative duty of other states (such as high-emitting former colonial powers) to provide land to accommodate displaced communities, which will undoubtedly encounter fierce opposition (*ibid.*). It also faces internal challenges, such as the heterogeneity of climate-displaced communities (including gender, class, and other divisions) and the need to develop mechanisms to resolve conflicts regarding adaptation and migration pathways. Finally, in order to ensure justice for *all* migrants (including those who opt out of collective migration decisions and elect to migrate individually), it must be complemented by the North's assumption of responsibility to welcome *individual* climate migrants as compensation for the harms caused by climate change. One vehicle that has been proposed to facilitate such individual migration is the issuance of passports for the territorially dispossessed (modelled on the Nansen passports issued by the League of Nations) that allow climate migrants to choose where they will re-settle and require all states to accept these passport holders and permit them to become naturalized citizens (Heyward and Ödalen 2016).

The successful implementation of the self-determination approach requires a responsibility-based framework that imposes obligations on Northern states based on their contribution to climate change (Van der Vliet 2018). Drawing upon several principles of international environmental law, including common but differentiated responsibility, a responsibility-based legal framework would emphasize the duty of high-emitting states to prevent displacement by reducing their own greenhouse gas emissions and by providing climate-vulnerable states with the technical and financial resources for climate adaptation and disaster risk reduction. If these measures do not forestall the need to relocate, then high-emitting states should open their borders to climate-displaced persons based on each country's historic contribution to climate change—or finance their relocation to an alternative destination selected by climate-displaced persons. Using carbon dioxide emissions from 1850 to 2011 as a proxy for climate change-related harm, Gerrard (2015) argues that the US and the EU are responsible for resettling over half of all climate-displaced persons. However, consistent with the self-determination approach, a responsibility-based legal framework should require high-emitting states to finance and facilitate the mobility decisions of climate-vulnerable people rather than dictating the terms and destination of migration. These high-emitting states would incur a variety of obligations, including the duty to furnish relocation assistance, and ensure that climate-displaced persons enjoy access to livelihoods, health care, housing, education, and the ability to protect their languages, cultures, and traditions of self-governance.

A responsibility-based approach should also take into account the degree to which Northern states have contributed to the *climate vulnerability* of Southern states and peoples. As Saad 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) (Saad 2017, 100).

Achieme (2019) argues that Northern states have a legal and moral duty to accept migrants from the Global South as a form of corrective justice for colonial and post-colonial interventions that impoverished Southern states and peoples and deprived them of the capacity for self-determination. Given the imperial interconnection and interdependence between Northern and Southern states, the border is a legal fiction that perpetuates poverty and inequality. In addition, the duty to accept migrants might also be derived from the North's violation of the customary international law obligation to refrain from causing transboundary harm. Specifically, the North has devastated the Global South by maintaining an international economic order that systematically violates economic, social and cultural rights by producing "harmful impacts on wages, prices, employment, social services . . . human health, and access to environmental necessities, such as food, land, and water" (C. Gonzalez 2011, 787).

The self-determination approach invites a deeper doctrinal and philosophical engagement with evolving notions of sovereignty and the rights of migrants under international law (Thomas 2013), especially as these intersect with common but differentiated responsibility for climate change and with Southern demands for reparations for the North's colonial and post-colonial domination and exploitation (Achieme 2019). While a full analysis of this topic is beyond the scope of this paper, one of the goals of this article is to identify future research and advocacy projects that do not replicate the abyssal exclusions of the emerging legal responses to climate displacement.

Instead of treating climate-displaced persons as objects (savages, victims, or exploitable workers), the self-determination approach embraces their agency and creativity so that they may devise ways to preserve their lives, livelihoods, cultures, and ways of life in the face of catastrophic climate change. If embedded in a legal framework that imposes obligations on states to accept climate-displaced persons and to make resources available to them as reparation for the legacy of colonial and post-colonial dispossession, this approach may permit people to shape their own history, and potentially transcend the colonial borders that impose immobility and increase climate vulnerability. The self-determination approach is an example of the ways that Southern states and peoples are attempting to infuse the climate regime with different values, perspectives, and solutions that redeploy existing legal doctrines in the interest of subaltern communities.

VI. Conclusion

Racialized communities have borne the brunt of carbon capitalism from its origins in genocide and slavery to the contemporary climate crisis and are increasingly displaced by the emerging green energy economy. Their location below the abyssal line subjects these communities to the "slow violence" of the extractive and polluting fossil fuel industry; resource wars; predatory economic policies; climate-induced disasters; and criminalization, detention, and state-sanctioned death when they attempt to cross the militarized borders of the Global North. Viewing climate change as an environmental issue unrelated to other racial justice struggles erases history and conceals the multiple and inter-related injustices of the fossil fuel-based global economy.

Racial capitalism undermines solidarity by portraying large segments of humanity as inferior, unworthy, expendable, and a threat to national security. This is particularly evident in the inhumane response of Northern countries to migrants fleeing conflict, persecution, poverty, and environmental

degradation. As climate change threatens to increase the flow of migrants, Northern states are proposing solutions that reinforce national borders, intensify the abyssal divide, and absolve the North of responsibility for its prodigious carbon emissions and its current and historic subordination of the South. The North's proposals blame migrants for the economic and ecological crises of capitalism and impede resilience by restricting mobility.

Communities below the abyssal line are the canaries in the coal mine. They reside in the sacrifice zones of carbon capitalism and are the first to suffer the ravages of climate change. Their plight is a harbinger of the harm that will eventually befall almost everyone as the planet becomes increasingly inhospitable to human, plant, and animal life. Racism creates divisions between groups of people whose vulnerability to carbon capitalism should serve as the basis for solidarity and resistance. It perpetuates the illusion that those who identify as white can survive climate catastrophe by controlling the movement of persons classified as non-white. As economic inequality increases and the planet's ecosystems are brought to the brink of collapse, all but the ultra-affluent will become frontline communities in an increasingly damaged and dangerous world.

In a provocative article titled "Human Rights and Root Causes," Susan Marks (2011) calls for an examination of the systemic causes of injustice and proposes that scholars and activists spend less time pursuing state-oriented reforms that demobilize oppositional activity and more time channeling grievances into organized and coherent action. Climate-vulnerable states and peoples are using every legal tool at their disposal to seek climate justice (Burkett 2015), and it is important to heed their voices, support their work, and critique emerging legal and policy responses to climate displacement that reinforce abyssal exclusion. However, it is also essential to identify the larger structural causes of environmental, economic, and racial injustice and the opportunities for emancipatory collective action.

A race-conscious analysis of the cradle-to-grave impacts of carbon capitalism has the potential to foster collaboration among legal scholars across diverse fields of expertise and to promote alliances among social movements that reject militarism, extractivism, Indigenous dispossession, mass incarceration, police brutality, economic inequality, racism, xenophobia, and the dehumanization, exploitation, and expulsion of migrants and refugees. As Naomi Klein observes, social justice struggles are often compartmentalized.

The 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 (Klein 2016, 10).

The racialized abyssal line can serve as the glue that brings together scholars and activists and provides a common framework for transnational collaboration and mobilization.

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