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Capisani, Simona Mila

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What We Owe to Climate Refugees

DISSERTATION

submitted in partial satisfaction of the requirements
for the degree of

DOCTOR OF PHILOSOPHY

in Philosophy

by

Simona Mila Capisani

Dissertation Committee:
Professor Aaron James, Chair
Assistant Professor Jeffrey Helmreich
Chancellor's Professor of Law Kenneth W. Simons

2018

DEDICATION

To Papa.

Ah, dear father, graybeard, lonely old courage-teacher, what America did you have when Charon quit poling his ferry and you got out on a smoking bank and stood watching the boat disappear on the black waters of Lethe?

Allen Ginsberg
"A Supermarket in California"

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ACKNOWLEDGMENTS

dissuade me from following in your footsteps, I find myself here nonetheless. However, it is not your academic or career pursuits that I find myself following. Rather, in admiration, I only hope to access or emulate even just a small fraction of your love of life and learning. You continue to teach me, and though you are no longer here to share this with, in a sense you will always be my first reader. I love you and miss you.

CURRICULUM VITAE

Simona Capisani

EDUCATION AND DEGREES

2018   University California Irvine
Ph.D. Philosophy;
Graduate Feminist Emphasis Certificate- Gender and Sexuality Studies
Thesis Adviser: Aaron James

2016   University California Irvine
Certificate in Teaching Excellence

2012   San Francisco State University
Masters Philosophy
Masters Thesis: "Public Reason and the Availability of Truth"
Thesis Adviser: Shelley Wilcox

2009   University of San Diego
B.A., *magna cum laude*, Interdisciplinary Humanities (Philosophy Concentration); Environmental Studies; Art History Minor

AREAS OF SPECIALIZATION

Social and Political Philosophy, Feminist Philosophy, Environmental Philosophy, Normative Ethics

AREAS OF TEACHING COMPETENCE

Moral Philosophy, Applied Ethics, Political Theory, Feminist Theory, Kant's Practical Philosophy, Philosophy of Art

TEACHING EXPERIENCE

Instructor of Record

2018   **University of California Irvine**
Medical Ethics— Fall 2018

2015-2017   **San Diego Mesa College**
Phil 102B Introduction to Philosophy of Values— Sp. 2017, Summer 2016, Sp.2015

2014-2018   **Irvine Valley College**
Phil 1 *Online* Introduction to Philosophy— Fall & Spring from 2014-2017, Spring 2018

2013   **Sacramento State University**
Phil 6 Introduction to Philosophy

2010-2012   **San Francisco State University**
Phil 130 Political and Social Philosophy— Fall 2012
Phil 160 Introduction to Philosophy of Art— Spring 2012
Phil 110 Introduction to Critical Thinking— Sp 2011, Fall 2011 Fall 2012, Su. 2012

Teaching Assistant
2013-2018 **University of California Irvine:**
Phil 1 Introduction to Philosophy— Fall 2014, Winter 2015, Fall 2016, Summer 2017
Phil 2 Puzzles and Paradoxes — Spring 2015, Summer 2015 (online), Summer 2016
Phil 4 Introduction to Ethics — Winter 2016, Spring 2016
Phil 10 Ancient Philosophy — Fall 2015
Hist 15f What to Eat in America: Immigration and Foodways — Winter 2017

2010-2012 **San Francisco State University:**
Phil 330 Political Philosophy— Fall 2012
Phil 160 Introduction to Philosophy of Art— Fall 2010

PROFESSIONAL DEVELOPMENT/PEDAGOGICAL EDUCATION

2016-Present   Minorities and Philosophy (MAP) Leadership Team

2015-2017   Law, Reason, and Value Member (UCI Philosophy Dept. and UCI Law)
University of California, Irvine

2014-2017   UC San Diego Political Theory Workshop Member (UCSD Political Science)
University of California, San Diego

2017   "AB540/UnDocu Ally Training"
University of California, Irvine

2016   "Inclusive Pedagogy and Norms in Philosophy"
University of California, San Diego

2016   University Studies 390C
University of California, Irvine

2015   University Studies 390A
University of California, Irvine

2015   University Studies 390B
University of California, Irvine

| 2015 | UCHRI Research Group & Minorities and Philosophy SoCal Regional Event University of California, Los Angeles |
| 2015 | "Philosophy and Inclusive Pedagogy California Regional Workshop" University of California, Irvine |

SERVICE TO THE PROFESSION

2016-2018	Organizational Director Minorities and Philosophy (M.A.P.) non profit
2016-2017	Graduate Student Department Representative, UCI Department of Philosophy
2015-2017	UCHRI Multi-campus Graduate Working Group Member: Inclusive Pedagogy
2016	Co-Organizer, "UCSD Inclusive Pedagogy and Norms in Philosophy Workshop"
2015	UCI Pedagogical Fellow
2015-2016	Workshop Lead, UCI T.A. Professional Development Program
2015	Organizational Committee Chair, SoCal Regional M.A.P Event
2015	Workshop lead, UCSD Summer Program for Women and Philosophy
2015	Program Coordinator & Educator, UCI TH!NK Teaching Children Philosophy
2014-2017	Founder & Chair, UCI Minorities and Philosophy Departmental Chapter
2014-2017	Chair of Development & Public Outreach, The UCI Hypatia Society
2013-2014	Co-Organizer, UCI Perspectives on Gender Conference
2013	Chair, APA Pacific Division Conference
2012	Lead Graduate Teaching Associate, San Francisco State University
2010-2013	Active Member, Bay Area Feminism and Philosophy (BayFAP)
2010-2013	Mentor, Philosophy Mentorship Program San Francisco State University
2010	Chair, Women in Philosophy PSWIP Conference

HONORS AND AWARDS

2016-2017	Graduate Student Department Representative, UCI Philosophy Department
2015-2016	Outstanding Graduate Student Teaching Assistant Award, School of Humanities UCI
2016	Certificate in Teaching Excellence, University of California Irvine
2016	School of Humanities Graduate Fellowship, University of California Irvine

2016	Kavka Foundation Award, University of California Irvine
2015	Pedagogical Fellowship, University of California Irvine
2015-2017	UCHRI Multi-campus Graduate Working Group Grant Recipient
2012	Distinction, Thesis Defense; San Francisco State University
2012	Lead Graduate Teaching Associate, San Francisco State University
2009	Departmental Honors Award Humanities, University of San Diego
2009	Academic Excellence Award College of Arts and Sciences, University of San Diego

PROFESSIONAL PRESENTATIONS/CONFERENCES

2018   "What We Owe to Climate Refugees"
       International Society of Environmental Ethics Conference

2018   "The State of Minorities in Philosophy"
       APA Central, Chicago

2016   "Philosophical Obligations and Commitments to Inclusive Pedagogy"
       Invited Speaker, UCLA Minorities and Philosophy

2016   "Norms in Philosophy"
       Invited Speaker, UCSD

2015   "Philosophy & The Inclusive Classroom"
       Panel Speaker, SoCal Regional MAP Event at UCI

REFERENCES

Aaron James, Dissertation Adviser   **Casey Perin**, Professor
University of California Irvine   University of California Irvine
E-mail: aaron.james@uci.edu   E-mail: cperin@uci.edu

De Gallow, Executive Director Instructional Development
University of California Irvine Vice's Provost's Office Division of Teaching and Learning
E-mail: dgallow@uci.edu

ABSTRACT OF THE DISSERTATION

What We Owe to Climate Refugees

By

Simona Mila Capisani

Doctor of Philosophy in Philosophy

University of California, Irvine, 2018

Professor Aaron James, Chair

With the onset of ecological instability, by the middle of this century many people will be at risk of displacement due to anthropogenic climate change. People will be compelled to migrate internally as well as across international borders. In the dissertation I develop and defend the "theory of liveable locality" as a normative framework for understanding climate-based displacement and our obligations to climate refugees.

I directly consider the territorially exclusive and territorially all-encompassing nature of the state system and its conventional approach to addressing the consequences of its organizational structure. I argue that in light of this structure, every person affected by the territorial state system has the moral right to be somewhere liveable. I maintain that such a right has been overlooked. This is because in "normal" empirical conditions of centuries past, liveable spaces are provided to individuals by their country of nationality. Under conditions of climate change, however, when territorial integrity and the liveability of certain spaces can no longer be assumed, the territory of one's birth may be compromised. These empirical conditions make this membership right visible.

I do not propose a radical restructuring of our current practices, but rather demonstrate that our current state system already has the capacity to protect climate refugees. Additionally, I argue

that feminist philosophical considerations of climate refugees are a necessary and critical intervention, but also that they should go beyond addressing the ways climate change displacements are differentially experienced along gender lines. Such an approach must account for the way assumptions about gender construct discourse about the relationship between climate change and gender, especially in theory and policy discussions. I argue that the theory of liveable locality does so and thus establishes a foundation for a much needed feminist normative approach to the question of what we owe climate refugees.

INTRODUCTION

In 2015 the high court in New Zealand ruled against Iaone Teitiota, a farmer and fisherman from the island nation of Kirabati who was seeking protection and refugee status for himself and his family. Initially, in a court appeal in 2011, Teitiota claimed protection on the grounds that his island home (and territory of birth) was no longer a place where the safety and health of him and his family could be secured. Those conditions were not the result of state-based persecution but due to environmental degradation brought on by rising sea levels and the continued threat of climate change. Teitiota's lawyers argued that he and his family would suffer harms and inevitable danger if protection was not secured.

In September of 2015 Teitiota was deported despite the New Zealand Supreme Court's acknowledgement that there could be a case to be made for recognizing someone as a "climate refugee." The court recognized the importance of climate change as a concern for the international community. It nevertheless justified its decision to deny Teitiota protection and asylum on the grounds that an appeal to refugee status on the basis of climate-based displacement is not made available by the 1951 Refugee Convention relating to the Status of Refugees and its 1967 Protocol. The court ruling stated that, "although the Court has every sympathy with the people of Kirabati, Mr. Teitiota's claim for recognition as a refugee is fundamentally misconceived [and] it attempts to stand the Convention on its head."[1]

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[1] *Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment*, [2015] NZSC 107, New Zealand: Supreme Court, 20 July 2015, http://www.refworld.org/cases,NZL_SC,55c8675d4.html.

Teitiota's case, as well as other instances of displacement already occurring, along with predictions about the scale and scope of future climate change-induced migration, raise significant moral questions in addition to a range of political and legal challenges facing the international community. Should international law protect people who are forced to leave their country of birth and citizenship due to the effects of climate change? Who has a responsibility to aid so-called climate refugees? If we have obligations to climate refugees, what do we owe to them? What is the moral foundation for such obligations?

The work here attempts to explain what we owe to climate refugees, to specify what rights they can claim, and to offer a normative framework for understanding the nature of our obligations to them. This will include a philosophical argument for how we should understand climate change-based displacement as well as an account that explains to whom such claims to protection are addressed. The theory developed and employed in these efforts starts with an examination of current practices in order to provide a normative foundation that is useful for guiding or justifying reforms to the status quo. In this sense it can be regarded as foundational theorizing about an urgent and pressing real-world problem.

I argue that reflection on climate refugees illuminates a duty to correct a failure of the territorial state system. If such a failure is not addressed, the legitimacy of the system is in question. In response to the questions posed above, I offer an associational framework that sees climate refugees as addressing claims to protection against the territorial state system understood as a type of social practice. The rights of climate refugees are thus membership rights.

A duty to climate refugees can be justified in a number of ways. I will compare several alternative normative frameworks and highlight the advantages of the account I argue for. However, it is important to emphasize that philosophical arguments about climate refugees have by and large neglected to consider the normative implications of climate change. Climate change introduces a

shift in the background empirical conditions within which our current practices take place. We can no longer assume territorial stability, for example. This requires us to re-evaluate common conceptions that have been central to the practice of the territorial state system. By accounting for this shift in empirical conditions, this work offers a novel approach to the formidable problem that climate refugees pose. It makes evident how climate-based displacement is a consequence of the way the territorial state system is structured. Additionally, it demonstrates why fulfilling our obligations to climate refugees is a legitimacy condition for the territorial state system itself.

The following examples help illuminate the complex challenge climate refugees pose for the current international protection regime, the territorial state system, and the international community as a whole. They also demonstrate the need for developing a normative framework that can help to structure or justify reform.

Tabiteauea atoll, one of 33 small islands belonging to the Republic of Kirabati and Teitiota's place of birth, exists six feet above sea level and has experienced a significant decline in fresh groundwater sources. With the projected three feet rise in sea-levels due to glacial melt, in addition to the warming and consequent expansion of sea water, Kirabati will suffer from further flooding and erosion. More than half the population of Kirabati already lives in the capital island of Tarawa. Many people have moved from smaller outer islands that have already experienced a deprivation of resources, land, and consequent economic hardship caused by more extreme weather events and changes to the physical environment. After first internally migrating to Tarawa, Teitiota moved across international borders to New Zealand and eventually made his case for protection against these threats.

In the various opinions that emerged over the course of the four years of Teitiota's legal battle, New Zealand legal authorities maintained that the effects of climate change do not constitute "persecution" that would otherwise warrant protected refugee status under the Convention. This is

because the impacts of climate change are indiscriminate; they do not target specific individuals for particular reasons. Furthermore, justices argued that granting asylum in Teitiota's case would establish a problematic international precedent that would permit "millions of people" facing hardships or deprivations caused by climate change to pursue asylum protection claims.

Since the term 'refugee' is a legal term of art, the rights entailed by one's refugee status is narrowly defined by the 1951 Refugee Convention. According to the Convention, a refugee is someone who is owed protection on the basis of (i) their status as individuals persecuted for reasons of membership to some social group and (ii) their being located outside their country of nationality. Such individuals fear continued persecution if they were to be sent back to their "home" country because of the failure to be protected by their country of nationality.[2] Given the current international protection regime, there are a number of challenges to extend protection to people displaced by climate change. It is unclear whether the harmful impacts of climate change can be regarded as "persecution" or whether a "persecutor" can be identified. Additionally, protection of refugees only applies if an individual has already crossed international borders. So the current protection regime cannot currently address the need and possibility for pre-emptive protection efforts.[3]

As Jane McAdams notes, "the law does not answer or resolve the fundamental problems of definitional debates – it simply provides a set of criteria from which certain rights and obligations may flow."[4] So while international law may define "refugee" in this particular way, those outside the defined can still be owed protection. However, as evinced in Teitiota's court case, the current international protection regime faces difficulties in addressing the problem of climate-based displacement.

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[2] Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford: Oxford University Press, 2012), 42.
[3] McAdams, *Climate Change, Forced Migration, and International Law*, 43-45.
[4] Ibid., 42.

Teitiota's case drew international media attention and a more wide-spread awareness of the plight facing those living in low-lying Pacific island nations threatened by rising sea levels. A recent study published in the spring of 2018 predicts that thousands of islands across the planet will be uninhabitable much sooner than originally predicted due to routine flooding and freshwater contamination. The study argues that "because of the loss of freshwater resources and the increased frequency of impacts to infrastructure, most of these islands will likely become uninhabitable in the near future, well before the end of the 21st century."[5] Since close to 750,000 people reside on atoll islands, a significant number of people are at risk of becoming "climate refugees" in the next few decades from these territories alone.[6]

Low-lying islands are not the only territories at risk of becoming uninhabitable however. Consequently, citizens of island nations are not the only people at risk of climate change-induced displacement. Researchers recently released a study which predicts that temperatures[7] in the Middle East and North Africa (where over 500 million people live) will rise to the extent that habitability in the region will be compromised regardless of whether we can slow the increase in global surface temperatures by reducing green-house gas emissions.[8] High temperatures, coupled with increased air pollution due to desert dust, as well as prolonged duration of heat waves (increasing from a previous average of 16 days to a projected increase to 118 days by the end of the century) will make it difficult to sustain the populations that currently occupy these territories.

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[5] Curt D. Storlazzi, Stephen B. Gingerich, Ap van Dongeren, Olivia M. Cheriton, Peter W. Swarzenski, Ellen Quataert, "Most atolls will be uninhabitable by the mid -21st century because of sea-level rise exacerbating wave-driven flooding," *Science Advances* 4, no. 4 (2018): 5-6.

[6] Jackie Flynn Mogensen, "Climate Change Will Make Thousands of Islands Uninhabitable. A New Study Says It'll Happen Sooner Than We Thought," *Mother Jones,* April 25, 2018,https://www.motherjones.com/environment/2018/04/climate-change-will-make-thousands-of-islands uninhabitable-a-new-study-says-itll-happen-sooner-than-we-thought/ (accessed May 11, 2018).

[7] According to the study, in this region the maximum average temperature has been about 43 degrees Celsius. This number could reach about 50 degrees Celsius by the end of the century.

[8] J. Lelieveld, Y. Proestos, P. Hadjinicolaou, M. Tanarhte, and E. Tyrlis, G. Zittis, "Strongly increasing heat extremes in the Middle East and North Africa (MENA) in the 21st Century," *Climatic Change* 137, no.1-2 (2016): 245-260.

The threat of climate change-based displacement is not only a concern for distant populations residing in the Global South. Communities in the United States are already contending with the issue. Consider the Isle de Jean Charles in Louisiana. It is connected to the continental United States by a single road that now lies several inches above sea level. What was once an area of land surrounded by marshes and swamplands is now a small strip of land frequently cut off from basic resources located on "mainland" Louisiana. The community of one hundred residents, mostly Biloxi-Chitimacha-Choctaw Native Americans, now reside on about two percent of the original land mass of the original territory. The impacts of climate change are making their home uninhabitable, and their displacement inevitable. According to a study published in the Proceedings of the National Academy of Sciences, four hundred and fourteen villages, cities, and towns in the United States will be compelled to migrate or be relocated.[9] Currently, seventeen American communities (mostly communities of Native peoples) are already displaced due to climate change-related impacts and are in the process of moving to habitable territory.[10] Aid efforts have been ad hoc, however, because there is no national or international framework for addressing climate-based displacement.

According to research conducted for the United Nations High Commissioner for Refugees (UNHCR), there are several subcategories of people who will find their territories uninhabitable due to the effects of climate change. There are people who will need to move from areas prone to "sudden-onset" natural disasters. The intensity and severity of these "natural disasters" (such as flooding) has increased as a result of climate change. Additionally, people's livelihoods may be threatened by "slow-onset" effects of climate change. Such effects include sea level rise and the resulting salinization of freshwater sources and an increased frequency of droughts. Furthermore,

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[9] Michael Isaac Stein, "How to Save a Town from Rising Waters," *City Lab*, January 24, 2018, https://www.citylab.com/environment/2018/01/how-to-save-a-town-from-rising-waters/547646/ (accessed May 11, 2018).
[10] Ibid.

people may be displaced because their entire country of birth, or portions of their birthplace will disappear or be destroyed.[11]

In light of these various types of displacement, uninhabitability may be considered on a continuum and may be the result of a multitude of intersecting factors that include climate change. While in some cases uninhabitability will be easy to determine, as in the case of disappearing island nations, in other cases it may be more difficult to identify. This may be due to difficulties in determining whether patterned changes to an environment are due to climate change. Additionally, the uninhabitability of a region may only effect some but not all members of a state. Furthermore, given the rate of deterioration of a region, the liveability of a region may decline prior to the physical disappearance of the territory. While the scientific community is still clarifying ways to assess uninhabitability, formulations for determining uninhabitability have been proposed. Suggestions include judging whether a habitat has been changed permanently to the extent that the survival or adaptability of affected individuals could be ensured.[12]

While there have already been a number of proposed strategies to address the challenges faced by those displaced by climate change, there is no body of jurisprudence nor is there an authoritative international institution responsible for governing climate-related movement. Some proposed strategies include complimentary protection directed at asylum seekers already located in host countries, conventions, and refugee re-classification.[13] However, due to the limited scope of international legal conceptions of refugee rights, current cases of climate displacement rely on inadequate legal resources and insufficient ad hoc humanitarian schemes. For example, some of the limited protection efforts have been based on legal resources for environmental disasters or non-

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[11] Elizabeth Feris, "Protection and Planned Relocations in the Context of Climate change," *UNHCR Division of International Protection,* (2012): 23.

[12] Feris, "Protection and Planned Relocations in the Context of Climate change," 26.

[13] Katrina M. Wyman, "Responses to Climate Migration," *Harvard Environmental Law Review* 37, (2013): 175.

anthropogenic environmental change.[14] Certain types of displacement are not adequately addressed by these resources. As Jane McAdam explains,

a particular challenge for any new treaty would be adequately accounting for slow-onset movements brought about by gradual environmental deterioration [...] and the refugee paradigm, which premises protection needs on imminent danger does not capture the need for safety from longer-term processes of climate change which may ultimate render a person's home uninhabitable.[15]

Furthermore, given the current refugee protection regime, as well as current environmental law, it is not clear to what extent states have obligations towards the displaced.

An important feature of climate change-based displacement is that it currently occurs within a global territorial state system. Individuals are not free to migrate within this system, and thus movement away from uninhabitable territories and dangerous or unstable environmental conditions is not an accessible adaptation strategy. The territorial state system and its recognition of sovereignty as jurisdictional authority over territory protects the right of states to establish and enforce national immigration laws and policies. The general assumption is that states have the right to admit or exclude non-citizens as they see fit. Movement away from uninhabitable territories may prompt individuals to move across the boundaries of their state of nationality. In doing so, they will encounter the expression of this jurisdictional authority by way of border-enforcement. International law provides conditions for recognizing exceptions to this general assumption, however it only acknowledges a restricted set of forced migrants as individuals to whom we owe protection. For

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[14] For example, Swedish asylum law provides a national provision to protect people unable to return to their country of origin due to some environmental disaster. It is yet unclear as to whether this protection extends to those displaced by climate change.

[15] Jane McAdams, "The Normative Framework of Climate Change-related Displacement,'" *The Brookings Institution* April 3, 2012, https://www.brookings.edu/research/the-normative-framework-of-climate-change-related-displacement/.

example, refugees are an exception to the rule that states have the authority to make decisions about the make-up of their national communities.

Unless people classify as an exceptional case requiring protection, they risk violating laws and policies when they move across international borders. Consequently, they are not entitled to protections or prolonged inclusion in states beyond their place of birth. It becomes evident why ambiguity regarding the status of people displaced by climate change (especially in cases of cross-border displacement) is worrisome. The precarity of their condition is due in part to a gap in the international protection framework. Consequently, climate refugees pose both a practical and normative challenge to the status quo protection regime.

In Chapter One I directly consider the territorially exclusive and territorially all-encompassing nature of the state system and its conventional approach to addressing the consequences of its organizational structure. I argue that in light of this structure, every person affected by the territorial state system has the moral right to be somewhere liveable. I maintain that such a right has been overlooked. This is because in "normal" empirical conditions of centuries past, liveable spaces are provided to individuals by their country of nationality. In this way the territorial state practice guarantees that individuals have at least one liveable place they can be. Under conditions of climate change, however, when territorial integrity and the liveability of certain spaces can no longer be assumed, the territory of one's birth may be compromised. These empirical conditions make this membership right visible.

If states continue to exercise their right to exclude individuals from their territories, then the displaced are denied this basic right to a liveable space. In this first chapter I account for when territorial exclusion is no longer justifiable and introduce the "theory of liveable locality" as a normative framework for understanding climate-based displacement and our obligations to climate refugees. I argue that the circumstance of climate refugees place a moral constraint on how a state

exercises its jurisdictional authority. I give an account of the right to somewhere liveable as a basic right whose protection is a legitimacy condition for the territorial state system.

I also argue that the theory of liveable locality demands a reconceptualization of the conventional view of immigration and requires a revision of our traditional understanding of birthright citizenship. Traditionally understood, these concepts can no longer offer solutions to the problem of exclusion created by the territorial state system. The resulting normative framework establishes that our obligation to climate refugees, and the correlative right identified are associative in nature. It does not propose a radical restructuring of our current practices, but rather demonstrates that our current state system already has the capacity to protect climate refugees.

In Chapter Two I defend the theory of liveable locality by considering alternative normative grounds for our obligations to climate refugees. I argue that modesty of the associative framework proposed in Chapter One is a strength of the view and that the theory of liveable locality has advantages over other possible approaches.

Although there is relatively little philosophical work directly addressing climate refugees, the more expansive work addressing our obligations to refugees (conventionally understood) suggest three types of reasons that ground protection. Some arguments cite causal connections as the basis for why we have obligations to refugees. Others appeal to humanitarian considerations. And a third type of approach points to normative presuppositions of the state system as a ground for our obligations. My view takes the third approach. It identifies normative assumptions in the state system as a reason for why there are obligations to climate refugees.

In Chapter Two I consider versions of these various argumentative approaches to the particular case of climate refugees. I argue that the third approach has advantages over grounding our obligations to climate refugees in causal or humanitarian considerations. I then turn consider different version of the appeal to presuppositions of the state system. In particular, I consider

arguments that appeal to the "principle of non-refoulement," a recognized normative assumption that underlies the current refugee protection regime. I argue that the theory of liveable locality is preferable to non-refoulement because of its ability to address specific elements of the challenge climate refugees pose.

In Chapter Three I distinguish my approach from natural rights views. I argue that the right to somewhere liveable is not identical or reducible to a natural right. I consider various interpretations of the "Lockean Proviso" and maintain that the right to somewhere liveable is not equivalent to a Lockean proviso mechanism on any interpretation. Grounding our obligations to climate refugees in a membership right, rather than a natural right, and is far more suitable for the climate refugee problem. It allows us to sidestep numerous complications and controversies introduced by natural rights-based views. Though my view may share certain similarities and argumentative strategies with natural rights views, it is distinct from such approaches. It is thoroughly practice-based, and enjoys all the benefits touted by these alternatives without inviting their controversial assumptions.

Finally, in Chapter Four I consider the literature on climate refugees in light of feminist perspectives. Most of the current philosophical literature on climate refugees does not address or account for the gendered aspects of climate-based displacement and the normative implications such aspects have for theorizing about our obligations to climate refugees. I argue that feminist philosophical considerations of climate refugees are a necessary and critical intervention, but also that they should go beyond addressing the ways climate change displacements are differentially experienced along gender lines. Such an approach must also account for the way assumptions about gender construct discourse about the relationship between climate change and gender, especially in theory and policy discussions.

A feminist normative approach to climate refugees should create a space to critique and revise concepts themselves. This is vital if it is to aid the reform of social structures shaped by those concepts. Stated differently, a feminist approach to climate refugees ought to account for the "structural" nature of injustice. In this final chapter I argue that the theory of liveable locality does so, offering a feminist ethic for climate refugees. It offers a conception of vulnerability and explains why such a conception does not reinforce problematic gender assumptions. It is also compatible with feminist arguments that recommend the notion of "resistance." My account thus helps to expose the structural nature of the conditions climate refugees find themselves in, and guards against theorizing that justifies harmful and paternalistic protection policies. Additionally, my account of the territorial nature of the state system recognizes the embodied nature of participation and experience of the practice. The theory's attentiveness to embodiment is a feature of the argument for the right to liveable localities and thus places particular feminist concerns at the center of the account. In these ways, the chapter lays the foundations for a much needed feminist normative approach to the question of what we owe climate refugees.

CHAPTER ONE

Understanding Obligations to Climate Refugees

In Joseph Caren argument for open borders, he briefly sketches one possible case for a (prima facie) duty to admit conventional refugees.[16] It begins from assumptions about what the modern state system is like in practice:

> The modern state system organizes the world so that all of the inhabited land is divided up among putatively sovereign states who possess exclusive authority over what goes on within their territories. Almost all human beings are assigned to one, and normally only one, of these states at birth. Defenders of the state system argue that human beings are better off under this arrangement than they would be under any feasible alternative. [...] The duty to admit refugees can thus be seen as an obligation that emerges from the responsibility to make some provision to correct for the foreseeable failures of a social institution.[17]

Caren's does not elaborate on what these "foreseeable failures" might be. He does not mention that that climate change might be one of them.

I suggest that climate refugees implicate one particularly important duty to remedy a serious "failure" of the state system, a failure that threatens its very legitimacy. I suggest, in particular, that this duty be understood in associational, practice-based terms. Carens's general method is to start

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[16] Joseph Carens, *The Ethics of Immigration* (Oxford University Press, 2013).
[17] Ibid., 196.

with current practices for purely *argumentative* purposes. Indeed, his final justification for open borders does not depend on the existence even of the territorial state system. Here I offer a specifically associational account of our duties to climate refugees, which is specifically addressed to the state system as a kind of social practice. As I understand it, a duty to admit climate refuges can be justified in different ways. I offer but one among several possible justifications, some of which I return to in Chapter 2. For now, what's important is that my practice-based argument does not rely on alternative justifications and that the rights of climate refugees are rights of membership.

In this chapter I argue that, given an exclusive and all-encompassing territorial state system, each person has the moral right to be somewhere livable. A "livable space" is a physical space on a land area which affords adequate means of material substance, in close proximity to society. Since all such land areas are now part of one or another state's territories, this amounts to a right to at least (a) social integration and (b) a path to socio-political membership. While, ideally, a place to live would be provided by one's country of birth, each person has the moral right to immigrate to a livable space if he or she lacks one in his or her country of citizenship. States that have livable spaces, despite climate change, thus have a corresponding duty to admit climate refugees.

Climate-based displacement can be understood as an adverse consequence of territorial state system's structure and organization, territorial transience, along with an insufficient international protection regime. Given climate change, the moral legitimacy of territorial state system is undermined unless climate refugees have an effective means to some liveable space when their own country of citizenship can no longer guarantee such access. Then mere exclusion along with foreign aid will not suffice. Territorial exclusion is no longer justified, and a right to immigrate and gain social membership – in (a) proximity and integration into some social production with at least (b) access or a pathway to political membership -- becomes in force.

I defend this picture in the following ways. First, in section one I identify central territorial features that characterize the modern territorial state system. A key feature under climate change, for instance, is territorial transience. This necessitate changes to the international protection regime as well as modifications to traditional conceptions of the state system. In section two I interpret the territorial state system as a social practice and argue that the problem of climate-based displacement is a consequence of the practice and its organizational structure under such transient conditions.

Additionally, in section two I discuss some current solutions to problems generated by the practice and argue for their inadequacy. Citizenship, either by birth or by blood, is a norm that helps to address a problem of exclusion. The state system has global reach and allocates sovereignty along territorial bounds. So it significantly limits the ability of anyone to move around, even when migration is necessary for survival. I suggest that a conventional view of immigration and the traditional notion of citizenship are no longer sufficient solutions to the problem of exclusion when territorial permanence can no longer be assumed. While the practice affords certain rights and resources to participants, including as a state's right to exclude, the circumstance of climate refugees proves to be an important constraint on how this jurisdictional authority is exercised.

The right to be somewhere liveable, as I understand it, is a constraint of just this kind. It's a basic right whose realization and protection is a normative pre-condition of any state's exercise of authority over a particular territorial jurisdiction. The existence of climate refugees thus presents a challenge to the legitimacy of the state system itself. As a social practice, the territorial state system must be justified on its own terms, to its participants, in light of the consequences it generates. It is justified only if state-based societies have a moral obligation to protect climate refugees by providing a "livable space" when necessary. In section three I argue that the obligation, and correlative right to be somewhere liveable, are thus associative in nature. I call this account a theory of liveable locality. I also suggest that this requires only a relatively modest reform to our current international protection

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regime. The state system needn't be radically restructured to fulfill its obligation to climate refugees. I take this to strengthen the case for reform.

1.1 The Territorial State System: A Modern Social Formation

A defining feature of the Western modern state system is its territorial basis. State sovereignty is understood in part as jurisdictional authority over fixed spatial boundaries, defined over land, air, and water. The territorial nature of the state system is evident in two of its characteristic features. It is both (territorially) exclusive – states are assigned jurisdiction over particular territories -- and (territorially) all-encompassing – nearly all available areas of the globe are now so assigned. These features are separable, conceptually and historically. Although the territorial state system now structures the lives of almost everyone on the planet, its distinctive forms of political authority needn't be global. What began in Europe only became global reach only after a long and violent history of colonial conquest. Over the past four centuries, more and more people have only gradually found themselves located in world of territorially organized sovereign states.

In a (simplified) sense, the territorial map of states is a map of effective authority over land, air, and water areas.[18] But the territorial state system is not merely a product of the spread of capitalism, of changing material, technological, and other elements responsible for structuring political life. The idea that the surface of the earth should be divided up into fixed, individual territorial parts each under the political authority of a sovereign state has a life of its own, and the territorial nature of the emergent order has profoundly shaped international and domestic institutions, laws, and socio-

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[18] Alexander B Murphy, "The sovereign state system as political-territorial ideal: historical and contemporary considerations," *in State Sovereignty as Social Construct*, ed. Thomas J. Biersteker and Cynthia Weber (Cambridge: Cambridge University Press, 1996), 87.

political relationships.[19] It raises its own distinctive question of justification and is subject to its own requirements of legitimacy.

Sovereignty is a central premise of international law, and international law recognizes the rights of states to continue to exist and to exercise sovereignty *over* discrete spatial territories. Legal scholarship simply takes "territorial integrity" as a central principle of the modern state system,[20] as does the United Nations.[21] Legal notions such as `territorial integrity' evince the pervasiveness of this conception.[22] In the 1993 Motevideo Convention, for example, "statehood" is defined by a permanent population, a defined territory, a government, and a capacity to enter into relations with other states. A defined territory is emphasized as it sets the domain of a states power.[23]

1.1.1 Origins

The origin of territory-based order is commonly recognized to be the Westphalian sovereign state model. The collection of treaties signed in 1648 – collectively known as the Peace of Westphalia --successfully brought an end to a period of tremendous bloodshed and instability in Europe. With no side able to claim victory in the conflict, the peace instituted at Westphalia marked the end of the Thirty Years' War by instituting the recognition of the political autonomy of states within the Holy Roman Empire.[24] This was a distinct departure from the medieval conception of power and

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[19] Ibid., 82. Also see John Agnew, "Timeless Space and State-Centrism: The Geographical Assumptions of International Relations Theory" in *The Global Economy of Political Space*, eds. Steven J. Rosow, Naeem Inayatullah, and Mark Rupert (Colorado: Lynne Rienner, 1994).

[20] Ian Brownlie, *The Rule of Law in International Affairs* (Boston: M. Nijohoff Publishers, 1998).

[21] B.A. Hendrix, "International law as a moral theory of state territory?," *Geopolitics* 6, no. 2 (2001): 141-162. See also Sean Patrick Eudaily and Steve Smith, "Sovereign Geopolitics? – Uncovering the Sovereignty Paradox," *Geopolitics* 13, no. 2 (2008): 309-334.

[22] It has been argued that certain actions of the UN during periods of decolonization helped to forge the link between territorial integrity and state sovereignty. Michael Barnet and Martha Finnemore identify the norm of sovereignty- as political integrity and argue that it accounts for tendency to protect existing state borders. Michael N. Barnett and Martha Finnemore, "The Politics, Power, and Pathologies of International Organizations," *International Organization* 53, no. 4 (199): 699-732.

[23] Stuart Elden, *Terror and Territory: The Spatial Extent of Sovereignty* (London: University of Minnesota Press, 2009).

[24] Murphy, "The sovereign state system as political-territorial ideal: historical and contemporary considerations," 85-87.

governance in Europe, which did not define political authority by territorial boundaries.[25] In contrast to the medieval order, the emergent modern practice did not rely on conditions of loyalty to determine who is under what authority. Its system of rule moved away from a basis on kinship or fidelity to a monarch.[26] In pre-modern systems of rule, it was acceptable to have overlapping claims to a particular territory.[27] This European system of government was distinct from other systems of power and political authority existing around the time of its origins in its consolidation of authority into one geographically based public realm.[28]

By the early 17th century, the notion of an independent territorial state emerged as a focus of political thought and as a foundation for developing international legal principles. At the end of the Thirty Years' War, the Holy Roman Empire did not entirely disappear, the Church still was a dominant political influence, and a number of different political arrangements such as principalities, confederations, and free cities existed alongside states.[29] While territorial sovereignty was not yet a global guiding principle, its origins mark the arrival of the modern era. From the Napoleonic era, through the rise of nineteenth-century nationalism, two world wars, and through the decolonization of post-war years, the Western-European territorial state system has by now expanded globally.

1.1.2 Exclusion

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[25] John Ruggie, "Continuity and Transformation in the World Polity," *World Politics* 35 (1983): 275.

[26] While territorial boundaries served as demarcations of power in both the Dark Ages as well as Antiquity, they had little significance for reinforcing power and authority. In these older systems, feudal ties, or other claims of political authority crossed territorial boundaries. Sovereignty was understood more in terms of jurisdictional authority over subjects rather than territory. (Peter Sahlins, *Boundaries*, University of California Press, (1989))

[27] John Ruggie, "Territoriality and Beyond: Problematizing Modernity in International Relations," *International Organization* 47, (1993): 139-174.

[28] Most notably, other systems of authority during the origin era were the Ottoman Empire in North Africa, the Middle East, and South-Eastern Europe; the Mogul Empire in South Asia, the Chinese Empire, and Tokugawa Japan in East Asia. Additionally, indigenous empires such as the Inca and Aztec empires in South and North America and the existence of nomadic peoples in the Americas, Siberia, Oceania, and Africa constituted the systems of authority that would eventually be encompassed by the Western state system in the nineteenth century. Robert Jackson, "Sovereignty and its Presuppositions: Before 9/11 and After," Political Studies 55, no.2 (2007): 303.

[29] Murphy, "The sovereign state system as political-territorial ideal: historical and contemporary considerations," 86.

As I have described it, the territorial state system divides up the globe by allocating all inhabited land under the exclusive authority of some state. In this way, the system is all-encompassing. It carves up the world to such an extent that there is little "free space" upon which individuals can find themselves.[30] In this respect it is similar to a libertarian utopia in which there is no public property. As Jeremy Waldron illustrates in the domestic context in ``Homelessness and The Issue of Freedom,'' persons must be somewhere, and, given that territory is finite, there is a limited number of locations where a person could be physically located.[31] Human beings are embodied beings, which are invariably located in physical space, usually close to the surface of the earth. So in a world entirely carved up into states, everyone will at any given time find themselves located within the purview of some sovereign power.

The territorially all-encompassing structure of the state system, coupled with the presumption of a territorial notion of sovereignty, results in another defining feature of the system: it is territorially exclusive. Which is to say, the system establishes conditions for the legal or effective exclusion of individuals from one discrete political authority or another based on an individuals' territorial location. As Kal Raustiala explains, whether by birth or by travel away from one's place of birth, "the scope and reach of the law is connected to territory, and therefore, spatial location determines the operative legal regime."[32] Generally, a person's physical location specifies which authority they are under and which political authorities they are excluded from.[33] Since a state is defined in part by physical boundaries that include only a sub-set of people, exclusion from territorial areas is thus a central feature of the state system. In one sense, the exclusion of individuals from the domain of

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[30] Beyond Antarctica almost every square inch of land belongs to some state. The amount of land that was claimed by more than one state was only 1.6% as of the year 2000. Kenneth A Shultz, "Mapping Interstate Territorial Conflict A New Data Set and Applications," *Journal of Conflict Resolution* 61, (2015):1565-1590.

[31] Jeremy Waldron, "Homelessness and Issue of Freedom," *UCLA Law Review* 39, no. 1 (1991): 295-324.

[32] Kal Raustiala, "The Geography of Justice, *Fordham Law Review* 73, 2005: 2509.

[33] Carens, *The Ethics of Immigration*, 15.

discrete political authorities based on their spatial location is a descriptive, sociological feature of the state system. We have yet to say whether it is morally problematic. However, the exclusionary nature of the state system does suggest as *a moral problem of exclusion:* When and why should exclusion from a territory be justifiable?

1.2 An Associative Framework: Characterizing the Practice

To answer this question, I rely on a practice-based method of justification. We can justify moral principles for the state system in view of the kind of social practice it is. The principles in turn justify or constrain the exercise of a state's jurisdictional authority.[34] Here I follow Aaron James's understanding of the practice-based method.[35] To that end, I provide a further characterization of the state system's norms and general aims. I then argue for moral principles that set requirements for how the practice ought to be structured if it is to be morally legitimate.[36]

I have already indicated territorial features of the state system. In characterizing the system as a social practice, I identify their implications for central norms of state conduct as well as the practice's presumed purpose(s). In doing so I identify moral components of the territorial state system as a social object, in a way that shows why a failure to protect climate change refugees brings the legitimacy of the territorial state practice into question. Climate-based displacement is a consequence of the territorial state system's structure. So, in order to maintain its moral legitimacy, the practice must follow a principle of protection for those displaced by climate change. A practice-

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[34] Aaron James, "Why practices?," *Raisons Politiques* 51, no. 3 (2013): 43-62.

[35] Aaron James, *Fairness in Practice: A Social Contract for a Global Economy* (New York: Oxford University Press, 2012).

[36] Following James's formulation of a practice-based method of justification, such reasoning assumes T.M. Scanlon's moral theorizing about our duties to others. In identifying principles that regulate the territorial state system as a practice we first identify the possible objections all (or any) participants in the practice could reasonably raise – in light of their own interests – to the principle under question. If particular principles cannot be reasonably objected to by any affected in the practice, then it serves as a legitimacy condition for the practice. T.M. Scanlon, *What We Owe to Each Other* (Cambridge: Harvard University Press, 1998).

based method of justification accounts for why the duties to climate refugees emerge from the territorial state system itself.

1.2.1 A Territorial Social Practice

A "social practice" coordinates the actions of different agents according to presumably shared ends by way of common or widely recognized social understandings.[37] I maintain that the territorial state system qualifies as a social practice by this definition. It coordinates the actions of many different agents by assigning membership rights to state jurisdictions over discrete territorial units. And it does this in order to meet certain presumed ends -- ends that include peace and security as well as the protection of certain basic rights.

At very least, most agents participating in this practice, be they states and their officials or individuals, *act as though* borders demarcate the boundaries of political authority. Further, this authority is widely presumed to be legitimate. The recognition that the legitimate reach of state authority ends at its borders is the basis for the international order.[38] Actors generally recognize that the state is understood as a form of territorial governance and most actors abide by the norms associated with this organization. This decentralized organization of power and authority is unique to the post-Westphalian modern model.[39] As borders became more formalized over the course of the system's development, relations between states and other actors responded to the recognition of such boundaries.[40] Over time, formalized rules and procedures for state behavior, as well as

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[37] Aaron James, "Constructing Justice for Existing Practice: Rawls and the Status Quo*," Philosophy and Public Affairs* 33, no. 4 (2005).

[38] John Ruggie, "Territoriality and Beyond: Probelmatizing Modernity in International Relations."

[39] As Ruggie explains, modernity in international politics has been characterized by "a historically unique configuration of territorial space." John Ruggie, "Territoriality and Beyond: Probelmatizing Modernity in International Relations."

[40] Studies in international relations suggest that the formalization of borders is associated with the formation of diplomatic relations between states as well as inter-state relations. For example, the growth of border differentiation which was facilitated in part by modern cartographical techniques is associated with the behavior of rulers in their recognition of fellow rulers as peers. Michael Biggs, "Putting the State on the Map: Cartography, Territory, and

procedures for resolving disputes between states developed.[41] The compliance or coordinated conduct responsive to such procedures proceeds under the basic assumption that other participants similarly recognize such norms.[42]

Such coordinated activity also rests on the assumption that compliance with such norms advances presumed aims of the practice. As discussed above, the Treaties of Westphalia ushered in a time of relative stability and peace in Europe. The development of the state system was not without violence and conflict, of course. From colonialism to world wars, the current system did not eradicate conditions for brutality and struggle.   However, it did help to reduce war while providing a number of resources for security and extended periods of peace. As some theorists in comparative politics have argued, states emerged as sources of protection.[43] Eventually, states became the source for other public resources – such as education and infrastructure – that contribute to lasting stability. The idea that the territorial state system's central purposes is to provide the conditions for peace and stability is an aim that most people widely accept or something that people believe almost everyone endorses.[44]

European State Formation" *Comparative Studies in Society and History* 41, no. 2 (1999): 374-405. Jordan Branch, "Mapping the Sovereign State," *International Organization* 65, no.1 (2011): 1-36.

[41] Norms of state sovereignty, though appearing in the early modern period, further developed in the 19th and 20th century and were formalized in international conferences and organizations. For example, during the Congress of Vienna, the development of means for mediating territorial disputes without violence was a distinctive move away from practices of the medieval period. Additionally, the United Nations – in its creation of a General Assembly and a Security Council – reinforced the presumed equality between states and devised a means by which violations on an international scale could be punished as well as procedures by which international disputes are resolved.

[42] Gerry Mackie gives an account of theories of social norms that helps to understand how such coordinated action around shared expectations comes to be organized and reinforced. For Mackie, most understandings of social norms share several elements: (I) social expectations, (ii) a reference group, and (iii) maintenance by social influence. A social norm is constructed based on one's belief regarding other people's actions and about ones's belief about what others think one should do. Mackie refers to these others under one's consideration as the "reference group." Group members have expectations of one another. Such norms persist because of social influence. Approval or disapproval (including sanctions), one's belief in others' expectations, and the presumption that such expectations are held by enough members of the group is sufficient to maintain the persistence of such norms. Gerry Mackie, "What are social norms? How are they measured?," *UNICEF/Centre on Global Justice University of San Diego,* (2015).

[43] According to Kai Konrad and Stergios Skaperdas, states emerged as participants in a market for protection. With the threat of expropriation by robbers, in return for revenue through taxation, states provided protection services (through policy or through military force). Kai A Konrad and Stergios Skaperdas, "The Market for Protection and the Origin of the State," *Economic Theory* 50, no.2 (2012): 417-443.

[44] As Aaron James argues, the aim of peace or stability does not need actual widespread endorsement to still be

In addition to these central aims, we may attribute further purposes to a practice organized by a territorial division of political authority. For example, the presumed ends of the territorial state system could also include the facilitation of collective self-determination as well as the protection of civil or political rights. I suggest that it is reasonable to attribute these additional aims to the practice given the characterization of the practice I present below.[45] The actions of agents in a practice are responsive to the aims of the practice and widely held assumptions about the practice's norms. Generally speaking, the reason for a practice's organizational structure is justified in light of the practice's aims. If the consequences of the territorial state practice generate conditions that threaten the pursuit of its ends due to its characteristic features of being territorially all encompassing and territorially exclusive, then the system's legitimacy is threatened. In order to justify the rights that come with membership in a practice that distributes political authority over distinct territories, vulnerabilities that arise from this territorial structure must be addressed.

With this general picture of the territorial state system as social practice we can return to the problem of exclusion. By enforcing borders, the territorial state system excludes individuals from

operative. Rather, enough people just need to believe that enough other people accept or endorse it. Ideational endorsement is sufficient for the aims and norms of the system to be socially recognized and relevant to coordinate conduct around. Such aims or norms don't need actual endorsement. Aaron James, "How Cynical Can Ideal Theory Be?," *Journal of International Political Theory* 12, no. 2 (2016): 118-133.

[45] Aaron James argues that a theorist's interpretation of a social practice can either be more or less aligned with the understanding of the practice held by agents participating and affected by the practice. For example, a "protestant" interpretation of the territorial state system may stray from ingrained or commonly held understandings of its central aims. A protestant interpretation still must remain close to what can be assumed by participants, otherwise they may not be describing the same social object. On the other hand, a "catholic" interpretation "assigns special weight, or even authority, to how participants in a social practice themselves interpret what they are doing together, even or especially as regards its basic point." The decision to be more catholic or protestant in one's analysis depends on the aims of the theorist's justification. Here I am concerned with principles that capture what we owe to each other. In this sense I am concerned with normative principles, or principles that give us reasons for acting in accordance with the demand of such principles. As such, empirical conditions do set limits for what justice demands. My aim in addressing the question of what we owe to climate refugees is to justify principles that are normative for us. In other words, the principle governing our obligations to climate refugees, and to each other as participants in the territorial state practice concern the political world as it is and will likely be for some time and to the social life we find ourselves in. For this reason, the characterization I offer ought to trend towards being more Catholic than Protestant. In Chapter Two I elaborate on the constraints and considerations of realism for normative theorizing about climate refugees. James, "Why Practices," 57.

one sovereign territory to another. This becomes a moral problem when such exclusion is the reason for any type of deprivation or vulnerability that the territorial state system aims to guard against.

The problem can be understood in the following way. In the modern territorial state system, it is assumed that states have jurisdictional authority over a discrete space to establish rules and policies for its communities. By default, states are presumed to have the authority to decide their membership, under the presumption of non-interference of other sovereign powers. The state's authority over that space generates particular relationships and responsibilities to those individuals found within its boundaries that are exclusive of those individuals or communities located elsewhere.

Since political communities are made up of fleshy persons, they must be spatially located within the boundaries of one state or another given the global territorial reach of the practice. Which is not to say that everyone is afforded rights of membership. In the case of stateless people, there is no political community against which they can effectively lay the citizen's claims. Stateless people are effectively excluded, and they might object to this, not simply on humanitarian grounds, but by appealing to the aims of the territorial state system, which, as I'll suggest momentarily, include giving everyone a recognized place to be. In this way, a stateless person might draw on what is already acknowledged as part of or a justification for the practice's structure.

1.2.2 Birthright Citizenship

To address the problem of exclusion and maintain the legitimacy of the state system, the territorial state system has relied on particular ways of assigning citizenship. As Carens suggest, the practice of assigning citizenship at birth is due in part to the nature of the territorial state system: "the way the modern world is organized may give us one reason why everyone should be assigned some

citizenship at birth."[46] Carens observes that the common political and legal practice of acquiring citizenship automatically at birth is so familiar that it is barely noticeable or easily mistaken as a natural consequence of birth as such.[47] Indeed, seeing one's physical location at birth as a primary determinant for what political authority one is under is a substantive norm of a particular kind of social practice.

In this sense the notion of citizenship is territorial in nature. It assumes that borders are fixed, discrete units of sovereign power. While citizenship laws may fill various purposes from state to state, they reflect the general idea that everyone should be included within a legally recognized relationship to one or another state.[48]

The most obvious legal representation of this norm is *jus soli*, which grants citizenship on the basis of where one is physically born. This legal technique conveys a widespread understanding of the state and membership along the territorial lines I described above. However, what of *jus sanguinis,* an alternative legal technique used to automatically assignment of citizenship at birth? By this method, states grant citizenship on the basis of descent from parents that are citizens to a given territorially defined state. According to some (controversial) interpretations, a citizenship policy that is based on *jus sanguinis* is thought to regard ethnicity as the defining feature of a state.[49] This is because it refers to the acquisition of citizenship through blood lineage. But as Carens notes, it is difficult to explain all policies relying on *jus sanguinis* as attempts to express an ethnic conception of

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[46] Carens, *The Ethics of Immigration*, 21.
[47] Carens, *The Ethics of Immigration*, 21.
[48] I address the normative purpose of such norm in the characterization of the practice I offer in this chapter. There are non-normative interpretations of the purposes that underlie citizenship in its legal representation. Rainer Baubock identifies at lease five purposes which refer to ways in which the state relies on citizenship laws to articulate its relation with its population. Baubock distinguishes between the purpose of territorial inclusion, singularity, special ties, genuine links, and intergenerational continuity as some of the purposes that shape legislation or legal representation of the citizenship norm. Rainer Baubock, "Political Membership and Democratic Boundaries," in *The Oxford Handbook of Citizenship*, eds. Ayelet Shachar, Rainer Baubock, Irene Bloemraad, and Maarten Vink (Oxford: Oxford University Press, 2017).
[49] Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Cambridge: Harvard University Press, 1992).

the state.[50] Which suggests a further purpose, of inclusion. On either model for the allocation of citizenship, the aim is to avoid statelessness of the sort that can easily occur under a practice that allocates all territories under the domain of some sovereign state or another. In this general sense, both legal articulations of citizenship rights operate on the assumption of the state defined in terms of territory. Furthermore, as some theorists have argued, there has been a convergence between these two models of legal citizenship, especially in Europe.[51] States that have a *jus sanguinis* tradition increasingly grant citizenship to those born on within their national borders.[52]

Carens appeals to the territorial state system as an explanation for why all people ought to be assigned to some state or another and why states are in turn responsible for those people assigned to them via citizenship. My account follows Caren's analysis of the importance of birthright citizenship, but goes farther in accounting for its normative weight. Carens asks whether citizenship makes sense morally in order to answer the further question of why states confer citizenship to some and not others.[53] He acknowledges that, "most of our activities take place within some physical space [and] in the modern world, the physical spaces in which people live are organized politically primarily as territories governed by states."[54] In this sense he is addressing the structure of the territorial state system as a reason for the current political and legal practices of citizenship. He also references the aims of the practice I identified above by recognizing the responsibilities a state has for the "welfare and security of those living within the its territory."[55]

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[50] Carens points out that states characterized by a diverse ethnic makeup still use a version of jus sanguinis in the case of granting birthright citizenship to the children of parents who are emigrant citizens. This does not seem to entail an ethnic conception of the state. Carens, *The Ethics of Immigration*, 33.

[51] Randall Hansen and Patrick Weil, eds., *Towards a European Nationality: Citizenship, Immigration and Nationality Law in the EU* (Palgrave Macmillan UK, 2001).

[52] Germany's introduction of qualified jus soli in 2000 and the move in other European countries towards a mixture between the two legal practices are examples. Stephen Castles and Alastair Davidson, *Citizenship and Migration: Globalization and the Politics of Belonging* (London: Macmillan Press, 2000).

[53] Carens, *The Ethics of Immigration*, 22.

[54] Carens*, The Ethics of Immigration*, 23.

[55] Ibid., 23.

Yet, while Carens addresses the territorial state system in order to make sense of the morality behind current policies and practices, he does not give an account for the moral foundation such an address provides. But Carens does not account for moral relevance of the state practice, and for this reason, he relies on a different moral justification for birthright citizenship. Given Caren's theory of social membership, which I discuss further in the next chapter, granting citizenship at birth is a way states can recognize the moral importance of an individual's relationship to their political community.[56] But he neglects the deeper moral foundation of birthright citizenship. While my view is not incompatible with Carens's theory of social membership, it provides a more basic foundation for understanding our obligations to those displaced by climate change. My argument does not simply assume the current territorial practice for rhetorical purposes, as Carens' does. It goes further by justifying substantive moral requirements for the practice itself, which allow us to then assess ideas of how social membership should be assigned in practice.

Specifically, I take the norm of birthright citizenship to be the territorial state system's solution to the problem of how territorial exclusion can be justified. But that solution, imperfect as it was, is now well out of date. As currently understood, it cannot adequately address the problem of exclusion under the shift in empirical conditions we now recognize as global climate change. So the problem of exclusion, which, I suggested, is part and parcel of the territorial state system itself, requires a new solution.

1.2.3 The Right to Exclude?

For a system that defines rights of sovereignty across distinct territories, birthright citizenship offers a territorial definition of the political community's rights and obligations and of who, at least

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[56] Carens, *The Ethics of Immigration*, 24.

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initially, can lay claim to participate in collective self-governance.[57] As David Miller argues, given the diverse set of functions states fulfill, states would be ineffective if they didn't have authority over a set of specific territorial boundaries.[58] Yet the norm of birthright citizenship does not typically mandate how states allocate citizenship in cases when membership is not automatically assigned.[59] Any changes beyond the initial determination of state-based political community by birthright, for example by exposure to immigration, are managed on an *ad hoc* basis by states themselves. Decisions for membership and policies that govern procedures for entry or exclusion proceed according to a state's interests as well as particular constraints the state has agreed to by way of specific treaties or *ad hoc* negotiations. Aside from specific agreements, each sovereign state is permitted to choose to admit or exclude those who are not born within their borders according to what the state judges to be important for its national interests. The state system itself allows them to exclude or include individuals on the basis of their skills, education, talents, and other prerequisites for citizenship. So when an individual from one state crosses national borders, they do not have a *necessary* claim to membership.

Giving states sovereign control over immigration and citizenship status within their territorial boundaries does not necessarily threaten the legitimacy of the system: the operative assumption is that citizenship sufficiently blocks conditions that would undermine the state system's protective aims. This is what Carens and others refer to as the *conventional view of immigration.* On the conventional view, states have a moral right to exercise discretionary control over their borders, which includes the right to exclude or include immigrants according to national interests.[60] Any decisions regarding membership and inclusion beyond the allocation of citizenship at birth are left

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[57] Rainer Baubock, "Recombinant Citizenship," in *Inclusions and Exclusions in European Societies*, eds. M.Kohli and A. Woodward (London: Routledge 2001), 38-58.

[58] David Miller, *National Responsibility and Global Justice* (New York: Oxford University Press, 2007), 200-215.

[59] Carens, *The Ethics of Immigration*, 22.

[60] Carens, *The Ethics of Immigration*, 20.

up to a state's own regulation of its naturalization policies.[61] Moderate versions of the view argue that a state's fundamental right to control immigration is not without exceptions.

I will return to this point below when I address the relevance of our current refugee protection regime. For now, I turn to a sample of prominent philosophical arguments which assume the conventional view. Each argues that exclusion is at least sometimes justifiable, although the various views differ over the basis for the right to exclude and how the right is best formalized. Each of these arguments rely on understandings that are widely held in the practice, namely: that sovereignty and citizenship involve a presumption of fixed territory, and that the right to exclude, as a sovereignty right, is justifiable given the status quo practice of citizenship.

The conventional view takes communitarian and liberal egalitarian forms. Both versions tend to cite immigration impacts on a national community as grounds for a state right to exclude on an *ad hoc* basis.[62] As Michael Blake explains, these views regard a "community" as a group of people who share certain attributes not shared by all of humanity.[63] For instance, some versions emphasize a community's shared linguistic or cultural practice, or a historically-rooted notion of identity, as a salient reason why states are morally free to exercise (at least some) discretionary control over admission or exclusion, despite what may be morally relevant differences between states in their resources or capacities. These views all assume the shared understandings that define the state system as a territorial practice, including the assumed aims of securing peace and the conditions for collective self-determination and self-governance.

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[61] Naturalization is the term used to describe the acquisition of new citizenship after one's birth.
[62] David Miller, "Immigration: The Case for Limits," *in Contemporary Debates in Applied Ethics,* eds. Andrew I. Cohen and Christopher Heath Wellman (West Sussex: Wiley-Blackwell, 2005), 193-206; Will Kymlicka, *Multicultural Citizenship* (Oxford: Clarendon Press, 1996); Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983); Anna Stilz, "Guestworkers and Second Class Citizenship," *Policy and Society* 29, no. 4 (2010): 295-307.
[63] Michael Blake, "The right to exclude," *Critical Review of International Social and Political Philosophy* 17, no. 5 (2014): 527

Michael Walzer has argued members of some (political) community should have the right to determine membership in their community, because membership itself is a type of social good that is comprised of common understandings within the community.[64] However, a community's shared understandings are not sufficient to define it, since a political community is defined, in part, by being a collective occupying a specific space. For communitarians such as Walzer, the right to exclude from a common space is vital. The entrance of individuals could restructure the community itself, potentially changing its previously understood nature. According to Walzer, the right to exclude helps protect the type of commonality needed for a cohesive community built on shared understandings.[65] Yet people located in a state's territory who are not automatic members by birth may still be able to claim rights against the coercive political authority simply given their spatial location.[66] In this sense, the explanation for why a state-based political community may or may not have duties to `non-natives' or `new-comers' relies on an independent territorial demarcation of the population in question.

Some theorists who reject communitarian arguments for the right to exclude, such as Christopher Heath Wellman, ground the right to exclude in individual rights. But this shift does not abandon the normative (territorial) assumptions that characterize birthright citizenship. Wellman maintains that the right to exclude is a part of the individual right to freedom of association, a right that also applies to states seen as collectives made up of individuals.[67] Self-determination is then comprised of the right of a (legitimate) sovereign state to decide its own future. To pursue this future, the collective must have freedom from undesired associations within the confines of physical borders, which are independently given.

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[64] Walzer, *Spheres of Justice*, 45.
[65] Blake, "The right to exclude," 528.
[66] Walzer defends the case of guest workers to illustrate this point. Walzer, *Spheres of Justice*, 56.
[67] Christopher Heath Wellman and Phillip Cole, *Debating the Ethics of Immigration: Is There a Right to Exclude?* (Oxford: Oxford University Press 2011).

Like Wellman, Michael Blake also takes issue with the communitarian defense of the right to exclude. When an individual crosses a state's territorial border, what is at stake is not that the individual has entered (and consequently threatened the make-up of) a political or social community. Rather, a person finds him or herself *outside the territory* that assigns them their status as citizen, and thus outside a particular relationship. On Blake's view, a person who exits their place of (birthright) citizenship attempts to enter into a new relationship with a community defined by its territorial borders.[68] This territorial kind of a relationship is a source of the obligation (of the host state's citizens as current community members) to protect the rights of those entering into their (spatial) community. Blake argues that this relation grounds the right to exclude.

Here Blake assumes an ideal functioning of the modern territorial order.[69] In a world where all citizens have their rights protected, individuals who leave the physical boundaries of their birth state are shifting the burden of protection on to those within the place of entry. Given this interpretation, Blake argues that the state has no obligation to include the new individual given that the emigrant already has a resource for rights-protection in their former (territorial) community. It can justifiably exclude when a state's citizens do not want to enter into this "relationship of obligation" with a new-comer. When the state decides not to exercise its right to exclude and chooses to accept any new-comers, its action is simply one of beneficence. On Blake's view, the rights and responsibilities of states and citizens are grounded by a shared participation in (coercive) institutions which compensate any limits to autonomy by providing rights protections. Yet the scope of such obligations is confined to the limits of such institutions' reach within some specific territory.

These arguments all presuppose birthright citizenship in its specific territorial formulation. As is evidenced by the theoretical approaches discussed above, the pervasiveness of the modern

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[68] Blake, "The right to exclude," 532.
[69] Blake, "The right to exclude," 533.

territorial order often obscures the territorial assumptions built into the notion of sovereignty and the related rights and practices it affords.[70] Yet most interpretations of the conventional view affirm the unilateral authority of states to adjust their membership policies and determine criteria for naturalization, and so *reaffirm birthright citizenship as a solution to the problem of exclusion*. As Rainer Baubock argues, naturalization decisions "preserve rather than undermine the basic principle of birthright" because they allow for entitlements, such as representation of new comers, while still affirming a distinction between newcomers and native citizens.[71] In each of these various interpretations of the state practice, citizenship status is connected the fact that states are indeed territorial communities.[72]

According to the associative framework I have introduced, the allocation of citizenship at birth is simply one way to help justify the territorial state system's practice of recognizing the right to exclude. This allows states to maintain legal rights such as control over naturalization laws and policies in virtue of mutually recognized sovereignty and statehood status. But those rights are conditioned upon the assumption that the norm of birthright citizenship in fact carries out its presumed role in practice, if not perfectly, then effectively enough. And the norm of birthright citizenship may or may not adequately guard against circumstances of exclusion that are generated by the practice's territorial structure, depending on background conditions. What will not change is the underlying problem of exclusion, which results from the very territorial nature of the state system

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[70] As Alexander B. Murphy argues, the territorial assumptions associated with the modern sate system are evident even in interpretations of the development of institutions that challenge the organizational order. For example, while the European Union appears to be (at the very least) in tension with the territorial-state model as it requires a limit on state sovereignty, ``most analyses of the EU continue to treat it either as a puppet of the member states or as a super state in its own right [...] in the former case, the continuation of the territorial status quo is assumed [...] in the latter, some adjustment in the current political map is contemplated, but not in the nature of the system itself." Murphy, *The sovereign state system as political-territorial ideal*, 106.

[71] Rainer Baubock, "From moral intuition to political change: on Joseph Carens' theory of social membership and open borders," *Political Theory* 43, no. 3 (2015): 397.

[72] Carens acknowledges that a citizen's connection to their home state is based on the history of being located in the state's physical territory. Carens, *The Ethics of Immigration*, 28.

itself, a practice that divides the world entirely into states. Since all people are born somewhere, it is likely that they will happen to be born within the territory of a state. It certainly helps not to be excluded from the place of one's birth, but if the place of one's birth is inadequate for further reasons, then it will not equally be acceptable to leave further decisions regarding inclusion or membership to states themselves.

1.2.4 Climate Change

Why might the place of one's birth be inadequate? The conventional view just described relies on a general empirical supposition about environmental conditions: that the physical spaces with a state's borders are suitable for life in a political community for virtually everyone born there. While this was perhaps plausible enough in the past, the "new normal" brought on by global climate change means that we can no longer assume perpetual territorial integrity. The slow onset effects of climate change (such as sea-level rise or desertification) and more immediate impacts (such as severity of weather events) will compromise the capacity to inhabit particular territories or may threaten to erase such territory all together. In this case, the norm of birthright citizenship can no longer satisfy legitimacy conditions of the territorial practice.

By directly recognizing climate change as the new conditions for the territorial state practice I identify one of its "foreseeable failures." The occurrence of conditions that generate climate-refugees should not be mistaken as "natural" consequences. Rather, they should be regarded as consequence of the territorial and excusive nature of the state system, along with a failure of responsibility on the part of participants in the practice to guard against or correct the consequences of its own structure and presumed operative norms.

By taking this shift in empirical assumptions seriously, we can identify a particular right that the territorial state practice ought to protect. The conditions of the new normal expose a right that

has previously gone unnoticed, for being implicitly accounted for under operative norms such as birthright citizenship. The theory of liveable locality makes this right explicit.

1.2.5 The Right to a Liveable Place

The assumption that a state's territory is stable or permanent underlies many of the operative norms that help to justify the state system. The following example helps to make the assumption visible. The norm of birthright citizenship ensures that an individual has a relationship, membership, and inclusion within at least one state. This is important insofar as people will in any case invariably find themselves located somewhere in a world under a state jurisdiction. But people will not invariably remain in the areas of their birth or places to which they have been "assigned." Indeed, individuals are presumed to have a right to migrate away from their territory of birth, if they can do so. The right to leave any state is currently recognized in a number of different international instruments as a part of the territorial state practice.[73] A state's preventing its nationals from leaving its own borders is a violation of a basic human right to emigration.

However, a right not to be prevented from leaving one's territory of birth does not necessarily imply that there is at least some other place individuals can exit to. A right to exit does not, as such, entail an automatic right to naturalization to the state where an immigrant happens to land. Again, at present, states retain unilateral discretion over whom to admit. But, as suggested earlier, this rests on the presumption that a principle of birthright citizenship has been fulfilled – that the would-be immigrant is already afforded adequate membership rights in his or her home state. If the immigrant

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[73] The Universal Declaration of Human Rights enshrines this right to exit in Article 13. Also Article 12 of the International Covenant on Civil and Political Rights, Article 8 of the International Convention of the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 5 of the International Convention on the elimination of all Forms of Racial Discrimination, Article 10 of the Convention on the Rights of the Child, etc. Colin Harvey and Robert P. Barnidge Jr, "Human Rights, Free Movement, and the Right to Leave in International Law," *International Journal of Refugee Law* 19, no. 1 (2007): 1-21.

were still in his or her place of their birth, for instance, he or she would be afforded citizenship and problem of exclusion would be adequately addressed.

But when is the problem "adequately" addressed? In particular, what happens when we can no longer assume territorial permanence or stability? If states have the authority assumed by versions of the conventional view, to decide who they admit and who they exclude on an *ad hoc* basis, then *all* states could well refuse entry or membership to those not "assigned" to them vis-a-vis birthright citizenship. And if we cannot assume the permanent existence of the place in which they can claim the status of birthright citizenship, individuals may be legally left with nowhere to be.

Human beings are embodied, invariably located in physical space. For humans to exist at all they must be located *somewhere*, usually near the earth's surface where they can access the basic resources for existence. Given that state-based political communities are made up of these embodied creatures, so too must communities be located in physical spaces that are habitable for such creatures. The sudden loss of such spaces, if such territories constitute the state of one's birthright citizenship, coupled with the exercise of a state's right to exclude, immediately generates the problem of exclusion in its most basic form. Where are the displaced people supposed to be? They may be legally excluded from all possible liveable spaces, with no legal title to be anywhere. If no other state is good enough to admit them by a unilateral, ad hoc decision, their right of exit cannot be advanced. The right to exit become a mere formality. It might be "claimed," and so isn't entirely meaningless. But it can't be exercised.[74]

To understand the force and nature of this exclusion, compare a libertarian utopia in which there is no public property. As Jeremy Waldron argues in "Homelessness and The Issue of Freedom," in a world without public spaces, where anyone can permissibly be, without anyone's

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[74] I thank Richard Arneson for raising the following point in conversation. Arneson notes that the right to exit is not necessarily rendered meaningless when the right to liveable territory cannot be guaranteed.

permission, those who lack private property – the homeless, for instance -- will always be subject to some civil or criminal sanctions for trespassing.[75] Given that territory is finite, there is a limited number of locations where a person would be able to be physically located. In a world with no public spaces, there is "literally nowhere'" one is allowed to legally be unless one has some ownership over some physical space.[76] Movement from one place to the next would only involve liberating oneself from one trespassing liability to another. The property-less person would find him or herself legally excluded from all places he or she could possibly be. And that might be seen as denying individual's very right to existence. As Waldron suggests, "it would not be entirely mischievous to add that since, in order to exist, a person has to be *somewhere*, such a person would not be permitted to exist."[77]

In the same way, climate refugees might find their very right to exist in jeopardy, for being excluded from any habitable territory. This would not be caused by a failure of any particular state's functioning. It would be caused by the territorial state system itself, which creates the possibility of their predicament. Climate refugees can be de facto stateless simply because of the decentralized organizational structure of the state system, which leaves decisions of entry up to particular states, along with the fact that their home state territory is no longer habitable. Their rights to be in some habitable space are violated, but the right in question is not held against any one particular state. For it is not any given state's failure that explains violation if any number of states might include them but don't. The violation results, rather, from the structure of the system, the system that creates this predicament in the first place.

The right against being excluded from habitable territory can be understood as a basic right in the sense argued for by Henry Shue.[78] According to Shue, what makes basic rights distinctive is

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[75] Waldron, "Homelessness and Issue of Freedom," 297.
[76] Ibid., 300.
[77] Ibid.
[78] Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy,* Second Edition (New Jersey: Princeton University Press, 1996).

that their enjoyment is necessary for the enjoyment of other rights.[79] In a situation that requires the sacrifice of a basic right for a non-basic right, the sacrifice of a basic right would be self-defeating. If people have any rights at all, Shue argues, then the class of basic rights "are everyone's minimum reasonable demands upon the rest of humanity."[80] On the foregoing argument, the realization of the right to be somewhere liveable is a precondition for meaningful possession[81] of other uncontroversial rights that attach to people qua their status as "human" as well as "member of a political community." One cannot effectively claim certain civil rights or political rights (such as the right to self-determination) if one is under water or stranded in the desert. The right to be somewhere liveable is conditioned upon having the sorts of rights that characterize one's relationship to the state they are assigned to at birth. But in a world entirely made up of states, the necessity for being located in a habitable space may entail the crossing of external borders. And given the current legal configurations, such movement would entail a perpetual legal violation, akin to trespass. A person displaced by climate change cannot claim, or at least cannot effectively advance, what would otherwise be their rights by birth.

We can see birthright citizenship as an expression of the importance of guaranteeing the opportunity for a relationship between individuals and some state, a relationship of membership, with legal standing. But what matters, then, isn't birthright citizenship, but the guarantee itself. That, ultimately, is what serves the state system's ends of peace and security. And if we also admit that the aim of securing certain political, socio-economic, or civil rights, or the creation and protection of property rights, it becomes clear that such rights are conditional on providing habitable spaces from

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[79] Shue, *Basic Rights*, 19.
[80] Ibid., 19.
[81] Shue, *Basic Rights*, 75. Rights would not generate requirements in others and would be more akin to wishes if it does not include a demand for social guarantees. I do not necessarily follow Shue's view that correlative duties would not exist in the absence of social guarantees. Without guarantees for rights enforcement, rights may be violated. But the duties that attach to such rights could still be understood as existing. In this case however, I mostly concerned with an individual's capacity or chance to actual enjoy the rights they possess.

which these additional rights can be claimed and advanced. Indeed, for *any* objective one might ascribe to the state system, having a secure right to be somewhere liveable seems a necessary condition for its attainment.

The requirement that people be protected against territorial exclusion might be expressed as the following principle: given a state system, understood as a territorialy exclusive and territorialy all-encompassing practice, each person has the moral right to be somewhere liveable. Thus, every individual has a moral right against exclusion as well as a right to an effective means of being in a liveable space if one lacks such a place in one's country of citizenship.

A "liveable space" as I understand it requires not only means of subsistence but proximity to – and the possibility for integration into – forms of social production as well as access to eventual political membership. I explain why citizenship is eventually required in Chapter 2. By an "effective" right to a livable space I mean that individuals or societies facing potential displacement ought to be provided access to a liveable territory in addition to simply not being prevented from leaving such a territory. This means that, as state-based territories continue to degrade towards an uninhabitable threshold, people can exercise the right as a pre-emptive claim to movement elsewhere.

What "threshold"? It is difficult to say in the abstract, but it may be enough to claim protection, for example, if rising sea-levels contribute to limited access to physical space and fresh water, or completely hinder an individual's access to securing basic needs through work. If communities become isolated or cut off from their places of employment to the extent that they can no longer engage in a basic practice of economic or social exchange required to provide food or other resources, then they may have a claim to be relocated. This may mean that if farmlands are entirely dried up due to an increase in surface temperatures and drought, both access to food as well as the means to produce an income by farming could count as conditions of inhabitability.

In some cases, a territorial area becomes completely uninhabitable. But people may be denied their right for a livable space well before doomsday. It is enough that people can no longer be assured that basic needs are met, because confidence in the security of these needs can no longer be maintained. A low-lying island may not need to be entirely submerged under water; the likely prospect in the relatively near future would already be an instance of a failure to provide a livable space for everyone on the territory. If they are not provided safe harbor elsewhere, the state system would already be failing to meaningfully advance their claims against exclusion to liveable territories.[82]

In other cases, a territorial area may only be partially uninhabitable, and the local state may have a responsibility to facilitate internal migration. But even if local authorities have feasible means of doing so at a reasonable cost (perhaps along with foreign assistance), it will matter if (perhaps due to negligence) there are some people to whom accommodations are not being provided and cannot be expected. Their right to be somewhere livable may then be violated.

When refuges go to the great trouble required to show up on foreign shores citing ecological problems, this is reasonable evidence that their right to a livable space has not been satisfied. But it is important that would-be refugees can enjoy such claims *before* being desperate enough to undertake an uncertain and dangerous voyage abroad, when the foregoing conditions have not been satisfied.

As I mentioned, a country may be unable to provide liveable spaces for all of its citizens; internal migration may not be sufficient to ensure such a right is protected. The threshold for liveability may not be met if the remaining habitable spaces of a state are not sufficient to support both a relocated community and the "hosting" community. Internal relocation efforts may not be

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[82] If basic subsistence needs are compromised due to either slow onset effects or immediate impacts of climate change, a case could be made that occupation of the current territory doesn't meet a requirement of liveability. The account on offer is flexible in this regard.

justifiable if there is a reasonable expectation that the movement of displaced people to another territory or region will exacerbate threats to ecological, but also economic or political stability.

In part, the notion of liveablity includes the reasonable expectation about the security of one's living conditions. Liveability includes access to basic subsistence needs. This speaks to the material component of the concept. However, we can also consider how the reasonable belief in the stability or security of one's lived context, including reasonable confidence in the infrastructure which shapes lived experience is another type basic resource integral to liveablity.

To be embodied, in part, is to stand in relation to material resources, physical spaces, as well as the social, political, and cultural structures enacted upon bodies and engaged with in lived experience. Shared social structures condition such experiences. Access to (or restriction from) certain physical spaces effects opportunities for political and social engagement, impacts the possibility to from relationships or various networks. The reasonable belief in the security of infrastructure or access to particular spaces is part of the expectation that one's way of life can be sustained. It is a relevant part of the belief in the possibility of one's lived experience.

Being deprived of the possibility to sustain a reasonable belief in continued accessibility to the structures that construct one's lived experience has consequences for whether certain spaces satisfy the right to be somewhere liveable. The latter, as I have argued, is a right that is required to claim a number of other rights, such as the right to political participation. If one cannot sustain the reasonable expectation in the persistence of such structures, one suffers the loss of the possibility for such engagement. This has consequences for the possibility of claiming other rights afforded to citizens. Furthermore, such insecurity has potentially detrimental consequences for the psychological and physical health of individuals. The "liveability" of a space involves its provision of basic resources as well as the possibility for the persistence of such resources and structures.

The social practice of the territorial state system acknowledges "fleshy existence" and these elements of embodiment that supports this conception of liveablity. For example, the territorial nature of political authority establishes the moral importance of physical space. The practice distributes authority by establishing bounded spaces of sovereignty across the earth's surface. Thus, it establishes the condition that being physically situated somewhere is morally relevant. The practice of birthright citizenship is an example of how the practice of the territorial state system recognizes the status of *embodied* subjects. It helps to secure an infrastructure of support based on the physical locations of individuals distributed across territories. In this regard, the practice acknowledges how existence or lived experience is characterized (in part) by physical dependency. we can see how the territorial state system relies on the assumption that the body is an important part of what grounds our ethical obligations.[83]

The theory of liveable locality reveals the practice of the state system's assumption about the normative implications of a "fleshy-existence." As a normative framework, it does not deny our embodiment as an important part of what grounds our moral and political obligations. Instead, it makes embodiment central to a moral framework for understanding our obligations to refugees.

This is not an argument that the preservation of an individual's preferred way of life is a condition for liveability. The theory of liveable locality does not make the further claim that individuals are owed opportunities for the *same* way of life they experienced before the impacts of climate change. However, the theory does acknowledge the importance of ensuring a reasonable expectation of the possibility of continued engagement with the infrastructure that conditions lived experience. For this reason, a reasonable expectation or prediction about the inhabitability of a territory can justify intervention prior to the actual loss of a livable space. If people displaced by

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[83] Gail Weiss, "A Genealogy of Women's (Un)Ethical Bodies, in *New Feminist Perspectives on Embodiment (Breaking Feminist Waves),* ed. Clara Fischer and Luna Dolezal (Cham: Palgrave Macmillan, 2018), 17-36.

climate refugees are relocated to spaces that can only temporarily sustain them, the obligation to the displaced may not be discharged. Furthermore, if people are relocated to spaces without the possibility of access to infrastructure or networks of resources and support, then their right to a liveable space may not be protected by such interventions. Importantly, the theory does not reject arguments for securing a way of life that is relevantly similar to the one that is threatened by climate-induced displacement. The minimal requirement it establishes can work in conjunction with other arguments for why it would be preferable or morally better to relocate people to locations where the skills they already have can help them start a new way of life.

An implication of Shue's view of basic rights is that people ought not to merely have a right, but ought to be able to enjoy it by way of social institutions.[84] His reason for maintaining this is that a social guarantee is an important element of a right because it is what necessitates correlative duties.[85] I suggested earlier, contra Shue, that a person may have a right that they cannot exercise or enjoy. Yet, I suggest that the associative right against exclusion does necessitate the effective ability to enjoy it. Otherwise, the practice against which such a rights claim is made remains morally illegitimate. For this reason, international institutions are required to settle and adjudicate when livable spaces are or are not being provided. This could be accomplished in part by an expansion of existing refugee law. I say more about this in Chapter two.

1.3 The Principle of Liveable Locality & Associative Obligations

The problem of climate-based displacement provides a critical lens by which we can understand more clearly certain operating assumptions of the state system. We can summarize the problem in

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[84] Shue argues, "It is analytically necessary that if people are to be provided with a right, their enjoyment of the substance of the right must be protected against typical major threats." Shue thus characterizes a moral right as including the element of enjoyment or possibility to exercise the right. Shue, *Basic Rights,* 32-33.

[85] Michael Payne, "Henry Shue on Basic Rights*," Essays in Philosophy* 9, no. 2 (2008).

the following way. *The modern territorial state system assumes (implicitly) that individuals have a right to be somewhere liveable. It also makes an empirical assumption about the fixed, permanent nature of territory. Climate change reveals that it cannot coherently operate with both presumptions. But it cannot deny the first assumption regarding the right to liveable locality because such a right is fundamental for the justification of the system. So it must deny the presumption of territorial stability that underlie its basic norms and make revisions to widely held principles accordingly.*

This interpretation of the problem of climate-based displacement illuminates the associative nature of the obligations to address such a problem. People displaced by climate change have a standing to demand that a principle of liveable locality be followed. This standing is granted by a principle which arises from the practice itself in light of aims that can be attributed to the practice (and which are widely understood and acknowledged) once made evident by considering the moral implications of climate change for the state system. Given the characterization of the practice presented earlier, the aims of peace, stability, and possibly the protection of particular civil, economic, and political rights are appealed to when justifying the practice of allocating political authority over territorial boundaries. If any consequences that arise from such a configuration do not fulfill the aims of the shared practice for all those affected by this distribution or political authority, then those who are adversely affected by such consequences can appeal to collectively understood and endorsed aims when they advance arguments regarding their treatment under the shared practice.

Such arguments should be understood as being addressed to a shared social practice itself (in light of the widespread comprehension that helps coordinate action, adjust or set expectations, etc).[86] A principle requiring the protection of those displaced by climate change can be understood

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[86] James, *Fairness in Practice*, 37-38.

as generating associative obligations as opposed to being an external or independent moral requirement.[87] As James argues, when it comes to social practices, "in many cases collective responsibility can be assigned, to a group of agents that can, through cooperation, regulate the arrangements they share, according to regulative principles justified in light of the group's collective governance powers."[88] As a member or participant to the state practice, agents in the practice have standing to demand that such a principle is met.

In these terms, states can be understood as one possible addressee, given their participation in the territorial state system. The principle that prohibits exclusion of liveable territory, formulated earlier, can be addressed to them as participants in the state system practice chiefly responsible for the very exclusion in question. States that claim sovereignty and the rights associated with the latter thus enjoy benefits that are granted by the system itself. Their very makeup and identity as a state is embedded within the social system that distributes political power across individuated territories. Thus the claim of legal power over decisions of entry and inclusion is a claim by association within the given practice of the territorial state system, and it can equally come with an associative obligations.

Such membership rights are legitimate in light of the fulfillment of moral obligations articulated by the certain principles, especially those that govern and arise from the practice in virtue of its intended ends. In general, the bearers of particular duties are defined by the type of associations they are in and by which they can claim particular rights. Here states are the bearers in question when they claim legal privileges of sovereignty, including the right to exclude.

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[87] In Chapter three I defend the argument that the right to somewhere liveable is associative in nature. I resist the objection that such a right is reducible to a natural right and provide arguments for why the obligations to those displaced by climate change are not necessarily grounded in natural duties.
[88] James, *Fairness in Practice*, 101.

I have argued that such membership obligations are recognized in the norm of birthright citizenship. However, again, a state's claim and exercise of the right to exclude those displaced by climate change is no longer justifiable. In order to continue to claim and exercise the rights associated with sovereignty, the territorial state system must ensure that all individuals (or societies) have a liveable place to be. In the following chapter I consider a range of possible ways in which the obligations of livable locality to climate refugees can be addressed. For now I suggest that states can discharge this associative duty collectively or individually.

By arguing that our obligations to those displaced by climate change are associative, I have made the case that they are a legitimacy condition for certain sovereignty rights. In doing so I have not argued for anything very exotic. This notion that democratic states are morally constrained by particular norms is *already* an operative assumption in our international politics and part of our current legal practices. While this is an interpretive claim, it seems appropriate given the shared understandings of the current refugee protection regime described in the introduction. The moral logic behind the Geneva Convention, for example, is that the problem of refugees results from the way the territorial state organizes the world.

Even in the case of "refugees" as they are traditionally defined, there is an established principle that set constraints on a state's jurisdictional authority, namely, the *principle of non-refoulement*. As Carens explains, "whenever a state acknowledges that it would be wrong to send someone back to their home country, it is implicitly recognizing the person as [...] someone whose situation generates a strong moral claim to admission in a state where she is not a citizen."[89] While the Convention does not impose a duty on states to take in refugees, the principle of non-refoulement prevents states from sending refugees back to their country of birthright citizenship if

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[89] Carens, *The Ethics of Immigration*, 205.

they were to face risk of persecution. In this sense, the current protection regime already acknowledges constraints on states upon whose shores a refugee arrives. In the following chapter I evaluate the principle of non-refoulement and argue that the principle of liveable locality a more comprehensive and effective way of assigning responsibility for addressing the problem of climate-based displacement. At this point it is enough to point out that constraints on state sovereignty are a part of the territorial state system and serve to address normative assumptions of the system that lend it claims to legitimacy.

Thus far I have presented my positive account. We owe something to those displaced by climate change, and such obligations are associative in nature. I have identified a particular kind of associational right: the right to somewhere liveable. The norm of birthright citizenship, by comparison, is no longer sufficient as a means of dealing with the exclusionary nature of borders. Birthright citizenship can no longer guarantee the right to somewhere liveable when all states could possibly exclude people migrating away from their territory of birth because such a territory is no longer existent or habitable. So, I have argued, if the territorial state system is to justify the possession and exercise of certain membership rights associated with sovereignty, it must establish provisions for addressing displacement. Whatever these are, they can be understood as obligations for states in virtue of their participation in the state system practice. In virtue of their association, displaced people, other states, or even individuals or collectives not (yet) facing territorial insecurity have standing to advance arguments for a framework for protection.

In the following chapter I address a series of objections to the view and contrast it with competing views that aim to provide alternative moral foundations for our obligations to climate refugees. I will also elaborate on the advantages of adopting the view I have presented here. One general benefit, for instance, is that the associative account I have offered can better address Carens's worry of the conflict between "what morality requires of democratic states with respect to the

admission of refugees and what democratic states and their existing populations see as their interest."[90] The associative framework gives reasons to be more optimistic about the fulfillment of such duties by way of a revision of the current protection regime. My account does not call for a radical restructuring of the state system, and it explains why, to some extent, satisfying our obligations to climate refugees is of interest to states. States can see sufficient reasons for action simply in the need to preserve the legitimacy of a system that affords them the rights of membership. If the legitimacy of their own sovereign rights depends on ensuring that everyone has somewhere to be, then states have an incentive to act preemptively to address the problem of climate-based displacement. I elaborate on this point in Chapter 2.

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[90] Carens, *The Ethics of Immigration*, 222-224.

CHAPTER TWO

Defending the Theory of Liveable Locality

In Chapter One I presented my main argument for practice-based obligations to climate refugees. In this chapter I compare competing approaches. This will bring out what is distinctive about my approach and highlight several of its advantages.

In the philosophical literature, there is work on our obligations to refugees conventionally understood, but very little of it addresses climate change refugees in particular. Carens, for instance, presents obligations of three general kinds, based in (i) causal connections, (ii) humanitarian concerns, and (iii) normative presuppositions of the state system.[91] All three of these argument types might be said to ground obligations to climate refugees. My view can be understood as taking up the third ground; it presents normative presuppositions of the state system as a distinctive reason (among other reasons) for why we have such obligations. In this chapter, I discuss appeals in the philosophical literature of all three kinds. I do this to explain why my approach is distinctive and advantageous. This further supplements the positive argument already provided in Chapter One.

In Chapter One, I argued that climate change reflects a major change in the empirical background condition presumed by the territorial state system, and that this change requires us to reconsider the system's conventional normative presumptions. My practice-based approach to the problem is different from several other approaches in this way. While other approaches might accept that the change in empirical conditions bears on the policy consequences of *independently*

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[91] Carens, *The Ethics of Immigration*, 165.

justified principles, my approach suggests that the new realities of climate instability has a more fundamental moral importance: it changes what moral obligations arise from the current territorial state practice in the first place.

For example, the first two approaches Carens mentions – an appeal to causal connections and to humanitarian concern – make no essential reference to the state system. They might equally apply, though perhaps with different implications, under any or no social order. In the following chapter I start by comparing my practice-based argument for a right to be somewhere liveable to alternative approaches of these first two kinds. In evaluating each as a potential foundation of the current protection regime, I maintain that my approach, while not the exclusive means by which we can justify protection, avoids certain difficulties that arise for other views.

Next, I examine arguments which, like the theory of liveable locality, refer to normative assumptions of the territorial state system. I consider the "principle of non-refoulement" in this connection and explain why it is distinct from the view I have proposed. While non-refoulement can be understood as the principle which provides the moral logic of the current Refugee Convention, the unique challenge climate refugees pose gives us reasons to seek alternative grounds.

In Chapter 3, I further develop the distinctness of my position. There I address the objection that the right I have identified is a natural right, and so not "based" in state practice after all. I argue that the right to someplace liveable is not a natural right but rather a *membership right* that arises out of the practice of the territorial state system. While the failure to protect climate change refugees may entail a violation of some fundamental natural right, we need not adopt such an account. At very least, a practice-based argument from membership rights is a distinctive legitimacy condition. But this also offers its own advantages, since an appeal to membership rights avoids many of the controversies that natural rights views introduce. If indeed climate change reflects a change in background conditions of the territorial state system, we can see how obligations for protection exist

without needing to determine whether individuals have a particular right in pre-state conditions. We thus sidestep the difficulties of defending natural co-ownership rights or a natural group right to self-determination. I make the case for this by discussing Lockean and other natural rights views.

2.1 "Real World" Problems and Normative Theorizing

The various normative arguments that address our obligations to climate refugees can be evaluated in light of the degree to which they address the specific "real-world" challenge climate refugees pose. A theory can be evaluated according to how progressive or how conservative its arguments for status quo reform may range. Furthermore, if such theories generate principles that assume more idealistic conditions, this raises questions about their relevance to a pressing problem. While they may perhaps succeed in the intellectual aim of answering why we would have any obligations, the resulting principles may not adequately guide action for real agents in the specific conditions they find themselves in. The degree to which a theory establishes demands of justice that apply to our *current* political world is especially important if the theory itself purports to address current injustices and recommend principles for change. I accept this desiderada and will suggest that my practice-based approach scores better in this regard than other views.

Why should a theory be expected to guide action? If a theory is supposed to be an answer the moral question of what we owe *to one another*, then it is important to consider whether its recommendations are even accessible given the particular constraints of our social life. I follow James in maintaining that we have reasons to start our normative theorizing from the social practices we currently have, in the present case, the state system and its established normative presuppositions. From this perspective, we can see why the state system itself generates a moral obligation to protect climate refugees. This conclusion is valuable for many reasons, but one of them, as James claims, is simply a matter of explication: "it helps us to illuminate and understand what the practice-generated

obligations of justice are, how they arise, and why they might be especially compelling as grounds for policy change, given the social practices we already have."[92] I suggest that such an approach has particular advantage over natural rights views given the urgent and possibly extensive challenge that climate displacement poses for the current territorial state system.

A normative theory that hopes to address challenges that arise in our current political life should be progressive in proposing changes to the status quo. There are limits to this, however. A theoretical account that suggest more controversial grounds or necessitates more radical reforms to the current system may be of no use or could possibly be harmful. A relatively conservative theoretical approach, other things being equal, has a greater chance of engendering reform, since such changes would likely be more feasible to introduce or enact. Furthermore, views that stray too far from the current system may either fail to stave off the injustice being addressed or may introduce further injustices that result from radical reconfigurations of the current system.[93] "Ideal theories" that stray too far from real-world factual constraints may generate principles that are practically ineffective. Perhaps those principles are not responding to the phenomena or situation at hand or so removed from such constraints as to be motivationally ineffective.[94]

In this connection, Mathew Lister suggests that a normative foundation for climate refugees should amount to what he calls a 'progressive conservatism.'[95] His own view, which he offers as an example, purportedly does not require significant alterations to the current normative system that underlies our international protection regime. Lister follows Allen Buchanan's suggestion that, at the

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[92] James, "Why Practices," 48.
[93] In this chapter I suggest that some of rival views that aim to provide certain normative grounds for climate refugees are too radical, and thus problematic for such reasons.
[94] Laura Valenti, "On the Apparent Paradox of Ideal Theory," Journal of Political Philosophy 17, no. 3 (2009): 332-355; Ingrid Robeyns, "Ideal Theory in Theory and Practice," *Social Theory and Practice* 34, no.3 (2008): 341-362
[95] Mathew Lister, "Climate Change Refugees," *Critical Review of International Social and Political Philosophy* 17, no.5 (2014): 618-634

very least, a theory should not directly contradict the moral principles of the international legal system. Instead it ought to aim to build upon its acceptable moral principles.[96]

The question whether reform is feasible is clearly vital in circumstances where millions of people may be at risk (as is the case with climate-based displacement). A view that seeks to provide a normative foundation for the climate refugee problem should not *only* be correct as a matter of theory. Its strength or advantageousness over competing proposals can also be evaluated according to the practical ideal of 'progressive conservatism.' As Lister argues, "if we can achieve acceptable results with less controversial premises, both widespread agreement and correctness are more likely to result."[97] Below I defend my theory of liveable locality in these terms. I answer objections to the view and evaluate the associative normative foundation I presented in the previous chapter in comparison with alternative normative grounds. I claim that my practice-based approach fares better than its competitors in part due to its progressive conservatism.

It is a matter of controversy whether the intended "feasibility constraint" can be part of what some philosophers refer to as "ideal theory." It may be of interest to assess a theory's proposed principles as more-or-less "ideal." But debates over ideal and non-ideal theory (about justice) tend to use the distinction in a variety of ways, and I do not mean to take a position on how the ideal/non-ideal distinction or distinctions are best characterized. I do assume that real-world facts or feasibility concerns can factor into the construction of normative principles. How "ideal" they are as a result is a further question.

As Laura Valenti notes, this is a matter of how we address two further considerations. The first is whether a theory is "utopian." A fully-utopian view rejects the need to abide by any feasibility constraints. More "realistic' theories, by comparison, do accept constraints on the design of

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[96] Allen Buchanan, *Justice, Legitimacy, and Self-determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2004), 63.

[97] Mathew Lister, "Climate Change Refugees," 619.

normative principles. As Rousseau promises in *The Social Contract*, such theorizing proceeds by "taking men as they are, and laws as they might be."[98] Among this latter, more "realistic" type of theory, we can raise a second kind of question, of how exactly "real-world" limitations enter into the design of the theory's principles.[99] More "realist" views will take more of the status quo into account in the hope of (effectively) guiding action.

In these terms, a "progressively conservative" theory addresses facts about the world and aims to establish normative principles which are practically effective. At the same time, such a view might be excessively conservative (or too "realist"); perhaps it appears to give an indiscriminating defense of the status quo.[100] Theorists such as Lister who hope to address the urgency of the problem climate refugees pose can be understood as seeking a proper balance between progressive and conservative elements.

If a view aspires to guide the action of real-world agents, it becomes especially important how far it engages with the "real world" injustices it aims to address. According to David Wiens, principles in that case can *only* be justified by considering the boundaries set by feasibility constraints. As Wiens notes, such views "can justify their assertion only by conducting a thorough feasibility assessment of the ideal world prior to specifying the states of affairs we ought to realize."[101] While a political ideal may identify a target for actual political reform, the mere identification of the ideal is not sufficient for justifying the adoption of it as a goal for reform (it is not enough to have demonstrated that it is the best ideal morally speaking).[102] At the same time, according to Wiens, a proper analysis of the feasibility frontier is difficult to generate, and often not undertaken properly. As he explains, "the

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[98] Jean-Jacques Rousseau, *The Major Political Writings of Jean-Jacques Rousseau: The Two Discourses and the Social Contract,* trans. John T. Scott (Chicago: The University of Chicago Press, 2012).

[99] Valenti, "On the Apparent Paradox of Ideal Theory," 4.

[100] Ibid., 7.

[101] David Wiens, "Political Ideals and the Feasibility Frontier," *Economics and Philosophy* 31, no. 3 (2015): 464.

[102] Wiens, "Political Ideals and the Feasibility Frontier," 462.

causal mechanisms that generate the status quo and the ways in which the causal mechanisms required to realize the ideal are likely to interface with the status quo."[103] Philosophical theorizing tends to be content with speculating about the various causal mechanisms that would contribute to properly reforming the status quo. In fact, the assumed status quo in the proposed view is often of some close possible world -- in which case "feasibility" in the actual world is not being addressed for what it actually is.

Wiens is pessimistic that such theorizing might succeed. A more extensive and appropriate feasibility analysis may simply come up short due to the difficulty of even estimating the feasibility frontier.[104] This is for two reasons. The first is the intricacy of the calculations required for such an analysis. Determining the feasibility of long-range aims is near impossible, and the estimation of short or medium-term objectives (while easier to estimate given the limitations of the time horizon) don't seem to adequately apply to ideal principles themselves. The second source of the problem is that proposed political ideals "typically constitute fundamental (perhaps revolutionary) departures from the status quo."[105] It seems that confidence and success of our feasibility assessment may be enabled by proposals for more limited political ideals, especially if restricted to shorter-term considerations.

I suggested earlier that feasibility is indeed important for a normative theory for climate refugees; it should address the conditions of injustice that climate refugees actually face and give reasons for reform. The theory I have presented purports to give principle-based requirements of justice. But as a practice-based method, it *also* aims to be sensitive to the constraints or contexts of the practice it addresses. The theory is not strictly concerned with presenting standards of justice that could never be an appropriate practical social goal.[106] In particular, my account offers a minimal

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[103] Ibid., 462.
[104] Ibid, 462.
[105] Ibid., 463.
[106] David Estlund, "Utopophobia," *Philosophy and Public Affairs* 42, no. 2 (2014): 113-134.

political ideal that does not require far-reaching changes or reform.[107] In this way it is distinct from arguments that advocate for more "idealistic" requirements that stray father from the current territorial state system.

For example, Carens's "cosmopolitan" open-borders argument is not concerned with whether or not there is a chance that such a practice can or will be adopted.[108] Carens argues that such theorizing is still valuable "because it is important to gain a critical perspective on the ways in which collective choices are constrained, even if we cannot do much to alter those constraints."[109] Yet one consequence of disregarding feasibility constraints, practical considerations, or requirements of realism entirely is that there may be a gap between principle and policy. Carens sees this type of gap to be "particularly wide when we focus on refugees," and on an open borders account, such a "gap becomes a chasm."[110] In the following section I argue that our arguments need not entail such a gap, and that Carens's conclusions of pessimism regarding our obligations to refugees more generally (and climate refugees in particular) need not be so drastic. I argue that such pessimism results from ignoring the normative implications of the change in empirical conditions climate change introduces for the territorial state system.

The theory of liveable locality takes this change in empirical assumptions into account, and it demonstrates that we have reason to pursue normative arguments concerned with bridging (or at least shortening) the gap between principle and policy. The right to be somewhere liveable is grounded in a widely accepted interpretation of the territorial state system. The argument for the right starts with facts about our current practices and conditions, most notably, the fact of climate change, and takes them to shape moral reasoning about the state system and the normative principles

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[107] Unlike David Estlund, I am not merely interested in clarifying our intellectual convictions about justice. Estlund, "Utopophobia," 122.

[108] Carens, *The Ethics of Immigration*, 229.

[109] Ibid., 229.

[110] Ibid., 229.

which underlie its protection regime. One might debate exactly how "realistic" the assumed understanding of the current practice is, but the proposed normative foundation does at least emerge from what is already understood or accepted about current political and legal systems. I argue below that the theory of liveable locality is preferable to its rivals in part because it is appropriately "progressive" as well as appropriately "conservative." In other words, it is critical of the status quo, but suggests that reform is justifiable on the grounds of the current system. It does not necessitate radical revision of the modern territorial state system as it is currently understood and accepted.

At the same time, my account is not incompatible with the argument for open-borders. What is crucial is simply that it does not rely on the feasibility of radical revisions to the territorial state practice. Rather, it proposes more a more limited political ideal and assumes key elements of the status quo. Empirical conditions may drastically change, of course, and perhaps some open-borders argument could be defended in light of practical applicability and feasibility constraints. For example, if or when coastal flooding, rising sea levels, and ice cap melting begin to pose a sharp risk of *Waterworld*-esque conditions, fear of such a cataclysm may quickly change what is political feasible.[111] Perhaps then the preservation of borders and the territorial state system as we know would no longer be justifiable. At such a point, an open-borders account might be said to provide a basis for reconfiguring our obligations to the displaced. In such a case, the practice-based framework I have presented could work in conjunction with an open-borders account to establish new obligations. Under current conditions, however, my view does not necessitate any such controversial starting point. For this reason, it is preferable to "less-idealistic" views, which may stray too far from the status quo in both their interpretation of the problem of climate-based displacement and their proposed remedies.

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[111] *Waterworld*, directed by Kevin Reynolds (1999; Universal City: Universal Pictures), film.

Still, is my own account itself too "unrealistic"? My account hopes to define an idea of progress towards a goal.[112] As Weins emphasizes, in that case "the basic problem is that our efforts to characterize a distant objective that represents fundamental departures from the status quo are too fraught to justify asserting political obligations to work toward the realization of any particular long-range target [...] we cannot reasonably expect reform efforts aimed at a distant political ideal to realize the optimal feasible state of affairs."[113] Wiens suggests there are several ways to avoid this problem. If normative theorizing wants to continue to argue for certain political ideals, the theorist can reject the feasibility requirement, or adopt a simpler feasibility analysis. The first solution is not available for the account I offer for the reasons identified above. For the latter option, Wiens offers Holly Lawford-Smith's suggestion that theorists need only resolve whether the feasibility of reform is possible in a logical, metaphysical, or conceptual sense.[114] Wiens identifies disadvantages for both approaches and he suggests a purportedly less problematic normative approach that doesn't "chart an uncertain transitional path toward a risky goal."[115] His proposal[116] is that we engage in normative theorizing that focuses on concrete social failures – understood as a state of affairs that morally worse than other feasible alternatives -- rather than political ideals. [117]

Even if my account is seen as ideal-oriented, I would not admit that it is hopelessly "utopian."[118] But my theory of liveable locality could be developed as a kind of "backwards-looking"

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[112] Wiens classifies such theorizing as a "Target View" approach. Wiens, "Political Ideals and the Feasibility Frontier," 449.

[113] Wiens, "Political Ideals and the Feasibility Frontier," 471.

[114] Holly Lawford-Smith, "Understanding Political Feasibility," *The Journal of Political Philosophy* 21, no. 3 (2013): 243-259.

[115] Wiens, "Political Ideals and the Feasibility Frontier," 472.

[116] Wiens calls this a "failure analysis approach. Such an approach would "identify states of affairs that are suboptimal with respect to some evaluative criteria; diagnosing the causes of the suboptimal states; evaluating potential remedies for circumventing or mitigating the identified failure, assessing the moral costs and benefits of alternatives; prescribing remedies that are (as far as we can tell) likely to leave open possibilities for future progress." Wiens, "Political Ideals and the Feasibility Frontier," 472.

[117] Wiens, "Political Ideals and the Feasibility Frontier," 472.

[118] Estlund, "Utopophobia."

approach of the sort Wiens proposes. I will not defend this characterization here, however. I do however acknowledge the need to narrow the gap between policy and principle. A theory's success on this count may be a reason to favor it over rivals. Here I maintain that my own practice-based account at least fares well in comparison to rival approaches.

By itself, the practice-based method of justification does not settle what feasibility constraint is appropriate. Indeed, James argues that a practice-based framework does not deny a purely intellectual pursuit for what is morally required regardless of what practicality requires – as long as this is admitted as a distinct theoretical objective.[119] The requirements of "practice-sensitivity" emerge only when our objective is to justify normative principles that give reasons for agents in the real world – to say, if you will, what justice requires of *us*. Then the aim is, at very least, to generate regulative principles for a practice that could exist or be sustained.[120] But, as the case requires, one can also be responsive to more robust feasibility requirements and generate principles that are available to people in our current political and social life. To that end, the argument might begin from the conditions set by our current political or social environment, including widely shared assumptions within a given social practice. For only then, it may be argued, will we answer a question of what we owe to one another in a way that justifies principles that are indeed normative for us in our current social life.[121]

The theory of liveable locality I have argued for provides a normative foundation that arises out of the territorial state system under conditions of climate change. As such, it generates a regulative principle for the existing system, and explains why we have obligations to people displaced by climate

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[119] As James notes, even if a theorist does not constrain their theorizing by considerations of practical relevance, a considerations of practices can still be important. As he argues, this is because "a social practice may often be presupposed by the moral issues themselves." James, "Why Practices?," 48.

[120] James specifies that the practice it addresses should "at least be feasible as a generally assured form of social cooperation among distinct agents who lack direct knowledge of and control over one another." James, "Why Practices?," 43.

[121] James, "Why Practices?," 49.

change by accounting for the "internal" nature of the moral demand for protection. At very least, the argument against the exclusion from liveable spaces is not an argument for a practice that is *incompatible* with our current conceptions of territorial authority and other assumptions held in the current territorial state system. Even this modest claim is important if we think that we are not yet in a position to drastically alter the current territorial state system. Again, if empirical conditions are such that moving away from this social practice becomes inevitable (as it might be in the case of *Waterworld*-like scenarios), we may *then* require theorizing of the type Carens offers in his arguments for open borders. However, given that we are not yet in such conditions, and given that they cannot now be foreseen, we should pursue arguments that do not require a complete overhaul of the existing territorial state system practice.[122]

For this reason, the theory of liveable locality fares better among competing views that favor "ideal theorizing" and which rejects or ignores feasibility requirements all together. Such views, which need to defend their reason for denying such constraints, are less suited for filling the legal gaps apparent in the current protection regime. If part of the concern for establishing a normative foundation for climate refugees is the need for a framework upon which legal and political changes can be justified, views that are unconcerned about the infeasibility of the view are not adequate grounds for such reform.

Furthermore, a practice-based approach may fare better than normative theorizing that begins from existing practice but abstracts even farther away from the social practice of the current territorial state system. The farther away we move from our current understanding of the assumptions and conceptions rooted within the territorial state system, the more we move away from

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[122] James argues that given the lack o.f a credible alternative to the current practice of the state system, we might be more inclined to pursue arguments that don't require a "fundamental revolution away from existing social practice." In this sense a practice-based approach presents an alternative which offers a more credible account of what changes or revisions are worth pursuing. James, "Why Practices?," 52.

understanding how the current protection regime is impacted by the state system. This becomes of crucial importance if we are concerned with the goal of addressing legal and political actions such as those of New Zealand, which rejected the asylum claims of people fleeing the impacts of sea level rise on low-lying island nations. James suggests that "the more abstract the framing characterization of a practice, the weaker the public argument for resulting conclusive obligations."[123] In that case, we may value arguments that seem more applicable in circumstances where we must decide to enforce protection for those displaced by climate change. The latter is not a mere hypothetical problem, but an actual challenge we are *already* facing. So, we should value an argument for reform that is more credible in its proposals as regards to this pressing problem. A practice-based approach of the kind I have suggested demonstrates that – as participants in the state system – we already comprehend and perhaps implicitly accept the type of regulative principle the theory of liveable locality identifies.

I now survey arguments that offer alternative normative grounds for our obligations to refugees. I start with arguments that address the normative presumptions of the state system and thus seem concerned with addressing our current practices. I then turn to arguments which abstract farther away from the current practice of the territorial state system. While the theory of liveable locality is not incompatible with such proposals, such proposals introduce challenges that can be side-stepped by a practice-based approach.

2.2 Alternative Rationales for Grounding our Obligations to Climate Refugees

Let us return to the three types of reasons Carens's offers for why democratic states have a duty to refugees: causal connection, humanitarian concern, and the normative presuppositions of the territorial state system. The theory of liveable locality develops the third kind of rationale: one

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[123] James, "Why Practices?," 55.

important ground for our duty to climate refugees arises out of the normative assumptions of the territorial state system.

Carens's own view is a proposal to expand the definition of refugee to include anyone fleeing threats to basic rights. He then argues that there is no justification for refusing entry and aid to refugees.[124] But Carens's argument does not name an obligation to climate refugees *in particular*. And though it accounts for our obligations to refugees by referring to the state system, it does not present a full normative argument for such reasoning. The theory of liveable locality does both.

2.2.1 Causal Connection

Although Carens does not acknowledge or consider climate refuges under the heading of the state system's normative presuppositions,[125] he does briefly consider "environmental refugees" under the heading of causal connection which might justify duties we have.[126] As Carens explains, in some cases we have an obligation to admit refugees because of some causal connection to the conditions that induce their displacement. Although the causal connection may be controversial or diffuse, rich democratic states are largely responsible for anthropogenic climate change, and thus are ultimately responsible for climate-based displacement.[127] Carens only gestures at such an argument, however, and this line departs from his general account of our obligations to refugees.

While a causal connection approach could justify protection or compensation for climate refugees by developed countries, it also introduces several difficulties. As Mathias Risse points out, contribution to climate change over the past centuries was done unknowingly. Furthermore, communities threatened by climate change have also benefited from improvements and changes in

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[124] Carens, *The Ethics of Immigration*, 15.
[125] Ibid., 196.
[126] Ibid., 195.
[127] Carens, *The Ethics of Immigration,* 195.

living conditions as a result of the same causes linked with anthropogenic climate change. It may also be difficult to identify how far any given developed country's emissions have caused climate change-induced displacement, though this would be the primary basis for allocating responsibility to repair the harm caused. And aside from the difficulties of measuring and attributing emissions and related effects to any specific country, it is not clear that *future* harms would be due to emissions in developed countries. China's emissions, for example, may be just as important. Finally, decisions to migrate away from an uninhabitable location or state are complex and may involve a network of causes which include climate change. In short, it is (and will continue to be) difficult to establish any very direct connection between a country's emissions or other causal contributions to climate change and climate-based displacement.[128]

While these difficulties may not be decisive, they are perhaps a thin reed upon which to base a climate refugee's claim to protection or compensation. As Risse notes, if compensation for harm done is the sole basis for such claims, then "considerations of causality will be *the only* relevant considerations to that end."[129] If there is a normative framework that does not allocate moral responsibility based on degree of causal contribution, then we can avoid the difficulty of identifying responsible parties.

On the practice-based account I have proposed, our duty to climate refugees emerges from the territorial state system itself. Responsibility is assigned in the first instance to all states, by virtue of their participation in the system, regardless of who specifically was responsible for climate change. In this sense it does not need to identify specific causal links between emitters and refugees to justify responsibility, at least in the first instance. (A country's degree of contribution still might bear, however, on how burdens of adaptation are to be fairly shared, along with other factors, such as

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[128] McAdam, *Climate Change, Forced Migration, and International Law*, 22.
[129] Mathias Risse, "The Right to Relocation: Disappearing Island Nations and Common Ownership of the Earth," *Ethics and International Affairs* 23, no. 3 (2009): 282.

country's level of wealth.) Given the difficulty of assessing such causality and the problems such difficulties create for normative theorizing, this is a particularly important advantage.[130] Causality is still a consideration in a very general way, but only in an uncontroversial sense. It is enough that climate refugees find themselves in peril as a result of the configuration of territorially defined states. Indeed, the very existence of political system that limits territorial movement counts as causally contributing to their peril.

Carens may not be opposed to the moral grounding I have proposed. The three rationales for justifying our obligations to refugees (conventionally understood) are complementary and all could be relevant simultaneously. For Carens, all three types of reasoning may be sufficient to create (at least) a prima facie duty to refugees.[131] At the same time, in the case of climate refugees, there may be more reason to adopt one rationale over the others. It remains important if grounding our obligations to climate refugees in the normative presuppositions of the state system avoids challenges that arise for both the causal connection approach as well as humanitarian rationales.

I now turn to the latter approach. Many of the problems with the current protection regime arise due to the tendency to see obligations to refugees as humanitarian in nature. As I will now explain, the theory of liveable locality is a distinct and, in many respects, a superior justificatory model. While a humanitarian justification for aid is compatible with my proposal, it remains important to also ground our obligations to climate refugees apart from humanitarian considerations.

2.2.2 Humanitarian Concerns

The principle of non-exclusion from liveable spaces applies to members in a shared practice in virtue of their participation of that commonly understood practice. In that sense it is not an

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[130] The challenge of assessing causality for normative theorizing is a consideration about the strength of a normative theory's practical import as was discussed earlier in this chapter.
[131] Carens, *The Ethics of Immigration*, 196.

"external" or "independent" moral requirement. A humanitarian requirement to aid the plight of the destitute, by comparison, might apply equally to any or all human associations, or perhaps even in a "state of nature." Where it does apply to state conduct, it doesn't not apply to a state or the state system per se. So, while climate refugees may well present a humanitarian issue, the normative ground I have proposed is not a humanitarian one. In that case the basic right to a liveable location, and the duty to climate refugees it generates does not rely solely on humanitarian reasons for fulfillment. Indeed, in my view the failure to address the claim of climate refugees is *primarily* unjust for reasons related to moral presuppositions of the state system.

Climate-based displacement is not a natural fact in the world. Despite the involvement of weather and climate systems, displacement is not merely the result of "natural causes." Our obligations require more than humanitarian assistance and charity. A failure to provide for climate refugees is not merely a failure of generosity or a failure to provide help when we are able to.

The contrary view is widely held, and it helps account for the mistaken notion that states can determine whether or when they have satisfied their obligations to climate refugees. To provide for climate refugees is not merely an act of beneficence or a costly extension of a secondary duty. Rather it is a requirement that participants in the state practice have reason to meet in light of the membership in a shared social practice and common understandings about that practice's ends.

Often a state's choice to provide assistance to refugees or those in need is regarded as charity, or a generous extension of a state's responsibilities. States often respond to people fleeing from natural disasters, for example, through *ad hoc* humanitarian responses by which they determine whether and how far emergency protection will be provided. Accordingly, most humanitarian aid or protection is responsive rather than preemptive.[132] Climate change-induced events and the

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[132] Jane McAdam, "Climate Change Displacement and International Law: Complementary Protection Standards," *UNHCR Legal and Protection Policy Research Series*, (2011): 41.

consequent harms that follow from it have been treated in much the same way.[133] While the international refugee protection regime does not go beyond political violence or persecution based on humanitarian grounds, efforts by the international community to aid displaced people still seem motivated by humanitarian concern.

In recent developments, New Zealand has proposed a type of humanitarian visa specifically for Pacific Islanders displaced due to the impacts of climate change (namely, rising sea levels).[134] Though the Supreme Court of New Zealand has ruled that climate change is not a ground for refugee status, the court identified conditions severe enough to warrant humanitarian reasons for protection. In 2014, a judge granted a family fleeing from Tuvalu (to escape the impacts of rising sea-levels) residency based on humanitarian considerations.[135] Australia has promised to invest $226 million dollars over the next four years to aid Pacific Islanders to contend with the impacts of climate change. The humanitarian financial aid volunteered by Australia does not include a mechanism for handling movement across international borders. While these ad hoc approaches are welcomed as they are the first formal proposals addressing and recognizing the conditions of climate refugees, they are not systematic. The harms they aim to mitigate are regarded primarily has humanitarian violations. Furthermore, they tend to characterize our duties to the displaced as ones that arise *after* individuals find themselves in conditions warranting address.

It is noteworthy that such schemes do not ask the displaced to demonstrate that climate change contributes to their vulnerable condition.[136] The fact that someone has had to flee is itself treated as sufficient evidence of his or her need for protection. McAdams notes parallels with the

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[133] McAdam, "Climate Change Displacement and International Law: Complementary Protection Standards."

[134] Lin Taylor, "New Zealand considers visa for climate 'refugees' from Pacific Islands," Reuters, November 17, 2017, https://www.reuters.com/article/us-newzealand-climatechange-visa/new-zealand-considers-visa-for-climate-refugeesfrompacific-islands-idUSKBN1DH1JB.

[135] Ibid.

[136] McAdam,"Climate Change Displacement and International Law: Complementary Protection Standards," 42.

development of the international refugee protection regime, which resulted from a series of international agreements that responded to a crisis.[137] As Carens argues, need is one reason why we may have a duty to refugees, "simply because they have an urgent need for a safe place to live and we are in a position to provide it."[138] Whether such approaches emerge from the international refugee protection regime, or are related additional protections, humanitarian reasons are certainly important. The question is whether humanitarian reasons are sufficient to address the challenge climate refugees pose.

According to Thomas Pogge, the humanitarian duties taken up in the international realm in response to "natural" disasters and other related events can be interpreted as a specific kind of duty -- duties to provide. These are distinct from duties to protect. Duties to protect require preventative action, whereas duties to provide require the neutralization of harmful effects. For Pogge, duties to protect and duties to provide are both positive duties. Yet they are distinct, because they refer to different types of threats, which trigger different interventions. The recent measures to aid climate change refugees on humanitarian grounds could be understood as formalizing a duty to provide in Pogge's sense.

Pogge uses the distinction to criticize most humanitarian interventions and international human rights documents, which focus on assistance *ex post*. This is especially the case in response to climate change-based events which are currently treated as "natural" disaster emergencies.[139] Pogge argues that the tendency to regard our duties as primarily duties of provision, rather than of protection, tends to close of possibilities of fulfilling human rights in different, more preventative ways.

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[137] Ibid., 43

[138] Carens, *The Ethics if Immigration*, 195.

[139] McAdam, "Climate Change Displacement and International Law: Complementary Protection Standards," 45.

Pogge's argument could likewise be applied to our current refugee protection regime, which grants protection only *after* a claimant escapes or moves away from the source of harm. In this sense the current system remains reactive and *ex post*. But especially in the case of climate refugees, preventive measures are crucial. It is crucial to pre-empt climate-induced events and anticipate the complete deterioration of habitable spaces. An advantage of the view I have proposed is that it does not enshrine our duty to climate refugees as merely a duty to protect. The grounds for action, on my account, are not inexorably linked or characterized by harms that come with sending people back into conditions of danger. Rather, a principle that forbids excluding people from liveable spaces responds to a general risk that the right to be somewhere or other liveable will be infringed. The principle allows for a wider temporal focus regarding someone's spatial location than an account waits for wayward souls to turn up on foreign shores. A would-be refugee needn't have already moved away from an uninhabitable territory to claim a right of protection. As such, the reforms that such a principle supports can be both *ex ante* as well *ex post*. Our current protection regime does not have such flexibility.

A further difficulty is that the current refugee regime tends to encourage the mistaken view that displaced victims are reliant on charity. But in fact, climate refugees have a claim to protection that should not turn on the generosity of those who are better off. The account I offer acknowledges the systematic nature of displacement in a territorially based system of states. The theory of liveable locality regards climate refugees as people who have lost access to a right they are entitled to under that system. Their displacement is not due to some "act of God" or even a state's failure to include them as political members. Even if the displaced are impacted by "natural" disasters, whether these are extreme weather events, or deteriorating environmental conditions, climate refugees are not inevitable victims of nature. They are in conditions of vulnerability because of the very way the

territorial state system is arranged. Their protection therefore should not rely solely on a given state's or international institution's *ad hoc* decisions for protection.

Climate refugees are deprived entitlements that they and all citizens have in virtue of participating in a common political practice. They are people who risk the violation of their rights because such conditions happen within the context of a system that organizes authority over territory in an exclusive and all-encompassing way. They can no longer rely on birthright citizenship to protect them against risks of being excluded from all livable places to be. Their conditions of vulnerability require principled address rather than acts of beneficence, because what's at stake is not mere need and humanity, but the very legitimacy of a system that grants states the right to exclude.

In recognizing climate refugees in this way, the theory of liveable locality preserves the dignity of the displaced. It calls for systematic, principle-based protection for climate-induced migration. And, in this context, the very notion of a "refugee" is imbued with a sense of dignity that may be missing in the current protection regime. It refers to individuals, a class of persons who face peril under a right that we should all accept should be guaranteed for all.

This speaks an important worry expressed by Anote Tong, former President of Kirabati, a Pacific archipelago threatened by rising sea levels. Tong has been an advocate of the idea of "migration with dignity" on the international stage. Tong has publicly rejected the notion that Kiribati nationals should be understood as refugees. "We don't want to lose our dignity. We're sacrificing much by being displaced, in any case. So we don't want to lose that, whatever dignity is left. So the last thing we want to be called is 'refugee.' We're going to be given as a matter of right something that we deserve, because they've taken away what we have."[140] Citizens of Tuvalu and Kirabati have echoed the importance of being represented as valuable members of a community who are active

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[140] Anote Tong, " It's not just the climate that's at stake, it's the future of a generation," interview by Tommaso Perrone, *Lifegate,* December 22, 2017, https://www.lifegate.com/people/news/anote-tong-kiribati-interview.

and bring positive contributions to such communities. As McAdam notes, these apprehensions to be labeled a "refugee" illustrate failures of the current international protection regime. Setting aside the regime's ability to account for those displaced by climate change, the current regime already struggles to implement principles of burden sharing.

This could likely be a factor in a failure to design new treaties dealing specifically with climate-change related displacement.[141] If we move away from understanding our obligations to climate refugees as "humanitarian" in nature, then one might be more optimistic about the political will of states. At the very least, states have to recognize that they have principled reasons for protection that arise out of principles they implicitly endorse or accept by virtue of their own claim to territorial sovereignty.

2.3 Grounding Obligations in Normative Presumptions of the Territorial State System

Theorists who assume the convention view of immigration have largely overlooked the possibility of justifying our obligations to climate refugees on the basis of presuppositions of the state system. There are exceptions, however. Some have suggested that the principle of non-refoulement is the best way to ground our obligations to climate refugees. In this section, I point out the limitations of this approach.

2.3.1 Claims Prior to Social Membership

In Caren's theory of social membership, we are given a moral argument for why being located within the territorial boundaries of a state gives rise to moral claims of membership within that state's political community. The central idea is that living in a society over time makes one a member, and

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[141] McAdam, *Climate Change, Forced Migration, and International Law*, 41.

being a member is sufficient to have a moral claim to legal rights and eventually the legal status of citizenship. As Carens states, "what matters most morally with respect to a person's legal status and legal rights in a democratic political community is not ancestry or birthplace or culture or identity or values or actions or even the choices that individuals and political communities make but simply the social membership that comes from residence over time."[142] Put simply, the moral claim to citizenship relies on social membership. Social membership is normatively prior to citizenship and gives the moral foundation for claims to citizenship.[143]

Carens's theory asserts that people can be members of a political society without being citizens, and thus can advance moral claims to legal rights regardless of their citizenship status. But the theory is only concerned with people who are already present on the territory of a state. Carens himself professes that "it is not very helpful in thinking about admissions" and "has nothing to contribute to the discussion of refugees or to the arguments in favor of freedom of movement" though it may be compatible with such arguments.[144] Carens does not purport to explain what we owe refugees, let alone climate refugees.

The theory of liveable locality is not incompatible with Carens's theory of social membership, nor is it a direct alternative to Carens's view. Indeed, my approach can usefully appropriate his argument. What is owed to a climate refugee, once they find themselves on the territory of a receiving state, can be grounded in the fact of their membership in the political community. But the claim to become a member and hence a citizen has a deeper source, which is not essentially tied to a person's de facto presence on a territory, as Carens suggests. When all the world is carved into discrete territories, if people find their place of citizenship is no longer habitable, they would have a moral claim to a pathway to citizenship that does not rest on their length of stay in a new community.

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[142] Carens, *The Ethics of Immigration*, 160.
[143] Ibid., 160.
[144] Carens, *The Ethics of Immigration*, 162.

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In a world entirely divided into states, where the protection intended by the practice of birthright citizenship is no longer reliable, a coalition of states should instead provide new places for climate refugees to be. The right to be in a livable place would then amount to membership and hence a pathway to becoming a citizen.

2.3.2 The Principle of Non-Refoulement

Since Carens's theory of social membership cannot address admissions, Carens turns to the principle of *non-refoulement* in order to explore the question of what is owed to refugees. The principle of non-refoulement is commonly recognized as the underlying moral foundation for the current refugee protection regime. For Carens, it is a prime example of a principle that arises out of the normative assumptions of the state system.

Should non-refoulement be seen as the sole or primary ground for our obligations to climate refugees, and the basis for our current refugee protection regime? To answer, I turn to Matthew Lister's arguments for why non-refoulement accounts for our duty to climate refugees, in addition to those currently recognized by the international protection regime. By comparison, the theory of livable locality has important advantages.

Here I do not claim that livable locality is the exclusive basis for understanding our obligations to refugees. I also set aside the question of whether the Refugee Convention (as a legal practice) could or should be seen as something which extends protection to climate refugees or whether additional or new treaties are required. For now, my claim is simply that, if normative presuppositions of the territorial state system supply duties to refugees at all, they equally supply duties to climate refugees as well.

The obligations states have to refugees is conventionally understood as an exception to a state's right to discretionary control over its immigration policies. Refugees represent a special case,

a morally distinct group that can advance claims to aid from the international community not available to all. The principle of *non-refoulement*, which is found in Article 33 of the 1951 Refugee Convention, and binds states in the 1967 Protocol,[145] states: "No Contracting State shall expel or return ("*refouler*") a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] life race, religion, nationality, membership of a particular social group or political opinion."

The Refugee Convention does not impose a duty on states to take in refugees. It is the principle of non-refoulement that prevents a state from sending refugees *back* to their state of origin if doing so would leave them subject to persecution. Hence, from a normative perspective non-refoulement provides the moral logic behind current legal standards. As Carens explains, "whenever a state acknowledges that it would be wrong to send someone back to her home country, it is implicitly recognizing that person as a refugee [...]."[146]

As I have maintained, one background assumption of the territorial state system, and thus of its protection regime, is the right of sovereign states to exclude. A state is primarily responsible for what happens within its assigned territory. The Refugee Convention and its principle of non-refoulement simply adds a special responsibility not to send refugees away from their territory when doing so would put refugees at risk of specified harms that follow from persecution.[147] According to traditional conceptions of the territorial state system, refugees do not have a direct claim to entry, but rather a claim not to be sent back into harm's way. The fear of persecution if one is sent back may be sufficient to justify granting asylum.

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[145] Article I(1) of the 1967 Protocol states that the states party to the protocol are bound by Articles 2-34 of the 1951 Convention. UNHCR, "Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol," 2007.
[146] Carens, *The Ethics of Immigration*, 205.
[147] Carens, *The Ethics of Immigration* 208.

Like Carens, Lister argues that non-refoulement is the normative force behind the Refugee Convention. Lister takes refugees to be morally distinct from other groups seeking aid insofar as refugees are people who could "be helped by providing them the particular remedy of asylum, understood as including both non-refoulement and a durable solution," where a 'durable solution' is understood as a right to remain in a safe country indefinitely.[148] For Lister, if the Convention picks out people who have the latter trait, and other groups needing protection don't have such a trait, then the Convention defines refugees as a morally separate group warranting protection. Given this interpretation, the principle of non-refoulement accounts for what is owed to refugees.

Carens does not consider the possibility of extending non-refoulement to climate refugees, though he does argue for an expansion of the definition of refugee in principle. Lister argues for the possibility of extending the Convention's granted status and protection to those who could be helped by granting asylum (defined by non-refoulement and a durable solution). However, unlike Carens, he does not advocate for expanding the definition of "refugee." In this sense Lister could be understood as suggesting more minimal reform to the current protection apparatus. More specifically, Lister's argument could be understood as an attempt to offer a more generous interpretation of the principle which currently grounds claims to admissions and protection. As such, it has an advantage over arguments for reform that introduce additional normative grounds not already enshrined in our current legal practices. The advantage of such a proposal is that it demonstrates that our current practices already have resources for such protection. As Lister notes, we don't need significant modification to the refugee convention to ensure protection to some of those displaced by climate change.[149]

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[148] Lister, "Climate Change Refuges," 620.
[149] Lister, "Climate Change Refuges," 621.

Lister does not give a practice-based justification for his view, but he does appeal to normative presuppositions of the state system. To suggest non-refoulement as a moral basis for our obligations to climate refugees is to, in part, find reason in current normative principles already understood and accepted by participants in the state practice. This raises the question of whether we need not look beyond non-refoulement to ground our obligations to climate refugees as I have argued. I argue that the theory of liveable locality and its related principle for protection is distinct from non-refoulement. It can be appealed to either in addition to or in replacement of non-refoulement.

Lister argues that the moral logic of the Refugee Convention can be extended to only a subset of those displaced by climate change. According to Lister, the right to non-refoulemont is owed to those displaced by climate change in cases "where international movement is necessitated, and where the threat is not just to a favored or traditional way of life, but to the possibility of a decent life at all."[150] Lister understands a 'decent' life as one that is not threatened by persecution, danger, and where the basic needs of a person are met.[151] He stresses that the number of people facing displacement due to climate change is a much larger group than the group we owe extended refugee protection or migration rights to. We may owe other forms of aid to the displaced, and to those harmed by climate change more generally. Extending refugee protection or other forms of migration rights is a part of the requisite international response to climate change but does not apply to all displaced by climate change on Lister's account.

As Lister points out, granting refugee protection in the form of asylum in particular is considered a "weighty remedy" because it requires states to do things beyond their existing obligations. Like others who assume the conventional view of immigration, such constraints or expectations on states should only come in extreme cases. This reasoning justifies the conditions

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[150] Lister, "Climate Change Refuges," 621.
[151] Lister, Lister, "Climate Change Refuges," n. 27.

Lister defends. He argues that our obligations are triggered only in the case of cross-border movement, and such cases will be relatively few given projections that indicate internal migration will make up the majority of climate-based movement.[152] Furthermore, just because climate change poses a threat to a people's "traditional way of life," such difficulties are not sufficient to trigger an obligation. According to Lister, if there is no duty to insure all people can continue a favored way of life in the domestic case, then there is less reason to expect an obligation to protect a favored way of life on an international scale.[153]

Lister does not specify the specific right climate refugees can claim alongside traditional refugees. It is an individual right, and what is plausibly owed is the capacity to be full members within a polity that permits sufficient autonomy and respect. In other words, what is owed is the opportunity to be a member of a self-determining group.[154] According to Lister, this is the logic that justifies granting asylum in the case of refugees fleeing persecution as well. In both cases, persecution and climate-based displacement (narrowly-defined) are both cases in which asylum is the only remedy. Lister does not see a special connection between asylum and political harm. Given his interpretation of the international refugee protection regime, such protections are appropriate when it is the best remedy and thus the harm need not be specifically political.[155]

The theory of liveable locality generates a distinct principle from non-refoulement. It generates a principle of non-exclusion from habitable territories. In one sense, it is more general than the principle of non-refoulement. For non-exclusion may include, but is not limited to, not sending people *back* to inhabitable territories. This is an important distinction. Non-refoulement, as I mentioned earlier, does not establish a general right to take people in. It is only triggered once

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[152] McAdam, *Climate Change, Forced Migration, and International Law*, 166-172.
[153] Lister, "Climate Change Refuges," 624.
[154] Ibid., 626.
[155] Ibid., 630 n. 14.

people already arrive to a state territory other than the state of their birth. Non-refoulement cannot establish a pre-emptive right to be relocated or a right to entry. The principle of non-exclusion in the theory of liveable locality can compel states to act prior to the arrival of an individual seeking protection. More significantly, a climate refugee has moral standing to advance a claim while located either on a soon-to-be uninhabitable territory or on the shores of a receiving state.

Even if non-refoulement can ground the moral claim climate refugees can advance, as Lister suggests, it introduces specific challenges, some of which undermine the "practical" benefits of relying on this already existent normative foundation. I mentioned earlier that when conditions are anticipated to become uninhabitable, the principle doesn't ground people's claim to move. A theory of liveable locality side-steps this issue and can ground pre-emptive movement.

In theory, any human rights violation could give rise to an obligation based on the principle of non-refoulement. International human rights law has expanded protection obligations beyond the 'refugee' category in order to address problems such as arbitrary deprivations of life or instances of degrading treatment.[156] Such protection is known as "complementary protection" in international law because it complements protection provided by the Refugee Convention. It identifies human rights violations that arise apart from political persecution. For this reason, it is usually applied in cases where severe deprivation of socio-economic resources arise apart from state-based persecution.

Such violations, in theory, give rise to non-refoulement obligations. A violation of a right to a particular standard of living could be seen as a form of degrading treatment. Since the latter, under "complimentary protection" gives rise to international protection, non-refoulement could serve as the underlying principle for such protection. In other words, if complimentary protection is considered, it would seem that non-refoulement could then account for the conditions climate

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[156] McAdam, *Climate Change, Forced Migration, and International Law,* 70.

refugees find themselves in. For this reason, it seems adequate as a principle of protection for climate refugees.

Consideration of current international practice gives us reason to be skeptical about the success of such an argument. In practice, violations of basic human rights do not usually trigger non-refoulement based-protection. This gives us further reason to seek an alternative to non-refoulement as a principle for protection. As Mcadam notes, courts have narrowly defined the notion of "degrading treatment" so that such treatment is not understood in terms of unemployment, or lack of resources, etc.[157] Climate impacts are not necessarily rejected as a type of degrading treatment in existing jurisprudence, but it is not clear whether such harms could clearly fall within the domain of "degrading treatment."[158]

Such practical hinderances to protection can be found in the case of Ione Teitiota, a Kirabati national who moved to New Zealand in 2007 with his family and applied for refugee status on the basis of uninhabitable conditions in Kirabati brought on by sea-level-rise associated with climate change. The Supreme Court of New Zealand eventually rejected his appeal for protection. His move was regarded as a type of "adaptive" migration, and the human rights issues he and his family face in Kirabati were not seen as demonstrative of a failure to be protected, or a type of systematic violation that would trigger a non-refoulement obligation.[159]

The heightened threshold for what counts as inhuman and degrading treatment and the related harms mentioned earlier creates a higher threshold for protection against expulsion. As in the case of Ione Teitiota, the requirement set by such high thresholds makes protection from non-refoulement less likely. For example, as McaAdams explains, "[...] it is doubtful that an applicant

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[157] McAdam, "Climate Change Displacement and International Law: Complementary Protection Standards," 16-18.
[158] Ibid., 18.
[159] *Teitiota v Chief Executive of the Ministry of Business, Innovation and Employment* , New Zealand Supreme Court 107 (20 July 2015), http://www.nzlii.org/nz/cases/NZSC/2015/107.html.

could presently substantiate a claim according to the level of severity of harm mandated by the European Court of Human Rights."[160] Deliberation over the degree of voluntariness for movement is thus required in order to determine whether the threshold of harm has been sufficiently reached to trigger the non-refoulement principle. Pre-emptive movement away from such harms, as in the case of Ione Teitiota, is thus likely regarded as voluntary migration.

Thus, even if the impacts of climate change would make basic survival in a person's state of birth impossible, or in Lister's words, would make a decent form of life impossible, the principle of non-refoulement would only be of assistance under conditions that were already unbearable. Furthermore, the reliance on a non-refoulement principle does little to establish grounds for pre-empting such conditions. As argued earlier, when addressing humanitarian grounds for protection, the theory of liveable locality regards spatial location as morally important. The principle of non-reofulement could also be interpreted as recognizing the moral relevance of someone's spatial situatedness, but the temporal scale of the non-refoulement principle would be much more limited. Stated differently, the principle only regards someone's spatial situatedness as morally relevant only *after* they have moved away from the source of harm. Thus, protection is grounded in considerations of harms that would befall individuals conditional on whether their physical situatedness would change. More specifically, the space they occupy is only morally relevant given the alternative of returning them back to the place they were formally occupying.

The theory of liveable locality does not need to tether our obligations to such temporal considerations per se. All individuals in the state system can claim a right to liveable location. All can claim such a right without having to first move away from a particular space. However, movement away from an uninhabitable space doesn't preclude individuals from protection either. A principle

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[160] McAdam, "Climate Change Displacement and International Law: Complementary Protection Standards," 25.

that forbids exclusion from liveable spaces accommodates the fact that people may *need* to relocate regardless of whether they can do so . This feature of the view is also morally relevant given the concern for gender equity, which I return to in Chapter Four.

So the theory of liveable locality is not subject to Pogge's criticism in the way non-refoulement is; it does not justify the tendency of our current protection regime to neglect protection and *ex-ante* focused aid. My proposal requires a more "progressive" system than one based simply on the principle of non-refoulement.

2.3.3 Limits to the Obligation

One might of course object that the theory of liveable locality sets demands that exceed what is reasonably acceptable. I now pose and answer several such objections.

David Miller notes that there may be a contestation between a refugee's rights claim and the state's claim that its obligation to admit has been reached.[161] Along these lines one may object that any constraint on a state's rights should be limited by the requirements of sovereignty. A sovereign state, it may be said, has a right to exercise its own judgment about the interests of its territorially-based community. If people displaced by climate change are to have claims that effectively constrain the state's right to exclude, then they are in this way like traditional refuges, whose claims are limited.

At best, it may be added, states have a secondary duty to address another state's failure to execute a primary moral duty to its citizens. If all states succeeded in their primary moral duty to their citizens, then refugees would not exist. In accepting them, states are often understood as accounting for the failure of another state's primary moral duty, and so acting beyond their own primary moral duties to their citizens. When the secondary duty threatens to override the primary

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[161] Miller, *National Responsibility and Global Justice.*

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interests and duty states have to their citizens, a state is thought to be justified in closing its borders to refugees as a sovereign prerogative grounded in its primary duty.

This is an important objection, and if it cannot be addressed, then calls to expand the current refugee protection regime may seem too radical of a departure from the status quo. Perhaps a more conservative solution is then necessary in order to motivate a solution to the moral problem at hand. If the theory of liveable locality contradicts or undermines essential moral presuppositions of the state system, then it is not addressing current conditions and widely held understandings. Its recommendations for reform would be best seen as addressed to a different context or social practice.

In response to the traditional "problem" of refugees, Hannah Arendt argues that the supposed duty of states to their own citizens is simply a guise under which states violate people's right to have rights. Human rights can only effectively be protected in a political community, understood as a territorial entity, that guarantees them.[162] And so the human rights of refugees is equally a claim to political membership, citizenship, and other state-based protections intended to uphold such rights, whatever else is owed to current citizens.

In response to Miller's concern for national sovereignty, Carens defends his own proposed expansion of the current refugee protection regime in view of problems with the principle of non-refoulement. If resettlement was made an additional formal duty, instead of an option left to the discretion of states, he argues, then the current protection regime would be more fair in the assignment of admissions responsibilities.[163] This would in many cases increase the demand on states

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[162] Hannah Arendt, *The Origins of Totalitarianism* (Orlando: Harcourt Inc, 1951).

[163] This is fairer given the creation of disproportionate burdens. Such a burden may fall on neighboring states that are in close proximity to a state people are fleeing from. Near-by states may be the most likely location refugees reach when leaving the borders of their state of origin. On the other hand, disproportionate burdens may fall on rich democratic states. Carens notes that the principle of non-refoulement at least creates incentives for people to seek asylum in a rich democratic state, which means that such states could be asked to take in more than their fair share of refugees. Rich democratic states use this as a justification to potential abuse their exclusionary practices This further

to admit refugees, but in the name of fairness to other states, who also face refugee "problems." In that case, however, a state's right to exclude and prioritize the securing of basic rights of its own citizens and residents is itself subject to legitimate limitations.

Arguments from national duty have force, Carens suggests, only because they "conflate the question of who ought to make a decision with the question of whether a given decision is justifiable."[164] The mere fact of state sovereignty, or the recognition of a state's jurisdictional authority over its own territory, is not sufficient to justify a state's decision that they have done enough to meet such obligations. One could grant that one has authority over a decision but also admit that such a decision is subject to moral criticism. That by itself does not entail the need for a supranational authority.[165] It may mean only that those who would defend refugee exclusion face a heavy burden of justification.

Even here, Carens grants that a state has the moral right to decide that it has already done its fair share regarding refugees admissions or resettlement. Yet the case of climate refugees may be somewhat different. We have reason to question whether states do retain such a right. If the treatment of climate refuges does cut to the quick of the state system's basic moral presuppositions, then the very right of sovereignty of a state over a territory would come with conditions. And as I argued above, the theory of liveable locality suggests that the current refugee regime enforced by the Convention does not meet the moral duty we have to those who are and will be displaced by climate change. A morally more adequate protection regime would remedy the gaps created by a sole reliance on the principle of non-refoulement. And such an expansion needn't make demands upon states beyond reasonable limits, especially if the burden of accommodating climate refuges is fairly

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creates a circumstance in which democratic states cannot meet their moral responsibility to refugees. This is because they establish a protection system that in practice is inaccessible to refugees. Carens, *The Ethics of Immigration,* 209, 216-217.

[164] Carens, *The Ethics of Immigration,* 219.

[165] Ibid., 220.

allocated. Nor would accommodation conflict with state interests. For the very right of sovereignty of states to define and act on their own interests is what is in question.

In a basic sense, what is in question is a right that all individuals under the state system enjoy. One of its basic aims is to provide conditions for stable self-governance, in a political community where everyone has a place to live. The climate refugee's claims to a livable place can be understood not as special pleading, but as a demand for fair treatment under a shared practice, defined in part by this and other aims. In this sense, a violation of a basic right of climate refugees is not subordinate to national interests, nor it does not "clash" with claims of states that they have already done their fair share.[166]

A strength of the associative view I have offered is its recognition of the way a change in empirical background conditions bears on basic ideas of territorial sovereignty and birthright citizenship. In doing so it also better accounts for the causal mechanisms involved in climate displacement. Climate change refugees reflect a self-generated failure of territorial state system itself. In this regard climate refugees are similar to people currently recognized as refugees. At the same time, as the case of sinking island nations suggests, the statelessness of climate refugees needn't be caused by a failure of any particular state's functioning or primary responsibility to their citizens. Many climate refugees are and will be stateless simply because their home territories become uninhabitable, and because, by default, the decentralized organizational structure of the state system leaves no one with responsibility.

All of this allows us to assign greater weight to complaints of the displaced than one would in a traditional national sovereignty picture. What can seem like high costs or excessive burdens are not that at all if they are in fact simply *required* for the very *legitimacy* of the state system and each

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[166] Miller, *National Responsibility and Global Justice.*

state's right to rule. States may not be able to legitimately claim (as Miller argues) that obligations have been exhausted. For the basic rights of climate refugees are simply not subordinate to the interest of members of aid-giving states.

The well-off, developed democratic states are afforded sovereignty rights in virtue of their participation in the state system, and properly addressed as participants. They are perhaps most likely to admit responsibilities in the name of the "international community," and so most likely to initiate or at least support multi-lateral measures to reform the refugee system. But the point applies to any state. A state cannot avail itself of appeals to sovereignty for the purposes of justifying its decision not to accept climate refugees, if such acceptance is necessary for the legitimate exercise of that very right. Such claims are simply illegitimate, and so not reasonable "objections" to being asked to do more on the climate refugee front.

Furthermore, appeals to undue burdens are notably weak when advanced by well-off, democratic states. Such states benefit significantly from the organization and structure of the practice of the territorial state system. In helping to fulfill practice-based obligations, these states may and must take on costs. But we can see how such costs are possibly counter-balanced by a state's continued ability to enjoy the benefits it receives as a participant in a practice, perhaps by its very aims. Given their associative relationship, a state's objection to providing for the basic rights of climate refugees is hard to justify. Climate refugees are merely claiming the same promised benefits purportedly available to all in the territorial state system.

Of course, we can imagine extreme circumstances in which providing for climate refugees could threaten the basic needs of citizens within a receiving or aid-giving state. Perhaps the burden of accommodating refugees might be more fairly shared. Or perhaps circumstances are dire enough to call the structure of the territorial state system into question. Where providing the displaced with liveable territory could only be facilitated by depriving others of such basic needs, it might become

unreasonable to expect states to fulfill their associative obligations, but then only because a more significant revision of the practice is required.

Granting this possibility does not undermine the associative moral framework I have offered. If anything, such a framework makes it easier to diagnose the moral legitimacy of the practice in question. It helps to gauge when empirical conditions have normative consequences, which might include abolishing the state system entirely. The theory of liveable locality does not require the preservation of the current system, per se, but merely specifies what must be done as long as it is maintained. As long as we maintain the territorial state system, we are obliged to more systematically address the claims climate refugees. I will return to this point when I discuss moral foundations that require more radical revisions to the status quo.

2.3.4 Motivational Worries

All of this suggests that we should not be pessimistic about engendering the political will to do what states ought to. If the theory of liveable locality has an aspiration to address our current politics, as I have claimed, then it should do more than clarifying an intellectually gratifying principle of justice in regards climate refugees. As James points out, even highly ideal theories presuppose the motivating force of reason. Since principles of justice are supposed to be action guiding, then they are justified in part by the fact that their addressees have a capacity to be motivated to action. If not, then the theory wouldn't be addressed to anyone in a practice.[167] On the other hand, one certainly should not underestimate the capacity of states to ignore moral considerations. The competing interests of states and climate refugees suggests that we might, in this case, worry about the capacity of people or polities to reason very well or capably. Talk of expanding our current obligations

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[167] Aaron James, "How Cynical Can Ideal Theory Be?," *Journal of International Political Theory* 12, no. 2 (2016); 122.

confronts obvious questions about political will – which may be less of a concern about whether people *can* listen then whether they *will* listen to such principles.

As suggested earlier, the principle of non-exclusion I have proposed at least does not rest on humanitarian concerns. This may seem to be an advantage since it is thus "less reliant" on the need for people or polities to be "generous." And I have explained why the obligation to climate refugees does not directly compete with a state's primary duty to its citizens. Even so, however, my appeal to principle, like any appeal to principle, may or may not effectively motivate political action.

If this is a limitation of any moral argument, then it is no count against my proposal in particular. But Carens suggests a different cause for pessimism about his own proposed expansion to the refugee regime. He worries that the admission of refugees does not really serve the interest of rich democratic states well enough, feeling "afraid that refugee policy is today one of those areas where the gap between what morality requires and what serves even long run self-interest is so great that interest can do very little work in supporting morality."[168] Consequently, Carens suggests that "we cannot be too optimistic that democratic states will be willing to do what they ought to do in admitting refugees."[169] If this is a concern regarding current practices which *already* accept obligations to traditional refugees, we may be even more pessimistic about the case of climate refugees. This is also part of McAdam's worry, noted above.

Does a practice-dependent theory give us reason to be more hopeful about moral theorizing? It is not immediately clear that a political philosopher's appeals to the various kinds of reasons that justify our duty to climate refugees (whether humanitarian or otherwise) give us reasonable hope that they will make any difference. Yet, as suggested earlier, moral arguments can certainly fare better or worse in this regard. And I have given an argument that draws to a

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[168] Carens, *The Ethics of Immigration,* 223.
[169] Ibid., 224.

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considerable degree from presupposed aims of the territorial state system. My practice-based approach to climate refugees does present a way that climate refugee protection can be justified to people or societies as they currently are, under our current empirical conditions. States, as participants in the territorial state practice have a basis for acknowledging the demands of their shared associations. In this sense, a principle of non-exclusion to liveable territory is a normative principle for all of us. As James argues, associative principles indicate that participants in a practice "not only in fact have certain normally conclusive reasons for action, they can see this to be true in part by way of understanding themselves."[170]

And what if the majority of the people in a practice don't actually endorse its aims? Then, again, it is not clear how they are being addressed by such arguments to begin with. If participants don't endorse the aims of the practice, can the principle still be motivating? Are the principles still accessible to real polities if such aims are not shared?

Here I follow James in his response to this concern. James argues that aims or purposes of a practice need not be actually endorsed; ideational endorsement may be sufficient. For the participants in the territorial state system, "if enough members accept that enough of the other agents endorse a purpose, even if few or none of them in fact accept its necessity or value, the agents may still more or less effectively coordinate around the presumed end, as if it is a shared goal."[171] Arguments addressing a practice refer to the supposed aim of the practice itself, and so are not dependent on what aims individual participants have in the practice. Even so, the participants are still a practical audience, who can be addressed by principles, which might claim their collective attention and guide politics and policy. So, as for the theory of liveable locality, even if no one accepts the value of having a protected place to be (an extreme assumption most likely) the

[170] James, "How Cynical Can Ideal Theory Be?," 129.
[171] James, "How Cynical Can Ideal Theory Be?," 130.

perception that we do generally accept this, given our current legal and political practices and international protection regime, may be sufficient to motivate action.

Accordingly, states (perhaps for various and possibly different reasons) may have the incentive to engage in multilateral efforts to create special arrangements for the displaced, or could be inclined to accept displaced peoples within their own territory. If they already recognize the common assumption that an all-encompassing, territorially exclusive state system exists in part to provide territorially-based protections, they may not want to leave it up to chance how such protections will be discharged and how individuals will be allocated. States could be motivated to cooperate or coordinate arrangements for the satisfaction of such requirements of protection so that they could participate in a process that addresses displacement in a systematic or orderly way.

CHAPTER 3

Natural Rights and Climate Refugees

I have offered a practice-based argument for a particular kind of membership right. The right to be somewhere livable, and so to emigrate when necessary, is a right to membership in a habitable state. This right is justified for and in light of the state system and its territorial nature. It is not necessarily justified otherwise, for instance, in a state of nature, a partially territorialized world, or indeed any conditions that do not share the main features elaborated upon in Chapter 1.

An important objection to my account is that my appeal to the existence of a social practice is unnecessary and redundant. The failure to secure liveable territory for climate refugees, it may be argued, simply means the state system has violated natural rights. Specifically, it may be seen as violating a Lockean proviso on the appropriation of land and other resources from the global commons. Because the state system in effect allows the appropriation of natural resources such as land from the global commons, it must, in John Locke's phrase, leave "enough or as good" liveable territory for others. But this is precisely what climate refugees are denied in being excluded from livable places while lacking a habitable place to be.

On one interpretation, for example, a so-called 'enough-and-as-good' proviso affords each able-bodied person a fair share of the earth's resources. But a more modest interpretation might also secure a right to a livable place to be: perhaps "leaving enough" requires only that everyone be left the material means of substance or a decent life, which includes a livable place to be. But while this might amply justify the protection of climate refugees, a natural right would not depend on or be sensitive to the state system in principle. The proviso would reflect the rights of individuals prior to any social practice.

This would assume, as Locke did, that one can account for how individuals could (rightfully) interact in a pre-state condition.[172] I take no position here on the question of whether that is a coherent and relevant idea. It is important that, for my argument, I don't have to. Again, the practice-based argument I have made for the minimal right to somewhere liveable is not an argument for a right that individuals could equally or would necessarily have in the state of nature. That right is a constraint on state power over territory, and, as such, it is a legitimacy condition for the territorial state system. It is not grounded in a natural claim to property or resources. Rather, it is, again, a *membership right* and is not reducible to a version of the Lockean Proviso.

In this chapter, I consider different interpretations of the Lockean Proviso and natural rights views that might be said to justify obligations to protect climate refugees. Under no interpretation is the right to somewhere liveable is reducible to a natural right to have "enough and as good" liveable territory. I grant that a Lockean proviso could be considered one possible ground for the moral justification of protection of climate refugees. I claim only that such a proposal is distinct from the practice-based argument I have given.

3.1 Abstracting From Practice: A Lockean Proviso

I will begin by pointing out some general limitations of several Lockean provisos. I then turn to natural rights views that specifically attempt to justify relocation or the provision of territory for people displaced by climate change. Here I focus on Mathias Risse's argument that a right of co-ownership of the earth's resources is the foundation for an argument for protection, as well as Cara Nine's proposal that a group right to self-determination justifies protection for climate refugees.

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[172] As Helga Varden explains, "only if private individuals in principle can realize justice on their own in the state of nature can they have a natural executive right, and only if they have a natural executive right is their actual consent necessary to establish civil society." This is why the success of the proviso is important. Helga Varden, "The Lockean 'Enough- and-as Good" Proviso: An Internal Critique," *Journal of Moral Philosophy* 9, (2012): 411.

Risse offers an individual rights-based account, while Nine proposes a group-right foundation for her argument. Although my view shares a similar argumentative strategy with Risse's co-ownership account, the practice-based argument I offer retains many of the benefits of Risse's approach without depending on the controversial elements that accompany a co-ownership view. For this reason, it avoids certain challenges that are otherwise troublesome for constructing arguments for the protection of climate refugees. In response to Nine, I maintain that a right to somewhere liveable is an individual right. This avoids complications that arise from a moral argument for group-rights. I follow Lister and others in suggesting that a group-right foundation presents practical challenges for international law.

John Locke himself thought nature was given by God to humanity in order to be cultivated for human benefit. As Locke argues, "God, who hath given the world to men in common, hath also given them reason to make use of it to the best advantage of life, and convenience. The earth, and all that is therein, is given to men for the support and comfort of their being."[173] One could regard the territorial state system as a cultivating mechanism. As a mechanism of organizing land and resources, the system has indeed helped to generate good and better options for humanity's survival. It has at least helped to maintain general peace and stability. In this sense, despite the evils of war, poverty, and slavery, the state system could be said to have improved conditions in comparison to a pre-state system.

If this is correct, then the practice-based argument I have given shows that Locke's Proviso might be *insufficient* to legitimate the state system. Which is to say, there are circumstances under which a Lockean Proviso may be satisfied, and yet the territorial state system continues to be illegitimate. The state system permits the appropriation of land into state jurisdictions, and suppose that this

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[173] John Locke, *Second Treatise of Government and a Letter Concerning Toleration*, ed. Mark Goldie (Oxford: Oxford University Press, 2016).

amply satisfies the requirement that "enough and as good" be left for others, because the consequent economic growth has created ample means, at least in the aggregate, for everyone to have enough. Even so, under conditions of climate change, this would not be sufficient for the protection of the relevant membership rights. Many people may in fact be excluded from territories where the wealth of nations is distributed. In that case, the territorial state system would continue to be illegitimate, until everyone is afforded a membership right to somewhere liveable. And if a Lockean proviso is not a sufficient condition for establishing the legitimacy of the territorial state system, this marks an importance difference between Lockean natural rights and the membership right I have identified.

Lockean provisos of course come in many interpretations. The meaning of Locke's Proviso is a topic of debate in philosophical scholarship. The conventional answer is that the 'enough and as good' clause was intended to set restrictions on acts of appropriation and that the clause was a type of proviso setting a necessary condition that would have to be met. Jeremy Waldron and others have suggested an alternative interpretation. They argue that Lock intended the clause to set a sufficient condition for original appropriation. I briefly turn to these distinct interpretations and argue that neither form is equivalent to the view I have offered.

For Helga Varden, by leaving "enough and as good," Locke means that one's labor over a fair share of the earth's resources gives rise to 'fixed' property.[174] But if the earth's resources are not fairly shared, then property rights are not fixed, and there must be some way of resolving seemingly incompatible property claims. There must be some way of deciding how individuals with different claims can rightfully seize private property (without the consent of others), when all the earth's land is commonly owned prior to such acquisition.[175]

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[174] Varden, "The Lockean 'Enough- and-as Good" Proviso: An Internal Critique," 412.
[175] Varden, "The Lockean 'Enough- and-as Good" Proviso: An Internal Critique," 414.

Robert Nozick and John Simmons argue that newcomers merely have a right to *use* land, rather than a right to acquire and own it.[176] Indeed, Nozick argues that, under conditions of scarcity, the Lockean proviso cannot give rise to property rights. In that case even labor cannot explain how individuals secure property rightfully. If an individual finds themselves in conditions of scarcity, other individuals will have already appropriated resources prior to her arrival, and thus they cannot secure their fair share while still acting in accordance with the proviso. The newcomer would have to deprive another individual of their property, since others did not leave enough and as good for them.[177] The chain of previous actions that led to the conditions of scarcity thus result in conditions where the proviso cannot generate fixed ownership over resources.

This challenge lead Nozick to maintain that the proviso requires revision or reinterpretation under conditions of scarcity. Simmons' interpretation of the proviso gives individuals more resources than on Nozick's account.[178] While mixing one's labor in accordance with the proviso does yield property rights, even under conditions of scarcity, people who already own resources must provide resources for the newcomer.

Jeremy Waldron breaks from the traditional interpretation that the 'enough and as good clause' establishes a necessary restriction on acquisition.[179] For Waldron, the clause is not a proviso but rather a sufficient condition. His view is that Locke is arguing that individuals have a right to things they mix their labor with under conditions where there is enough and as good left for others.[180] Instead of this being a necessary condition, it is, as John Tomasi puts it, "the effect of the operation

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[176] Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, Inc., 1974); John A. Simmons, *The Lockean Theory of Rights* (New Jersey: Princeton University Press New Jersey, 1992).
[177] Nozick, *Anarchy, State, and Utopia* , 173-175.
[178] Simmons, *The Lockean Theory of Rights*, 238-242.
[179] Jeremy Waldron, "Enough and as Good Left for Others," *Philosophical Quarterly* 29, (1979): 319-28.
[180] As Waldron notes, "That there is enough and as good left in common for others is seen by Locke as a fact about acquisition in the early stages of man, rather than as a natural limit or restriction on acquisition." Waldron, "Enough and as Good Left for Others," 321-322.

of the spoilage condition (along with the labor requirement)."[181] The spoilage condition is that people can appropriate and use as much as one can before it spoils.[182] According to Waldron's reading, once the original necessary conditions set by the labor and spoilage clause are met, the effect described by the "enough and as good clause" disappears. In short, on Waldron's view, the enough and as good clause was never intended as setting a restriction condition. In this sense, the "proviso" doesn't require anything whether on the original reading, the proviso requires appropriation.[183]

C.B. Macpherson regards the "enough and as good" proviso as a "sufficiency" restriction on the accumulation of property in pre-state conditions.[184] For Macpherson, the requirement is a part of a more fundamental principle that individuals should have the opportunity to acquire basic needs for life through their labor. The establishment of private property increases productivity to the point that individuals unable to acquire land would still retain the opportunity to acquire basic needs.

James Tully also takes this kind of view.[185] In conditions of plenty, the acquisition of some portion of the earth's land and resources does not harm other individuals. However, when conditions are such that acquisition would harm others, then others would have grounds to object to appropriation on the basis that they are made worse off. So individual private property is only justifiable if no one is made worse off by the creation of it. Thus, in conditions of scarcity, Tully argues, the rights to take resources by labor no longer apply since "enough and as good" was not accessible for all.

Gopal Sreenivasan offers a defense of Tully's proposed interpretation.[186] According to Locke, Sreenivasan argues, everyone gets to acquire land. The proviso can be satisfied if all individuals start

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[181] John Tomasi, "The Key to Locke's Proviso," *British Journal for the History of Philosophy* 6, no. 3 (1998): 450.
[182] Locke, *Second Treatise of Government and a Letter Concerning Toleration,* II.31.
[183] Tomasi, "The Key to Locke's Proviso," 451.
[184] C.B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford: Clarendon Press, 1962).
[185] James Tully, *A Discourse on Property: John Locke and his Adversaries* (Cambridge: Cambridge University Press, 1980).
[186] Gopal Sreenivasan, *The Limits of Lockean Rights in Property* (Oxford: Oxford University Press, 1995).

with "the largest universalizable share of land" where such a share is measured according to considerations of welfare for all. Sreenivasan argues that this interpretation of the proviso characterizes it as a sufficient rather than a necessary requirement.[187] Where Sreenivasan differs from Tully is in his characterization of what "enough and as good" means. For Sreenivasan the phrase ought to be interpreted as meaning enough and as good of an *opportunity* for self-preservation rather than merely enough and as good of a certain resource.

If, as some of these interpretations might suggest, the "enough and as good" proviso is a sufficient or necessary condition for legitimizing the territorial state system, we can still maintain that the membership right I have identified is not equivalent to a natural right. Legitimacy of the current state system may be temporarily satisfied when the appropriate conditions obtain. However, under conditions of climate change, the system can no longer maintain its legitimate status, for failing to guarantee everyone a livable place to be. The protection of the membership right I have identified would be a further necessary condition for the state system. Again, in that case distinct rights are at issue.

3.2 Co-Ownership and Climate Refugees

Mathias Risse offers an approach to climate refugees that does not rely on causal or humanitarian grounds. Risse maintains that all human beings are co-owners of the earth. It is this co-ownership that grounds a climate refugee's claim to relocation when portions of the earth's surface become uninhabitable. Though inspired by Grotius, the idea of "collective-ownership" of the earth view is not intended to have a theological foundation, and it is meant to generates a conception of human rights. According to Risse, since the earth's resources are needed by all to live, but are not the

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[187] Gopal Sreenivasan, *The Limits of Lockean Rights in Property*, 114-116.

byproduct of anyone's accomplishments, they belong collectively to all human kind equally. By "equally," Risse does not mean that every human being has a claim to an equal *share* of such resources.[188] Rather, all human beings, as co-owners, should have an equal *opportunity* to satisfy their basic needs, and thus have an equal claim to natural resources when their use is necessary to meet basic needs.[189]

For Risse, the right to the satisfaction of basic needs by use of the earth's resources can override established property rights. As Risse puts the point, "property conventions cannot condemn anybody to starvation."[190] Such a right is not based on a principle of charity or humanity, but is rather a moral constraint on the extent of private property rights. Risse emphasizes that the notion of egalitarian ownership he proposes does not refer to the set of rights and duties identified by property law. Rather, they have a deeper source in the idea that all humans, regardless of their identity or status, have a symmetrical claim to resources.

According to Risse, humans collectively own the earth, and certain natural human rights illustrate the nature of co-ownership. Such rights are at risk given the territorial state system. So, Risse argues, they should be protected by a set of associative rights, which are held in virtue of membership in the territorial state system.[191] Though Risse's proposal gives moral weight to the satisfaction of basic needs, he claims that "it derives entitlements through an argument that does not put the whole argumentative burden on needs."[192] Rather, such entitlements are characterized by the predicament of needing resources for survival that have not been created by any individual. Common ownership rights include (at least) liberty rights: co-owners are not bound to a duty to refrain from using the

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[188] As Risse states, "[...] all humans have a symmertrical claim to original resources; in particular, this view is not per se "egalitarian" in any sense other than by stipulating this symmetry." Risse, "The Right to Relocation, 286-287.
[189] Ibid., 285.
[190] Ibid.
[191] Risse, "The Right to Relocation, 283.
[192] Ibid., 284.

earth's resources.[193] In addition, common ownership rights include claim rights to liberty rights, since common ownership must ensure some access to the resources in question.[194]

It follows that a state's claim of exclusive control over territories is legitimate only when the resulting arrangements are satisfactory to other (equal) co-owners. Because the land of the earth is covered by states, and because states have the right to determine who enters their territory, there is a need to reconcile the notion of common ownership with the state system exclusionary consequences. Because the system is territorial by nature, human beings "come to be excluded from exercising rights with regards to much of what is collectively owned."[195] More specifically, the exclusive nature of the state system exposes co-owners to *ex ante* risks of being denied access to essential resources, and to *ex post* conditions in which they cannot exercise their right of co-ownership when necessary. The state system both undermines the possibility of securing basic needs and hinders their ability to relocate elsewhere to do so.

On this account, climate change-based displacement disrespects natural co-ownership rights, by violating a "right of necessity." Since the displaced lose their ability to exercise their ownership rights in their place of origin, the climate refugee has a right to be relocated. In cases where territory is no longer habitable, the only way to respect the right of equal opportunity to satisfy basic needs (by obtaining collectively owned resources) is to help in relocation efforts.[196] States are thus restricted by a "right of necessity" proviso, which overrides their right to exclude individuals in emergency situations where people cannot satisfy their basic needs.

Like the theory of liveable locality I have proposed, Risse's argument addresses normative presuppositions of the state system. As Risse notes, individuals are not only subject to the state within

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[193] Ibid., 288.
[194] Ibid., 287.
[195] Ibid., 290.
[196] Risse, "The Right to Relocation," 293.

whose territory they find themselves. They are also subject to the system of states. Risse summarizes the possible wrong done this way: "Such states that have this ability to refuse entry are not merely failing to come to the aid of the "needy," but are also denying them the opportunity to satisfy their needs."[197] Like the view I have offered, Risse's normative framework does not rely on humanitarian considerations or causal connections, and it addresses the imposition of a practice which divides the surface of the earth up into individual states. It does not require assigning blame and identifying a causally responsible agent, which allows us to sidestep difficult questions regarding the responsibility of contemporary agents for historical wrongs. There is no need to demonstrate complex causal relationships between emitters and climate change-based displacement. Rather, the territorial state system is itself "responsible" for generating the conditions that all states must address.[198] Like my view, Risse's proposal assigns collective responsibilities, which do not depend exclusively on specific states. The relevant claim to guarantees, as he puts it, are held against the system of states as a whole.[199]

Additionally, Risse and I both argue, to some extent, for the moral weightiness of basic needs satisfaction. We both maintain that a principle of basic needs satisfaction is less controversial than competing proposals and thus preferable in a theory about what ought to be done about climate refugees. As Risse points out, much of moral and political philosophical reasoning tends to reflect on foundational elements that have little implication for concrete problems in the realm of justice.[200] To be sure, when addressing the questions of what ought to be done, philosophical inquiry should not be entirely biased by the status quo. However, normative theorizing concerned with establishing

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[197] Ibid., 291.
[198] For Risse, the impositions of the state system impact the accessibility of the earth's original resources. This is because States introduce political and economic relationships and regulations that determine this access. Such a system of territorially based states results in the exclusion of co-owners from utilizing their right over most of what is collectively owned. As Risse notes, "in virtue of the concentrations of power that it includes, a state system can readily violate rights of co-owners, first by undermining their opportunities to satisfy basic needs where they live, and second by impeding their ability to relocate." Risse, "The Right to Relocation," 134.
[199] Ibid.
[200] Risse, "The Right to Relocation," 131.

foundations for policy reform should also be concerned about the implications of moral arguments for "real world" issues.[201] For Risse, this means adopting an approach that involves "less abstract characterizations of different grounds of justice."[202] We are to strike a balance between a (progressive) critique of the status quo and basic (or conservative) characterizations that are more likely to reflect shared assumptions or widely held beliefs.

Risse and I also agree that, if obligations of justice are to be regarded as demands of reasonable conduct, albeit rigorous ones, then considerations of whether they can be reasonably accepted[203] are relevant for evaluating the strength of given view about what those demands are. I suggest that the theory of liveable locality can be successful on this count. According to the practice-based approach I have argued for, our obligations to climate refugees are obligations of justice. But because the requirements of justice are justified for and from presuppositions of the state system, seen as a social practice, all who are affected by the practice can indeed reasonably be expected to accept their demands. They can be expected in part because of their shared understandings of what they are doing together in the practice, and what those understandings require, when fully developed for a novel problem. The theory of liveable locality generates a principle of non-exclusion from liveable spaces in this way. Such a principle concerns how the nature of the territorial state system accounts for the problem of exclusion it generates. So, in protecting the right to be somewhere liveable, the practice can be understood as responding to its own principle of justice. Such a principle is "internal"

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[201] As Risse argues, "To be sure, philosophical inquiry can the more readily present concrete policy advice the more decidedly it is biased toward the status quo and the more willingly it takes its cues for what is right and wrong from observing what is widely believed. And these are precisely the kinds of concessions that philosophers normally are, and should be unwilling to make." However, the more minimal the starting point, the more confident we can be about the success of such a view, especially compared to more "broad characterizations of moral discourse." Risse, "The Right to Relocation,"131-132.
[202] Risse, "The Right to Relocation," 131.
[203] Ibid., 132.

to the practice and the protection regime, as a mechanism for addressing the problem of exclusion. So it cannot be ignored as a mere "external" ideal.[204]

The acceptability of such principles for actual agents depends in part on whether the characterization of the problem of climate refugees and the territorial state system at hand approximates actual current circumstances. As suggested in the previous chapter, at the very least, the principle I have identified assumes the social practice of the territorial state system. A basic associational right to be somewhere liveable is justified for that practice, and not necessarily otherwise. This in turn grounds our obligations to climate refugees, generating collective responsibilities for all participants in the current state system and our current protection regime. Again, the demands must at least be possibly achievable,[205] and the social practice identified should be feasible[206] and potentially stable,[207] as I've suggested they are. For, again, if we are concerned with justifying principles as normative for "us," because they set demands of justice for our current (and near future) social and political life, then we have a reason to start within current social practices. A moral argument is then credibly addressed to the state system as we already understand it.

Risse does not accept these requirements. The state system merely presents one way that natural rights of co-ownership over the earth are being infringed. For Risse, the common ownership rights which provide the moral foundation for our obligations to climate refugees are "natural and pre-institutional."[208] In a state of nature, prior to the establishment of property conventions, all individuals would have a natural right to use the planet's resources in order to meet basic needs.[209] And so individuals states and other actors must limit their authority, both by making sure their actions

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[204] James, "Why Practices?," 58.
[205] Ibid., 53.
[206] As James explains, it must be feasible "among distinct agents who lack direct knowledge of and control over one another." James, "Why Practices?," 55.
[207] This is if justice is to be regarded as something that can be maintained. James, "Why Practices?," 55.
[208] Risse, "The Right to Relocation," 291.
[209] Mathias Risse, *On Global Justice* (New Jersey, Princeton University Press 2012), 111.

and decisions don't make meeting basic needs impossible and by creating opportunities to meet such needs.[210] The territorial jurisdiction of states (understood in terms of property conventions) must therefore preserve the ability of all individuals to meet basic needs (which include what is needed for physical health and mental competence to make choices or to deliberate).

Risse does aspire to normative modesty. He contends that natural rights are rights that all could reasonably accept, and that the conception of collective ownership can be endorsed across cultures.[211] But other candidate ideas -- including political or cultural self-determination, or nondomination – are, he argues, more contentious.[212] So both Risse and I advocate for "minimally demanding starting points," in view of what all can reasonably accept.[213] And I agree with Risse that such minimal starting points are "more likely to have at least somewhat more concrete implications than inquiries into the nature of moral discourse."[214] However, for Risse, this minimal starting point is a claim to natural rights, whereas I make no such claim.

In this way my argument is still more modest. It is enough, I claim, that all persons have membership rights *when a territorial state system exists*. What moral rights they may have under different arrangements – whether in a state of nature or partially territorialized world -- is a further question. It's a further question that needn't be answered *in order to* justify robust climate refugee rights. We can begin with the world as it is.

Risse does hold that natural rights *give rise* to membership rights, by which he means rights held in virtue of membership within the territorial state system (what Risse calls the "global-order").[215]

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[210] Risse, *On Global Justice*, 136-137.
[211] Ibid., 118.
[212] Ibid., 118.
[213] Ibid., 118.
[214] As Risse notes, such benefits are especially true for his collective ownership of the earth view. Risse, *On Global Justice*, 131
[215] Risse, "The Right to Relocation," 292.

For Risse being a member of that order "merely means to live on the territory covered by it."[216] And since the territorial state system covers the whole earth's surface, all are members; of necessity, all live on one or another state's territory.[217] Collective ownership leads to associative rights,[218] because, in the world as we have it, natural ownership claims must be addressed to the territorial state system: association in one state or another is a necessary means for their protection.

Because I make no appeal to natural rights, my account does not introduce difficulties that come along with the idea of basic needs satisfaction. To begin with, "needs" are hard to define in naturalistic terms: are they what a person requires in a state of nature, or in modern society? Risse's own interpretation already seems to imply that "needs" are linked to a community's social development. Is such a conception appropriately "natural"? If it is, it becomes more controversial to understand the persistence of humanity's "ownership" following the development of political or economic practices and conventions which regulate property.[219] As Anna Stiltz objects, given the establishment of property conventions, it seems preferable to move away from a conception of "collective ownership" and just to refer to the legitimacy of property rules along the lines of how well the function morally compared to common use-rights.[220]

Another difficulty facing a natural rights approach to basic needs concerns the moral importance of such basic needs and, consequently, how robust are they as a legitimacy constraint. Stiltz suggests a further challenge to Risse's account on these grounds. Risse assumes the moral significance of basic needs; the notion of collective ownership only maintains that we have an equal moral standing to use

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[216] Risse, "The Right to Relocation," 292.
[217] Risse emphasizes that membership in the global order does not mean participation in the order. Membership rights vis-à-vis the state system are held regardless of whether the constraints of the state system are experienced by an individual or group.
[218] Risse understands associative rights as "rights that hold because individuals live within a particular association, the global political and economic order." Risse, *On Global Justice* 136.
[219] Anna Stiltz, "On Common Ownership," *Ethics and International Affairs* 28, no. 4 (2014): 502.
[220] Stiltz, "On Common Ownership," 503.

the planet's resources. As Stiltz argues, the account in that case does not generate a specific distribution principle; it simply assumes the principle it intends to argue for.[221]

If Risse argues that equal moral status to use the earth's resources is something than can be justifiable to all, then the argument must make controversial assumptions about natural or fundamental interests in the earth. As Stitlz points out, our natural or fundamental interests in the earth don't necessitate an interest in satisfaction of basic needs; other interests could be justified as a fundamental interest.[222] And if there are a range of ways to characterize the distributive implications of the equal moral status Risse identifies, it is not clear that basic needs satisfaction can be defended over competing considerations. Stitlz summarizes this challenge by raising the following question: "How does one move from the very plausible-but quite weak-idea that appropriation of the earth must be consistent with people's equal moral status, to subsequently defend any specific distributive criterion."[223] And perhaps even more fundamental, it is unclear how the legitimacy of property conventions should then depend on principles for use of the earth's resources, prior to the establishment of property conventions.

These difficulties are easily avoided. We need not rely on a natural rights view to avoid controversial normative grounds. A minimalist account of our obligations to climate refugees can be directly grounded in membership rights, without saying anything at all about humanity's fundamental interests in a state of nature. According to my practice-based account, our associative right not to be excluded from somewhere livable can be adequately defended *without* relying on any further principle, natural or otherwise, that is external to the territorial state system. We don't need to say why pre-practice principles should apply to individuals now. The principles that do apply to members in a practice just stem from the practice itself.

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[221] Ibid., 503.
[222] Ibid., 503.
[223] Stiltz, "On Common Ownership," 504.

At the very least, the theory of liveable locality accounts for what is owed to climate refugees. It gives reasons for members of the state system to act in a particular way with regard to people who are displaced. It needn't do more than that. As James argues, a "practice-based approach can be valuable simply because it helps us to illuminate and understand what the practice-generated obligations of justice are, how they arise, and why they might be especially compelling as grounds for policy change, given the social practices we already have."[224]

Furthermore, the theory of liveable locality doesn't run the risk of assuming the distributive principle of justice it aims to justify. For the provision of liveable territory is necessary precisely because of the territorially-all encompassing nature of the state system. The serious challenge Stiltz poses for Risse's approach is therefore of less concern for the theory of liveable locality. The satisfaction of a basic right to be somewhere liveable can ground a criteria of distributive justice simply because this is a basic legitimacy requirement of an exclusive system. Liveable locality presents a distribution principle *because of* conditions specific to the social practice of the territorial state system under conditions of climate instability.

3.3 Climate Refugees, Group Rights, and Territory

In Cara Nine's account of the rights of climate refugees (what she calls "ecological refugees"), the territorial state system is subject to a Lockean proviso, seen as a legitimacy constraint on its distribution of exclusive power over discrete territories.[225] Like Risse, Nine argues that climate refugees have natural rights. But instead of an individual right to the opportunity to satisfy basic needs, Nine defends the right of a group of people to have an opportunity of self-determination.

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[224] James, "Why Practices?," 57.

[225] Cara Nine, "Ecological Refugees, State Borders, and the Lockean Proviso," *Journal of Applied Philosophy* 27, no. 4 (2010): 359.

Locke's own proviso is intended to establish reasonable restrictions on the acquisition of private property amongst a group of interacting individuals.[226] According to Locke, prior to appropriation, no land belongs to any one person by the laws of nature. And yet anyone can take from the commons without the consent of others, since, also by the laws of nature, all people have a right to self-preservation and so the use of resources. This presents a difficulty. As Varden explains, "The challenge regarding private property, then, arises because every-one is seen as having the land in common, and yet everyone is also seen as enjoying a non-consensual right to preserve themselves by means of these common resources."[227] Locke's answers is that the mixing of one's labor with the common resources yields a property right *if* the appropriation of these resources was properly constrained. The proviso establishes the constraint in question. Taking natural resources is rightful if laborers on the land leave 'enough and as good' for others.[228] As long as everyone complies with the proviso, everyone's use of resources will square with every other individual's right to self-preservation through their own labor with such resources.

Nine characterizes her own version of the Lockean proviso in terms of territorial rights. Territorial rights protect the basic value of preserving self-determining groups, by giving them the power to establish justice over a specific territorial region. Territorial rights are thus rights of political authority.[229] So while broadly Lockean in nature, they are not merely property rights to the earth's resources, but the earthly foundation for groups to exercise a right to self-determination, seen as self-government. A group is self-governing "if it has the independent and determinate political control over some important aspects of its members' common life,"[230] especially so that it has the ability to establish justice for all in group members. Unless a group is sovereign over the geographical territory

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[226] John Locke, *Two Treatises of Government*, ed. P. Laslett (Cambridge: Cambridge University Press, 1988).
[227] Varden, "The Lockean 'Enough- and-as Good" Proviso," 416.
[228] Locke, *Two Treatises of Government*, II5, 27.
[229] Nine, "Ecological Refugees, State Borders, and the Lockean Proviso*,*" 405.
[230] Ibid., 400.

where its members reside, Nine argues, they simply no longer exist as a self-determining group, and aren't in a position to establish associative justice.[231]

On this account, the proviso comes into play when a group's status as self-determining is at risk. In the case of climate refugees, a loss of land amounts to a threat or potential loss of the capacity for self-determination, since their relevant group lacks access to the territories of other states. In that case, according to the proviso, other states with habitable land at least have an obligation to provide access to their territory.[232] According to Nine, climate refugees must also have territorial rights over a territory. It is not sufficient that they are merely permitted entry.

Nine's account is distinct from the theory of liveable locality as well as Risse's collective ownership primarily because it appeals to group rights rather than the rights of individuals. Group rights are controversial, as is a right to self-determination. And so on that point alone, Nine's account is not a minimalist account of the sort that Risse and I take to be necessary.

According to Nine's view, territorial rights are understood as collective rights. As collective rights they have particular features that individual rights do not have. She explains, "collective rights are rights that individuals hold collectively but that individuals cannot hold individually."[233] While there are different ways to account for collective rights, Nine proposes that an interest theory of rights, such as the one proposed by Joseph Raz,[234] is more appropriate than an agency theory of rights.[235] According to the latter theory, a group is seen as an agent, it has capacities like persons which give it grounds for claiming rights. On an interest theory, rights are grounded by a person's interest.

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[231] Nine, "Ecological Refugees, State Borders, and the Lockean Proviso," 361-362.
[232] Ibid., 366.
[233] Cara Nine, *Global Justice and Territory* (Oxford: Oxford University Press, 2012), 18.
[234] Joseph Raz, *The Morality of Freedom,* (Oxford: Clarendon Press, 1986).
[235] Ibid.

For a group, the relevant interests are those of the individual members of the group. On Raz's view, any one single member's interest is sufficient to justify a correlative duty.[236]

Nine admits that "it is at least a valid question how [a group's] claims to self-determination can be understood" but under an agency view of collective rights such a question could not even be raised. This is because according to the agency view, groups that cannot act on procedural decisions would not be considered collective agents.[237] Thus groups, such as minority groups who may be oppressed to the extent that they could not organize to make or act on such decisions, would not "count" as a collective agent. In wanting to account for groups like the one in this example, Nine uses Raz's interest theory of collective rights with some modifications. She regards the holder of a territorial right to be a collective understood specifically as a group with a claim to self-determination.[238]

The interest theory concept of a collective right establishes that a group of individuals has a collective right if their common interest is enough to ground a duty in others. Additionally, it must be the case that the interest of any individual member of the group is not sufficient (by itself) to ground the duty. If both conditions are met, then the group has a right together, and such a right is one that none of the individuals have separately. This might entail, according to Raz, that the interests of the rights-holder are not necessarily the only ground for the right.

If Nine is adopting this characterization, her view can be interpreted as a collective conception rather than a corporate conception of group rights. On a corporate account, a group has a moral standing apart from the members that make it up. Conversely, on a collective group rights account, the right is held jointly by individuals.[239] In this sense individuals don't necessarily "dissolve"

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[236] Joseph Raz, *The Morality of Freedom,* 207-209.
[237] Nine, *Global Justice and Territory,* 19.
[238] Nine, *Global Justice and Territory,* 24.
[239] Peter Jones, "Group Rights," *The Stanford Encyclopedia of Philosophy,* ed. Edward N. Zalta (2016), https://plato.stanford.edu/archives/sum2016/entries/rights-group/.

morally into the group they make up. On a corporate account, an individual may risk losing a certain independent status. Skepticism about group rights usually assumes the corporate conception of group rights. Various critiques challenge that claim the groups (as ontological or sociological entities) can have a particular status or whether they can be a distinct being that is not reducible to the individual members of the group.

While such criticism can be avoided by a collective right conception, there are still worries about the possible implications of ascribing rights to groups. The central concern is that group rights may be dangerous for rights of individuals within and outside of the identified group. These critiques vary. One version of the concern is that group rights will render individual rights invisible because it is the group that has standing rather than its individual members.[240] Waldron and others have expressed another concern about the relationship between a group and its members: specifically, the power a group can have over its members in virtue of the rights afforded to the group.[241]

If a groups rights turns out to be a right it can hold against its members, then it can regulate the lives of the members of the group. This is a concern when a group may be one that has involuntary membership. When people are perceived to belong, and are thus ascribed to particular groups – perhaps on the basis of race or culture – then they are less free to leave or disassociate from a group. They have little control over their "membership" so to speak. In cases where such membership becomes oppressive, a group rights account may strengthen the power of the group over its involuntary members.[242] A similar worry is that group rights may override the rights of individuals in cases of conflict between these different rights.

If Nine's account is indeed a collective rights account and not a corporate rights account, then her view implies that the group right is held jointly by the individuals who make up the group.

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[240] Andrew Vincent, "Can Groups be Persons?" *Review of Metaphysics* 42, no.44 (1989): 687-715.
[241] Waldron, *Liberal Rights*, (Cambridge: Cambridge University Press, 1993).
[242] Will Kymlicka, *Multicultural Citizenship*, (Oxford: Clarendon Pres, 1995).

Its grounding is the interests of those group members. If Nine is following Raz's view, then one could argue that the group right climate refugees have derive in part from the aggregation of these individual interests. Some have argued against the view that rights can be impacted by or should derive from aggregation of this sort.[243] The general worry is that if the aggregation of interests is sufficient to produce a right, the group rights view starts to approximate the sort of aggregation involved in utilitarian reasoning. For this reason it may expose itself to some of the challenges rights-theorists and other moral views have with utilitarian accounts.

These general worries about group rights, and the specific concerns about a collective conception of group rights speak to the substantive nature of Nine's view. By grounding obligations to climate refugees in a group rights approach, this normative approach is controversially substantial. Some may argue that identifying those displaced by climate refugees as belonging to a monolithic group is controversial and possibly problematic. This is especially the case if climate refugees themselves don't identify as members of this group. Involuntary membership that follows from external ascription of individuals into a group may obscure important contextual elements that factor into an individuals particular circumstance of displacement. This is part of a worry feminist theorists raise in the context of arguing about climate refugees. I will return to these concerns in chapter four.

For now, it is sufficient to argue that we need not take on a controversially substantive view in order to ground the obligations to climate refugees. The strength of the theory of liveable locality is that it provides a rights-based view without having to establish an account that resembles or introduces particular moral theoretical commitments such as utilitarian-esque commitments to the importance of numbers and aggregation for establishing rights. Furthermore, it is perhaps important to note that displacement is not *necessarily* a group-level problem. Displacement can occur on an

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[243] Yael Tamir, "Against Collective Rights," in *Multicultural Questions*, eds. Steven Lukes and Christian Joppke (Oxford: Oxford University Press 1999), 158-180.

individualized scale, or it can affect entire societies or groups. If an entire territory or state becomes uninhabitable, most or all inhabitants of the territory may be displaced. If a territory is in transition, parts of it may become uninhabitable which may result in displacement of a smaller selection of the inhabitants. According to our current international legal practices, protection is allocated on "individualistic" grounds. Under the Refugee Convention, while it may be because of one's membership in a group that one meets the criteria for protection, the individual is regarded as the sole claimant of an individual right to protection.

Additionally, one can challenge the specific implications of Nine's view.[244] Morally speaking, Nine's characterization of the right of self-determination is controversial.[245] It requires the transferring of territory from one group to another in order to satisfy her proviso. And that proviso does not directly affect the right to self-determination directly. What it does bear on is territorial rights, and changes to territorial ownership may affect the self-determination of various groups. This raises the possibility of a conflict between the rights of self-determination of distinct groups.[246] The conflict could be between different stateless groups of refugees vying for territory. It could also present a conflict between a receiving state and the displaced group.

These difficulties are easily avoided. As I have argued, we can instead derive principles of justice for our current territorial practice with reference to the current practice itself, without defending a natural right that exists in conditions prior to the development of a territorial state system. Perhaps a failure to protect climate refugees would in some cases be a failure to preserve a group's self-determining status due to a loss of territory. Yet we need not seek justification for their protection on a moral mandate founded on a natural right held by either groups or individuals in the state of

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[244] For a detailed consideration and critique of Nine's view and a discussion of the issue of sinking island states and self determination see Jorgen Odalen, "Underwater Self-determination: Sea-level rise and Deterritorialized Small Island States," *Ethics, Policy & Environment* 17, no. 2 (2014): 225-237.

[245] Lister, "Climate Change Refugees," 627.

[246] Odalen, "Underwater Self-determination, 225-237.

nature. In short, the legitimacy of the state system can be justified or challenged apart from the question of whether a Lockean Proviso is satisfied.

CHAPTER 4

Towards a Feminist Ethic

The current philosophical literature on climate refugees does not adequately account for gendered aspects of climate-based displacement and their normative implications. Philosophers do acknowledge that climate change will exacerbate existing inequalities. But despite the fact that women bear disproportionate burdens, there is a general neglect of the significance of gender.[247]

For this reason, feminist philosophical attention to climate change is critical. There are major gaps in the philosophical *and* social science literature that can be filled only with feminist political and ethical perspectives.[248] It is not enough to address gender-differentiated effects of climate change. The gendered dimensions of climate change go to the *concepts* we use to discuss and make decisions about it as well. What is needed is a framework that accounts for the ways that gendered concepts and assumptions shape our discussion of climate change and its related impacts of displacement.

In this chapter I argue that the theory of liveable locality has considerable merit in this role. At very least, it introduces a conception of vulnerability that does not reinforce problematic gender assumptions. But it is also attentive to embodiment – a key theme in feminism -- and the deep way this generates the problem of climate-based displacement. My approach is also responsive to feminist concerns about the structural nature of injustice. And, despite being practice-based, it is responsive to the feminist challenge that a normative theory must provide a foundation for revising our social practices and their constitutive concepts.

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[247] Notably, collections such as *Climate Ethics: Essential Readings* (do not have selections on gender and climate change. This particular example does not have an entry by a feminist author or a female or nonwhite author. Despite the increased work on gender and climate change, books published on the general topic of climate justice have excluded such work. Stephen M. Gardiner, Simona Caney, Dale Jamieson, and Henry Shue, ed., *Climate Ethics: Essential Readings* (Oxford: Oxford University Press, 2010).

[248] Nancy Tuana and Christ J. Cuomo, "Climate Change: Editors' Introduction." *Hypatia* 29, no. 3 (2014): 533-540.

In this chapter I first suggest that theorizing about climate change and climate refugees, even in feminist theory, has not been attentive enough to gender. Next I turn to feminist critiques of the language of "vulnerability," and suggest that climate refugees should not be treated as "vulnerable peoples" in the conventional sense. I suggest the theory of liveable locality introduces a better conception of vulnerability from a feminist perspective. I answer feminist objections against the use of any notion of vulnerability in a normative analysis. I explain why I don't rely on a problematic idea of the "resilience" of climate refugees, and why I can accept feminist arguments about "resistance."

4.1 A Lack of Gender Discourse

The importance of gender in climate change responses and effects is increasingly recognized in contemporary feminist political theory, legal studies, policy development, and feminist philosophy.[249] In the social sciences and in international policy studies, for example, there has been an evolving focus on the gendered dimensions of climate change.[250]

This "feminist focus" in policy-oriented work is a welcome development. At the same time, feminist political/social *philosophical* investigations of climate change pay scant attention to gender as such.[251] Perhaps most significant for my discussion, feminist philosophical political writing on

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[249] For example, at the 2012 meetings of the Conference of the Parties to the United Nations Framework Convention on Climate Change, the parties of 194 UN member states and the European Union decided that the issue of gender and climate change should be an item on the agenda of subsequent meetings. Furthermore, the parties agreed to the need to promote gender balance and committed to improving the participation of women in negotiations. Tuana and Cuomo, "Climate Change," 534.

[250] This work has generally aimed to bring considerations of already vulnerable populations to the forefront of policy deliberations and theorizing. In this chapter I will return to consider these approaches in the social sciences and will acknowledge both the benefits but also the harmful consequences of these theoretical and empirical frameworks due to their employment of certain assumptions and conceptions of femininity and masculinity as well as their focus on the vulnerability of women in the Global South.

[251] As Nancy Tuana points out, feminist philosophy has "long been attentive" to subject matter and relationships involved with investigations regarding climate and gender. As Tuana notes, "feminist philosophy has long been attentive to the conceptual and material relationships and interdependencies among "industrial development," male dominance, and the devaluation and destruction of nature." She adds that, "critical examination of the connections

globalization and migration largely fail to make specific arguments regarding our obligations to climate refugees. Of the little work there is on the matter, gender-justice perspectives continue to have at best a marginal role in conventional climate justice theory, policy-oriented work, and political philosophy.[252]

Feminist philosophers writing on immigration have addressed shortcomings of traditional theories of justice, and theories of global justice in particular. They have critiqued such theorizing for not articulating the gendered nature of the harms or injustices at issue. Additionally, feminist political philosophers have addressed the complex ways in which globalization has both contributed to distinct rights violations of women and enabled women to claim their rights. Feminist philosophers have also criticized the lack of attention to the disparate impacts of environmental changes with regards to gender.

Feminist inquiry helps to illuminate how we understand phenomena such as climate-based displacement as well as how we respond to it. It can account for the ways assumptions about gender play out in scientific investigations and policy deliberations. Since climate change is not merely a natural phenomenon, but one that has social and political dimensions, feminist theorizing can draw attention to how gendered conceptions work in our shared understandings about our social and political practices. A feminist approach to climate change refugees should thus be sensitive to the gendered aspects of displacement. but should also account for the way gendered concepts and assumptions work in theoretical arguments as well as in our social practices. In sum, a feminist

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between women's subordination and their association with particular understandings of nature has provided a ground note for modern feminists." Furthermore, the intersection of feminist theorizing with environmental studies and ecology has contributed to the development of new branches of feminist theory, such as ecofeminism, which has jumpstarted feminist work on environmental issues. (Tuana and Como, "Climate Change," 534.
[252] Ibid., 534.

philosophical framework would ideally provide resources for understanding how climate change poses normative, ontological, and epistemological challenges.[253]

4.2 Agency, Vulnerability & Victimhood

Climate change has been conventionally framed as a scientific problem. Attention to human dimensions of climate change- based displacement are relatively new in both policy and academic discourse. Attention to gender is even newer, and mostly found in empirical work. What research there is on the intersection of gender and climate change was prompted by the way that gender, class, and race create special vulnerabilities an unequal distribution of harm.[254] While feminist philosophical analyses are less prevalent in the empirical literature and in the philosophical body of work on climate refugees, feminist philosophical methods provide a necessary framework for normative theorizing about climate refugees and for understanding and grounding responses to the impacts of climate change on individuals and communities.

Despite the growing appreciation that climate change has gender-differentiated impacts, the conventional approach has been to frame the challenge of climate displacement as a direct risk for those in the Global South. Research along these lines originally characterized the problem of climate displacement as primarily one of international security. A major point of emphasis is the threat to the Global North's stability and resources, given the predicted migration of populations from poor, underdeveloped states to wealthier, democratic states. Such work focuses on the relationship between population growth, violent conflict, and climate change,[255] and it tends to be alarmist in tone

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[253] Christina Shaheen Moosa and Nancy Tuana. "Mapping a Research Agenda Concerning Gender and Climate Change: A Review of the Literature." *Hypatia* 29, no. 3 (2014): 533-540.

[254] Tuana, "Mapping a Research Agenda Concerning Gender and Climate Change," 682.

[255] Norman Meyers, "Environmental Refugees: A Growing Phenomenon of the 21st century," *Philosophical Transactions of the Royal Society B: Biological Sciences* 357, no. 1420 (2002): pp. 609–613; M.B. Burke, E. Miguel, S. Satyanath, J.A. Dykema, D.B. Lobell, "Warming Increases the Risk of Civil War in Africa," *Proceedings of the National*

and center around the "vulnerability" of particular populations.[256] As a result, despite the fact that work along these lines does acknowledge gender as a dimension of climate change, it has been criticized by some feminist theorists for perpetuating harmful misrepresentations and problematic gendered assumptions.[257]

Some philosophical approaches to the question of what we owe to climate refugees draw directly from the notion of vulnerability.[258] It is because of their vulnerability, on this accounts, that others have obligations to protect them or reduce their risk of displacement. For example, Katrina M. Wyman has argued that our duties to assist climate refugees arise from a more general obligation "to assist vulnerable people generally."[259] In the case of climate refugees, Wyman argues that such duties are likely held by the developed countries. She does not directly specify if states or individuals hold the obligations, nor does she ask whether such duties are owed to developing countries or to individual climate refugees.[260] She simply focuses on people in economic need, suggesting that the Global North is likely to bear a duty do to ameliorate their plight.

Wyman acknowledges that developed countries might have vulnerability-based obligations for a variety of reasons.[261] Most notably, she points to Peter Singer's utilitarian principle, which establishes a general obligation to assist people regardless of the cause of their vulnerability (whether from climate change or not).[262] If such arguments provide a ground for our obligations to climate

*Academy of Science*s 106, no. 49 (2009): 20670–20674.

[256] Sherilyn MacGregor, "Gender and Climate Change: From Impacts to Discourses," *Journal of the Indian Ocean Region* 6, no. 2 (2010): 223-238.

[257] Sherilyn MacGregor, "Only Resist: Feminist Ecological Citizenship and the Post-Politics of Climate Change," Hypatia 29, no. 3 (2013): 617-633; Delf Rothe, "Gendering Resilience: Myths and Stereotypes in the Discourse on Climate-induced Migration," *Global Policy* 8, no. 1 (2017): 40-47 ; Chris J. Cuomo, "Climate Change, Vulnerability, and Responsibility" *Hypatia* 26, 4 (2011): 690-714.

[258] Katrina M. Wyman, "Are we Morally Obligated to Assist Climate Change Migrants*," Law and Ethics of Human Rights* 7 no. 2 (2013): 185-212.

[259] Wyman, "Are we Morally Obligated to Assist Climate Change Migrants," 189.

[260] Ibid., 192.

[261] Wyman mentions different bases for the responsibility to alleviate vulnerability understood as poverty. She mentions that such duties can be determined on the basis of liberal egalitarian principles, feminist care ethics, and utilitarianism. Wyman, "Are we Morally Obligated to Assist Climate Change Migrants," 190.

[262] Peter Singer and Renata Singer, "The Ethics of Refugee Policy*," in Open Borders? Closed Societies? The Ethical*

refugees, the justification for our duties to aid or protect are not specific to climate refugees in particular, not in virtue of the particular conditions climate change has created for them. Rather, it is the simple fact of their vulnerability that triggers obligations of humanitarian assistance.

Other philosophical accounts also associate climate refugees with vulnerability. As Robert Goodin has argued, our responsibility to others is based on the concept of vulnerability. In other words, it is the "vulnerability of the beneficiary" of our actions that grounds our duties to them. On such a view, the moral obligations that arise from special relationships, such as those with our family, friends, or compatriots, do not have priority over the duties we have to strangers or distant others. This is because the range of people who are vulnerable to the choices or actions we make reaches beyond those who we have made special commitments to by contracts, promising, etc. Thus, the vulnerability of others is what also grounds our international obligations.[263] Given this reasoning, we may have obligations to those displaced by climate change because they are vulnerable, quite aside from whether their vulnerability arises from our current social arrangements as opposed to merely natural or inevitable causes. The cause of vulnerability is not of principled significance.

4.2.1 "Vulnerability" and Gender

Climate change disproportionately affects women, the poor, and people of color. If only because of that empirical fact, climate change-based displacement is indeed a concern of feminism. However, feminist scholars have challenged the idea that climate refugees should be thought of as "vulnerable" people, for a number of reasons. As Chris Cuomo points out, "care should be taken when claims about vulnerability are employed" in both policy decisions and philosophical arguments. This is because "framing structural inequalities only in terms of susceptibility to harms

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and Political Issues, in ed. Mark Gibney (New York: Greenwood Press 1988).
[263] Robert E. Goodin, *Protecting the Vulnerable: A Reanalysis of Our Social Responsibilities*, (Chicago: The University of Chicago Press, 1985), xi.

focuses attention on the supposed weaknesses or limitations of those who are in harm's way, but says little about whether injustices or other harms have put them in such precarious positions."[264]

Various versions of this vulnerability critique have appeared in feminist arguments regarding gender and climate change. Some have cautioned that a hyper-focus on women as the primary victims of climate change as "vulnerable populations" places the responsibility on women to address the manifestation of climate-related problems in local communities while redirecting attention away from inequalities produced at the institutional level.[265] Others have argued that portraying climate refugees (and women in particular) as victims represents individuals as passive subjects of harm. A danger is that such an association risks perpetuating the idea that vulnerability is a constitutive feature of the displaced's identity or lived experience.

Additionally, in the literature on climate refugees, a focus on vulnerability depicts climate refugees, and women of color in the Global South in particular, as primarily victims. A central concern of feminist critics is that a focus on vulnerability obscures the agency or resilience of individuals of marginalized groups. Furthermore, such a focus risks mischaracterizing who is responsible for the harmful conditions these "vulnerable populations" find themselves in.

The concern, then, is that normative and empirical work focusing on vulnerability has the potential to justify or promote real-world harm. As Delf Rothe points out, discourses produced in academic literature can "create a field of possibility for certain political instruments [...] they define which policy measures appear possible and appropriate to cope with identified problems."[266] Such work can perpetuate myths or stereotypes when discussing the relation between climate change and

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[264] Cuomo, "Climate Change, Vulnerability, and Responsibility," 695.

[265] On these accounts, Seema Arora-Jonsson argues, "gender gets treated not as a set of complex and intersecting power relations but as a binary phenomena carrying certain disadvantages for women and women alone." Seema Arora Jonsson, "Virtue and Vulnerability: Discourses on women, gender, and climate change," *Global Environmental Change* 21, no. 2 (2011): 744-751.

[266] Delf Rothe, "Gendered Resilience,"41.

migration, and thus can produce work that naturalizes gendered categories like "women in the Global South." The attention to "female vulnerabilities" does not necessarily explore or critique gender roles and such work has a tendency to naturalize both gender and sex differences. This can contribute to the development of harmful practices or policies. Notably, such theorizing contributes to justification of paternalistic measures of address.[267]

For example, such work has grounded paternalistic population control policies in the Global South.[268] Arguments that link climate-induced migration to security, population growth, and resource scarcity can redirect the focus of policy efforts on addressing women's fertility as a constitutive part of the solution to managing displacement.[269] Even though such work emphasizes the importance of such policies for women's empowerment in climate-vulnerable territories, feminists have identified pernicious consequences.[270] Rothe has argued that such narratives mask the violent forms of population control that are implemented in the name of addressing the effects of ecological instability.[271] A notable example is the way such work has been used to legitimize and promote policies of sterilization in "at-risk" regions as a way to address the urgent problem of climate-induced displacement.[272]

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[267] Cuomo. "Climate Change, Vulnerability, and Responsibility."

[268] B. Hartmann, A. Hendrixson, J. and Sasser, "Population, Sustainable Development, and Gender Equality," in *Gender Equality and Sustainable Development,* ed. M Leach. (London: Routledge, 2015): 56–81.

[269] Such arguments rely on the rationale that climate change, paired with overpopulation, deteriorates already vulnerable areas (in the Global South). Thus, women's fertility and reproductive behavior in the Global South gets problematized. Such arguments call for governance mechanisms to control climate-induced migration on the global scale by making interventions in the communities of these "vulnerable populations" in already vulnerable territories. C. Methmann and A. Oels, "From 'Fearing' to Empowering' Climate Refugees: Governing Climate-induced Migration in the name of Resilience,*" Security Dialogue* 46, no.1 (2015): 51-68.

[270] Julian Reid "Climate, Migration, and Sex: The Biopolitics of Climate-induced Migration," *Critical Studies on Security* 2, no.2 (2014): 196–209.

[271] Rothe, "Gendered Resilience: Myths and Sterotypes in the Discourse on Climate-induced Migration," 45.

[272] For example, problematizing climate change displacement in terms of conflict and overpopulation has contributed to sterilization programs in India. Regions such as Madhya Pradesh have been identified as territories likely to generate a significant amount of climate refugees by the UK Department of International Development which has contributed to the introduction and persistence of forced sterilization. Gethin Chamberlain, "UK aid helps to fund forced sterilization of India's poor," *The Observer,* April 14 2012,
https://www.theguardian.com/world/2012/apr/15/ukaidforced-sterilisation-india.

Additionally, such work tends to be alarmist in tone. This contributes to the narrative that "the vulnerable" are primarily populations in the Global South who pose a resource threat to those in the Global North.[273] Such narratives obscure the extent to which people across the planet (and women in particular) may be harmed in various communities. Extreme droughts and fresh water scarcity are already disproportionately impacting women and girls in places where the responsibility to gather and provide water is gendered labor. The physical hardships for having to travel farther in riskier conditions is not the only resulting harm. Such effects also decrease opportunities for girls to attend school and increase the risk of assault.

However, impacts on freshwater resources are not only problems for women and communities in the Global South. States in the Global North are not immune to ecological instability as well. Reduced water availability is already affecting otherwise successful farmer communities in southeast Australia, for example. The women in these communities are experiencing increased burdens with the advent of more persistent droughts. Farmers' incomes fluctuate with the decreased crop yield. These workers have been compelled to travel farther to find work or are forced to relocate to other communities for work. Since most farmers in these communities are men, women partners sustain caretaking responsibilities, but are also required to seek additional employment or move with their families to new locations. Such economic hardships have been correlated with an increase in reported incidences of domestic violence. Such violence predominately affects women, and since records of such violence only record reported cases,[274] there is reason to believe such issues are more widespread that records would indicate by themselves. There are considerable barriers to reporting and recording household violence in rural communities, which are often geographically isolated and only reinforce traditional gender roles.[275]

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[273] Cuomo, "Climate Change, Vulnerability, and Responsibility," 700.

[274] Margaret Alston, "Gender and climate change in Australia," *Journal of Sociology* 47, no. 1 (2008): 53-70.

[275] Sarah Wendt, "Building and Sustaining Local Co-ordination: An Australian Rural Community Responds to

4.2.2 Feminist Critiques of "Vulnerability" and 'Victimhood"

The critique of the language of "vulnerability" in the context of the climate change follows more general feminist arguments regarding the danger of vulnerability discourse and its close association with victimization (most notably in the context of sexual violence). Feminists have argued that an account that grounds obligations in an individual or group's vulnerability makes it difficult to understand the way we participate in the social structures that generate such vulnerability.

Vulnerability is understood in most philosophical and theoretical work as susceptibility to harm, exploitation, or a threat to one's autonomy.[276] Feminists argue that, understood in this way, vulnerability connotes a condition of weakness, powerlessness, and dependency.[277] This is because a vulnerable condition is understood primarily as a condition in which someone can be harmed. The concept of vulnerability tends to also be used to refer to a fixed property: it is attributable to some individuals and groups but not others. It works to perpetuate the idea that a "vulnerable subject" is incapable of exercising their own agency or transforming their conditions in any way and that such conditions are hard to change.

When "vulnerability" is conceptualized in this way, the concept tends to link "femaleness and femininity with an inherently compromised status."[278] Consequently, the emphasis on vulnerability can produce an "othering" effect: those we have obligations to are not recognized as having the same status as those individuals not at risk.

This in turn perpetuates the idea that all "vulnerable" people are similar, when in fact they face diverse risks. Variations within an identified "vulnerable" group could then undermine efforts

Domestic and Family Violence," *British Journal of Social Work* 40, (2010): 44-62.

[276] Erinn Cunniff Gilson, "Vulnerability and Victimization: Rethinking Key Concepts in Feminist Discourses on Sexual Violence*,*" *Signs Journal of Women in Culture and Society* 42, no. 1 (2016): 72.

[277] Gilson, "Vulnerability and Victimization*"* 74.

[278] Gilson, "Vulnerability and Victimization," 75.

to advance their general protection. The unfortunate and unjustified assumption might be that protection is *only* justified to the extent that climate refugees' experiences are sufficiently similar or recognized as sufficiently vulnerable.[279]

Still more problematic is a reductive account of who can be vulnerable in the way that justifies assistance. Arguments that focus on vulnerability, regardless of whether they directly consider the gendered impacts of climate change risks, may reduce "the vulnerable" to a homogenous group. Along with hegemonic conceptions of gender, it may seem that to belong to the category "woman" is to inhabit the kind of body which is at risk of harm.

Accordingly, a dominant conception of vulnerability might not recognize those who are not cisgendered women. If the specific harms associated with (gendered) vulnerability are tied closely to harm "that is thought to be the property of particular kinds of bodies," notably feminine/female bodies,[280] then this has both normative and practical consequences. It perpetuates essentialized notions of gender identity, but also simply narrows the domain of inquiry. This is problematic if such work is supposed to aid policy, which may be less inclusive than it should be, and not responsive to the very real-world injustices it claims to address.

Feminists have argued ideas of vulnerability are closely associated to the notion of victimhood.[281] As Sharon Lamb has observed, the notion of victimhood presupposes notions of

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[279] Kimberle Crenshaw stresses the importance of theorizing which tends to categorize certain struggles as "singular issues. Such theoretical structures introduce both descriptive and normative views of social practices that risk reinforcing the status quo. Critiquing traditional arguments about discrimination, Crenshaw argues for the importance of "addressing the needs and problems of those who are most disadvantaged" and to place those that are marginalized at the center of an analysis in order to resist compartmentalizing their experiences or constructing arguments that undermine the "potential of collective action" Kimberle Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics," *The University of Chicago Legal Forum*, (1989): 167.

[280] Gilson, "Vulnerability and Victimization," 76.

[281] Examples of such work are: Linda Martin Alcoff, "Discourses of Sexual Violence in a Global Framework," *Philosophical Topics* 37, no. 2 (2009): 123-139; Gregory Bankoff, "Rendering the World Unsafe: 'Vulnerability' as Western Discourse," *Disasters* 25, no. 1 (2001): 19-35; Kate Brown, "Vulnerability: Handle with Care," *Ethics and Social Welfare* 5, no.3 (2011): 313-321; Lorraine Code, "A New Epistemology of Rape?," *Philosophical Papers* 38, no.3(2009): 327-345; Sharon Lamb, "Constructing the Victim: Popular Images and Lasting Labels, in *New Versions of Victims: Feminists Struggle with the Concept* (New York: New York University Press, 1999), 108-138; Ruth Macklin,

vulnerability.[282] And since vulnerability is associated with weakness or passivity, or a lack of agency, this invites the assumption that invulnerability comes along with having relevant capacities, or having a particular strength or sense of agency.[283] Vulnerability is thus seen as a potential flaw in a person, whereas invulnerability begins to look ideal.[284] Linda Martin Alcoff argues that feminist wariness of the notion of victimization is legitimate in "certain discursive contexts where regressive gender ideologies will be mobilized and perhaps strengthened by its use."[285] In short, characterizing individuals to whom we owe obligations as mere victims tends to downplay individuals' agency.[286]

According to this narrative, the vulnerable must then rely on the aid of others more "powerful" or "capable" of changing such conditions. Climate refugees are thus seen as passive or susceptible to the actions of the invulnerable. This is possibly what President Tong has in mind when he argued on the international stage against conceptualizing the displaced as refugees. The problem, as Erinn Gilson puts it, is that "to be vulnerable is to be en route to harm or violation by virtue of one's compromised status."[287] This in turn gives rise to "paternalistic, patronizing, and controlling consequences."[288] Such harmful consequences, whether in the form of policies or socio-cultural practices, become justifiable on the grounds they are the necessary means by which an individual can "achieve" or work toward invulnerability that is otherwise inaccessible to them in virtue of their status as "victim."

Conversely, responsibility may then be placed on women themselves to overcome their conditions of risk and harm. Gilson describes the problem this way: "the double bind of agency and

"A Global Ethics Approach to Vulnerability," *International Journal of Feminist Approaches to Bioethics* 5, no. 2 (2012): 64-81.

[282] Lamb, "Constructing the Victim," 108-138.

[283] Ibid.

[284] Gilson, "Vulnerability and Victimization," 84.

[285] Alcoff, "Discourses of Sexual Violence in a Global Framework," 137.

[286] Cuomo, "Climate Change, Vulnerability, and Responsibility," 695.

[287] Gilson, "Vulnerability and Victimization," 75.

[288] Ibid., 74.

victimization entails that one is either a passive victim and so cannot interpret one's experience outside this framing or that one is an active agent and so must not have been victimized."[289] In that case, this way of thinking is unable to respond to the conditions of those not traditionally judged to be victims, simply because such subjects may not satisfy the criteria that qualifies one as a victim. Gender-nonconforming and transgender people, prisoners, or other marginalized people may be perceived as weak, or passive, and not properly recognized as acting, efficacious agents.

The tendency to "victimize" those at risk of displacement in normative argumentation obscures the nature of the obligations we have to people who are displaced by climate change. It runs the risk of mischaracterizing the nature of the injustice(s) individuals and communities face. Feminists argue that such theorizing will not adequately capture who is responsible for addressing the harms and risks marginalized individuals face and who is owed protection or aid. In their view, feminist analyses should emphasize that individuals of disempowered groups are moral agents. They have their own capacities and are members of communities with their own collective priorities and abilities. Climate refugees, though vulnerable, should be regarded as rights-holders who have a claim to just treatment, and not merely as subjects of paternalistic regulation. Perhaps vulnerable individuals are indeed entitled to special accommodations or resources to contend with the problems of climate-based displacement. Even so, care should be taken to emphasize the structural nature of the conditions of inequality and vulnerability they may find themselves under.

4.2.3 An Alternative Conception of Vulnerability

The theory of liveable locality identifies a condition of risk to which individuals are susceptible. Yet it does not necessarily ground our obligations to the displaced in problematic

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[289] Ibid., 86.

considerations of vulnerability. Indeed, it provides a conception of vulnerability that is helpful for feminist theorizing. Although some feminist theorists have critically analyzed the notions of vulnerability and victimization, others have disassociated vulnerability from the concept of victimization, for many feminist theorists the idea is not inherently problematic and indeed useful.[290] Vulnerability needn't be associated with passivity or victimization, and it isn't in the practice-based account I offer.

Vulnerability, and the harms associated with it, are a likely consequence of failing to protect the right against exclusion from habitable territories. For the loss of liveable territory can be understood, to some extent, as a loss of the conditions required to claim an additional set of important rights. The account does not convey vulnerability as a *constitutive feature* of individuals who are at risk of losing access to liveable territories, however. It does not describe the lack of an individual's particular capacities. Rather, "vulnerability" simply describes an obstacle to the exercise of such capacities, seen as a feature of the *structural relations* individuals find themselves in as embodied subjects.

In recent work, Judith Butler consider the embodied subject who moves through public spaces or across borders. Butler argues that a major presumption in the idea of embodied subjects is that they are already free to move. Such freedom is made possible, in part, by material conditions. As Butler argues, "for the body to move, it must usually have a surface of some kind, and it must have at its disposal whatever technical supports allow for movement to take place [...] No one moves without a supportive environment [...]." Butler mentions how the very pavement of streets can be understood as a requirement of the body to exercise rights.

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[290] Gilson, "Vulnerability and Victimization," 71-97; Judith Butler, "Rethinking Vulnerability and Resistance," in *Vulnerability in Resistance,* ed. Judith Butler, Zeynep Gambetti, and Leticia Sabsay, (Durham: Duke University Press, 2016), 12-27; Linda Martin Alcoff, "Discourses of Sexual Violence in a Global Framework," 123-139.

Likewise, "liveability" can be understood in terms of the support required for the embodied subject, or what Butler refers to as "infrastructural conditions."[291] For Butler, part of what it is to be embodied is to be dependent on networks of support. Despite the (ontological) fact that bodies can be individuated and distinguished from one another, they are also defined by the relations that make the lives and actions of such bodies possible. Consequently, bodily vulnerability results from "social and material relations of dependency."[292] According to Butler, in order to "conceptualize the political meaning of the human body" we have to understand the relations within which it lives.[293] Vulnerability, for Butler accounts for the way bodies are subject to "social and material relations of dependency."[294]

The theory of liveable locality thus understands "vulnerability" as follows: it is a harmful condition that results from the structure and practice of the territorial state system in the context of environmental instability. In Butler's terms, vulnerability is understood as a body exposed "to failing infrastructural conditions."[295] This helps to establish our obligations to climate refugees, but it resists characterizing climate refugees as belonging to a particular, monolithic group defined in terms of their vulnerability. The theory of liveable locality shifts our concern to the way in which otherwise guaranteed structures of support may fail to protect *anyone* in the state system.

All individuals are embodied, and all exist within the context of a practice that distributes these bodies across delineated spaces of authority. So any individual the world over is at some risk of displacement. Importantly, all individuals have a claim against being left without a livable place to

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[291] Butler, "Rethinking Vulnerability and Resistance," 19.
[292] Judith Butler, Zeynep Gambetti, and Leticia Sabsay, "Introduction," in *Vulnerability in Resistance*, ed. Judith Butler, Zeynep Gambetti, and Leticia Sabsay (Durham: Duke University Press, 2016), 8.
[293] Judith Butler, "Rethinking Vulnerability and Resistance,"16.
[294] Judith Butler, Zeynep Gambetti, and Leticia Sabsay, "Introduction," 7.
[295] Butler, "Rethinking Vulnerability and Resistance," 16.

be. The right against exclusion from livable spaces is not held in virtue of one's status as a "vulnerable person" but rather in virtue of one's status as a member in a shared, global-sized social practice.

This means there is little need to identify a uniformity in how such vulnerability is experienced. This is a strength of the view. Following Gilson, the notion of vulnerability can then "more accurately reflect the array of experiences of those" who may find themselves in conditions of possible harm.[296] If many theorists assume that having a common experience of displacement is a criterion for determining who is owed protection, they are mistaken in this regard. Nor is there any need for "objectionable ontological claims about the constitutive vulnerability of women's bodies."[297] Rather, climate-based displacement may be specifically experienced by individuals in a wide variety of circumstances, states, and communities.

For this reason, the theory of livable locality can work in conjunction with other normative arguments addressing more specific injustices that arise in the context of climate-induced displacement. It provides a starting point for arguing that individuals are owed protection, but does not claim to be the sole basis for justifying protection. It may lend further support to arguments that address the "intersectional" nature of the injustices experienced by individuals that belong to more than one marginalized group.

So the theory of liveable locality does not need to avoid the concept of vulnerability all together to have feminist import. The theory's focus on vulnerability is "not intended to validate conventional ways of distinguishing between men and women (or even to validate that binary as a mode of framing an analysis)."[298] Rather, it can use the concept to account for the way in which practices of authority establish individuals or groups as "vulnerable populations." In part, it is a

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[296] Gilson, "Vulnerability and Victimization," 93.
[297] Judith Butler, Zeynep Gambetti, and Leticia Sabsay, "Introduction," 2.
[298] Judith Butler, Zeynep Gambetti, and Leticia Sabsay, "Introduction," 3.

political philosophical account about how vulnerability is produced and distributed by shared social practices.

Furthermore, my approach addresses the structural nature of vulnerability by recognizing the normative weight of particular empirical assumptions. The empirical context of climate change is seen to have normative consequences for our shared practice of jurisdictional authority over territory. In this way ecological background conditions are recognized as contributing to the construction of social life. As Shelley Wilcox notes, "feminist philosophers are able to offer nuanced normative recommendations concerning real-world immigration policies"[299] because they include unjust background conditions in their theorizing. They can attend to the way background conditions contribute to the production of injustices and how such conditions help to shape migration flows. The theory of liveable locality is in this way similar to feminist theories of immigration.

4.3 "Resilience" Theorizing and Climate Refugees

As a response to problematic theorizing around vulnerability and victimhood, some feminist theorists have framed arguments regarding climate refugees in terms of the *resilience* of the displaced and the strength of these "more vulnerable" populations. In doing so these accounts aim to bring attention to historical exploitation and the gendered assumptions involved in comprehending climate change and displacement. This "resilience discourse" shares a general commitment to addressing the adaptability and capabilities of individuals and communities at risk of becoming climate refugees.[300] As Rothe explains, climate displacement is not portrayed as a security threat in such accounts, but rather as a "possible adaptation measure of local communities to enhance their social

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[299] Shelley Wilcox, "The Open Borders Debate on Immigration," *Philosophy Compass* 4, no. 5 (2009): 827.
[300] Robert McLeman and Barry Smit, "Vulnerability to climate change hazards and risks: crop and flood insurance, *The Canadian Geographer* 50, no. 2 (2006): 217-226.

resilience against climate shocks."[301] Such a shift aims to emphasize a consideration of livelihoods and a sensitivity to differentiated gendered experiences of climate change, including how unequal gender relations contribute to differentiated vulnerabilities depending on one's gender identity.

When resilience discourse addresses climate refugees and gender inequity in particular, it uses two central concepts. It invokes a "*transformational*" understanding of resilience. And it focuses on the notion of *empowerment*.[302] That is, the concept of "resilience" is not merely about *adapting* to changing ecological conditions. It also speaks to the "transformative" power individuals and communities.[303] Relocation or migration are understood as a means by which vulnerable individuals or communities can eventually transform economic or social structures. For example, displacement or movement has the potential to disrupt deeply rooted gender norms given the new role women or girls take up in the absences created by male migration.[304]

Discussions of resilience also tend to emphasize the need for principles that empower climate refugees. What's called for, it is claimed, is that vulnerable individuals or communities be afforded the means necessary to develop adaptive capacities to deal with the impacts of climate instability. This might involve education, for example. This is thought to be necessary for both normative and practical considerations. Not only does gender equality require such provisions in any case, the empowerment of women and girls, as the most vulnerable in a community, contributes to the resilience of a community.

Another empowerment argument is that women have specialized forms of knowledge in virtue of the traditional roles they occupy. Empowering them can help a community contend with

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[301] Rothe, "Gendered Resilience," 43.
[302] Rothe, "Gendered Resilience," 44.
[303] Methmann and Oels, "From 'Fearing' to 'Empowering' Climate Refugees," 65.
[304] Ann-Kristin Matthe, "Gender and Migration in the Context of Climate Change," UNU-EHS Insititute for Environment and Human Security, March 21, 2016, https://ehs.unu.edu/blog/articles/gender-and-migration-in-the context-of-climate-change.html.

the impacts of ecological instability and displacement. For example, in Patricia Glazebrook's study in northeast Ghana, women farmers have particular knowledge and skills that contribute to adaptation practices that are otherwise discounted or overlooked on the international policy-making scale. The expertise of these women is relevant knowledge for adaptation efforts.[305]

From the perspective of feminist theorizing, the shift from "vulnerabilities" to "resilience" in discussions of climate refugees seems to be an improvement. However, the resilience literature has also been critiqued for introducing or producing additional harmful stereotypes.[306] It tends to naturalize both gender and sex differences. And if women are portrayed as a homogenous category, this invites essentialist assumptions, which may be as pernicious as ignoring gender all together.

Rothe argues that this is due in part to an exclusive focuses on women and girls. Transgender people are not considered, nor are men and boys.[307] As a result, resilience accounts often regard "women" as a cohesive identity group and risk perpetuating essentialist ideas about the special relationship "women" have to the environment in virtue of their membership in this group.[308] Even work that starts with the recognition of specific empirical contexts (for example, by focusing on particular communities) can culminate with generalized claims about a unified category (most typically, "women of the Global South").

The theory of liveable locality avoids these difficulties. Its notion of vulnerability is sufficient to address the structural conditions of inequality that arise when individuals are excluded from liveable territories. No further ideas of gender cohesion are required. And it can work in conjunction

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[305] For example, Patricia Glazebrook's case study in Ghana demonstrates how local women subsistence farmers in northeast Ghana had particular knowledge and skills that contributed to adaptaion practices that were otherwise discounted or overlooked on the international policy-making scale. The expertise of these women is relevant knowledge for adaptation efforts. Patricia Glazebrook, "Women and Climate Change: A Case Study from Northeast Ghana," *Hypatia* 26, no. 4 (2011): 770-771.

[306] Rothe, "Gendered Resilience," 44.

[307] Rothe, "Gendered Resilience," 45.

[308] Christiane Frohlich and Giovanna Gioli, "Gender, Conflict, and Global Environmental Change," *Peace Review* 27, no. 2 (2015): 137-146.

with feminist theories of resistance. According to some feminist accounts, *resistance* is preferable to resilience as a focus for feminist theorizing.[309] For resilience tends to mask the structural conditions of "precarity, inequality, statelessness, and occupation,"[310] and thus tends to justify hegemonic protection policies. Some feminist theorists have argued that vulnerability can function as a strategy of resistance, or that vulnerability is associated with existing practices of resistance. In other words, resistance may itself be seen as a social practice.[311] As for what idea of "vulnerability" people might rally around, the theory of liveable locality offers an appealing answer. In this way it can supplement resistance-oriented theories, without appealing to any notion of "resilience" in individuals and communities.

In linking vulnerability and resistance together, Butler has suggested that an embodied subject's interaction with the very infrastructure that has failed to support individuals can constitute a social practice of resistance. For example, spaces populated by people struggling for "running and clean water, [or] paid work and necessary provisions" can be interpreted as sites of resistance. As Butler puts the idea, "in effect, the demand for infrastructure is a demand for a certain kind of inhabitable ground, and its meaning and force derives precisely from the lack."[312] Indeed, "the demand to end precarity is enacted publicly by those who expose their vulnerability to failing infrastructural conditions."[313] Exposure of the body to such (failing) conditions of support for liveability can be regarded as a demonstration of how bodies are acted on by social practices.

According to the theory of liveable locality, anyone can advance claims to protect climate refugees in virtue of a shared membership in the territorial state system. If climate refugees themselves move across borders away from conditions inhabitability, their movement can be

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[309] Judith Butler, Zeynep Gambetti, and Leticia Sabsay, "Introduction," 6.
[310] Ibid.
[311] Ibid., 6.
[312] Judith Butler, "Rethinking Vulnerability and Resistance," 14.
[313] Ibid.

interpreted as an act of resistance to unjust social structures. Such a framework also accounts for more explicit forms of demonstration such as the various forms of the "Stand up for the Pacific" campaign or the Pacific Warrior Day of Action, movements that are comprised of various actions that take place across twelve Pacific Islands.[314] At the same time, since anyone can appeal to the theory of liveable locality, it does not place the responsibility of advocacy or argumentation for protection solely on those who are already, or likely to be, susceptible to climate-induced displacement.

4.4 Towards a Feminist Normative Ethic

Feminist theorizing reveals how gender, along with class, race, sexual orientation, education, etc.. "intersect" and explain the vulnerability of individuals. It can provide a lens for understanding how climate-induced displacement takes place within a context of these interconnected relations.

The causes and impacts of climate change-based displacement are complex, so any account of climate refugees must be understood, as Cuomo puts it, as "emerging from powerful and deeply entrenched economic and social norms and practices [...]."[315] A normative theory should be able to account for how gender and even climate change itself are constructions that impact and shape our social life and practices.[316] Yet much of the work that focuses on climate change and justice is

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[314] Such actions varied walking through ports in Papua New Guinea, to posing for photographs carrying signs with the slogan "we are not drowning we are fighting" in traditional dress waist deep water in Tokelau, to the construction of canoes in Vanuatu and Tonga. "Pacific Warriors Campaign against Climate Change, March 2013, http://www.abc.net.au/news/2013-03-04/pacific-warriors-climate-change-action/4550898); (http://world.350.org/pacificwarriors/.

[315] Cuomo, "Climate change, vulnerability, and responsibility," 692.

[316] Sherilyn MacGregor stresses the need to make differences of gender, class, and race visibile in discussions of the impacts and solutions to climate change. While not specifically addressing the problem of climate change-induced displacement, her arguments for the importance of feminist theorizing about climate change are relevant. She has argued for the importance of investigating "the ways in which gendered environmental discourses frame and shape dominant understandings of the issue[s]" and must recognize how gender is a "discursive construction that shapes social life" and the way "we interpret, debate, articulate and respond to social/natural.techno-scientific phenomena like climate change." Sherilyn MacGregor, "A stranger silence still: The need for feminist social research on climate change," in *Nature, Society, and environmental crisis*, ed. B. Carter and N. Charles (Malden: Wiley-Blackwell, 2010),

restricted to discussions about the ethical responsibilities of developed, democratic nations to those in the Global South. It does consider the differential impacts of climate change, but rarely acknowledges an intersectional perspective. It largely neglects gendered and racial elements and the ways hegemonic concepts can be perpetuated by theorizing.

A feminist normative framework, on the other hand, can add a great deal to our understanding of climate change, migration, and displacement.[317] It goes beyond traditional ethical theorizing about responsibilities of climate adaptation, given its focus on the connection between ontological or social and normative theory in its accounts of our obligations.[318] It offers a critical analysis of hierarchical power relations and investigates the very value systems that support them. A feminist approach to climate change refugees can in this way expose power relations involved with climate change displacement. A theory that neglects these dimensions does not adequately address the moral problem climate refugees face.

To what extent does the theory of liveable locality lay the groundwork for a feminist theory of climate refugees? Or to what extent can it be understood as a feminist framework itself? Earlier I argued that the theory of liveable locality has feminist merit for two main reasons: the conception of vulnerability it invokes and its attention to the embodiment. I now argue that my approach can also provide a foundation for revising our social practices and the concepts that constitute them.

A practice-based theory can create the critical space needed for the evaluation of concepts. It can show, for example, that proposed principles of justice do not reify hegemonic or discriminatory concepts. This is important for a feminist normative framework that aims to address how concepts contribute to the production of unjust social structures. This type of methodological

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[317] Moosa and Tuana, "Mapping a Research Agenda Concerning Gender and Climate Change," 682.

[318] Ibid., 686.

critique is necessary for arguments that propose alternative social practices or that argue for revisions of our current social practices.

The theory of liveable locality (i) argues that a revision of concepts is necessary to bring about social reform *and* (ii) employs a method of critique that can provide a groundwork for revising such concepts. In particular, the practice-based approach to climate refugees I have offered can be conceived as a type of "social critique" described by Sally Haslanger. It is a type of critique that motivates a revision of certain social practices and the "schemas"[319] through which they are constituted.

For Haslanger, social practices are a type of social structure. Social structures are a general category of social phenomena that are comprised of a set of interdependent *schemas* and *resources*. Schemas encode knowledge and provide individuals with scripts for acting and communicating with others. Resources are tools that sustain or perpetuate power.[320] According to Haslanger's model, the social world includes these schemas for action. Schemas offer different ways of interpreting, but they also make meaningful or legitimize certain ways of interacting with a given object or reacting to a particular event.[321]

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[319] Haslanger takes *schemas* to consist of public, shared patterns of thought, behavior, or modes of perception embodied in individuals and used to interpret or organize information. Haslanger suggests that we may conceive of *schemas* as intersubjective rules that are revisable or subject to change given the extent to which they are embodied. *Schemas* may be particular to a community, or they may traverse cultural or national boundaries. Social structures cannot be identified with *schemas*, the latter is merely one part of the former. According to Haslanger, this is because "social structures have material existence and a reality that 'pushes back' when we come to it with the wrong or an incomplete schema." The notion of *schema* employed in Haslanger's account of social structures is not a purely cognitive notion, emotional elements and collective cultural conceptions and underlying back- ground assumptions are also relevant features of *schemas*. *Schemas* are cognitive in that they are comprised of a set of beliefs and propositional attitudes that make certain phenomena meaningful and thus direct our attention and action to such phenomena. Consequently, they shape memory and understanding of an experience by influencing what information we take- up for comprehension. The information we process and use to make predictions or guide our action is often selective- it usually coincides with a dominant *schema*. However, *schemas* also are comprised of conceptual categories or culturally developed dispositions. See Sally Haslanger, "Ideology, generics, and common ground," in *Feminist Metaphysics: Explorations in the Ontology of Sex, Gender and the Self* ed. Charlotte Witt (London: Springer, 2011), 179-207; Sally Haslanger, "But mom, crop-tops are cute!," in *Resisting Reality: Social Construction and Social Critique* (Oxford: Oxford University Press, 2012), 413-414.
[320] Haslanger, "But mom, crop-tops are cute!," 414.
[321] Ibid., 417.

According to Haslanger, these schemas are a form of ideology. On such a view, ideology is not merely a set of background beliefs that justify social structures. And social practices, as a specific social structure, are not merely imposed on subjects. Rather, they are constituted by the behaviors, choices, and actions of subjects. Ideologies undergird social practices in the sense that they constitute a range of attitudes in addition to particular beliefs. Schemas help to sustain and are reinforced by ideology.[322]

Haslanger conceives of ideology critique as a way in which the dogmatic application of certain concepts can be disrupted.[323] Ideology critique is not just an attempt to change a set of beliefs or to show that some beliefs are unwarranted or false.[324] It can help to "give voice to the counter-hegemonic by describing and recommending resistant interventions and practices."[325] In order to prevent ideology from becoming hegemonic, a method of critique must make explicit that there are certain concepts that contribute to the production of social structures that are often taken for granted as natural facts.

The theory of liveable locality reveals how certain concepts of territoriality are embedded in the state system. It also argues that they are illegitimate under the empirical conditions of climate change. It exposes how the exclusion of climate refugees is not merely a "natural" phenomena that arises from environmental changes. It explains why we have ignored or overlooked the way in which we are bound by obligations to protect climate refugees. Such obligations have not been visible because the practice of the territorial state system has relied on concepts that can no longer be maintained.

Specifically, the theory explains the moral requirement to abandon the assumption of fixed territory associated with our notion of jurisdictional authority. We have a moral *requirement* to revise

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[322] Haslanger, "Ideology, generics, and common ground," 448.
[323] Ibid., 473.
[324] Haslanger, "But mom, crop-tops are cute!," 413.
[325] Haslanger, "Ideology, generics, and common ground," 475.

particular concepts associated with the practice of the territorial state system, partly in view of the nature of that practice itself. We see how concepts such as birthright citizenship are employed dogmatically in the social practice. And we see why, under conditions of ecological instability, the traditional notion of birthright citizenship is no longer viable. It does not provide the protection against exclusion that it once afforded.

4.5 Conclusion

By disclosing the possibility of alternative ways to understand concepts that are no longer adequate in conditions of climate instability, the theory of liveable locality is more than a form of ideological critique. It provides a prescriptive argument, both for why certain concepts ought to be revised, *and* it offers alternative concepts for social change. It helps to reveal that our obligations to climate refugees can already be found within our current social practice of the territorial state system. But such obligations are only made available by revising certain outdated conceptions of the practice itself.

In this sense, the theory of liveable locality takes the initial step of a feminist normative approach: as Haslanger puts it, "it make[s] visible the social dynamics that create our social worlds."[326] It allows for ideology to be submitted to critique, by making explicit a shared practice's presuppositions. But by *also* providing an argument for why a certain social practice ought to be revised, it goes beyond mere ideology critique to social critique – that is, to a principled argument for reform.

As a form of social critique, my approach can support further feminist arguments regarding climate refugees. It helps us decide whether certain climate refugee policies or practices contribute

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[326] Haslanger, "Ideology, generics, and common ground," 474.

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to the formation of further injustices. It has the potential to explain why the current protection regime is inadequate, but also provides a framework for identifying when certain social practices may become unjust. For this reason it is a useful resource and, hopefully, a model for feminist arguments that pay special concern for the way that new arguments can create newly problematic concepts that shape our ongoing shared social practices. As a matter of theory, it provides a basis for theorizing about the justifiability of practical proposals that aim to address the challenge of climate change-based displacement without neglecting the normative implications of current empirical conditions and the structural nature of the inequalities that characterize such conditions.

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