Climate Change Refugees

(Forthcoming in *Critical Review of International Social and Political Philosophy*)

Matthew Lister*

Law Clerk to Judge Dolores Sloviter, U.S. Court of Appeals for the 3rd Circuit, Philadelphia, PA, USA

Under the UNHCR definition of a refugee, set out in the 1967 Protocol Relating to the Status of Refugees, people fleeing their homes because of natural disasters or other environmental problems do not qualify for refugee status and the protection that come from such status. In a recent paper I defended the essentials of the UNHCR definition on the grounds that refugee status and protection is best reserved for people who can only be helped by granting them refuge in a safe state for an indefinite period of time, and argued that this does not include most people fleeing from natural disasters. This claim is most strongly challenged by possibility of displacement from climate change. In this paper I will explore to what degree the logic of the refugee convention, as set out in my earlier paper, can and should be extended to those fleeing the results of climate change.

Introduction

The idea of a "climate change refugee" is a comparatively new one. Despite the fact that international migration in response to environmental factors has been both normal and common throughout human history, the first significant discussions of movement based primarily on climate changed related factors[1] started only in the 1990's, and at this time the discussion was mostly undertaken by scientists interested in climate change, not by those doing legal, practical, or normative work on refugees and forced migration[2] (McAdam 2012, pp.1-3). The highly comprehensive three-volume set, *Immigration and Asylum from 1900 to the Present* (Gibney and Hansen, 2005) does not discuss climate change specifically at all, nor does it have entries for island states such as Tuvalu or Kiribati, often thought to be among the most likely to produce climate change refugees.[3] A recent volume on forced migration, (Crepeau *et al.*, 2006) covering many

* Email: listermj@gmail.com

different problems and perspectives, included no coverage of climate change. While a large legal and practical (or, perhaps, intended to be practical) literature has developed over the last several years,[4] more normatively focused work has been relatively sparse. Two of the most important recent normative works on refugees and asylum, Gibney (2005) and Price (2009) for example, give no significant discussion to the topic of climate change at all.[5] While in the last few years there have been a small number of philosophical papers addressing, at least in some sense, the problem of climate change refugees, (Risse 2009, Nine 2010, Kolers 2012) I shall register some significant worries about the treatment of the problem presented there.

In this paper, I will provide a normative foundation for the idea of a climate change refugee, and show how this category can be made to fit within the logic (though not the current legal language) of the UN Refugee convention. In doing so, I will draw on my earlier work on refugees; showing how the normative basis for refugee protection I there developed can be extended to include the most relevant groups affected by climate change. (Lister 2013) While this is not, by any means, a general solution to the problems faced by people threatened by climate change, I will argue that crafting such protection has an important role to play in a scheme of responses.

This approach, if successful, has several advantages over its rivals. Though it would require modifying or adding to the current terms of the UN refugee convention, it would not require a fundamental shift in the underlying logic that I have described. If this is so, we would not need a new "territorial approach",[6] nor need we make reference to ideas like the "common ownership of the earth".[7] And, we would not need to fundamentally re-cast refugee protection in terms of a "human rights" approach,[8] one that depends, it seems to me, on greatly modifying and expending our understanding of human rights and how they function in international law. Although I would contend that the more modest change I suggest is the correct one in any evaluation, the more important argument for it in this setting is its greater degree of "progressive conservatism".[9] This is a central concern in that, in cases like those at issue in this paper and on topics such as refugees in general, feasibility and likelihood of successful adoption of a proposed change are fundamental, and of crucial importance. What we want is a system that will do the most justice to people given plausibly achievable goals, starting from the situation we find ourselves in. Proposing views that would require major changes to our normative systems, as those discussed above would, will often lead to inaction, inertia, and greater injustice. In cases such as this, the practicality of a proposal is not a mere detail, but a fundamental concern. More "ideal"

proposals are often worse than useless- they may lead to greater injustice. Thus, I will show how my extension of the logic of the UN Refugee Convention fares better than other proposals in terms of being a useful step to help those in need. Furthermore, even as a matter of theory, if we can make due with a more conservative account, this is to be preferred to an approach that requires us to accept controversial accounts of territory or common ownership of the earth. If we can achieve acceptable results with less controversial premises, both widespread agreement and correctness are more likely to result.

The "Logic" of the UN Refugee Convention and the Case of Climate Refugees

The 1967 Protocol to the UN Convention on the Status of Refugees defines a refugee as one who:

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

This definition does not, in any plausible way, cover people fleeing their homes because of environmental disruption, including disruption caused by climate change.[10] Those fleeing disruption caused by climate change are not plausibly thought of as being persecuted, and so cannot have a well-founded fear of persecution. Generally speaking, the danger caused by climate change is indiscriminate, and hence the danger faced is not "on account of" one of the "protected grounds"- race, religion, nationality, membership in a particular social group, or political opinion.[11] Given this, two essential elements of the refugee definition are missing in the case of those fleeing the impact of climate change.

However, I have recently argued, (Lister 2013) that the best way to understand the logic of the Refugee Convention- the normative force behind it- is to ask what, if anything, makes refugees a normatively distinct group from others who need aid from the international community.[12] In this earlier work, I argued that the best way to understand what is morally distinct about refugees is to ask to whom what we owe to refugees is owed. In that work, I assumed the fairly standard idea that what is owed to refugees is, first, *non-refoulemont* - the obligation to not return those fleeing danger of the appropriate sort to a state where they would face this danger - and, at least eventually, a "durable solution"- the right to remain in a safe country indefinitely, with eventual access to full membership. In that work I argued

that the group picked out by the Refugee Convention definition was normatively distinct from others needing help from the international community, because such people could only, or at least could best, be helped by providing them the particular remedy of asylum, understood as including both *non-refoulemont* and a "durable solution".[13] To the extent that those picked out by the Convention definition had this trait, and other groups needing aid did not, it made sense to treat Convention refugees as a morally distinct group. This, I argued, was the logic of the Refugee Convention.

There was, however, a lacuna in this earlier argument. There I maintained that if other groups not picked out by the Refugee Convention definition also could only be helped by granting them asylum (as defined above), then the logic of the Refugee Convention, even if not its terms as currently accepted, would tell in favor of extending refugee status and protection to these others in need of aid as well. I provided some argument as to why I did not think this would be a common case, but held open the possibility that certain environmental displacements, including (but not necessarily limited to) climate change, might fit this standard (Lister 2013). It is my goal in this section of the paper to fill the gap in my earlier argument by showing how the logic of the Refugee Convention can apply, without significantly modification, to certain people displaced by climate change related environmental problems.[14] I shall argue that refugee status, and with it the right to *non-refoulemont* and a durable solution, is owed to the subset of those displaced by climate change or other environmental disruptions of expected indefinite duration, 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.

In the next section I shall explain why refugee status and the right to asylum ought to be extended to the group picked out above, but need not be extended to others displaced or facing displacement from climate change. The number of people who face serious difficulty from climate change is very large in comparison to the number who would be picked out by this account, so it is important to see why only this group must be given this particular form of aid. But, before showing that, it is necessary to reiterate two points. First, there will often be a moral obligation owed by the international community or by individual states to people harmed by climate change other than that I discuss here. That a person or group is not properly thought of as a refugee does not mean that they are not in need of, or owed, other forms of aid. Secondly, and relatedly, this is only one small part of what may be owed to those harmed by climate change. It would be foolish to think that extending refugee protection, or even granting other forms of migration rights, could solve all of the problems that are likely to

arise. So, this approach will not solve all or even most problems. But, it is, I shall argue, and important piece of the proper international response to climate change, and so worth working out in some detail. As I have argued before, making our duties clear is one important step to fulfilling them. (Lister 2013)

Why these limits?

Each of the limits I argue for here has some degree of parallel with the logic of the Refugee convention, as I have elsewhere described it. Understanding these limits, and why they are relevant to granting refugee protection, is our next step. First, however, it is worth reiterating that asylum is a particularly weighty remedy, one requiring a state to take steps it otherwise would have no obligation to take, and therefore may only be required when it is the only, or perhaps clearly the best, remedy for a situation. This is perhaps especially important for explaining why asylum is the proper remedy for environmental problems expected to be of indefinite duration, but not for those expected to cause only temporary displacement.

If an environmental problem is of temporary duration, such as the typical damage from a hurricane, earthquake, or flood, it is reasonable to expect people to return to their homes once the danger has passed, at least if help in restoring communities to functioning levels is granted.[15] Because of this, some form of temporary protection will usually suffice for those forced from their homes because of environmental problems.[16] In earlier work, I noted how the situation is different for those who faced persecution on the basis of a protected ground. Because this threat comes from a state (or a non-state group the state cannot or will not control) we must assume that the threat is of indefinite extension.[17] This is part of what makes asylum, including a durable solution, appropriate in such cases. While this typically does not apply to those fleeing natural disasters, it may plausibly apply in the case of certain sorts of environmentally based displacements. The most plausible cases involve low-lying islands faced with rising sea levels and, perhaps even more importantly, rapidly decreasing access to fresh water.[18] In cases such as this, the threat that leads people to abandon their homes is unlikely to be short-term. For such people, temporary protection will not suffice. In certain cases, those discussed below, this need for a permanent solution to the problem will justify asylum as a remedy.

The next issue is the role of *international* or cross-border movement in the analysis. Although supposedly "sinking islands" have caught much of the public (and philosophical) attention, as Jane McAdam (2012, p. 16) notes, the large majority of migration related to climate change will be, or could be, internal.[19] This is unsurprising, given that climate change has, and will have, effects all over the globe, but only a small percentage of the currently inhabited planet will become uninhabitable. (Or so we may hope.

If this is not so, we have more significant problems than any theory of migration can help us with.) Even in the case of countries facing quite serious environmental problems plausibly tied to climate change, such as Bangladesh, the vast majority of the projected movement will be internal to the country (McAdam 2012, pp. 166-72).

That the majority of migration plausibly tied to climate change is likely to be internal is relevant for two reasons. First, it throws serious doubts on "alarmist" views of the likely migratory impact of climate change. As McAdam (2012, pp. 4-5) notes, projections of millions of people crossing international borders are both not based on sound estimates and empirical study, and threaten to create the sort of panic and backlash against those actually displaced across international borders that has tended to leave them unprotected.[20] Second, if people are able to relocate safely within their own country, there is no, or at least significantly less, reason to provide protection in another country. Aid may be given in-country.[21] In many cases this will be preferable, not just to countries other than the one in need of aid, but also to those harmed, who may have no desire to leave their own countries, cultures, languages, friends, and so on. In such cases there may even be an obligation to help the people remain within their own state rather than offering the option of coming to a new state, though, as with many issues in relation to international assistance, context will be important.[22]

In other cases, internal relocation will not be a plausible option. This may be so for all or for only a part of the population. (It may be, for example, that a low-lying island can support a very small population, but that the majority of its inhabitants will have to leave.) In such cases, we again are faced with a group of people who can only be helped by granting them residence in a safe, new, state, given our previous assumption that the condition in question is likely to be of indefinite duration. We see here, again, how some portion of those forced to move fit within the logic of the Refugee Convention definition. (In the sort of cases under consideration here, we also need not worry to the same degree that the "country of origin" will oppose attempts at aid, a feature that I have elsewhere argued (Lister 2013) is of significant importance in determining the nature and scope of our duties. Noticing this helps us see how the logic of the refugee convention applies in both the case under consideration and in the more "traditional" case.)

The final condition I defend, that the threat faced must be to the possibility of living a decent life at all, not merely to a favored or traditional way of life, is in part a corollary to the previous condition. Many people around the world face significant challenges to their favored or traditional ways of life due to environmental challenges tied to climate change.

Farmers in the Mid-West of the United States, for example, have faced several years of significant drought thought by many to be influenced by climate change. If the already serious drought continues or worsens, it is plausible that these farmers will have to leave their homes and favored ways of life. Imagine, however, that one effect of climate change is that areas of the Canadian prairie not currently suitable for heavy agricultural work became capable of supporting the former way of life of displaced Mid-Western U.S. farmers. Or, consider a somewhat less hypothetical case. Many Yup'ik Eskimos in Alaska now face very significant challenges to their traditional way of life due to quickly decreasing ice coverage, melting permafrost, and related erosion. Imagine that the Yup'ik could continue their traditional way of life in near-by Siberia. In either of these cases, would there be an obligation for the country where the favored way of life could be continued- Canada or Russia- to grant entry to those displaced from their homes? I will argue that there is no such obligation.

There are several plausible bases for a duty to grant asylum to those facing the appropriate dangers (whatever they may be), but it does not seem that any of these would require granting admission to people merely because they face difficulties, even severe difficulties, in continuing a favored or traditional way of life. In earlier work (Lister 2013) I argued that either something like Rawls's "duty of assistance" (Rawls, 1999, pp. 105-13) or a "duty of humanitarianism" (Gibney 2004, pp. 229-49) could ground such a duty. Perhaps other accounts, such as Risse's (2009) supposed "common ownership of the earth" could also suffice. That many bases are available for this duty is one of its strengths- it need not depend on any one particular controversial theory, but is supported by several accounts. But on none of these accounts is what is owed the ability to continue any particular favored or traditional way of life.

We can see why this would be so when we consider the domestic case. Even in the domestic case, where duties to members are arguably significantly higher, there is no obligation to ensure that all people must be able to continue or enjoy any particular way of life, so long as all people have a range of good lives open to them. In any society, it may be that unproblematic developments tend to render particular ways of life difficult or impossible. Changing tastes may render a form of life unviable, or democratically decided upon decisions about environmental stewardship may make certain lifestyles, such as logging, no longer available. Similarly, traditional religions may find it difficult or impossible to flourish or even survive in open societies where membership may not be enforced by law. But, in all of these cases, there is no obligation for the state to ensure that any particular way of life is able to flourish or survive.[23] As Rawls (1996, p 197) states, "there is no social world without loss: that is, no social world

that does not exclude some ways of life that realize in special ways certain fundamental values."

If domestic societies do not have an obligation to preserve or make possible all of the favored or traditional ways of life desired by their own citizens, it is hard to see how the international community could have such an obligation. But, if there is no such international obligation, then the fact that climate change made a traditional or favored way of life impossible within a certain territory would not imply a right to enter into a distinct state where the way in life in question could be pursued, unless this was as a matter of mutual agreement.[24] The case is different, however, if and when climate change or other forms of environmental difficulty makes any decent form of life at all impossible in a territory. Here those threatened are not required merely to accept a different, less desired, form of life, but face the possibility of being unable to live a decent life at all. Such would be the case if climate change caused an island to have too little fresh water to support the population, for example. Assuming such danger to be country-wide,[25] those at risk would have no choice but to enter another country if they are to live any sort of decent life at all. I shall argue below that states receiving people fleeing from climate change or other environmental harms need not take steps to allow the victims to recreate their former styles of life beyond what is required by human rights, liberal principles of justice, and other such considerations, but here we can see clearly the difference between the two groups discussed in this section.

I have argued that the logic of the refugee convention can be plausibly extended to cover certain people fleeing from environmental harms, including climate-change related harms. This group is made up of people who are fleeing dangers expected to be of indefinite duration, who have no choice but to cross an international frontier, and where the risk is not just to a favored or traditional way of life, but to the ability to live a decent life at all.[26] This is a minority of people whose lives will be seriously impacted by climate change. But, I have tried to show, it is the subsection of those affected by climate change who are properly thought of as refugees, and so who ought to be eligible for asylum. While we should not underestimate the difficulties faced in changing the Refugee Convention to include this group, the reasons for doing so are, I hope, clear.

Is "Individualized" Protection Sufficient?

Asylum and refugee protection is "individualistic" in several senses. First, even though group membership often figures into the justification for a claim to refugee protection, it is the individual in question, and not the group, who is typically thought to be owed protection. Additionally, refugee status determinations are typically made in an individualized way,

rather than being applied to a group of people as a whole.[27] In this section of the paper I will address these issues, focusing first on the more "practical" issue of status determination, before returning to the more "conceptual" issue of whether providing relief to individuals, as individuals, suffices to meet our moral duties.

McAdam (2012, p. 188) has noted that one potential problem in applying the Convention Refugee paradigm to those fleeing the effects of climate change is that the type of individualized status determinations that are typical of Convention refugees seem implausible and impractical in the case of mass flight. In assessing the extent to which individualized determinations are proper at all, we should distinguish between two scenarios. In the first case, an entire territory or state is rendered uninhabitable, requiring flight by all inhabitants. In the second, adverse environmental developments do not render the territory completely uninhabitable, but do make it so that only a much smaller fraction of the population may safely remain within the territory. In the first scenario, only minimally individualized determinations seem necessary. In such a case, determining that the person seeking protection is in fact from the state affected should be sufficient. State-wide application of protection with only minimal individualized determinations is used in several countries in relation to various sorts of temporary protected status.[28] I can see no obvious reason why, in the first scenario, more than this sort of minimal determination would be needed.

The second scenario is somewhat more complicated because, per hypothesis, not everyone from the threatened territory must leave, though most will have to. Here a "blanket" determination of the sort considered above may be less applicable. In such cases, the most plausible approach might be pre-departure screening of a minimal sort, establishing citizenship and identity, for example, and determination, in cooperation with the government of the territory, of those who will leave.[29] This would allow orderly processing with only minimally individualized determinations-deciding that people were who they said they were, and so on. Given the possibility of these procedures, worries about individualized processing in these cases do not seem to me to be decisive or perhaps even especially significant.

The deeper and perhaps more interesting question is the more conceptual one, of whether individualized remedies can satisfy our moral duties here.[30] Though there are significant differences between their views, both Cara Nine and Avery Kolers have argued that "individualistic" remedies cannot meet our moral duties to those forced to flee their homes in the face of climate change,[31] and that "corporate" remedies are instead needed. Many "corporate" approaches favor "territorial" remedies, seeking

to remedy the harm suffered by those fleeing from climate change by transferring territory from existing states to those whose state can no longer support them.[32]

Both Nine and Kolers argue that "individualistic" remedies, such as that applied by traditional refugee protection of the sort I have argued for, cannot suffice to remedy the wrong suffered by those who are displaced. The wrong in issue, according to corporate approaches, is that those displaced have been deprived of their "collective right to self-determination", (Nine 2010, p. 359) and face losing their "political identity, political community, currency, civil society institutions, and perhaps even language" (Kolers 2012, p. 334). These harms, it is claimed, can only be compensated by granting a new territory to those who have fled their own. This is not just a right to enter a safe country, but the right to govern some new territory, on terms largely similar to how the group governed its own former territory. Importantly, this would be a right held by the group, and not by any particular member in it. In what follows, I shall argue that each part of this claim is mistaken. First, I shall argue that the international society does not owe the sort of right to self-determination to the displaced group suggested by the corporate approach. Rather, what is owed is the opportunity for each individual to be part of a self-determining group. Next, I will show that corporate accounts, but especially Kolers', depend on an implausible account of responsibility for whatever plausibility they have. Finally, I will note that pragmatic concerns tell heavily in favor of individualistic approaches. Given that, in areas such as this, the feasibility of a theory is an essential feature, this is not a minor concern. If I am correct in these claims, then there will be significant reason to favor individualized over corporate responses in the type of cases we are considering.[33]

Corporate accounts such as Nine's and Kolers' depend on the notion that there is a right to self-determination, held by groups, that ought to be enforceable against the international community. Typically, this right would be operational within an existing territory, but, when a territory becomes unable to support the group in question, the right to self-determination entails at least a defeasible right to claim a new territory (Nine 2010, p. 366, Kolers 2012, p. 336). This claim is, at least, highly controversial. The sort of right to self-determination that it depends on is not recognized in international law, nor is it likely to be at any point soon. Of course, this does not settle the conceptual or moral issue, but does show that the account faces considerable problems with implementation. Perhaps more fundamentally, it is a controversial account of what self-determination requires even among those who recognize such a right for groups.

To see the controversial nature of the corporate view, we may note that, even among those who accept "primary rights" accounts to self-determination and secession,[34] the view here would be an extreme one, in that it calls for not just the reorganization of an existing state among its current inhabitants, but the transfer of territory from one group to another, completely alien group.[35] This might suggest retreating to a less controversial "remedial rights only" account for acquiring new territory, but such an account, if it were to be successful, would require attributions of responsibility that are not, for reasons I will discuss below, plausible. Finally, it is important to note that this approach is most likely to promote backlash against those in need of aid. If states believe that what is required of them, to help climate change refugees, is to give up significant portions of their territory, then aid is very unlikely to be forthcoming. This history of backlash against refugees in general, and the particular backlash against territorial claims in the case of Nauru, (McAdam 2012, pp. 147-53) strongly point in this direction, giving further reason to think that the territorial, "corporate" approach is unworkable.[36]

What is plausibly owed to those displaced by climate change is a right, held by individuals, to be able to be full members in a polity that respects them and allows them sufficient autonomy. In the case of existing states with minimally just governments, this right is satisfied by not interfering with the legitimate government. But, it is a non sequitur to suppose that this means, in the case of a destroyed state, that the old government should be given new territory. Rather, the relevant sort of self-determination can be fully supplied within the individual protection approach, as each individual would be provided the same sort of self-determination rights that anyone anywhere has - the right to take part in a just society. This would require respecting minority rights and protecting the rights of the displaced individuals, protection of language rights, and so on.[37] But, this may all be done without granting new territory to governments of no longer inhabitable states. Self-determination, properly understood, does not, then, tell against individualistic approaches.

Kolers has suggested another argument the might tell in favor of the corporate/territorial approach, one based on the supposed wrong-doing of industrialized states from which territory would be taken. Here, the wrong-doing of some states might call for compensation for those harmed in the form of a grant of new territory. If this were so, then a less controversial "remedial rights" approach to self-determination might support corporate remedies for those displaced by climate change. We might think of this wrong-doing on analogy with either crime or tort, but neither approach supports a corporate/territorial view, I shall show.

Consider first the crime approach. (Kolers 2012, p. 334) Criminal responsibility typically requires an intentional act that was prohibited at the time of its doing, and usually also requires that the bad results be foreseeable. This is an implausible description of the large majority of actions leading to climate change. As noted by Risse (2009, p. 282), emissions of green-house gasses was completely legal at the time the majority of damage was done (and largely still is.)[38] Furthermore, for most of the time when significant greenhouse gases were emitted, there was no wide-spread understanding of the danger. Perhaps an argument could be made about further release of gases, but it would be hard to show that these were proximate causes of the harms to those facing danger, as opposed to releases of gasses in the past. If we want an analogy with crime to work, it is important to make sure there is a real analogy. At best, Kolers has not shown this, and the proposed analogy seems quite weak on several grounds.

Next consider the analogy with tort. Here the basis for moral responsibility need not be as direct as with crime. There need not be a pre-exiting prohibition on the action causing the danger, for example. There may still be problems about foreseeability, but that is not my main worry. Rather, the most fundamental problem with the tort approach is that it depends on a highly controversial and, to my mind, implausible version of joint and several liability. Even the worst contributor to global warming will have only contributed a minority portion of the total amount of greenhouse gases. Yet, Kolers' corporate/territorial solution is one that can only be imposed on a particular state, putting the full burden on one country.[39] Such an approach is implausible on its face (especially when we note that actions by the threatened states are themselves significant contributors to their current situation; see McAdam (2012, pp. 123-7) but also has the negative result of making burden-sharing more difficult. The individualized approach, on the other hand, provides a straight-forward way to distribute shares of blame and so to partition burdens. Neither "wrongdoing" argument, then, tells in favor of a corporate/territorial approach.

Finally, it is worth noting that neither Nine nor Kolers give any serious discussion to the situation of the current inhabitants of the territory to be re-distributed. Ignoring the impact on those who dissent to territorial transfers is a common problem in discussions of self-determination. That there is a problem is not even noted in the accounts under consideration.[40] But, without at least a gesture at this problem, we have no reason to think such an account can be successfully implemented without itself inflicting significant injustice.

Conclusion

Climate change is a complex and fiendishly difficult problem. No one approach is likely to do more than make a partial contribution to the necessary changes that it engenders. In this paper I have argued that one part of an acceptable response is to see how refugee law might be extended to help some of those at risk, and have argued that these changes follow from the logic of the UN Refugee Convention. While, at best, this is only a small part of a complex puzzle, it may yet be an important one.

Acknowledgments

My thanks to Patti Tamara Lenard, Crispino Akakpo, Adam Hosein, Jaya Ramji-Nogales, and an anonymous referee for this journal for helpful comments and discussion. Nothing in this paper reflects an official position of the 3rd Circuit Court of Appeals for the U.S. government.

[1]We should note that climate change is almost always only one factor necessitating movement of peoples in the sort of case we are interested. There are no actual clear "clean" cases. This, arguably, has some significant implications for some theories of duties to those who must flee their homes, implications ignored in some of the more purely philosophical discussions of the matter.

[2] McAdam (2012, p.3) notes that the term "environmental refugee" was first used in a formal document in 1985, by Essam El-Hinnawi, but the term covers many more people than plausibly fall under the "climate change refugee" category, and does not, for plausible reasons, give that category any special attention.

[3] The work does include a discussion of migration from Bangladesh, another state often associated with climate change refugees, but this discussion focuses almost exclusively on politically related factors in relation with India. (Abrar 2005)

[4] This literature is very ably discussed in McAdam (2012). I am greatly indebted to it for my knowledge of this literature, and think that McAdam's books is clearly essential reading for anyone interested in this general subject. Howard Chang, has also provided important consideration of the issue from the perspective of economic analysis. See Chang (2010). I briefly touch on some of Chang's points below, but do not have the space to consider all of his arguments in depth.

[5] Price briefly discusses people fleeing from natural or environmental events that would prevent them from returning home within any fairly short time period, but does not mention climate change as a likely cause. See Price (2009) pp. 174-6.

[6] Such an approach is advocated, in somewhat different ways, by both Nine (2010) and Kolers (2012). I shall show what is especially problematic about these approaches later in the paper.

[7] As is advocated by Risse (2009).

[8] As is, at least sometimes, advocated by McAdam (2012), among others. See also Karen Musalo (1994).

[9] This term is due to Allan Buchanan, and suggests that a theory, "should build upon, or at least not squarely contradict, the morally acceptable principles of the existing international legal system." See Buchanan, (2004) p. 63

[10] See McAdams (2012) pp. 42-48 for a very helpful discussion of problems in trying to apply both the UN Refugee Convention, as well as various regional refugee conventions, in their current form, to the case of those fleeing climate change.

[11] Of course, it is not unusual for people fleeing "natural" disasters to be unequally subjected to danger *because of* one of the protected grounds. In such case, the people in question are subject to persecution and meet the "nexus" requirement of the refugee definition, and hence are plausibly convention refugees. Such "hybrid" cases contain an important element of human agency that is lacking in the "clean" climate change refugee case. I discuss hybrid cases, and why they should be seen to fall under a fairly traditional reading of the refugee definition, in my paper, (Lister 2013)

[12] People who cannot meet their basic needs on their own, but who can be adequately helped by their own governments, form another morally distinct category. These distinctions will be relevant further along in this paper.

[13] Here one of the differences between my approach and that set out by Matthew Price becomes clearer. I hold that the remedy of asylum is appropriate when this is the only or best way to help those in need. While I have argued that this typically follows the classical UN Refugee Convention, this connection is shallow rather than deep- on my account, there is no *special* connection with persecution on the basis of a protected ground, or with harm from a state government. Rather, it is simply the case that this sort of harm can typically only be remedied by granting asylum, while other types of harm may be addressed in other ways. My account, then, does not postulate a special relationship between asylum and political harm, nor with the desire to provide a political rebuke to offending states, as does Price's. Though we sometimes argue for similar substantive conclusions, the logic of the arguments is quite different. This comes out in the case addressed by this paper, where the harm faced is not directly political. See Price, (2009) pp. 24-94.

[14] This extension need not be restricted to environmental displacement cause in part by climate change. The displacement of the inhabitants of Montserrat due to volcanic activity is a clear example.

[15] As McAdam (2012, pp. 161-85) documents in her fieldwork in Bangladesh, those displaced by temporary environmental problems often have strong personal preferences to return to their homes as well. Given these preferences, a remedy that helps make this possible and likely is especially appropriate.

[16] Most current forms of temporary protection have significant shortcomings, but this need not change the fundamental point. Furthermore, supposedly temporary protection often leads to long-term displacement, after which significant ties to the protective community are formed. This may lead to distinct grounds for allowing some people granted temporary protection to adjust to permanent resident status. For useful discussion on both of these points, see Price (2009) pp. 174-80. Adam Hosein, in an unpublished paper, "The Fundamental Argument for Legalization", presents a particularly powerful and original argument for this claim. (Hosein [unpublished])

[17] Of course, a state that engaged in persecution may be toppled or otherwise change. If this happens in a relatively short time period after the would-be refugee seeks protection, a "changed circumstances" clause, such as that found in the asylum law of the US and other countries, may properly be invoked. For discussion of the "cessation clause" in the refugee convention, see Guy Goodwin-Gill, (1996) pp.80-9. However, it is usually implausible to assume this will happen, and after a certain amount of time, a refugee would have built up

a plausible claim to remain in the host country. For discussion on this last point, see Adam Hosein, (unpublished).

[18] For very helpful discussion of the actual likely mechanisms that could make island states such as Tuvalu or Kiribati uninhabitable, see McAdam (2012) pp. 123-7, and the work cited therein. It is worth noting that, while climate change is a likely example of environmental or "natural" problems that might render a territory indefinitely uninhabitable, the fit is far from perfect or exclusive. On the other hand, as will be discussed below, much of the damage caused by climate change will not render entire territories uninhabitable, indicating that not all climate change related movement must be addressed via the refugee approach.

[19] Of course, if current immigration rules were changed, at least some movement that would, under current rules, be internal would likely rather be cross-border. But, for our purposes, what is most relevant is that much of the movement likely to be induced by climate change *could be* internal- crossing an international border is not, strictly speaking, necessary to avoid the most immediate and pressing dangers.

[20] For helpful discussion of backlash against (often relatively small) movements of refugees, where large flows were feared, see Gibney, (2004, pp. 94-103, 177-92).

[21] Howard Chang has argued that there are significant economic reasons to favor international migration in cases such as those I consider in this section. See Chang (2010), pp. 346-55. These are significant arguments in need of more consideration than I can give them here, but for now I shall merely note that they are largely pragmatic arguments, while I am here primarily interested in questions of moral obligation. States may, of course, decide that the best way for them to meet their duties to those who suffer from climate change is to allow more migration generally, but, if I am right, this is not a necessary conclusion from a moral perspective.

[22] For example, if internal migration on a large scale would threaten to throw a whole country or significant part of it into chaos, while international migration would avoid this, then of course international migration would be preferable.

[23] States plausibly have an obligation to help their own citizens whose ways of life have become unviable to transition to new ways of life. This might apply to mid-west farmers or to the Yup'ik. It seems much less plausible to me that this duty is owed to citizens of other states.

[24] We might think that considerations of causation and rightful compensation lead to greater duties here. This argument has some force, but is not, I think, fully convincing in the end. I address this issue further below.

[25] Or, perhaps, nearly so. It might be that part of a country is subject to significant damage, while another part remains inhabitable, but the remaining part is not sufficient to support the entire population. This is, in fact, a fairly plausible scenario for some low-lying islands. On this point, see McAdam (2012) pp. 159-60. I return to this point below.

[26] A "decent" life here is merely one where the basic needs of the person in question are met, and the life is normally free of danger and persecution. Some, such as Will Kymlica, have argued that access to one's own "societal culture" is necessary for a decent life. See Kymlica (1996), pp. 75-106. This strikes me as almost certainly false. For argument to that end, see Waldron (1992). The ability of millions of refugees and other migrants to live rich, meaningful lives outside of their original "societal cultures" tells strongly against Kymlica's claim, especially in areas relevant to this paper. Even if Kymlica's claim were more plausible, I would contend that there would be strong pragmatic reasons to avoid extending refugee protection in the way his account might suggest, as the likely outcome would be less protection for those in need, not more.

[27] Nothing in the Refugee Convention itself seems to require this, and "group" designations are sometimes used, at least at first, during mass-flight situations. But, most states that accept large number of refugees insist on individualized determinations, and some, such as the US, require some sort of individualize process before accepting refugees living in camps for resettlement.

[28] For helpful discussion, see Price (2009) pp. 174-80 and Gibney (2005)

[29] Pre-departure screening and planned, managed, movement is certainly preferable in the first scenario as well, but might be less likely, so I do not want to assume it.

[30] By calling this a "conceptual" question, I do not mean to indicate that it does not have practical implications. Indeed, one part of my argument against "corporate" remedies will turn on their impracticality, and the adoption of corporate remedies would have many quite serious implications for practice. But, the question is conceptual in the sense that it asks about the nature of our moral duties to certain people, not primarily about procedures or the implementation of them. The papers I consider are, in fact, almost completely silent about how their proposed solutions would be implemented in the real world.

[31] Both Nine and Kolers focus on the supposed "sinking island" case, taken to be one where the entire territory of a state becomes uninhabitable. Other types of movement related to climate change, types we should expect to make up the majority of environmentally related movement, is not seriously considered in either paper, so it is hard to know what remedies, if any, Nine or Kolers would supply in those cases. However, as the cases considered by Nine and Kolers significantly overlaps with the cases where I would extend refugee protection, I will not spend more time on this point.

[32] What, exactly, this comes to is a matter of dispute between Nine and Kolers. Nine's view is more literal- territory, in the sense of land, would be transferred from an existing state to the people fleeing the effects of climate change. See Nine (2010) p. 361. Kolers' view is, at least, more complicated, in that he seeks to break the link between territory and land, arguing that "territory" is a "normative" term describing "the ratio of justice to geographical space". See Kolers (2012) p.338. This is, at least, a highly idiosyncratic view of territory, and I will admit that I do not think I fully understand it. To my mind, it seems to turn on an implausible metaphor for what plausibility it has, and seems extremely unlikely to be of practical use. At best, Kolers seems to me to be pointing out, in a highly obscure way, that sovereignty over land may be shared by different groups of people. This may be relevant, but putting this in terms of "creating new territory" or territory being "positive sum", as does Kolers, seems to me to obscure the issue rather than clarify it. As much as is possible, I shall try to avoid the dispute between Nine and Kolers on the nature of territory, as I do not think it has significant implications for the view and argument I will present.

[33] None of this, of course, is to deny that more corporate responses could not be negotiated. For example, it would not be implausible for the entire (quite small) population of Tuvalu to relocate to New Zealand, as part of a planned movement. But, I shall argue, this would not require granting Tuvaluans special territorial rights in New Zealand.

[34] A "primary rights" account to self-determination and secession is one that does not base the exercise of the right on any prior wrong-doing by other parties. See Buchanan, (2004), p. 353. Examples include Wellman, (2005) and Copp, (1997).

[35] Kolers, as noted, might contest this characterization, given his claim to present a "normative" notion of territory, where claims are said to not be "zero sum". Again, I will note that this seems to me to be little more than a metaphor, and a confused one at best. At the least, control over physical territory will be shared, and so reduced. The examples Kolers lists, such as shared sovereignty within states, confirms this rather than showing that territory may be non "zero-sum".

[36] On backlash against refugees in general, see Gibney (2004), pp. 94-103, 177-92.
[37] There are many competing accounts of what appropriate minority rights in a liberal state come to. See, in particular, the accounts given by Kymlicka (1996, 2001) Raz (1995), Tan (2002). I make no attempt here to say which is the right account, but any of these is capable of being grafted onto my approach without having to resort to the corporate/territorial view.
[38] Of course, one may be morally responsible for harms that are not against an existing law. But, such responsibility does not easily fit within the "crime" model here under consideration. These harms are, at best, considered under a "tort" model, though even here foreseeability of harm is significantly relevant for determining moral and legal responsibility. My thanks to an anonymous referee for helpful comments on this point.
[39] Of course, a new state could, in some cases, be placed on an existing border, splitting the burden between two or more countries. Or, if we want to allow highly disjoined states, the territory could be even more widely distributed. The first "solution" seems to me to be unlikely to be of more than minimal help for the real problem here, while the second poses too many problems of practicality. In neither case do these "solutions" seem to me well calibrated to the actual problems we face. My thanks to an anonymous referee for pointing out the need to say more here.
[40] On the need to address this problem, and the difficulties faced, see Lister (Forthcoming).

References

Buchanan, A., 2004. *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law.* Oxford: Oxford University Press.

Chang, H., 2010. The Environment and Climate Change: Is International Migration Part of the Problem or Part of the Solution? *Fordham Environmental Law Review*, Vol. 20, pp. 341-56.

Copp, D., 1997. Democracy and Communal Self-Determination. *In* R. McKim and J. McMahan, eds., *The Morality of Nationalism*. Oxford: Oxford University Press. 277-300.

Crepeau, F., *et al.*, *Forced Migration and Global Process: A View from Forced Migration Studies*. Lanham, MD.: Lexington Books.

Gibney, M., 2004. *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees*. Cambridge: Cambridge University Press.

Gibney, M., 2005. Temporary Protection. *In* M. Gibney and R. Hansen, eds., *Immigration and Asylum: From 1900 to the Present (3 vol.)*. Santa Barbara: ABC-Clio. 599-601.

Gibney, M and Hansen, R., eds., 2005. *Immigration and Asylum: From 1900 to the Present (3 vol.)*. Santa Barbara: ABC-Clio.

Goodwin-Gill, G., 1998. *The Refugee in International Law, 2nd ed.* Oxford: Oxford University Press.

Hosein, A., unpublished. The Fundamental Argument for Legalization.

Kymlicka, W., 1996. *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Oxford University Press.

Kymlicka, W., 2001. *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship*. Oxford: Oxford University Press.

Kolers, A. 2012. Floating Provisos and Sinking Islands. *Journal of Applied Philosophy*, 29 (4), 333-343.

Lister, M. 2013. Who Are Refugees?. *Law and Philosophy*, Vol. 32, pp.654

Lister, M., (forthcoming). Self-Determination, Dissent, and the Problem of Population Transfers. *In* F. Teson, ed., *The Problem of Self-Determination*. Cambridge: Cambridge University Press.

McAdam, J., 2012. *Climate Change, Forced Migration, and International Law*. Oxford: Oxford University Press.

Musalo, K., 1994. Irreconcilable Differences? Divorcing Refugee Protection from Human Rights Norms. *Michigan Journal of International Law* 15 (2), 1179-1240.

National Public Radio, 2013. Impossible choice faces America's first 'climate refugees'. Available from: http://www.npr.org/2013/05/18/185068648/impossible-choice-faces-americas-first-climate-refugees. Accessed 4 July 2013

Nine, C., 2010. Ecological Refugees, States Borders, and the Lockean Proviso. *Journal of Applied Philosophy*, 27 (4), 359-375.

Plumer, B., 2012. What we know about climate change and drought. *The Washington Post*, 24 July. Available from: http://www.washingtonpost.com/blogs/wonkblog/wp/2012/07/24/what-we-know-about-climate-change-and-drought/ . Accessed 4 July 2013.

Price, M., 2009. *Rethinking Asylum: History, Purpose, and Limits*. Cambridge: Cambridge University Press.

Rawls, J., 1996. *Political Liberalism (Paperback edition)*. New York: Columbia University Press.

Rawls, J., 1999. *The Law of Peoples: With "The Idea of Public Reason revisited"*. Cambridge, MA: Harvard University Press.

Raz, J., 1996. *Ethics in the Public Domain: Essays in the Morality of Law and Politics*. Oxford: Oxford University Press.

Risse, M., 2009. The Right to Relocation: Disappearing Island Nations and Common Ownership of the Earth. *Ethics & International Affairs*, 23 (3), 281-300.

Tan, K.C., 2002. *Toleration, Diversity, and Global Justice*. University Park, PA: Pennsylvania State University Press.

Waldron, J., 1992. Minority Cultures and the Cosmopolitan Alternative. *University of Michigan Journal of Law Reform*, Vol. 25, 751093.

Wellman, C.H., 2005. *A Theory of Secession: The Case for Political Self-Determination*. Cambridge, Cambridge University Press.

1967 Protocol relating to the Status of Refugees, Article I section 2, incorporating by reference with modifications article 1 A(2) of the 1951 Convention on the Status of Refugees.