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**‘Migrants in a feverland’:  
State obligations towards ‘environmental refugees’**

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**Abstract**

This paper considers whether states have a duty to accept those who cross borders to escape environmental disasters associated with climate change. It then examines how such a responsibility might be distributed, focusing on the predicament of the citizens of small island states expected to be inundated by rising sea levels. In assessing states’ responsibility to admit these individuals, I draw on Walzer’s theory of mutual aid, demonstrating that even under this narrow conception of states’ obligations, a duty to accept displaced islanders can be established. However, the proximity principle is ill-suited to determining *which* states should shoulder responsibility in this situation. Drawing on Miller’s account of remedial responsibility and his ‘connection theory,’ I suggest that the obligation to accept ‘environmental refugees’ should be shouldered principally by affluent states that share significant degrees of causal and moral responsibility for climate change, and also have particularly strong capacities to assist the displaced.

“In those first years the roads were peopled with refugees shrouded up in their clothing. Wearing masks and goggles, sitting in their rags by the side of the road like ruined aviators. Their barrows heaped with shoddy. Towering wagons or carts. Their eyes bright in their skulls. Creedless shells of men tottering down the causeways like migrants in a feverland. The frailty of everything revealed at last. Old and troubling issues resolved into nothingness and night.” –Cormack McCarthy, *The Road* (2006: 28).

Even if an apocalyptic situation like Cormack McCarty’s vision in *The Road* never comes to pass, the wreckage resulting from climate change may nonetheless reveal the frailty of the legal concepts and institutional arrangements currently used to structure responses to migration. Should climate change result in even a fraction of the displacement anticipated by some scientists, the ‘old and troubling issues’ of sovereignty, citizenship, and membership rights may not resolve into ‘nothingness and night’, but they will almost certainly be shaken to the core.

It is therefore striking that the ethical dimensions of the ‘environmental refugee’ issue have received relatively little attention to date. This oversight is also troubling, as international law currently lacks effective safeguards for migrants who may be forced across international borders largely due to environmental changes. Many advocates have called for the negotiation of a binding convention on the rights of so-called ‘environmental refugees,’ but these efforts often presume that the actors involved have come to terms with the complex questions of principle the issue raises: Who are ‘environmental refugees’? What are their rights? How should responsibility for upholding these rights be distributed? Even a brief survey of states’ responses to the problem

of cross-border environmental migration demonstrates the lack of consensus on this issue: Sweden and Finland have enacted legal protections for asylum seekers fleeing environmental disasters. New Zealand is piloting labour migration programmes to resettle skilled workers from island states at risk of inundation, while India has erected a 4000 kilometre fence along its border with Bangladesh to prevent would-be ‘environmental refugees’ and other migrants from accessing Indian territory.

As a preliminary contribution to emerging debates on the ethical dimensions of environmental displacement, this paper will first consider whether states have a duty to accept those who cross international borders to escape environmental disasters associated with climate change. Second, it will examine how such a responsibility might be distributed. I will focus in particular on the question of resolving the displacement of the citizens of small island states such as Tuvalu and Kiribati, which are expected to be inundated within the next 100 years due to rising sea levels.<sup>1</sup> Some islanders may avert impending displacement by, for example, participating in labour migration programmes; my interest is in those who, due to age, infirmity or other reasons, are not able to access such opportunities. While this represents a small fraction of the total number of people likely to be uprooted by the effects of climate change, this type of displacement has already begun on the Cataret Islands, and is expected to increase sharply in the future.

To establish states’ general responsibility to admit and assist these environmental refugees, I will draw on Walzer’s theory of mutual aid, which generates a relatively restrictive account of states’ obligations to accept refugees fleeing threats such as persecution and war. There are undoubtedly significant shortcomings to Walzer’s argument. However, I have engaged with this work in order to demonstrate that even under this relatively narrow conception of states’ obligations, a duty to admit those displaced from island states can be established. Turning to the *distribution* of this responsibility, I will argue that the proximity principle, which has been used to allocate primary state responsibility for sheltering conventional asylum seekers and refugees, is ill-suited to determining which states should shoulder responsibility in this situation. Instead, drawing on Miller’s account of remedial responsibility and his ‘connection theory,’ I suggest that the obligation to accept environmental refugees from small island states should be shouldered principally by affluent states that share significant degrees of causal and moral responsibility for climate change, and also have particularly strong capacities to assist those from inundated states.

Before proceeding, it is necessary to clarify the scope of the discussion, the assumptions underpinning it, and the definitions at stake. The term ‘environmental refugee’ has been the subject of considerable controversy (Bell 2004, Penz 2010). To be sure, the term has no basis in law, and I am not using it in any legal sense. Rather, I employ it to refer to those who have been

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<sup>1</sup> This paper largely focuses on the islanders’ predicament as a question of individuals’ loss of membership rights in a viable state, a wrong that may be remedied by granting individual refugees the opportunity to move to and become citizens of another state, such as Australia or Germany. However, the problem may alternatively be framed as question of group rights and self-determination. In this view, the principal harm is the loss of territory upon which the political community may live together; this is a wrong that would presumably best be remedied by providing each inundated island state with new land upon which they could continue to be self-determining. My focus on states’ obligation to accept individual environmental refugees is not to discount the potential merits of responding to the problem of by providing alternative land on which the citizens of ‘ecological refugee states’ may be continue to be self-determining, or at least partially self-determining. (See, *inter alia*, Nine 2010 and Risse 2009 for details discussions of this approach). Of course neither remedy would fully compensate for the wide range of losses the uprooted would be forced to bear.

displaced across an international border, in large part due to environmental changes, particularly those associated with climate change. Many of those seriously affected by deteriorating environmental conditions may lack the resources or capacity to move, but still have compelling claims for international assistance. My focus on those expected to be displaced from small island states is not meant to diminish this problem, but to enable examination of some of the particular questions cross-border migration raises about issues such as admission, membership and territorial rights. Distributing responsibility for displacement prompted by climate change is fraught due to uncertainty over who precisely is responsible for climate change; the extent to which particular climactic changes are attributable to humans; the number of people who may be affected; and our ability to prevent future displacement through adaptation and mitigation strategies. However, my assumption is that despite these uncertainties, the distribution of states' responsibility for sheltering those displaced from small island states may still be meaningfully discussed. Although international organisations, individuals and sub-national groups may have important roles to play *vis-à-vis* environmental refugees, it is important to focus on the responsibilities of states if only because the remedies that may be required, from admission to territorial redistribution, are primarily in the power of the state to provide. Last, I assume that although the voluntary repatriation of refugees to their countries of origin is currently the predominant solution to displacement, even if massive emissions cuts are made, return will not be a viable option for those displaced from small island states. Thus these environmental refugees need not only shelter, but membership opportunities in resettlement states.

### **Obligations to shelter 'environmental refugees': Implications of mutual aid**

On the face of it, we have good reason to think that states have an obligation to shelter and assist not only those displaced by persecution and conflict, but also those forced across borders for other reasons such as environmental disaster. To provide protection to 'conventional' refugees while refusing it to those compelled to flee due to ecological devastation appears to be morally arbitrary, and offends the generally held view that if an innocent person is suffering, someone should remedy this situation (Miller 2001: 453). We may also have more particular reasons to help environmental refugees. To the limited extent that theorists have engaged with the issue of climate change and forced migration, they have tended to examine the problem through the lens of liberal theories of international justice (e.g. Bell 2004), or theories of territorial rights and property ownership (e.g. Nine 2010, Risse 2009). For theorists who advocate free movement of people around the world, sheltering environmental migrants is a given. However, these positions do not yet find widespread support. In this section, I will therefore examine Walzer's influential and comparatively restrictive account of mutual aid as the basis for states' obligations towards refugees, and will consider the implications of this principle for displaced islanders' claims for admission and assistance.

Walzer stresses that states have a legitimate right to limit the entrance of foreigners, in order to preserve citizens' right to national self-determination. 'Admission and exclusion,' Walzer argues, 'are at the core of communal independence. They suggest the deepest meaning of self-determination. Without them, there could not be *communities of character*, historically stable, ongoing associations of men and women with some special commitment to one another and some special sense of their common life. But self-determination in the sphere of membership is not absolute...it is subject both to internal decisions by the members themselves...and to the external principle of mutual aid' (Walzer 1983: 62). Walzer draws on the Good Samaritan story

to set the stage for his arguments on mutual aid. What ‘strangers’ or members of different political communities owe to one another ‘is by no means clear, but we commonly say of such cases that positive assistance is required if (1) it is needed or urgently needed by one of the parties; and (2) if the risks and costs of providing it are relatively low for the other party’ (Walzer 1983: 33). This is an ‘obligation that can be read out in roughly the same form at the collective level. Groups of people ought to help necessitous strangers whom they somehow discover in their midst or on their path. But the limit on risks and costs in these cases is sharply drawn’ (Walzer 1983: 33). The principle of mutual aid does not generally require the assisting state to permanently take in the needy party, or to be involved in a life-long relationship. However, the scope of the state’s discretion is constrained when it encounters refugees ‘whose need is for membership itself’ (Walzer 1983: 48).

Interestingly, Walzer suggests that states may sidestep the obligation to take in needy strangers by ceding territory to groups who direly require assistance. Walzer considers the example of Australia under the ‘White Australia’ policy, and argues that if the country, with its large tracts of unoccupied land, had faced the arrival of denizens of desperate, famine-stricken South Asians, ‘the collective version of mutual aid might require a limited and complex redistribution of membership and/or territory’ (Walzer 1983: 47). Members of ‘White Australia’ could ‘yield land for the sake of homogeneity, or they could give up homogeneity (agree to the creation of a multiracial society) for the sake of the land. And those would be their only choices. White Australia could survive only as Little Australia’ (Walzer 1983: 47). This suggests that Walzer would be sympathetic to the view that rather than providing shelter on an individual or family basis to those displaced from small islands, states may give up territory upon which the citizens of inundated islands may continue living together in a self-determining manner. However, as many critics have noted, this argument is highly problematic as it appears to condone racism. Furthermore, it is far from clear that any state would voluntarily cede territory for this purpose. Even if this route is pursued, states may still have to contend with the claims of individual environmental refugees seeking membership in a new political community. For example, if one of Kiribati’s islands is flooded before the rest, and before any territorial exchange is negotiated, the residents may not feasibly be able to move to another Kiribati island, due to lack of space and the prospect of repeated displacement. Instead, they may seek refuge as individuals in another, more secure state. It may also be argued that preserving certain island states as self-determining entities may not be viable once the citizens are no longer living on their traditional lands. Walzer (1983: 44) himself recognises that ‘the link between people and land is a crucial feature of national identity.’ It may be that in the absence of this link, the citizens of certain island states cease to be a cohesive, self-determining people. Thus states may not always be able to discharge their obligations under the principle of mutual aid by reallocating territory; rather, they may have to consider admitting environmental refugees as members of the political community.

In Walzer’s account, it is the ‘victims of political or religious persecution’ who ‘make the most forceful claim for admission. If you don’t take me in, they say, I shall be killed...What can we reply? Towards some refugees we may well have obligations of the same sort that we have toward fellow nations. This is obviously the case with regard to any group of people whom we have helped turn into refugees. The injury we have done them makes for an affinity between us’ (Walzer 1983: 49). Under Walzer’s argument, refugees struggling for political and religious freedoms may have particularly strong claims for admission in liberal democracies that share these values. However, if environmental refugees also face a certain—albeit slower—demise,

which is at least in some measure due to the emissions of large, wealthy countries in a position to provide them with shelter, then he would presumably have to admit that under the principle of mutual aid, these individuals should be admitted. Assuming this argument is accepted, states would still, under the principle of mutual aid, have the right to turn away refugees if they arrive in large numbers, or if they are perceived as lacking sufficient connection with the host community's way of life (Walzer 1983: 49-50). A wide variety of objections may be mounted against these restrictions, but even if these limits stand, it is clear that the principle of mutual aid logically supports the admission of environmental refugees, especially those displaced in part due to the actions of the receiving states, and those facing stark risk of harm. As Walzer (1983: 51) recognises, 'at the extreme, the claim of asylum is virtually undeniable,' even when large numbers are involved.

Upon admission, what can the environmental refugee legitimately expect from the host state? Currently, the primary commitment of the international refugee regime is to uphold the principle of non-refoulement, which prohibits turning back the displaced if this exposes them to serious risk of harm. The utility of this principle is limited when considering the protection needs of those displaced from small island states which will physically cease to exist (above water, at least). However, host states would certainly be obliged to refrain from deporting these refugees to countries where they would face serious insecurity. Beyond simple shelter, however, Walzer (1983: 52) insists that host states are obliged to grant refugees citizenship: 'the members must be prepared,' he writes, 'to accept, as their own equals in a world of shared obligations, the men and women they admit'; this is 'why territorial admission is so serious a matter'. Particularly as they have no prospect of being able to return to their countries of origin, environmental refugees from small island states must have the opportunity to access membership rights in their states of asylum, and any benefits the host society typically provides, such as medical care and education.

### **Distributing responsibility for admitting and assisting environmental refugees**

The previous section argued that even under Walzer's comparatively restrictive account of states' obligations to take in refugees, a responsibility to recognise the admission claims of those displaced from small island states may be established. The more difficult and controversial question is how this responsibility should be distributed amongst the considerable number of states who could conceivably execute it. Typically, responsibility for sheltering refugees is distributed on the basis of proximity. If a refugee fleeing persecution or conflict can access an international border where she can claim asylum, the receiving state has the obligation not to turn the asylum seeker back to a violent fate. Walzer (1983: 51) recognises the arbitrariness of the proximity principle, but nonetheless argues that we have a stronger obligation towards those at our borders in part because turning them away would 'require us to use force against helpless and desperate people'. Although some scholars and practitioners find the proximity principle intuitively compelling, as it results in clear and relatively uncomplicated delineations of responsibility, others have expressed concern over its tendency to unevenly distribute opportunities to seek asylum, and 'burdens' for host states (Gibney 2000: 315-316). The proximity principle appears particularly ill-suited to effective allocation of responsibility for refugees from small island states, which do not border any other state, and are often thousands of miles from any country that might be able to accept them. Arguably, the proximity principle would simply come into play when the citizens of island states arrive in a new country and ask for shelter. However, the asylum-seeking process is unlikely to play out in this manner in this

case. The citizens of these states are typically very poor, while departures from their remote islands are very expensive, and require visas. Without assistance, most islanders will be unable to leave, and thus the proximity principle will not be activated. Instead of waiting for the islanders to file refugee claims at international airports, a concerted decision will have to be made to assist in relocating the islanders before rising sea levels destroy their fresh water supplies. The proximity principle does not help us identify which state(s) this should be. Furthermore, the principle is also not sensitive to the particular responsibilities that certain states may have towards climate change refugees, in light of their high and unmitigated greenhouse gas emissions. How then might responsibility for environmental refugees be allocated?

Many of the theories that have been applied to help elucidate responsibility for the negative effects of climate change recognise that states' past actions may create particular responsibilities towards certain populations.<sup>2</sup> While the specifics of arguments based on responsibility for historical injustice vary, the core idea is that the wealthy states that have emitted the most, and benefitted the most from activities that generate high levels of greenhouse gases, are obliged to take the lead in cutting emissions, and financing adaption measures in the poor countries that are bearing the brunt of the negative effects of climate change. Under this view, the biggest emitters, such as the United States, would be responsible for taking in most of those displaced from small island states. As with the proximity principle, there are several general problems with this line of argument.<sup>3</sup> Although the 'polluter pays' principle is intuitively compelling, arguments rooted in historical responsibility are problematic because they require contemporary citizens to pay the price for their forbearers' actions, which they did not know—at least before the early 1990s—would have such harmful effects. Furthermore, because of the complexity of the global climate system and emissions patterns, it is impossible to disaggregate the harms associated with climate change and attribute them to particular agents. In light of conceptual hurdles such as these, we have good reason to be wary about attributions of responsibility for environmental refugees that rely solely on arguments about historical responsibility. In contrast, Miller's theory of remedial responsibility is better suited to explaining and distributing responsibility for helping climate change refugees because it takes questions of historical responsibility into consideration, but also weighs other relevant factors such as capacity to assist and the effectiveness of the aid that may be provided. Ultimately, arguments based on historical responsibility and Miller's 'connection theory' may attribute responsibility to the same actors, but Miller's approach provides a more compelling justification, which may ideally translate into greater readiness on the part of states to shoulder their responsibilities.

To be 'remedially responsible for a bad situation means to have a special obligation to put the bad situation right, in other words to be picked out, either individually or along with others, as having a responsibility towards the deprived or suffering party that is not shared equally among all agents' (Miller 2001: 454). The central question when distributing remedial responsibility is: 'What connects a particular agent A to a particular patient P in such a way that A is singled out as having a remedial responsibility towards P that others, in general, do not have?' (Miller 2001: 454) Under Miller's connection theory, remedial responsibility is determined by considering and balancing a range of different types of responsibility, including but not limited to causal and moral responsibility. Causal responsibility refers to an agent's role

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<sup>2</sup> For examinations of duties to remedy climate change generally, see for example Shue (2010), Caney (2010) and Meyer and Roser (2010).

<sup>3</sup> For a detailed refutation of the historical responsibility approach as it applies to mitigating the effects of climate change, see Miller (2008). For a defence, see Neumayer (2005).

in generating a particular state of affairs, based on a ‘common sense understanding of causation’ (Miller 2001: 455). Causal responsibility may or may not be linked with moral responsibility, which involves the evaluation of the agent’s conduct in terms of moral blame or praise. Moral responsibility may be incurred for acting wrongly, or for not acting as duty requires. For example, if I walk down the street, accidentally trip and knock down another pedestrian, I am causally responsible for the accident, but not morally responsible. However, if I collided with the pedestrian purposefully, or due to negligence, I would be both causally and morally responsible for the results (Miller 2001: 455-458).

Although it may appear obviously reasonable to hold agents accountable for their actions on the basis of their causal or moral responsibility, Miller emphasises the complexities associated with this proposition. For instance, there may be several agents, or no identifiable agent, with causal or moral responsibility for certain harms. Rather than resting automatically with the causally or morally responsible agent, under Miller’s connection theory the locus of remedial responsibility may vary, depending on factors such as the different capacities of the agents involved; the effectiveness of the assistance they could provide; the relative cost to each agent of remedying the harm; whether certain agents benefitted from the harm; and whether the agents and the individuals in need of help have some ‘special responsibilities’ towards one another, due for example to ties such as family relations or nationality (Miller 2001: 460-462, Miller 2007: 99-104). Miller’s connection theory is therefore both forward-looking and backward-looking: by asking us to consider and pluralistically balance six principles—causal, outcome and moral responsibility, benefit, capacity and community ties—it respects the basic conviction that in general ‘people should be held responsible for the harm that they do’ while recognising that attribution of responsibility must also consider whether the agent identified as remedially responsible in fact has the capacity to rectify the harm (Miller 2001: 466, Miller 2007: 103-104). Under this approach, there is ‘nothing paradoxical...in assigning remedial responsibility on the basis of causation, say, in one case and on the basis of communitarian relations in the next case...Where two or more of the principles apply, the theory tells us to look at the strength of the various connections...In some cases it may recommend dividing responsibility between two or more agents, where this makes practical sense, and the ties are of comparable strength’ (Miller 2001: 471).

The connection theory does not give us a completely straight-forward way of attributing responsibility for environmental displacement. As Miller (2001: 471) admits, there is ‘no algorithm’ for dividing up responsibility for alleviating deprivation and suffering. However, this approach ensures that ‘there is always *some* agent’ who can be assigned responsibility for a bad situation, such as the uprooting of islanders (Miller 2001: 471). Furthermore, it accommodates the deeply held belief that in general agents should rectify the harms for which they bear significant moral responsibility, without needing to reach definitive, precise conclusions regarding proportional allocation of causal and moral responsibility for climate change. Because questions of causal and moral responsibility are considered alongside and balanced against other factors such as capacity to assist, and having benefitted from the harm, a general sense of actors’ relative roles and culpability will suffice.

In practice, what would this approach entail? Even when we consider the distribution of remedial responsibility for refugees through the lens of connection theory, we may find that we have multiple states that could reasonably be held responsible for assisting displaced islanders. Prime candidates would be those wealthy states that have benefitted from emitting high levels of greenhouse gases (especially after the early 1990s, when the harmful effects of such emissions

became well known), and have land and finances available to accommodate the refugees and facilitate their relocation and integration. Where there is a communal link, such as shared language, religion or history, this may further narrow down which state should accept responsibility for which particular group.

Further precision in the allocation of responsibility for assisting the displaced islanders may be achieved by appealing to Miller's *principle of equal sacrifice*, which applies his views on remedial responsibility to explain which states should take the lead in cutting greenhouse gas emissions. For mitigation efforts, the principle of equal sacrifice entails distinguishing between endemically impoverished societies and those with the capacity to ensure that their members do not fall below the global poverty line. Members of the latter groups are obliged to implement cuts to achieve an agreed-upon global target. Targets 'for reducing gas emissions should be set in such a way that the costs of meeting these targets are allocated on an equal per capita basis among the members of the better off societies' (Miller 2008: 146). Setting aside for a moment the sense in which it is problematic to frame the acceptance of refugees as a sacrifice (given that most refugees become responsible, productive members of their new societies in relatively short order), what would the application of the principle of equal sacrifice to the refugee problem involve? First, the 'better off societies' could be ranked in terms of per capita emissions and income, taking note of relevant factors including availability of inhabitable land. Those in need of refuge could be distributed amongst this set of countries in such a way that the numbers accepted and costs incurred by the asylum states are approximately equal. To the extent possible, displaced communities could be resettled together, to countries where they have links on the basis of language, culture, history, or the presence of diaspora groups.<sup>4</sup>

In the event that agreement is reached to redistribute territory to 'ecological refugee states' upon which they may continue to be self-determining, a similar approach could be taken to distributing remedial responsibility. Wealthy and high emitting but densely populated states could be called upon to cover the costs of resettling the islanders. Alternatively, 'ecological refugee states' and host states could negotiate arrangements for 'nested self-determination, where the Tuvaluans' and other islanders 'have rights to limited self-determination within another state's territory' (Nine 2010: 372).

## Conclusion

The first aim of this discussion was to demonstrate that even under Walzer's relatively narrow account of states' duties towards refugees, a responsibility to accept 'environmental refugees' forced from small island states due to the effects of climate change may be established. The second aim was to explore how this obligation may be distributed, taking into account factors such as causal and moral responsibility for climate change, and capacity to assist. The looming challenge is to translate arguments of principle into robust political and legal commitments to those who are uprooted, and who face the prospect of displacement. As formal allocations of responsibility are negotiated, it will be essential to take into account the perspectives and preferences of displaced persons themselves. Beyond the loss of land and livelihoods, the restriction of free choice represents a significant harm associated with forced migration. An important way to rectify this harm would be to present displaced communities and

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<sup>4</sup> Miller (2005) argues for a similar arrangement for conventional refugees. Risse (2009: 296-297) also advocates a solution along these lines, and suggests that taking in refugees from small island states could lift some of the responsibility host states would otherwise have to cut their emissions.

those at risk of displacement with as wide a range of choices as possible for their relocation, thereby upholding or restoring to some extent their ability to make meaningful decisions about the course of their lives.

Even if such participatory processes are implemented, environmental displacement, and particularly the flooding of small island states, generates harms that can never be fully remedied. It is therefore all the more important to pursue a multi-pronged approach to upholding responsibility for climate change that focuses on both supporting adaptation strategies such as migration, and on reducing the continued emission of unsustainable levels of greenhouse gases.

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